

IN THE SUPREME COURT OF NEVADA

DAISY TRUST, A NEVADA TRUST,

Appellant,

v.

SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION;
AND NEVADA ASSOCIATION
SERVICES, INC., A NEVADA NON-
PROFIT CORPORATION,

Respondents.

Supreme Court Case No. 83798

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Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX

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INDEX OF APPENDIX – CHRONOLOGICAL

<u>DATE</u>	<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE</u>
03/01/2019	Complaint	1	JA001-012
03/07/2019	Affidavit of Service	1	JA013
03/07/2019	Affidavit of Service	1	JA014
05/13/2020	Recorder's Transcript of Oral Argument	1	JA015-032
07/01/2020	Recorder's Transcript of Pending Motion	1	JA033-040
06/14/2021	First Amended Complaint	1	JA041-061
06/28/2021	Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment	1	JA062-107
06/30/2021	Nevada Associations Services, Inc's Joinder to Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment	1	JA108-110
07/12/2021	Opposition to Defendant Sunrise Ridge Master Homeowners' Association Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment and Request for NRCP 56(D) Relief	1	JA111-132
08/25/2021	Defendant Sunrise Ridge Master Homeowners' Association's Reply in Support of its Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment	1	JA133-141

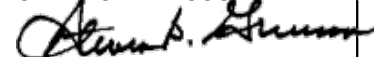
09/01/2021	Recorder's Transcript of Pending Motions	1	JA142-147
10/12/2021	Order Granting Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment and Defendant Nevada Association Services' Joinder Thereto	1	JA148-156
10/12/2021	Notice of Entry of Order Granting Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment and Defendant Nevada Association Services' Joinder Thereto	1	JA157-169
11/10/2021	Notice of Appeal	1	JA170-172

INDEX OF APPENDIX – ALPHABETICAL

<u>DATE</u>	<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE</u>
3/7/2019	Affidavit of Service	1	JA013
3/7/2019	Affidavit of Service	1	JA014
3/1/2019	Complaint	1	JA001-012
6/28/2021	Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment	1	JA062-107
8/25/2021	Defendant Sunrise Ridge Master Homeowners' Association's Reply in Support of its Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment	1	JA133-141

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6/30/2021	Nevada Associations Services, Inc's Joinder to Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment	1	JA108-110
11/10/2021	Notice of Appeal	1	JA170-172
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5/13/2020	Recorder's Transcript of Oral Argument	1	JA015-032
7/1/2020	Recorder's Transcript of Pending Motion	1	JA033-040

9/1/2021	Recorder's Transcript of Pending Motions	1	JA142-147
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1 **COMP**
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13
14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 DAISY TRUST, a Nevada trust,
17
18 Plaintiff,

CASE NO: A-19-790395-C

Case No.:
Dept. No.:

Department 18

13 vs.

14 SUNRISE RIDGE MASTER HOMEOWNERS
15 ASSOCIATION, a Nevada non-profit
16 corporation; and NEVADA ASSOCIATION
17 SERVICES, INC., a Nevada corporation;
18
19 Defendants.

20 **COMPLAINT**

21 COMES NOW, Plaintiff, Daisy Trust, by and through its attorneys, ROGER P. CROTEAU
22 & ASSOCIATES, LTD., and hereby complains and alleges against Defendants as follows:

23 **PARTIES AND JURISDICTION**

- 24 1. Plaintiff, Daisy Trust ("*Trust*"), is a Nevada trust, authorized to do business and doing
25 business in the County of Clark, State of Nevada.
26 2. Daisy Trust is the current owner of real property located at 3883 Winter Whitetail Street, Las
27 Vegas, Nevada 89122 (APN 161-15-811-066) (the "*Property*").
28

- 1 3. Daisy Trust acquired title to the Property by Trustee's Deed Upon Sale recorded on August
2 30, 2012, by and through a homeowners association lien foreclosure sale conducted on
3 August 24, 2012 ("*HOA Foreclosure Sale*"), by Nevada Association Services, Inc., a Nevada
4 corporation, authorized to do business and doing business in Clark County, State of Nevada
5 ("*HOA Trustee*"), on behalf of Sunrise Ridge Master Homeowners Association, a Nevada
6 domestic non-profit corporation ("*HOA*"). The HOA Foreclosure Deed was recorded in the
7 Clark County Recorder's Office on August 30, 2012 ("*HOA Foreclosure Deed*").
- 8 4. Upon information and belief, HOA is a Nevada common interest community association or
9 unit owners' association as defined in NRS 116.011, is organized and existing under the laws
10 of the State of Nevada, and transacts business in the State of Nevada.
- 11 5. Upon information and belief, HOA Trustee is a debt collection agency doing business in the
12 State of Nevada, and is organized and existing under the laws of the State of Nevada.
- 13 6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
- 14 7. The exercise of jurisdiction by this Court over the parties in this civil action is proper
15 pursuant to NRS 14.065.

16 **GENERAL ALLEGATIONS**

- 17 8. Under Nevada law, homeowner's associations have the right to charge property owners
18 residing within the community assessments to cover the homeowner's associations' expenses
19 for maintaining or improving the community, among other things.
- 20 9. When the assessments are not paid, the homeowner's association may impose a lien against
21 real property which it governs and thereafter foreclose on such lien.
- 22 10. NRS 116.3116 makes a homeowner's association's lien for assessments junior to a first deed
23 of trust beneficiary's secured interest in the property, with one limited exception; a
24 homeowner's association's lien is senior to a deed of trust beneficiary's secured interest "to
25 the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312
26 and to the extent of the assessments for common expenses based on the periodic budget
27
28

1 adopted by the association pursuant to NRS 116.3115 which would have become due in the
2 absence of acceleration during the 9 months immediately preceding institution of an action to
3 enforce the lien.” NRS 116.3116(2)(c).

4 11. In Nevada, when a homeowners association properly forecloses upon a lien containing a
5 super-priority lien component, such foreclosure extinguishes a first deed of trust.

6 12. On or about January 25, 2005, Michael F. Delapaz and Carolyn T. Delapaz, husband and
7 wife, and Ludivina C. Catacutan, a single woman, all as joint tenants (“*the Former Owners*”)
8 purchased the Property and obtained a loan secured by the Property from Bank of America,
9 N.A., (“*BANA*” and/or “*Lender*”), that is evidenced by a deed of trust between the Former
10 Owners and Lender, recorded against the Property on January 28, 2005, for the loan amount
11 of \$220,864.00 (“*Deed of Trust*”). The Deed of Trust provides Lender is beneficiary.

12 13. On or about January 25, 2005, the Former Owners obtained a second loan secured by the
13 Property from Bank of America, N.A., (“*BANA*” and/or “*Lender*”), that is evidenced by a
14 second deed of trust between the Former Owner and Lender, recorded against the Property on
15 January 28, 2005, for the loan amount of \$55,216.00 (“*2nd Deed of Trust*”). The Deed of
16 Trust provides Lender is beneficiary.

17 14. The Former Owner executed Planned Unit Development Riders along with the Deeds of
18 Trust, effective as of January 25, 2005.

19 **The HOA Lien and Foreclosure**

20 15. Upon information and belief, the Former Owners of the Property failed to pay to HOA all
21 amounts due to pursuant to HOA’s governing documents.

22 16. Accordingly, on May 20, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of
23 Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the
24 HOA was \$1,117.00, as of July 8, 2010, plus interest, late charges, costs, fees for the
25 management body, and attorney’s fees.

26 ///

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28 ///

- 1 17. On July 13, 2010, HOA Trustee, on behalf of the HOA, recorded a Notice of Default and
2 Election to Sell Under Homeowners Association Lien ("*NOD*") against the Property. The
3 NOD stated the amount due to the HOA was \$2,214.00 as of July 8, 2010, plus late fees,
4 collection fees and interest.
- 5 18. On March 21, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale against
6 the Property ("*NOS*"). The NOS provided that the total amount due the HOA was \$4,648.67
7 and set a sale date for the Property of April 20, 2012, at 10:00 A.M., to be held at Nevada
8 Legal News.
- 9 19. On or about March 30, 2012, after the NOS was recorded, BANA, through counsel Miles,
10 Bauer, Bergstrom & Winters, LLP ("*Miles Bauer*") contacted the HOA Trustee and HOA via
11 U.S. Mail and requested adequate proof of the super priority amount of assessments by
12 providing a breakdown of up to nine (9) months of common HOA assessments due the HOA
13 prior to the filing of the HOA Lien in order for BANA to calculate the Super Priority Lien
14 Amount in an ostensible attempt to determine the amount the HOA Lien entitled to super-
15 priority.
- 16 20. Upon information and belief, Miles Bauer requested the Former Owners' HOA arrears in an
17 attempt to pay the super-priority amount of the HOA Lien ("*Super-Priority Lien Amount*").
- 18 21. In an Affidavit of Adam Kendis of Miles Bauer, Mr. Kendis provided that he could not locate
19 a response from the HOA and HOA Trustee to the "March 30, 2012, Miles Bauer letter to the
20 HOA, care of the HOA Trustee."
- 21 22. The Affidavit states that Miles Bauer used a Statement of Account from Nevada Association
22 Services, Inc., for a different property in the same HOA to determine a good faith payoff.
- 23 23. On April 19, 2012, BANA, through Miles Bauer, provided a payment of \$378.00 to the HOA
24 Trustee, which included payment of up to nine months of delinquent assessments (the
25 "*Attempted Payment*").
- 26 24. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$378.00.
- 27 25. On August 24, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the
28 Property and recorded the HOA Foreclosure Deed on August 30, 2012, which stated that the

- 1 HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the Foreclosure Sale
2 for the highest bid amount of \$5,470.00.
- 3 26. The Foreclosure Sale created excess proceeds.
- 4 27. After the Notice of Default was recorded, BANA, the purported holder of the Deed of Trust
5 recorded against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and
6 HOA and requested all amounts due the HOA by the Former Owners, upon information and
7 belief, Miles Bauer requested the sums due to the HOA by the Former Owners so it could
8 calculate the breakdown of nine (9) months of common HOA assessments in order for
9 BANA to calculate the Super Priority Lien Amount in an ostensible attempt to determine the
10 amount of the HOA Lien entitled to super-priority over the Deed of Trust.
- 11 28. In none of the recorded documents, nor in any other notice recorded with the Clark County
12 Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or
13 entity, including but not limited to BANA, had attempted to pay any portion of the HOA Lien
14 in advance of the HOA Foreclosure Sale.
- 15 29. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the
16 amount of \$5,470.00, thereby purchasing the Property for said amount.
- 17 30. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the
18 HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted
19 to pay the Super-Priority Lien Amount.
- 20 31. Upon information and belief, the debt owed to Lender by the Former Owners of the Property
21 pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value
22 of the Property at the time of the HOA Foreclosure Sale.
- 23 32. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority
24 Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby
25 changing the priority of the HOA Lien vis a vis the Deed of Trust.
- 26 33. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the
27 Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale
28 acquired title to the Property subject to the Deed of Trust.

- 1 34. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure
2 Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien
3 Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and
4 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders
5 and potential bidders would not have bid on the Property.
- 6 35. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would
7 not have received payment, interest, fees, collection costs and assessments related to the
8 Property would have remained unpaid.
- 9 36. HOA Trustee acted as an agent of the HOA.
- 10 37. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of
11 respondeat superior.
- 12 38. HOA and HOA Trustee conspired together to hide material information related to the
13 Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
14 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis
15 the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.
- 16 39. The information related to any Attempted Payment or payments made by Lender, BANA, the
17 homeowner or others to the Super Priority Lien Amount was not recorded and would only be
18 known by BANA, Lender, the HOA and HOA Trustees.
- 19 40. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide the
20 aforementioned information for their own economic gain and to the detriment of the bidders
21 and potential bidders at the HOA Foreclosure Sale.
- 22 41. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in
23 BANA's Complaint filed against Plaintiff and the HOA on March 3, 2016 ("*Discovery*") in
24 the United States District Court for the District of Nevada, Civil Action No. 2:16-cv-00467-
25 MMD-CWH (the "*Case*").
- 26 ///
- 27 ///
- 28 ///

FIRST CAUSE OF ACTION

(Intentional, or Alternatively Negligent, Misrepresentation

Against the HOA and HOA Trustee)

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 41 hereof as if set forth fully herein.

43. At no point in time did HOA or HOA Trustee disclose to the bidders and potential bidders at the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the Super-Priority Lien Amount or that it was provided the Attempted Payment.

44. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from many additional services on behalf of HOA related to the Property and proceedings related to the HOA Foreclosure Sale.

45. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the Super-Priority Lien Amount.

46. Consequently, HOA and HOA Trustee received substantial benefit as a result of their rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and intentionally failing to disclose that information to the Plaintiff or the other bidders.

47. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.

48. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure Sale for their own economic gain.

49. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure

- 1 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to
2 the Attempted Payment of the Super-Priority Lien Amount by Lender and did so for their
3 own economic gain.
- 4 50. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose material
5 information related to the Attempted Payment of the Super-Priority Lien Amount.
- 6 51. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted
7 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA
8 Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at
9 the HOA Foreclosure Sale.
- 10 52. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the
11 Property.
- 12 53. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,
13 HOA would not have received funds in satisfaction of the HOA Lien.
- 14 54. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,
15 HOA Trustee would not have received payment for the work that it performed on behalf of
16 HOA in association with the HOA Foreclosure Sale and related proceedings.
- 17 55. Plaintiff attended the sale as a ready, willing and able buyer without knowledge of the
18 Attempted Payment.
- 19 56. Plaintiff would not have purchased the Property if it had been informed that any individual or
20 entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA
21 Foreclosure Sale.
- 22 57. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment of the
23 Super-Priority Lien Amount and their subsequent intentional or grossly negligent failure to
24 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related
25 thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby
26 purchased the Property.
- 27 ///
- 28 ///

- 1 58. HOA and HOA Trustee each profited from their intentional and/or negligent
2 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing
3 and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 4 59. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to advise
5 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the
6 HOA and/or HOA Trustee that was not publicly available which ostensibly changed the
7 priority of Deed of Trust vis a vis the HOA Lien.
- 8 60. HOA and HOA Trustee solely possessed information related to the Attempted Payment of the
9 Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale, and
10 intentionally withheld such information for their own economic gain.
- 11 61. Alternatively, HOA and HOA Trustee were gross negligently when it withheld information
12 related to the Attempted Payment of the Super-Priority Lien Amount.
- 13 62. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent
14 failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 15 63. HOA and HOA Trustee intended that bidders and potential bidders at the HOA Foreclosure
16 Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority Lien
17 Amount at the time of the HOA Sale and that their failure to disclose such information
18 promoted the sale of the Property.
- 19 64. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and
20 potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-
21 Priority Lien Amount would lead such bidders and potential bidders to believe that the Deed
22 of Trust was subordinate to the HOA Lien and not being sold subject to the Deed of Trust.
- 23 65. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the Super-
24 Priority Lien Amount.
- 25
- 26 66. The HOA and the HOA Trustee breached that duty to disclose the Attempted Payment to
27 Plaintiff.
- 28

- 1 67. As a result of the HOA and HOA Trustee's breach of its duty of care, duty of good faith and
2 candor to bidders at the HOA Foreclosure Sale for its own economic gain, Plaintiff has been
3 economically damaged in many aspects.
- 4 68. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase,
5 maintain, operate, litigate various cases and generally manage the Property would be lost
6 along with the lost opportunity of purchasing other available property offered for sale where a
7 super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to
8 purchase a property free and clear of the deed of trust and all other liens.
- 9 69. As a direct and proximate result of the actions of the Defendants, it has become necessary for
10 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
- 11 70. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
12 Procedure as further facts become known.

13 **SECOND CAUSE OF ACTION**

14 **(Breach of the Duty of Good Faith Against the HOA and HOA Trustee)**

- 15 71. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 70
16 as if set forth fully herein.
- 17 72. NRS 116.1113 provides that every contract or duty governed by NRS 116, et seq., Nevada's
18 version of the Common-Interest Ownership Uniform Act, must be performed in good faith in
19 its performance or enforcement.
- 20 73. A duty of good faith includes within that term a duty of candor in its dealings.
- 21 74. Prior to the HOA Foreclosure Sale of the Property, Lender purports to have obtained
22 evidence detailing Super-Priority Lien Amount.
- 23 75. Thereafter, Lender, by and through Miles Bauer attempted to pay the Super-Priority Lien
24 Amount to HOA or HOA Trustee by the Attempted Payment.
- 25 76. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the Attempted
26 Payment.
- 27 77. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure and
28 refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to

1 breach their duty of good faith, fair dealings and candor pursuant to NRS 116, et seq. to
2 Plaintiff.

3 78. HOA and the HOA Trustee owed a duty of good faith and candor to Plaintiff.

4 79. By virtue of its actions and inactions, HOA and HOA Trustee substantially benefitted to the
5 detriment of the Plaintiff.

6 80. As a direct and proximate result of the actions of the Defendants, it has become necessary for
7 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

8 81. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
9 Procedure as further facts become known.

10 **THIRD CAUSE OF ACTION**

11 **(Conspiracy)**

12 82. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through
13 81 as if set forth fully herein.

14 83. HOA and HOA Trustee knew or should have known of BANA's Attempted Payment of the
15 Super-Priority Lien Amount.

16 84. Upon information and belief, acting together, Defendants reached an implicit or express
17 agreement amongst themselves whereby they agreed to withhold the information concerning
18 the Attempted Payment of the Super-Priority Lien Amount from bidders and potential
19 bidders at the HOA Foreclosure Sale.

20 85. Defendants knew or should have known that their actions and omissions would injure the
21 successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To
22 further their conspiracy, upon information and belief, Defendants rejected the Attempted
23 Payment for the purpose of obtaining more remuneration than they would have otherwise
24 obtained at a sale of the subpriority portion of the HOA Lien.

25 86. As a direct and proximate result of the actions of the Defendants, it has become necessary for
26 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

27 87. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
28 Procedure as further facts become known.

1 WHEREFORE, Plaintiff prays for relief as follows:

- 2 1. For damages to be proven at trial in excess of \$15,000;
- 3 2. For punitive damages in an amount to be determined at trial;
- 4 3. For an award of reasonable attorneys' fees as special damages, and otherwise
- 5 under Nevada law;
- 6 4. For pre-judgment and post-judgment interest at the statutory rate of interest; and
- 7 5. For such other and further relief that the Court deems just and proper.

8 DATED this 1st day of March, 2019.

9 ROGER P. CROTEAU & ASSOCIATES, LTD.

10 /s/ Roger P. Croteau

11 ROGER P. CROTEAU, ESQ.

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15 (702) 254-7775

16 *Attorney for Plaintiff*

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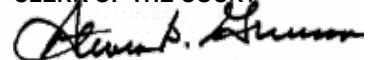
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7 *Attorney(s) for: Plaintiff*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 Daisy Trust, a Nevada trust

11 Plaintiff(s),

12 vs.

13 Sunrise Ridge Master Homeowners Association, a
14 Nevada non-profit corporation, et al.

15 Defendant(s).

Case No.: A-19-790395-C

Dept. No.: 18

Date:

Time:

AFFIDAVIT OF SERVICE

16 I, **Susan Kruse**, being duly sworn deposes and says: That at all time herein Affiant was and is a citizen of
17 the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under
18 license #1926, and not a party to or interested in the proceeding in which this Affidavit is made. The
19 Affiant received 1 copy of the: Summons; Complaint on the 4th day of March, 2019 and served the
20 same on the 5th day of March, 2019 at 2:50pm by serving the Defendant, Sunrise Ridge Master
21 Homeowners Association, a Nevada non-profit corporation, by personally delivering and leaving a
22 copy at Registered Agent, Thoroughbred Management, 2555 W. Cheyenne Ave.,
23 North Las Vegas, NV 89032 with Sarah O'Brien, Authorized Agent, pursuant to NRS 14.020 as a
24 person of suitable age and discretion at the above address, which address is the address of the resident
25 agent as shown on the current certificate of designation filed with the Secretary of State.



26 **State of Nevada, County of Clark**

27 SIGNED AND SWORN to before me on this
28 6th day of March, 2019

By: Susan Kruse

Notary Public:

Affiant: Susan Kruse
#: 1469

J & L Process Service, License # 1926
Work Order No: 19-7071

Steven D. Grierson

AFFT

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9120 W. Post Rd., Suite 101
Las Vegas, NV 89148
State Bar No.: 4958
Attorney(s) for: Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Daisy Trust, a Nevada trust

Plaintiff(s),

vs.

Sunrise Ridge Master Homeowners Association, a
Nevada non-profit corporation, et al.

Defendant(s).

Case No.: A-19-790395-C

Dept. No.: 18

Date:
Time:

AFFIDAVIT OF SERVICE

I, **Diana Brown**, being duly sworn deposes and says: That at all time herein Affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #1926, and not a party to or interested in the proceeding in which this Affidavit is made. The Affiant received 1 copy of the: Summons; Complaint on the 4th day of March, 2019 and served the same on the 5th day of March, 2019 at 9:00am by serving the Defendant, Nevada Association Services, Inc., a Nevada corporation, by personally delivering and leaving a copy at Registered Agent, Chris Yergensen, 6625 S. Valley View Blvd., C300, Las Vegas, NV 89118 with Stacy Dominguez, Front Desk, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.



State of Nevada, County of Clark

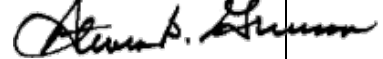
SIGNED AND SWORN to before me on this
6th day of March, 2019

By: Diana Brown

[Signature]
Notary Public:

Affiant: Diana Brown
#: R-033810

J & L Process Service, License # 1926
Work Order No: 19-7070



1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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DAISY TRUST,

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Plaintiff,

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vs.

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SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION, ET
AL.,

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Defendant.

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BEFORE THE HONORABLE MARY KAY HOLTHUS
DISTRICT COURT JUDGE
WEDNESDAY, MAY 13, 2020

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RECORDER'S TRANSCRIPT OF ORAL ARGUMENT

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APPEARANCES

19

For the Plaintiff:

ROGER P. CROTEAU, ESQ.

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For the Defendants:

JONATHAN K. WONG, ESQ.

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RECORDED BY: YVETTE G. SISON, COURT RECORDER

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Las Vegas, Nevada, Wednesday, May 13, 2020

[Case called at 10:25 a.m.]

THE CLERK: Daisy Trust v. Sunrise Ridge Master
Homeowners Association, A790395.

MR. CROTEAU: Good morning, Your Honor. Roger Croteau
for Daisy Trust.

THE COURT: Good morning.

MR. WONG: Good morning, Your Honor. Jonathan Wong
on behalf of Sunrise Ridge HOA.

THE COURT: Is that everybody? I'll take it as a yes.

MR. CROTEAU: That's all I know of that's here, Your Honor.

THE COURT: Okay.

MR. CROTEAU: There was a joinder. Just for the record, I
believe NAS filed a joinder.

THE COURT: Filed a what?

MR. CROTEAU: Joinder. I have it filed on 4/12 of '19, Your
Honor.

THE COURT: Yeah, they did.

MR. CROTEAU: For whatever reason, this was pretty old.

THE COURT: Okay. Yeah. Hang on one second.

All right. Go ahead, Mr. Croteau. It's your motion.

MR. CROTEAU: It's not, Your Honor. It's the HOA's.

MR. WONG: Okay. Jonathan Wong speaking here. I guess
I'll just --

1 THE COURT: I'm sorry, I meant Mr. Wong. It's your motion,
2 Mr. Wong. I'm sorry.

3 MR. WONG: No worries. I'll just jump right into it then.

4 THE COURT: Go ahead.

5 MR. WONG: So to make things simple, whenever I refer to
6 NRS 116 in my argument, I'm referring to the version that was in effect at
7 the time of the foreclosure sale, around August 2012.

8 Your Honor, it's our position that this case should be
9 dismissed for Plaintiff's failure to comply with NRS 38, subsection 310.

10 THE COURT: Mr. Wong.

11 MR. WONG: This statute provides that --

12 THE COURT: Excuse me, Mr. Wong. I think you're a little
13 close to the microphone. Something's a little bit --

14 MR. WONG: Oh, am I too loud.

15 THE COURT: I don't know about too loud. It's coming across
16 like -- give me a word somebody -- feedbacky, muffled kind of --

17 MR. WONG: Oh. How does this sound right now?

18 THE COURT: That's better.

19 MR. WONG: Is it still -- okay. Maybe I'll just try and talk
20 slower and little bit softer and see if that helps.

21 THE COURT: Yes, that's better. Slow and soft.

22 MR. WONG: Okay. All right. So it's our position that this
23 case should be dismissed for Plaintiff's failure to comply with NRS 38,
24 subsection 310. This statute provides that no civil action based upon a
25 claim relating to the interpretation, application, or enforcement of any

1 covenant, conditions, or restrictions applicable to residential property
2 may be commenced without first submitting the matter to mediation.
3 And Plaintiff's case falls squarely under this category. Each of Plaintiff's
4 causes of action are rooted in NRS 116, and per the *McKnight* [phonetic]
5 case that we cited, claims for NRS violations are the civil actions that are
6 contemplated as falling under the purview of this mediation
7 requirement.

8 So on the outset, Plaintiff's case is improper and should be
9 dismissed on this basis alone. But even without this going
10 [indiscernible], dismissal would still be appropriate on each of Plaintiff's
11 claims.

12 Moving to the misrepresentation claim. The key here is that
13 nothing under the plain language of NRS 116 imposed a requirement on
14 the HOA to inform purchasers of attempted tenders by the bank. Plaintiff
15 cannot point to an actual statutory provision that spells out this
16 requirement that it seeks to impose on the HOA.

17 NRS 116 actually provides for conveyance of title to a non-
18 warranty deed, and the notice of sale and the foreclosure deed here both
19 disclaimed any warranties as to the title being conveyed. So adding all
20 of this up, there's simply no basis for saying that the HOA made a false
21 representation by not affirmatively disclosing the bank's intent to tender.
22 And this is confirmed by the *Noonan* and *Orro* [phonetic] cases that we
23 referenced in our supplemental brief.

24 And I would point out that there are no allegations in the
25 complaint that Plaintiff asked anyone, specifically from the HOA, about

1 the existence of a tender. There was a declaration attached to the
2 opposition, but this only states that Plaintiff had a general practice of
3 trying to make some inquiries when he would attend these NRS 116
4 foreclosure sales, but there's nothing about what was done with respect
5 to this specific sale, whether he tried to talk to anyone or what other
6 efforts were made. So on this basis, the misrepresentation claim fails to
7 state a claim and should be thrown out.

8 As for conspiracy, this requires Plaintiff to show a
9 combination of two or more persons intending to accomplish an
10 unlawful objective. And for the reasons I just talked about, Plaintiff
11 cannot establish an unlawful objective. There just wasn't anything
12 unlawful about the way that the HOA noticed or conducted the
13 foreclosure sale.

14 Additionally, the conspiracy claim also fails, under the
15 intercorporate conspiracy doctrine, which provides that agents cannot
16 conspire with their principal where they act in their official capacities.
17 And that's exactly what we have here, Your Honor. Plaintiff has not
18 alleged that NAS was acting outside of the scope as the HOA's agent, or
19 for its individual advantage. So for these two reasons, the conspiracy
20 claim should be throw out as well.

21 And that takes us to the breach of NRS 116, subsection 1113
22 claim. This statutory provision imposes an obligation of good faith in
23 the performance of the duties and contracts governed by NRS 116. It's
24 important to note that this provision modifies the existing duties that are
25 set forth in NRS 116. It does not create a new duty. The duties that it

1 modifies are found in NRS 116, subsection 3116 through 31168. And
2 Plaintiff does not allege deficiencies in the HOA's performance of any of
3 these duties. Plaintiff is only seeking to impose an extra statutory duty
4 on the HOA through this good faith provision and that is improper.

5 NRS 116 is an unambiguous statute and Plaintiff has not
6 alleged otherwise. And, therefore, it must be interpreted by its plain
7 language. And I'm probably beating a dead horse at this point, but
8 again, nothing in the plain language of the statute imposed on the HOA a
9 duty to disclose the existence of an attempted tender by bank.

10 So in sum, Your Honor, we believe that NRS 38 acts as a bar
11 to Plaintiff's case and warrants dismissal in and of itself. But even
12 without considering NRS 38, dismissal is still proper as none of Plaintiff's
13 causes of action set forth a claim upon which relief may be granted.
14 Thank you.

15 THE COURT: Thank you. Mr. Croteau.

16 MR. CROTEAU: Thank you, Your Honor. Your Honor, it
17 sounds like somebody's got pots and pans in the background.

18 THE COURT: Yeah, it's coming and going.

19 MR. CROTEAU: All right. Well, I hope nobody is stuck doing
20 the dishes.

21 THE COURT: Well, nobody is doing anything here.

22 MR. CROTEAU: Okay.

23 MR. WONG: Jonathan Wong speaking, Your Honor. It's not
24 me either.

25 MR. CROTEAU: Your Honor, two things. This is an older

1 filing in terms of the briefing. What's absent from this motion is the
2 *Noonan* decision that came out in 2019, where we talk about
3 misrepresentation, either omission or intentional misstatements are at
4 least actionable to the extent that there was inquiry made, and it's a fact
5 question. The motion that's before you is a 12(b)(5) and a partial
6 summary judgment. Well, from the partial summary judgment
7 perspective there's been no discovery. From a 12(b)(5) perspective,
8 there is no discovery.

9 I make an oral motion now to amend the complaint if counsel
10 feels it was deficient in alleging the inspection and the inquiry with the
11 HOA and the HOA Trustee to bolster this complaint. I did include the
12 affidavit that would have been in the complaint, if necessary. And,
13 certainly, what would have been discovered if a deposition or an
14 interrogatory had been served. There is nothing that has been done in
15 this case in that respect.

16 As far as NRS 38.310. NRS 38.310 is and was set up for the
17 purpose of mediating a homeowner dispute with the HOA prior to
18 bringing the litigation. And what it talks about in 38.310, Subsection 1, is
19 there's no civil action based upon a claim relating to interpretation,
20 application, and enforcement of any covenant, condition, or restriction
21 applicable to the residential property or any bylaws, rules, and
22 regulations.

23 That is the CC&Rs. We're not suing under the CC&Rs. We're
24 suing under NRS 116 and common law theories. And subsection -- NRS
25 38.310, Subsection 1(b) is the procedures and the -- you know, one of the

1 litigation points would be the procedures used by the HOA for
2 increasing, decreasing, or imposing additional assessments. And the
3 issue of assessments is the functional issue of 38.310.

4 There is little to no assistance a mediator from the
5 Ombudsman's Office is going to provide in these cases. These cases all
6 emanate from all the actions of the HOA and the HOA Trustee prior to
7 my client being a member of the HOA and an owner of the HOA
8 property. So it really, really misstates the mark on that.

9 Secondly, the misrepresentation claim, counsel says there's
10 just no statutory obligation. I agree with counsel. There is no statutory
11 obligation affirmatively set forth where the HOA must record a document
12 prior to the sale identifying whether a super priority payment has been
13 made until 2015. However, as I pointed out before, that merely is a
14 codification, a bright line because again NRS 116 has not been
15 interpreted correctly by the HOA, certainly, and the HOA Trustees, as a
16 group. And that's what's led to nearly nine years of litigation. And from
17 the bank's perspective also.

18 So that is the ultimate issue for decision. *Noonan* -- the
19 *Noonan* decision is the decision that frankly identifies the difference
20 between what the statute provides as an obligation versus what the
21 statute would provide upon an inquiry and a false statement or a
22 material omission of a known fact. That's the focus of this case. And the
23 affidavit that's attached to the opposition -- my opposition, specifically
24 outlines that. Misrepresentation provides for the discovery rule.
25 Misrepresentation is not an affirmative misstatement always, but it is a

1 material omission of a material fact known by the party and relied upon
2 by the person who is hearing it. That is the case here.

3 As far as the NRS 116.113 claim. NRS 116.113, though not in
4 this briefing, but the Court can take judicial notice of that, and I've cited
5 before for the Court, where it specifically provides that the comment
6 section to 113 that was adopted in its entirety in the State of Nevada
7 talks about honesty and fact in the conduct of its duties, and in the
8 performance of its duties.

9 In this particular case, foreclosing on a property is
10 performance of its duties, and it's our contention that if they're asked a
11 question, that's not a privileged question, and the only question is, is has
12 anybody made any payments against this property, and they materially
13 don't answer that when they have actual knowledge that it has occurred
14 with the ramification that, you know, it could make the property
15 untenable from a financial perspective. I believe it's a material omission
16 of fact that the parties should know they should disclose. And that
17 ultimately is the case.

18 The comment section under 113, specifically says that
19 honesty and fact is what good faith means. In addition to that, it's the
20 covenant in good faith and fair dealing concept that we have in contracts
21 that's applied in the 113 comment as well. It's for those reasons that we
22 believe these cases transcend the basic tenet that we don't need to tell
23 you anything and that's what's missing in these cases.

24 And I know Your Honor has ruled in a certain way in these
25 cases, and as a practical matter I know you've heard my arguments

1 probably more elaborated in other cases, that's why I won't belabor this,
2 but I think our briefing does cover it, but I don't believe that it's an extra
3 statutory duty that doesn't exist on the law. I think it's a good faith
4 obligation that in the performance of their duties, if they're queried, that
5 they owe a duty of honesty and fact, and that's the point. And that's the
6 summation of the cases, frankly.

7 THE COURT: All right. Mr. Wong, anything?

8 MR. WONG: Yes, if I could be heard really quickly, Your
9 Honor.

10 THE COURT: Sure.

11 MR. WONG: I agree with Mr. Croteau that there's definitely a
12 dearth of case law to guide us on some of these finer points in these
13 cases. There are a few points that I would like to address really quickly
14 though.

15 With respect to the NRS 38 argument, the statute is not
16 confined to cases involving interpretation of CC&Rs. And I'll read
17 directly from NRS 38, subsection 310(1)(a), if you want to bear with me
18 really quickly. It says that, "No civil action based upon a claim relating to
19 the interpretation, application, or enforcement of any covenant,
20 conditions, or restrictions applicable to residential property, or any by-
21 laws, rules, or regulations adopted by the association."

22 So it's that second chunk that's getting at the CC&Rs. The
23 first chunk is not limited to CC&Rs and that was clarified in this
24 [indiscernible] case that we cited. The plaintiff there also had claims for
25 NRS violations, one of them actually being NRS 116, Subsection 113,

1 which Plaintiff has alleged here. And the Court found that those were
2 squarely subject to the mediation requirements of NRS 38. So we
3 believe that opposing counsel is interpreting this a little bit too narrowly.

4 With respect to the NRS 116, Subsection 1113 claim, counsel
5 has talked about honesty and fact, and what that means in the context of
6 contract cases and whatnot. But still he doesn't point to an expressed
7 duty spelled out under NRS 116, that the HOA did not perform with
8 honesty and fact.

9 And finally, if I could just address the oral motion to amend
10 the complaint. Normally, I have no objection to this, and I understand
11 that leave to amend should be freely given where justice so requires.
12 But in this particular case, it's my position that this would be futile
13 because in the underlying federal -- excuse me, in the underlying federal
14 case, Plaintiff was deposed, and he had sworn deposition testimony
15 where he says that he did not talk to the HOA or the HOA Trustee prior to
16 the foreclosure sale.

17 So Plaintiff really could not amend his complaint to include
18 allegations about -- saying that he did contact someone and tried to
19 make this sort of inquiry. And I'll leave it at that. Thank you, Your
20 Honor.

21 THE COURT: Mr. Croteau, what's your take on that? Is that --
22 do you disagree with that last --

23 MR. CROTEAU: I do actually. And, you know, when we start
24 getting into what collateral questions were, I didn't -- I wasn't litigating
25 that case or the attorney, and those questions were in a different fashion,

1 and they were directed at a different point.

2 So I do disagree. I believe that if discovery were to continue,
3 at least at a precatory level, even if it was only some discovery to see if
4 there's a case on the 56, I believe that that is not entirely [indiscernible].
5 And I've dealt with this issue before, and it's really a response that is to a
6 question that's not exactly on point. And --

7 MR. WONG: Your Honor, this is Jonathan Wong. Oh, I'm
8 sorry, go ahead.

9 MR. CROTEAU: I was just going to say, I mean, you know,
10 there's no real -- again, if we're going through even this record, what's
11 attached is the motion and so forth, really doesn't list any of that
12 documentary evidence that you're referring to that you're bringing into
13 this case. So we're still at 12(b)(5) motion here.

14 THE COURT: Right. But we --

15 MR. CROTEAU: I have no problem doing this case and
16 getting to a summary judgment.

17 THE COURT: As you said, we've been down this road before.
18 I found previously that there's no duty, and I agree there can be no
19 conspiracy at this point. I also understand that if there was an
20 affirmative misrepresentation it's a different story. But you're kind of --

21 MR. CROTEAU: But that's what the basis --

22 THE COURT: But you're kind of --

23 MR. CROTEAU: -- [indiscernible] whatever reason --

24 THE COURT: -- raising that now, and if there's --

25 MR. CROTEAU: But the affirmative misrepresentation issue

1 has been the issue in every one of my cases. That is -- that has been the
2 argument. And I understand you found no duty from the standpoint of
3 the HOA having to cry it out --

4 THE COURT: Correct.

5 MR. CROTEAU: -- to the folks there, and I understand. That's
6 not the basis of any of these cases I brought. They're all on the basis of
7 inquiry notice and failure to be told upon inquiry.

8 THE COURT: All right.

9 MR. CROTEAU: And every one has been supported with
10 that.

11 THE COURT: So explain to me --

12 MR. CROTEAU: And, again, if for whatever reason this
13 complaint is missing that particular allegation, it's in all of my other
14 complaints and that's why I'm seeking leave just to at least clean the
15 record, if you will. And it's just to support it with what is included in the
16 summary judgment motion already as an affidavit.

17 MR. WONG: Your Honor, this is Jonathan Wong speaking. I
18 think it might be beneficial if Your Honor is willing to consider doing this,
19 it would be taking this matter under advisement to read the deposition
20 transcript so that they be assessed exactly the context in which Plaintiff
21 provided that testimony. Your Honor can determine whether it's
22 applicable to the facts of this case.

23 THE COURT: Well that -- but then effectively you're getting --

24 MR. CROTEAU: Mr. Wong -- I mean, Your Honor, I mean, I'm
25 not objectionable to that; however, I would like to have an opportunity to

1 respond to that with a declaration from Mr. Haddad as to what the
2 purposes of those statements are and the context of what all that is, if
3 that's what the Court desires. And that's the [indiscernible] case. It's not
4 in this case, obviously.

5 THE COURT: So what exactly is Mr. Haddad's affidavit
6 going to say, that he had a duty to disclose at the auction, but they
7 didn't?

8 MR. CROTEAU: No, Your Honor. I mean, the actual affidavit
9 of what Mr. Haddad would say to testify to, prior to any sale, any sale,
10 and that's on his 20 plus years of history. He would always call the HOA
11 Trsutee, a) to find out if the sale is going to go forward. He would make
12 an inquiry at that time, if any payments had been made. And if he was
13 either told they were not, that there was an omission in the statement
14 leading him to believe that there were no payments made, and he
15 proceeded with the sale, that that would be an issue.

16 The one thing that's clear, and I've been in this space a long
17 time. I've been doing these cases since 2011. I represented a lot of the
18 major players that have been in this market. We had a position that we
19 took a long, long time ago that if payments were made that we were of
20 the risk that super priority payment would not have -- would have been
21 an issue and the deed of trust would not have been extinguished. We
22 did our research back then and that's what we were working under as a
23 thought process.

24 So that was an inquiry. And many of our clients at that time
25 were doing that. I mean, that was the point. For example, some HOA

1 foreclosure trustees were even announcing payments long before we
2 ever heard of SFR. And as the Court's probably aware, I've made this
3 argument before, I never heard of a tender lender from B of A, Miles
4 Bauer until approximately late 2014, after the SFR decision came out. In
5 all those years prior to that, there was never an allegation of tender, in
6 any case, for a lot of reasons. I mean, obviously, they couldn't
7 demonstrate that Miles Bauer letter and say we had no idea. We believe
8 we were just a -- we were not a real priority lien. We were just a lien. It
9 was a declaration against interest, if you will.

10 So we never heard that. Never saw it as a group. There's a
11 group of people doing the Plaintiff's work on HOA buyers. And the
12 tender issues didn't even -- the first tender issues leaked out after the
13 SFR decision and then predominantly started becoming available in '15,
14 '16, and even as late as '17.

15 So this is not, you know, such an odd area. This is an area
16 that has developed over time, but it's also been over time when it
17 stopped [indiscernible]. And part of the problem in these cases, there is
18 no level of due diligence that I can do as a buyer to find out what I just
19 asked them in that call. The lender won't talk to you. The HOA is the
20 only one to know or the HOA Trustee as the agent of the HOA, who is
21 actually receiving the call, are the only ones who will ever know if there's
22 a payment made. There's no duty on the lender to do anything.

23 THE COURT: Isn't that the risk of --

24 MR. CROTEAU: The only duty arises from the standpoint --

25 THE COURT: Isn't that the risk of the sale? I mean, isn't that

1 the whole point of it?

2 MR. CROTEAU: Well, and you know what's interesting, Your
3 Honor -- and entertain me for a minute, I appreciate that, and I mean
4 that. The query is why does NRS 116.1113 even exist? And the reason it
5 exists -- it doesn't exist in 107 sales. There is absolutely no obligation in
6 good faith in a 107 sale. There is a written in obligation of good faith
7 under a 116 sale. And the reason for that is that the HOA has knowledge
8 about the property. They have particular endemic knowledge, as it
9 relates to payments, assessments, what the community situation is. I
10 mean, all of that they have that information, but they have to operate in
11 good faith.

12 The person that they're foreclosing on is a member of theirs.
13 The person they're selling to is going to become a member of theirs, and
14 there's an ongoing relationship. There is a definite --

15 THE COURT: Okay. Well, we've been down this road, and I
16 just -- we've been kind of down this road, and I disagree. The only thing
17 I'm really kind of contemplating is everything in your complaint is the
18 omission. It's the failure to disclose. You're saying to me now for the
19 first time that there was something else going on.

20 MR. CROTEAU: I apologize. This complaint, for whatever
21 reason is missing the allegation.

22 THE COURT: So this is what I'm going to do.

23 MR. CROTEAU: All the other complaints --

24 THE COURT: I'm going to give you an opportunity to submit
25 a proposed.

1 MR. CROTEAU: Fine.

2 THE COURT: And then Mr. Wong, you can respond with
3 your position on it. And if you want to do the -- you know, I guess we
4 could turn it into a summary judgment kind of thing.

5 MR. WONG: Understood.

6 THE COURT: That's kind of where I'm leaning right now. As
7 it is, I've kind of ruled this same thing before, so --

8 MR. CROTEAU: I would welcome --

9 THE COURT: -- but I also -- I've also gone the other way
10 where we found that there was an affirmative representation at some
11 level.

12 MR. CROTEAU: I would welcome that opportunity if the
13 Court were inclined.

14 THE COURT: Okay. How much time you want?

15 MR. CROTEAU: A couple weeks is fine.

16 THE COURT: Okay. Mr. Wong, how much time do you
17 want?

18 MR. WONG: If I could have two weeks after that, Your
19 Honor, that would be perfect.

20 THE COURT: Sure. Mr. Croteau, you want any reply time?

21 MR. CROTEAU: Five days is fine.

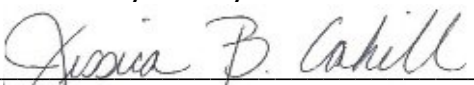
22 THE COURT: Okay.

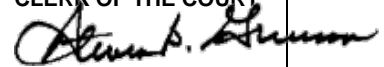
23 MR. CROTEAU: And just for the order, could we have actual
24 dates, Your Honor?

25 THE COURT: She's working on them.

1 MR. CROTEAU: Oh, I'm sorry. Thank you.
2 THE COURT: That's all right.
3 THE CLERK: Okay. The first day will be May 27th. Then June
4 10th. June 15th. And set for argument on June 24th, at 9:00 a.m.
5 MR. CROTEAU: Thank you very much, Your Honor. I
6 appreciate your courtesy.
7 THE COURT: Got them all? Okay.
8 MR. WONG: Thank you, Your Honor. Oh, Your Honor,
9 Jonathan Wong speaking here. If I may, who would you prefer to
10 prepare the order for today's hearing?
11 MR. CROTEAU: I assumed it was my obligation, Your Honor,
12 but it's up to you.
13 THE COURT: Either one of you wants to and have the other
14 sign off.
15 MR. CROTEAU: I'll do that, Your Honor.
16 MR. WONG: Oh, Roger. If you would like to do that, I have
17 no objection.
18 MR. CROTEAU: Thank you. Thank you, Your Honor.
19 THE COURT: Thank you.
20 MR. WONG: Thank you, Your Honor.

21 [Proceedings concluded at 10:52 a.m.]
22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio-visual recording of the proceeding in the above entitled case to the
24 best of my ability.

24 
25 Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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DAISY TRUST,

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Plaintiff,

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vs.

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SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION, ET
AL.,

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Defendant.

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BEFORE THE HONORABLE MARY KAY HOLTHUS
DISTRICT COURT JUDGE
WEDNESDAY, JULY 1, 2020

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16

RECORDER'S TRANSCRIPT OF PENDING MOTION

17

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APPEARANCES

19

For the Plaintiff:

ROGER P. CROTEAU, ESQ.

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For the Defendants:

JONATHAN K. WONG, ESQ.

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RECORDED BY: YVETTE G. SISON, COURT RECORDER

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Las Vegas, Nevada, Wednesday, July 1, 2020

[Case called at 10:18 a.m.]

THE CLERK: Daisy Trust v. Sunrise Ridge Master
Homeowners Association, A-790395.

MR. CROTEAU: Good morning, Your Honor. Roger Croteau
for Daisy Trust.

MR. WONG: Good morning, Your Honor. Jonathan Wong
on behalf of Sunrise Ridge HOA.

THE COURT: Good morning. Who's here for Daisy Trust?

MR. CROTEAU: Roger Croteau, Your Honor. How are you?

THE COURT: Okay. Thank you.

All right. Where do you want to start? Do you want me to
kind of start with where I kind of am, or do you all want to start?

MR. CROTEAU: That would be fine, Your Honor. If you
would.

THE COURT: I did grant the motion to amend and asked you
to submit the amended. I don't believe that I approved adding as to 113.
I think that cause of action -- a) I don't think that I gave leave to amend to
add it; and, b) I don't think it's a viable claim in any event. So I'm going
to deny it as to that portion.

Here's what I was looking for with respect to the
amendments and 116, and I thought you were letting me know that there
was a material misrepresentation, not an omission, but an actual
genuine misrepresentation. And I'm not seeing that in the amended. I'm

1 not seeing that it's any different from before or any of the other cases --
2 nothing personal. You know, where we pretty say there's no duty, and
3 you haven't found -- you haven't -- there isn't a duty. I don't see that -- I
4 don't think -- you're talking about the refusal of the tender as somehow
5 being an intentional, and I'm not making that leap.

6 MR. CROTEAU: Yeah. Well, I'm not sure that's what we're
7 saying. Just for clarification.

8 THE COURT: Okay.

9 MR. CROTEAU: And that's just for clarification, Your Honor.
10 What we're alleging and what we've always alleged is there was never a
11 statement saying no payments were made when in fact they were. What
12 we've been told -- well, strike that. That's not what I'm saying either. It's
13 a material omission, all right. And what I mean by that is -- and that's
14 covered in the *Newman* decision *v. Bayview*. It was cited in the
15 previous --

16 THE COURT: And, Mr. Croteau, I'm sorry. I'm only getting
17 like every third word. It's super muffled. Can you fix that somehow? I
18 don't know if you're --

19 MR. CROTEAU: I'll try.

20 THE COURT: -- if you're far away or if it's your setup --

21 MR. CROTEAU: No, no, no, no. I'm not. I'm right here. So I
22 hope that this works. I hope it works. It's the best I can possibly do.

23 But it's a material omission, and it's always been their
24 argument. And the argument is Mr. Haddad -- and we put it in
25 allegations 41 through 44, okay -- Mr. Haddad, as a practical matter on all

1 sales would have at least called to see if the sale is going that particular
2 day. He would need to know how much money he was going to come in
3 with. He needs to know what the opening bid would be. He would get
4 that information. And beyond that, he would ask if anybody has made
5 any payments. That's it. And he would get a non-response or a -- you
6 know, nothing from the HOA Trustee.

7 That is the material omission, okay. And it is a very material
8 omission because the payment of anything or any tender, which is the
9 equitable remedy of a denied payment makes this property purchase
10 subject to a deed of trust.

11 So, essentially, you're either buying [indiscernible] or you're
12 buying something that's free and clear of the first deed.

13 THE COURT: No, I get that.

14 MR. CROTEAU: So it's a material omission, and that is the
15 basis of these complaints. There are 13 allegations that can be added to
16 the general allegations under misrep. That's fine. But 113 is a specific
17 statutory requirement. That's a different issue. I didn't take your
18 statement to mean -- as to limiting me to doing something very limited. I
19 apologize. I wasn't trying to overstep my bounds.

20 THE COURT: No, that's --

21 MR. CROTEAU: I just figured that you were giving me the
22 opportunity to amend the complaint.

23 THE COURT: -- that's fine, but I didn't think that we were
24 going down that road, and I think I've said before that I don't think that
25 the attempt tenders is a defect to be disclosed under 113 in any event,

1 but --

2 MR. CROTEAU: Okay. That's fair.

3 THE COURT: --- I think that was beyond --

4 MR. CROTEAU: I understand the Court's ruling.

5 THE COURT: -- that was beyond the scope of what I allowed.

6 MR. CROTEAU: Well, that's all I have. What I have is in
7 there. Basically, know the allegation is there was a general omission
8 upon inquiry and that's really all I can say. I mean I can't tell you that
9 there's, you know, been overt statements made and, you know, they
10 were patently false. It's the lack of a statement upon inquiry.

11 And again that's allowed under *Noonan*. I mean *Noonan*
12 specifically, in that decision, right in there, a material omission or a
13 material misrepresentation. One is an active act. One is the active of not
14 providing information when it's known to --

15 THE COURT: Well, but omissions to me are synonymous
16 with duty.

17 MR. CROTEAU: They are.

18 THE COURT: They only matter if you have a duty and that's
19 kind of --

20 MR. CROTEAU: Well, that's -- but that's not exactly correct
21 under *Noonan* because *Noonan* gives us a 116 case, and it's very specific
22 on that. Ant they talked about it. *Noonan* is a 116 case. It's not
23 something I pulled out and put into this. It was really on 116. Basically
24 *Noonan* says, absent anything, all right, on 320.15 law, you know, the
25 way 16 [indiscernible] pre-2015, there was no written duty for them to do

1 anything. There is after 2015, obviously.

2 THE COURT: Right.

3 MR. CROTEAU: But prior to that there was no duty written
4 into the law except if you do something in furtherance, and you take the
5 next step and ask the question or you take your next step and attempt to
6 do something, you can have a material misrepresentation or material
7 omission. And our allegation is material omission.

8 THE COURT: I'm not really sure what you're -- so are you
9 saying that he said, has there been a tender or have any monies been
10 paid, and he was told, no?

11 MR. CROTEAU: He was told that there's no -- obviously, we
12 went forward to do the sale because it's our practice and procedure even
13 back then, not to buy property if there was any payments made.

14 THE COURT: But are you saying the inference is he said has
15 monies been offered or made?

16 MR. CROTEAU: Yes, the inference is this --

17 THE COURT: And they were told --

18 MR. CROTEAU: That's correct.

19 THE COURT: -- no? Because that to me is an active
20 misrepresentation. Omission, that's kind of where I am on the issue
21 here.

22 MR. CROTEAU: Well, maybe. I mean, I guess it depends on
23 how you want to interpret that, but if you interpret that to be a
24 statement, then I guess it is an actual statement and misrepresentation.

25 THE COURT: Okay. Anything else?

1 MR. CROTEAU: No, Your Honor. That's all.

2 THE COURT: Mr. Wong.

3 MR. WONG: Yes. Thank you, Your Honor. Can you hear me
4 okay?

5 THE COURT: I can.

6 MR. WONG: Okay. Wonderful. You know, I don't want to
7 get into *Noonan* too much. I think we sort of beat that case to death
8 during the motion to dismiss arguments.

9 What I think is key here is -- really is Plaintiff's deposition
10 testimony. He's trying to amend his complaint to add these allegations
11 about what his practice and procedure was during that time, as far as
12 contacting the HOA Trustee or the HOA prior to the foreclosure sale to
13 inquire about attempted payments and whatnot. But in his deposition he
14 specifically testified to the exact opposite. And we had this in our brief,
15 and he said back in 2012, he would not have spoken to the HOA or the
16 HOA Trustee about the property prior to the purchase. And then when
17 asked specifically about this property, he was asked, did you ask anyone
18 at HOA whether the bank had made any sort of payments regarding the
19 property, and he says, I did not.

20 So he can't change his sworn testimony, Your Honor. And
21 the reply noted that there was no signature on the deposition. That was
22 an oversight on my part. I do have the signed page, and I can easily
23 supplement that via an errata or something by the end of the day, if Your
24 Honor would still like. But the bottom line is that he just -- he cannot
25 contravene his sworn deposition testimony regarding the exact same

1 piece of property to [indiscernible] foreclosure sale. So it's our position,
2 Your Honor, that that precludes any ability to amend his complaint.

3 THE COURT: All right. I'm going to allow the amendment.
4 I'm going to deny the motion to dismiss. I think it's appropriate to bring
5 it back on a summary judgment, however, for whatever that's worth.

6 MR. CROTEAU: Your Honor, would you like me -- you're
7 saying I can't amend with 113.

8 THE COURT: Right.

9 MR. CROTEAU: I should file an amended with that deletion?

10 THE COURT: Correct. Please.

11 MR. CROTEAU: I'll take care of it. And I'll draft the order.

12 THE COURT: And then, Mr. Wong, if you want to bring it and
13 line everything up again, then we'll go from there.

14 MR. WONG: Okay. Fair enough.

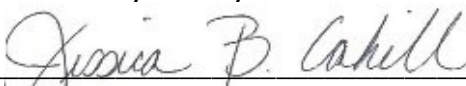
15 MR. CROTEAU: Thank you.

16 MR. WONG: Thank you, Your Honor.

17 THE COURT: Okay. Thank you.

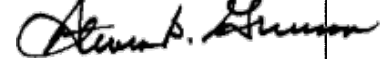
18 [Proceedings concluded at 10:28 a.m.]

19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708



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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,
12
13 Plaintiff,

Case No.: A-19-790395-C

14 vs.

Dept No.: 18

15 SUNRISE RIDGE MASTER HOMEOWNERS
16 ASSOCIATION; and NEVADA
17 ASSOCIATION SERVICES, INC., a Nevada
18 non-profit corporation;

FIRST AMENDED COMPLAINT

18 Defendants.

19
20 Plaintiff, DAISY TRUST, a Nevada trust (“**Plaintiff**”), by and through its attorneys, Roger
21 P. Croteau & Associates, Ltd., hereby complains and alleges as follows:

22 **PARTIES AND JURISDICTION**

23 1. At all times relevant to this matter, Plaintiff was and is a Nevada trust, licensed to do
24 business and doing business in the County of Clark, State of Nevada.

25 2. Plaintiff is the current owner of real property located at 3883 Winter Whitetail Street,
26 Las Vegas, Nevada 89122 (APN 161-15-811-066) (the “**Property**”).
27
28

1 3. Plaintiff acquired title to the Property by and through a Trustee's Deed Upon Sale
2 following a homeowners' association lien foreclosure sale conducted on August 24, 2012 (the
3 "**HOA Foreclosure Sale**"), by Defendant Nevada Association Services, Inc. d/b/a Assessment
4 Management Services, a Nevada non-profit corporation, authorized to do business and doing
5 business in Clark County, State of Nevada (the "**HOA Trustee**"), on behalf of Defendant Sunrise
6 Ridge Master Homeowners Association, a Nevada domestic non-profit corporation (the "**HOA**").

7
8 4. The Foreclosure Deed was recorded in the Clark County Recorder's Office on
9 August 30, 2012 (the "**HOA Foreclosure Deed**").

10 5. Upon information and belief, HOA is a Nevada common interest community
11 association or unit owners' association as defined in NRS 116.011, is organized and existing under
12 the laws of the State of Nevada, and transacts business in the State of Nevada.

13
14 6. Upon information and belief, HOA Trustee is a debt collection agency doing
15 business in the State of Nevada and is organized and existing under the laws of the State of
16 Delaware.

17 7. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.

18
19 8. The exercise of jurisdiction by this Court over the parties in this civil action is proper
20 pursuant to NRS 14.065.

21 **GENERAL ALLEGATIONS**

22 9. Under Nevada law, homeowners' associations have the right to charge property
23 owners residing within the community assessments to cover association expenses for maintaining
24 or improving the community, among other things.

25
26 10. When the assessments are not paid, a homeowners' association may impose a lien
27 against real property which it governs and thereafter foreclose on such lien.
28

1 11. NRS 116.3116 makes a homeowners' association's lien for assessments junior to a
2 first deed of trust beneficiary's secured interest in the property, with one limited exception; a
3 homeowners' association's lien is senior to a deed of trust beneficiary's secured interest "to the
4 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the
5 extent of the assessments for common expenses based on the periodic budget adopted by the
6 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration
7 during the 9 months immediately preceding institution of an action to enforce the lien." NRS
8 116.3116(2)(c).
9

10 12. In Nevada, when a homeowners' association properly forecloses upon a lien
11 containing a superpriority lien component, such foreclosure extinguishes a first deed of trust.
12

13 13. On or about January 25, 2005, Michael F. Delapaz and Carolyn T. Delapaz, husband
14 and wife and Ludivina C. Catacutan, a single woman, as joint tenants (the "**Former Owners**")
15 purchased the Property. Thereafter, the Former Owners obtained a loan for the Property from Bank
16 of America, N.A., ("**Lender**"),¹ that was evidenced by a promissory note and secured by a deed of
17 trust between the Former Owners and Lender, recorded against the Property on January 28, 2005,
18 for the loan amount of \$220,864.00 (the "**Deed of Trust**"). The Deed of Trust provides Lender is
19 beneficiary.
20

21 14. The Former Owners also executed a Planned Unit Development Rider along with the
22 Deed of Trust.

23 15. Upon information and belief, the Former Owners of the Property failed to pay to the
24 HOA all amounts due pursuant to the HOA's governing documents.
25
26
27

28 ¹ This term applies to the Lender and any assignees of the Deed of Trust.

1 16. On May 20, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Claim of
2 Delinquent Assessment Lien (the “**NODAL**”). The NODAL stated that the amount due to the HOA
3 was \$1,117.00, including late fees, collection fees and interest (the “**HOA Lien**”).

4 17. On July 13, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Default and
5 Election to Sell Under Homeowners Association Lien (the “**NOD**”). The NOD stated that the HOA
6 Lien amount was \$2,214.00.

7 18. On March 21, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of
8 Foreclosure Sale against the Property (“**NOS**”). The NOS stated that the total amount due the HOA
9 was \$4,648.67 and set a sale date for the Property of April 20, 2012 at 10:00 a.m., to be held at 930
10 South Fourth Street, Las Vegas, Nevada 89101.

11 19. On or about March 30, 2012, after the NOS was recorded, Lender, through counsel
12 Miles, Bauer, Bergstrom & Winters, LLP (“**Miles Bauer**”) contacted the HOA Trustee and HOA
13 via U.S. Mail and requested adequate proof of the super priority amount of assessments (“**Super-**
14 **Priority Lien Amount**”) by providing a breakdown of nine (9) months of common HOA
15 assessments in order for Lender to calculate the Super Priority Lien Amount, in an ostensible attempt
16 to determine the amount the HOA Lien entitled to super-priority.

17 20. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt
18 to pay the Super-Priority Lien Amount.

19 21. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate
20 a response from the HOA and HOA Trustee to the “March 30, 2012, Miles Bauer letter to the HOA,
21 care of the HOA Trustee.”

1 22. The Affidavit states that Miles Bauer used a Statement of Account from Nevada
2 Association Services, Inc., for a different property in the same HOA to determine a good faith
3 payoff.

4 23. On April 19, 2012, Lender, through Miles Bauer, provided a payment of \$378.00 to
5 the HOA Trustee, which included payment of up to nine months of delinquent assessments (the
6 “**Attempted Payment**”).

7 24. HOA Trustee, on behalf of the HOA, rejected Lender’s Attempted Payment of
8 \$378.00.

9 25. Despite Lender’s Attempted Payment, on August 24, 2012, HOA Trustee then
10 proceeded to conduct the non-judicial foreclosure sale on the Property and recorded the HOA
11 Foreclosure Deed, which stated that the HOA Trustee sold the HOA’s interest in the Property to
12 Plaintiff at the HOA Foreclosure Sale for the highest bid amount of \$5,470.00.

13 26. The Foreclosure Sale created excess proceeds.

14 27. The HOA Foreclosure Deed states that HOA Trustee “all requirement of law... have
15 been complied with.”

16 28. In none of the recorded documents, nor in any other notice recorded with the Clark
17 County Recorder’s Office, did HOA and/or HOA Trustee specify or disclose that any individual or
18 entity, including but not limited to the Lender, had attempted to pay any portion of the HOA Lien
19 in advance of the HOA Foreclosure Sale.

20 29. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders
21 at the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted
22 to pay the Super-Priority Lien Amount.

1 30. Upon information and belief, the debt owed to Lender by the Former Owners of the
2 Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market
3 value of the Property at the time of the HOA Foreclosure Sale.

4 31. Upon information and belief, Lender alleges that the Attempted Payment of the
5 Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien Amount,
6 thereby changing the priority of the HOA Lien vis a vis the Deed of Trust.

7 32. Upon information and belief, Lender alleges that as a result of the Attempted
8 Payment of the Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure
9 Sale acquired title to the Property subject to the Deed of Trust.

10 33. Upon information and belief, if the bidders and potential bidders at the HOA
11 Foreclosure Sale were aware that an individual or entity had attempted to pay the Super-Priority
12 Lien Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and
13 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and
14 potential bidders would not have bid on the Property.

15 34. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee
16 would not have received payment, interest, fees, collection costs and assessments related to the
17 Property and these sums would have remained unpaid.

18 35. HOA Trustee acted as an agent of HOA.

19 36. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the
20 doctrine of respondeat superior.

21 37. HOA and HOA Trustee conspired together to hide material information related to
22 the Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
23

1 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis the
2 Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.

3 38. The information related to any Attempted Payment or payments made by the Lender,
4 or others, to the Super-Priority Lien Amount, was not recorded and would only be known by the
5 Lender, the HOA, and HOA Trustee.
6

7 39. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide
8 the aforementioned information for their own economic gain and to the detriment of the bidders and
9 potential bidders at the HOA Foreclosure Sale.

10 40. As part of Plaintiff's practice and procedure in both NRS Chapter 107 and NRS
11 Chapter 116 foreclosure sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm
12 whether the sale was going forward on the scheduled date; and in the context of an NRS Chapter
13 116 foreclosure sale, Plaintiff would ask if anyone had paid anything on the account.
14

15 41. At the time relevant to this matter, Plaintiff would call the number associated with
16 the HOA Trustee to make the inquiries which were part of Plaintiff's practice and procedure.
17

18 42. Plaintiff would contact the HOA Trustee prior to the HOA Foreclosure Sale to
19 determine if the Property would in fact be sold on the date stated in the NOS, obtain the opening
20 bid, so Plaintiff could determine the amount of funds necessary for the auction and inquire if any
21 payments had been made.

22 43. At all times relevant to this matter, if Plaintiff learned of a "tender" or payment either
23 having been attempted or made, Plaintiff would not purchase the Property offered in that HOA
24 Foreclosure Sale.
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1 51. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral
2 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any Attempted
3 Payment of the Super-Priority Lien Amount by the Lender or any individual or entity.

4 52. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA
5 Foreclosure Sale believe that the HOA Lien included amounts entitled to superpriority over the
6 Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA
7 Foreclosure Sale for their own economic gain.

8 53. As a result of their desire that the bidders and potential bidders at the HOA
9 Foreclosure Sale believed that the HOA Lien included amounts entitled to priority over the Deed of
10 Trust, and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure
11 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to the
12 Attempted Payment of the Super-Priority Lien Amount by the Lender and did so for their own
13 economic gain.

14 54. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose
15 material information related to the Attempted Payment of the Super-Priority Lien Amount.

16 55. Upon information and belief, if HOA Trustee and/or HOA had disclosed the
17 Attempted Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the
18 HOA Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at
19 the HOA Foreclosure Sale.

20 56. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on
21 the Property.

22 57. Upon information and belief, if the Property had not been sold at the HOA
23 Foreclosure Sale, the HOA would not have received funds in satisfaction of the HOA Lien.

1 58. Upon information and belief, if the Property had not been sold at the HOA
2 Foreclosure Sale, the HOA Trustee would not have received payment for the work that it performed
3 on behalf of HOA in association with the HOA Foreclosure Sale and related proceedings.

4 59. Plaintiff attended the sale as a ready, willing, and able buyer without knowledge of
5 the Attempted Payment.
6

7 60. Plaintiff would not have purchased the Property if it had been informed that any
8 individual or entity had paid or attempted to pay the Super-Priority Lien Amount or any amount in
9 advance of the HOA Foreclosure Sale.

10 61. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment
11 of the Super-Priority Lien Amount, and their subsequent intentional or grossly negligent failure to
12 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related thereto,
13 Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby purchased the
14 Property.
15

16 62. HOA and HOA Trustee each profited from their intentional and/or negligent
17 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing and
18 refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
19

20 63. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to
21 advise bidders and potential bidders at the HOA Foreclosure Sale of information known solely to
22 the HOA and/or HOA Trustee that was not publicly available which ostensibly changed the priority
23 of Deed of Trust vis a vis the HOA Lien.

24 64. HOA and HOA Trustee solely possessed information related to the Attempted
25 Payment of the Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale,
26 and they intentionally withheld such information for their own economic gain.
27
28

1 65. Alternatively, HOA and HOA Trustee were grossly negligent when they withheld
2 information from the bidders and purchaser at the HOA Foreclosure Sale related to the Attempted
3 Payment of the Super-Priority Lien Amount.

4 66. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly
5 negligent failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
6

7 67. HOA and HOA Trustee intended that the bidders and potential bidders at the HOA
8 Foreclosure Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority
9 Lien Amount at the time of the HOA Sale and that their failure to disclose such information
10 promoted the sale of the Property.

11 68. HOA and HOA Trustee further intended that their failure of refusal to inform bidders
12 and potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-Priority
13 Lien Amount would lead such bidders and potential bidders to believe that the Deed of Trust was
14 subordinate to the HOA Lien and not being sold subject to the Deed of Trust.
15

16 69. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the
17 Super-Priority Lien Amount.

18 70. The HOA and the HOA Trustee breached that duty to disclose the Attempted
19 Payment to Plaintiff.
20

21 71. As a result of the HOA and HOA Trustee's breach of their duties of care, honesty in
22 fact, good faith, and candor to bidders at the HOA Foreclosure Sale for their own economic gain,
23 Plaintiff has been economically damaged in many aspects.

24 72. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase,
25 maintain, operate, and/or litigate various cases and generally manage the Property would be lost
26 along with the opportunity of purchasing other available property offered for sale where a
27
28

1 superpriority payment had not been attempted, thereby allowing Plaintiff the opportunity to
2 purchase a property free and clear of the deed of trust and all other liens.

3 73. As a direct and proximate result of the actions of Defendants, it has become necessary
4 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

5 74. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
6 Procedure as further facts become known.

7
8 **SECOND CLAIM FOR RELIEF**

9 (Breach of the Duty of Good Faith)

10 75. Plaintiff repeats and realleges each and every allegation contained above as if set
11 forth fully herein.

12 76. NRS 116.1113 provides that every contract or duty governed by NRS Chapter 116,
13 Nevada's version of the Uniform Common-Interest Ownership Uniform Act ("UCIOA"), must be
14 performed in good faith in its performance or enforcement.

15 77. A duty of good faith includes within that term a duty of candor in its dealings.

16 78. Pursuant to the drafter's comments of the UCIOA, Section 1-113 of the UCIOA,
17
18 codified as NRS 116.1113, provides that:

19
20 **SECTION 1-113. OBLIGATION OF GOOD FAITH.** Every contract or duty
21 governed by this [act] imposes and obligation of good faith in its performance or
22 enforcement:

23 this section sets forth a basic principle running throughout this Act: in transactions
24 involving common interest communities, good faith is required in the performance
25 and enforcement of all agreements and duties. Good faith, as [used sic] in this Act,
26 means observance of two standards: "honesty in fact," and observance of reasonable
27 standards of fair dealing While the term is not defined, the term is derived from and
28 used in the same manner as in Section 1-201 of the Uniform Simplification of Land
Transfer Act, and Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

29 79. Prior to the HOA Foreclosure Sale of the Property, the Lender paid the Super-Priority
Lien Amount to HOA or HOA Trustee by the Attempted Payment.

1 80. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the
2 Attempted Payment.

3 81. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure
4 and refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to breach
5 their duty of good faith, fair dealings, honesty in fact, and candor pursuant to NRS Chapter 116.
6

7 82. HOA and the HOA Trustee owed a duty of good faith, fair dealings, honesty in fact,
8 and candor to Plaintiff.

9 83. By virtue of their actions and inactions, HOA and HOA Trustee substantially
10 benefitted economically to the detriment of Plaintiff.

11 84. As a direct and proximate result of the actions of Defendants, it has become necessary
12 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

13 85. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
14 Procedure as further facts become known.
15

16 **THIRD CLAIM FOR RELIEF**

17 (Conspiracy)

18 86. Plaintiff repeats and re-alleges each and every allegation contained above as if set
19 forth fully herein.
20

21 87. Defendants knew or should have known of the Attempted Payment of the Super-
22 Priority Lien Amount.

23 88. Upon information and belief, acting together, Defendants reached an implicit or
24 express agreement amongst themselves whereby they agreed to withhold from bidders and potential
25 bidders at the HOA Foreclosure Sale the information concerning the Attempted Payment of the
26 Super-Priority Lien Amount.
27
28

1 97. Defendants were required, but failed, to complete and answer the questions posed in
2 the SRPDF in its entirety, but specifically, Section 9, Common Interest Communities, disclosures
3 (a) - (f), and Section 11, that provide as follows:

4 9. Common Interest Communities: Any “common areas” (facilities like pools, tennis
5 courts, walkways or other areas co-owned with others) or a homeowner association
6 which has any authority over the property?

- 7 (a) Common Interest Community Declaration and Bylaws available?
8 (b) Any periodic or recurring association fees?
9 (c) Any unpaid assessments, fines or liens, and any warnings or notices
10 that may give rise to an assessment, fine or lien?
11 (d) Any litigation, arbitration, or mediation related to property or
12 common areas?
13 (e) Any assessments associated with the property (excluding property
14 tax)?
15 (f) Any construction, modification, alterations, or repairs made without
16 required approval from the appropriate Common Interest Community
17 board or committee?

18 ...

19 11. Any other conditions or aspects of the property which materially affect its value
20 or use in an adverse manner? (Emphasis added)

21 See SRPDF, Form 547, attached hereto as Ex. 1.

22 98. Section 11 of the SRPDF relates directly to information known to Defendants that
23 materially affects the value of the Property, and in this case, if the Super-Priority Lien Amount is
24 paid, or if the Attempted Payment is rejected/accepted, it would have a material, adverse effect on
25 the overall value of the Property, and therefore, must be disclosed to the Purchaser in the SRPDF
26 by Defendants.

27 99. Defendants’ response to Section 9(c) - (e) of the SRPDF would have provided notice
28 to Plaintiff of any payments made by Lender, Former Owner, or others on the HOA Lien.

100. Defendants' response to Section 11 of the SRPDF generally deals with the disclosure of the condition of the title to the Property related to the status of the Deed of Trust and the Attempted Payment that would only be known by Defendants.

101. Nevada Real Estate Division's ("NRED"), Residential Disclosure Guide (the "Guide"), Ex. 2, provides at page 20 that Defendants shall provide, even in an NRS Chapter 107 foreclosure sale, the following to the purchaser/Plaintiff at the HOA Foreclosure Sale:

The content of the disclosure is based on what the seller is aware of at the time. If, after completion of the disclosure form, the seller discovers a new defect or notices that a previously disclosed condition has worsened, the seller must inform the purchaser, in writing, as soon as practicable after discovery of the condition, or before conveyance of the property.

The buyer may not waive, and the seller may not require a buyer to waive, any of the requirements of the disclosure as a condition of sale or for any other purpose.

In a sale or intended sale by foreclosure, the trustee and the beneficiary of the deed of trust shall provide, not later than the conveyance of the property to, or upon request from, the buyer:

- written notice of any defects of which the trustee or beneficiary is aware

102. If Defendants fail to provide the SRPDF to the Plaintiff/purchaser at the time of the HOA Foreclosure Sale, the Guide explains that:

A Buyer may rescind the contract without penalty if he does not receive a fully and properly completed Seller's Real Property Disclosure form. If a Buyer closes a transaction without a completed form or if a known defect is not disclosed to a Buyer, the Buyer may be entitled to treble damages, unless the Buyer waives his rights under NRS 113.150(6).

103. Pursuant to NRS 113.130, Defendants were required, but failed, to provide the information set forth in the SRPDF to Plaintiff at the HOA Foreclosure Sale.

104. Defendants did not provide an SRPDF to Plaintiff prior to, or at, the HOA Foreclosure Sale.

107. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

(Unjust Enrichment)

113. As a direct and proximate result of the actions of Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

114. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages to be proven at trial in excess of \$15,000;
2. For punitive damages in an amount to be determined at trial;
3. For an award of reasonable attorneys' fees as special damages, and otherwise under Nevada law;
4. For pre-judgment and post-judgment interest at the statutory rate of interest; and
5. For such other and further relief that the Court deems just and proper.

Dated this 14th day of June, 2021.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Christopher L. Benner, Esq.
Nevada Bar No. 8963
2810 W. Charleston Blvd., Ste. 75
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Attorney for Plaintiff

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/Joe Koehle

An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.

DECLARATION OF IYAD HADDAD

IYAD “EDDIE” HADDAD, being first duly sworn, deposes and says:

I, Iyad Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the manager of Resource Group LLC, as trustee of Daisy Trust (“*Daisy Trust*”). Daisy Trust obtained its’ interest in the Property from the HOA Foreclosure Sale. In my capacity as set forth above, I have reviewed the foregoing Amended Complaint. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

I further provide that it was my practice and procedure, as set forth herein, that prior to attending and/or at an HOA Foreclosure Sale pursuant to NRS 116 at all times relevant to this case, I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association’s lien. If I learned that a tender had either been attempted or made, I would not purchase the property offered in that foreclosure sale.

I would, and did, rely on whatever recital and/or announcements that were made at the HOA Foreclosure Sale. I also relied on the HOA Foreclosure Deed that provided that the HOA and HOA Trustee complied with all requirements of law. I reasonably relied upon the HOA and/or the HOA Trustee’s material omission of the tender and/or Attempted Payment of the Super Priority Lien Amount and/or the Attempted Payment or any portion thereof upon prior inquiry when I purchased the Property on behalf of the Plaintiff.

ROGER P. CROTEAU & ASSOCIATES, LTD.
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1 As part of my practice and procedure in both NRS 107 and NRS 116 foreclosure sales, I
2 would call the foreclosing agent/HOA Trustee and confirm whether the sale was going forward on
3 the scheduled date; and in the context of an NRS 116 foreclosure sale, I would ask if anyone had
4 paid anything on the account. I would contact the office of the foreclosing agent/HOA Trustee; I
5 would ask the relevant questions to the employee who answered the phone with the understanding
6 that an employee who answered for the foreclosing agent/HOA Trustee would be able to answer my
7 questions, or direct me to another, appropriate, employee.
8

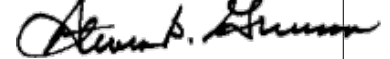
9 I would contact the HOA Trustee prior to the HOA Foreclosure Sale to determine if the
10 Property would in fact be sold on the date stated in the Notice of Sale, obtain the opening bid, so I
11 could determine the amount of funds necessary for the auction and inquire if any payments had been
12 made; however, I never inquired if the "Super Priority Lien Amount" had been paid. I would
13 reasonably rely on the information provided by employee representatives of the foreclosing
14 agent/HOA Trustee who was charged with responding to my inquiries. I personally do all of the
15 research on any and all properties that I purchased at the HOA Foreclosure Sales.
16

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed this 14 day of June, 2021.

19
20
21
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23
24
25
26
27
28

EDDIE HADDAD



LIPSON NEILSON P.C.
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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust
Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;
Defendants.

Case No.: A-19-790395-C
Dept.: XVIII

**DEFENDANT SUNRISE RIDGE
MASTER HOMEOWNERS'
ASSOCIATION'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT, OR ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT
(HEARING DATE REQUESTED)**

COMES NOW, Defendant Sunrise Ridge Master Homeowners' Association ("Defendant" or "Sunrise Ridge") by and through its counsel of record, LIPSON NEILSON P.C., and hereby submits its Motion to Dismiss Plaintiff's First Amended Complaint, or alternatively, Motion for Summary Judgment ("Motion"). This Motion is made and based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument that may be presented in this matter.

///

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises from a non-judicial foreclosure sale conducted on real property located at 3883 Winter Whitetail Street in Las Vegas, Nevada 89122 ("Property"). The sale took place on August 24, 2012, wherein the Property sold to Plaintiff Daisy Trust for \$5,470.

At the time of the sale, Bank of America, N.A. ("BANA") held an interest in a Deed of Trust encumbering the Property. Upon receiving a copy of the Notice of Sale recorded by Nevada Association Services, Inc. ("NAS") on behalf of Sunrise Ridge, BANA made a conditional tender of the superpriority portion of the delinquent assessment lien. NAS rejected the tender and proceeded with the sale.

Plaintiff filed an initial complaint, alleging that Sunrise Ridge and NAS acted fraudulently, in violation of NRS 116, and with the intent to commit a conspiracy, by selling the Property without disclosing the existence of BANA's conditional tender (the "Original Complaint"). In support of these claims, Daisy Trust maintained that Sunrise Ridge had either a contractual or statutory obligation to disclose the tender, that the non-warranty foreclosure deed was worthless because it violated NRS 116, and that it would not have purchased the Property had it known the tender existed.

Sunrise Ridge filed a Motion to Dismiss the Original Complaint (the "MTD/MSJ"), and the parties thereafter filed supplemental briefing. Plaintiff also filed a Motion to Amend the Complaint. The Court denied Sunrise Ridge's granted Plaintiff leave to file an amended complaint, but as part of this order, the Court explicitly disallowed the inclusion of a claim for Violation of NRS 113.

Plaintiff has now filed its First Amended Complaint (the "FAC"), but it suffers from the same issues that plagued the Original Complaint, namely that Plaintiff does not allege that he actually spoke with someone from Sunrise Ridge or NAS and was specifically advised that no payment or attempted payment had been made on the HOA's account. Rather, Plaintiff's allegations are still limited to vague and general

1 assertions about Plaintiff's "practice and procedure." Moreover, the FAC asserts as its
2 Fourth Cause of Action a claim for Violation of NRS 113, in direct violation of this
3 Court's prior order. The FAC also tacks on a claim for unjust enrichment, but this claim
4 is untenable; because there was nothing illegal about Sunrise Ridge's or NAS' conduct,
5 it was not inequitable for them to retain Plaintiff's payment for purchasing the Property.
6 As set forth in detail herein, these arguments are without merit, and the Court should
7 dismiss Plaintiff's FAC in its entirety, or alternatively grant summary judgment in Sunrise
8 Ridge's favor on all of Plaintiff's causes of action given key factual representations by
9 Plaintiff in written discovery responses.

10 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

11 On or around January 25, 2005, Michael Delapaz, Carolyn Delapaz, and
12 Ludivina Catacutan ("Borrowers") obtained two loans to purchase the Property. See
13 FAC ¶¶ 12 – 13. Both loans were secured by Deeds of Trust which were recorded with
14 the Clark County recorder. *Id.* BANA was the original lender under the senior deed of
15 trust. *Id.*

16 Sometime after purchasing the Property, Borrowers defaulted on their
17 homeowners' assessments. See FAC ¶ 15. Therefore, on or around May 20, 2010,
18 Sunrise Ridge, through Nevada Association Services, Inc. ("NAS"), recorded a notice of
19 delinquent assessment lien. *Id.* ¶ 16.

20 On or around July 13, 2010, Sunrise Ridge, through NAS, recorded a notice of
21 default and election to sell. See FAC ¶ 17. On or around March 21, 2012, Sunrise
22 Ridge, through NAS, recorded a Notice of Sale. See FAC ¶ 18.

23 On or around March 30, 2012, BANA, through the law firm of Miles Bauer
24 Bergstrom & Winters LLP ("Miles Bauer"), contacted NAS in response to the Notice of
25 Sale and requested a pay off ledger for the Property. See FAC ¶ 19.

26 On April 19, 2012, Miles Bauer sent NAS supplemental correspondence, wherein
27 it offered to pay \$378.00 to discharge Sunrise Ridge's superpriority lien on the Property.
28 See FAC ¶ 23; see also Ex. 5. NAS rejected the offer on Sunrise Ridge's behalf. *Id.* at ¶

1 24.

2 On or around August 24, 2012, Sunrise Ridge, through NAS, foreclosed on the
3 Property. See FAC ¶ 25. A foreclosure deed in favor of Daisy Trust was recorded on
4 August 30, 2012. *Id.*

5 At no time prior to the Foreclosure Sale did Plaintiff communicate with Sunrise
6 Ridge or NAS regarding the Property, the HOA's lien, or the Foreclosure Sale. See
7 Plaintiff's Responses to BANA's First Set of Interrogatories, attached hereto as **Exhibit**
8 **"A"**; see also Plaintiff's Responses to BANA's First Set of Requests for Admission,
9 attached hereto as **Exhibit "B."**

10 **III. RELEVANT PROCEDURAL BACKGROUND**

11 On March 3, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS, and Daisy
12 Trust in the United States District Court, District of Nevada, Case No. 2:16-cv-00467-
13 MMD-CWH ("Federal Action"). The complaint alleged causes of action for Quiet
14 Title/Declaratory Relief, Breach of NRS 116.1113, and Wrongful Foreclosure, and
15 Injunctive Relief.

16 On January 22, 2019, Sunrise Ridge, Daisy Trust, and BANA filed competing
17 motions for summary judgment. On March 1, 2019, while dispositive motions remained
18 pending in the Federal Action, Daisy Trust filed the instant lawsuit against Sunrise
19 Ridge and NAS alleging causes of action for Intentional/Negligent Misrepresentation,
20 Breach of NRS 116, and Conspiracy.

21 On March 18, 2019, the district court in the Federal Action issued an order
22 granting summary judgment in BANA's favor on its cause of action for quiet title, as well
23 as Daisy Trust's counterclaims. The district court denied summary judgment on BANA's
24 claims against Sunrise Ridge for Breach of NRS 116 and Wrongful Foreclosure.

25 On March 1, 2019, Plaintiff filed the Original Complaint in the instant matter,
26 alleging causes of action for 1) Intentional/Negligent Misrepresentation; 2) Breach of the
27 Duty of Good Faith; and 3) Conspiracy. Sunrise Ridge filed a Motion to Dismiss, or
28 Alternatively, Motion for Summary Judgment (the "MTD/MSJ") on April 9, 2019. The

1 hearing was continued a number of times at the request of the parties, and
2 supplemental briefing was also submitted to the Court. The MTD/MSJ was ultimately
3 heard on July 1, 2020. The Court denied the MTD/MSJ and allowed Plaintiff leave to
4 file an amended complaint, but specifically ordered that it would not allow addition of a
5 claim for Violation of NRS 113. A formal order was entered on October 14, 2020. See
6 Notice of Entry of Order, attached hereto as **Exhibit "C."**

7 On June 14, 2021, Plaintiff filed its FAC, asserting causes of action for 1)
8 Intentional/Negligent Misrepresentation; 2) Breach of the Duty of Good Faith; 3)
9 Conspiracy; 4) Violation of NRS 113; and 5) Unjust Enrichment.

10 **IV. STANDARD OF REVIEW**

11 **A. NRCP 12(b)(5)**

12 Nevada Rule of Civil Procedure 12(b)(5) provides that a party may move to
13 dismiss a complaint where the complaint fails to state a claim upon which relief can be
14 granted. Nev. R. Civ. Pr. 12(b)(5). Under Rule 8(a), a properly plead complaint must
15 provide "s short and plain statement of the claim showing that the pleader is entitled to
16 relief." Nev. R. Civ. P. 8(a). While Rule 8 does not require detailed factual allegations, it
17 demands more than "labels and conclusions" or a "formulaic recitation of the elements
18 of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations
19 omitted).

20 Dismissal is proper where the allegations are insufficient to establish the
21 elements of a claim for relief." *Stockmeier v. Nev. Dep't of Corr. Psychological Review*
22 *Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2009). Thus, to survive a motion to
23 dismiss, a complaint must contain sufficient factual matter "to state a claim to relief that
24 is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted). If, however, matters
25 are outside the pleadings are presented to the Court, the Rule 12(b)(5) motion to
26 dismiss must be treated as a motion for summary judgment under Nevada Rule of Civil
27 Procedure 56(b). Nev. R. Civ. Pr. 12(b)(5).

28 ///

1 **B. NRCP 56(b)**

2 “The purpose of summary judgment is to pierce the pleading and to assess the
3 proof in order to see whether there is a genuine need for trial.” *Matsushita Elec. Indus.*
4 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is appropriate
5 when the pleadings, the discovery and disclosure materials on file, and any affidavits
6 “show [] that there is no genuine disputes as to any material fact and the movant is
7 entitled to judgment as a matter of law.” Nev. R. Civ. P. 56(b); see also *Celotex v.*
8 *Catrett*, 477 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608,
9 610, 894 P.2d 988 (1995).

10 To survive a motion for summary judgment, the non-moving party “may not rest
11 upon the mere allegations or denials of [its] pleadings,” *Anderson v. Liberty Lobby, Inc.*,
12 477 U.S. 242, 248 (1986), nor may it “simply show there is some metaphysical doubt as
13 to the material facts.” *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. It is the non-
14 moving party’s burden to “come forward with specific facts showing that there is a
15 genuine issue for trial.” *Id.* at 587; see also *Wood v. Safeway, Inc.*, 121 Nev. 724
16 (2005), citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82
17 (2002).

18 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable
19 jury to return a verdict for the non-moving party. See *Anderson*, 477 U.S. at 248 (1986).
20 Further, a dispute will only preclude the entry of summary judgment if it could affect the
21 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to
22 raise a genuine issue of material fact is enough to require a judge or jury to resolve the
23 parties’ differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary
24 judgment ion, a court views all facts and draws all inferences in a light most favorable to
25 the non-moving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 100,
26 1103 (9th Cir. 1986).

27 ///

28 ///

1 **V. LEGAL ARGUMENT**

2 **A. Daisy Trust's Misrepresentation Claim Fails as a Matter of Law**

3 1. Plaintiff Fails to State a Claim for Relief for Intentional/Negligent
4 Misrepresentation

5 To establish a claim for misrepresentation, the plaintiff carries the burden of
6 proving each of the following elements: (1) a false representation was made by the
7 defendant; (2) defendant's knowledge or belief that its representation was false or that
8 defendant has an insufficient basis of information for making the representation; (3)
9 defendant intended to induce plaintiff to act or refrain from acting upon the
10 misrepresentation; and (4) damage to the plaintiff as a result of relying on the
11 misrepresentation. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441,
12 447 (Nev.,1998). Here, even with the new allegations in the FAC, Plaintiff is unable to
13 demonstrate a false representation under the undisputed facts.

14 To begin with, it bears emphasis that, under the pre-2015 version of NRS 116
15 (the version that controls here), neither the HOA nor NAS had an affirmative duty to
16 disclose the existence of payments and/or attempted payments on the HOA's lien. This
17 was the black letter law of pre-2015 NRS 116, and was confirmed by the Nevada
18 Supreme Court in *Noonan v. Bayview Loan Servicing, LLC*, 2019 WL 1552690, 438
19 P.3d 335 (Nev. 2019). (Stating that "Summary judgment was appropriate on the
20 negligent misrepresentation claim because [the HOA] neither made an affirmative false
21 statement nor omitted a material fact it was bound to disclose."). The *Noonan* Court
22 specifically noted that, under the revised version of NRS 116.31162, an HOA is required
23 to disclose if tender of the super-priority portion of the lien has been made, while the
24 pre-2015 version contained no such requirement.

25 In a recent string of unpublished opinions issued by the Nevada Supreme Court
26 last year, the Court erased any doubt as to whether the pre-2015 NRS 116 required
27 HOAs and their agents to affirmatively disclose payments to potential purchasers. See,
28 e.g., *Saticoy Bay, Ltd. Liab. Co. v. Mountain Gate Homeowners' Ass'n*, 473 P.3d 1046,

2020 WL 6129970 (Nev. 2020) (stating that “appellant's claims for misrepresentation and breach of NRS 116.1113 fail because respondent had no duty to proactively disclose whether a superpriority tender had been made”); see also *Saticoy Bay v. Silverstone Ranch Cmty. Ass'n*, 473 P.3d 1045 (Nev. 2020); *Bay v. Travata & Montage at Summerlin Ctr. Homeowners' Ass'n*, 474 P.3d 333 (Nev. 2020); and *Saticoy Bay v. South Shores Community Association*, 473 P.3d 1046, 2020 WL 6130913 (Nev. 2020).

Given that the pre-2015 version of NRS 116 imposed no duty on either the HOA or NAS to affirmatively disclose payments or attempted payments on the HOA's lien, the only way a misrepresentation could be made is for Plaintiff to have affirmatively inquired about the same, and be advised specifically that there were no such payments. Here, none of the allegations in the FAC allege that Plaintiff actually asked the HOA or NAS whether any person or entity had attempted payment on the HOA lien, and that Plaintiff was specifically informed that there had been no such payments. Rather, the FAC merely asserts that Plaintiff had a “practice and procedure” of contacting the HOA Trustee prior to foreclosure sales and making this inquiry:

40. As part of Plaintiff's **practice and procedure** in both NRS Chapter 107 and NRS Chapter 116 foreclosure sales, Plaintiff **would call the foreclosing agent/HOA Trustee** and confirm whether the sale was going forward on the scheduled date; and in the context of an NRS 116 foreclosure sale, Plaintiff **would ask** if anyone had paid anything on the account.

41. At the time relevant to this matter, Plaintiff **would call** the number associated with the HOA Trustee to make the inquiries which were part of Plaintiff's practice and procedure.

42. Plaintiff **would contact the HOA Trustee** prior to the HOA Foreclosure Sale to determine if the Property would in fact be sold on the date stated in the NOS, obtain the opening bid, so Plaintiff could determine the amount of funds necessary for the auction and inquire if any payments had been made.

43. At all times relevant to this matter, if Plaintiff learned of a “tender” or payment either having been attempted or made, Plaintiff **would not** purchase the Property offered in that HOA Foreclosure Sale.

///
///

1 See FAC at ¶¶40-43 (emphasis added). The Nevada Supreme Court explicitly found
2 such language inadequate to plead a claim for misrepresentation under NRS 116. See
3 *Mountain Gate Homeowners' Ass'n*, 473 P.3d at 1046, fn 2 (noting that "although
4 appellant's complaint alleges generally that appellant had a 'pattern and practice' of
5 'attempt[ing] to ascertain whether anyone had attempted to or did tender any payment,
6 **the complaint does not allege that appellant specifically asked respondents**
7 **whether a superpriority tender had been made in this case...**") (emphasis added).
8 Accordingly, Plaintiff's First Cause of Action for Intentional/Negligent Misrepresentation
9 fails (again) to state a claim, and must be dismissed.

10 2. Plaintiff's Discovery Responses Confirm That There Was No
11 Misrepresentation

12 Furthermore, Plaintiff directly admitted in his discovery responses in the Federal
13 Action that he did not communicate with the HOA or NAS prior to the Foreclosure Sale.
14 In his sworn Interrogatory responses, he represented the following:

15 **INTERROGATORY NO. 19:**

16 Describe all communications between you and all persons or entities
17 concerning the Property, the HOA Foreclosure Sale, the HOA Lien, including
18 the date of the communication, the parties to the communication, and the
19 substance of the communication.

20 **ANSWER TO INTERROGATORY NO. 19:**

21 None.

22 See Plaintiff's Responses to BANA's First Set of Interrogatories, attached hereto as
23 **Exhibit "A."** This response makes it clear that he spoke to neither the HOA nor NAS
24 regarding the Property, the Foreclosure Sale, and/or the HOA's lien. In further
25 confirmation of this fact, Plaintiff represented the following in his responses to BANA's
26 Requests for Admission:

27 **REQUEST FOR ADMISSION NO. 15:**

28 Admit that, prior to the HOA Foreclosure Sale, you did not communicate with
the HOA or HOA Trustee concerning whether any person or entity offered to
pay any portion of the HOA Lien.

RESPONSE TO REQUEST NO. 15:

Admit.

///

REQUEST FOR ADMISSION NO. 16:

Admit that, prior to the HOA Foreclosure Sale, you did not communicate with the HOA or HOA Trustee concerning whether any person or entity tendered funds relating to any portion of the HOA Lien.

RESPONSE TO REQUEST NO. 16:

Admit.

REQUEST FOR ADMISSION NO. 17:

Admit that, prior to the HOA Foreclosure Sale, you did not communicate with the HOA or HOA Trustee concerning whether they accepted any funds relating to any portion of the HOA Lien.

RESPONSE TO REQUEST NO. 17:

Admit.

REQUEST FOR ADMISSION NO. 18:

Admit that, prior to the HOA Foreclosure Sale, you did not communicate with the HOA or HOA Trustee concerning whether they accepted any funds relating to the super priority portion of the HOA Lien.

RESPONSE TO REQUEST NO. 18:

Admit.

See Plaintiff's Responses to BANA's First Set of Requests for Admission, attached hereto as **Exhibit "B."** Thus, insofar as this Court is not persuaded that Plaintiff's FAC fails to set forth facts stating a claim for Misrepresentation, Plaintiff's foregoing discovery responses demonstrate that there are no genuine disputes of fact that he did not communicate with the HOA or NAS prior to the foreclosure sale. These responses foreclose any assertions that the HOA/NAS made misrepresentations to Plaintiff regarding the existence of any attempted payments/tenders by BANA on the HOA's account. Accordingly, the HOA is entitled to summary judgment on Plaintiff's claim for Misrepresentation as a matter of law.

B. Daisy Trust's Claim for Breach of the Duty of Good Faith Fails as a Matter of Law.

In addition to misrepresentation, Plaintiff alleges that the HOA breached its duty of good faith under NRS 116.1113 by failing to affirmatively disclose the bank's attempted tender. This allegation is simply without merit. While NRS 116.1113 imposes a duty of good faith in the performance of every contract or duty governed by the statute, the only "duties" owed to Plaintiff are outlined in sections 116.3116 through

1 116.31168. Here, the HOA fully complied with these duties by complying with all notice
2 and recording requirements set forth in NRS 116 as it existed at the time of the sale. As
3 discussed above, the HOA was not required to disclose the existence of a pre-sale
4 tender of the superpriority portion of the lien. Further, it was specifically prohibited from
5 giving any purchaser at the auction a so-called warranty deed—the only type of deed it
6 could give to any purchaser was one made “without warranty” pursuant to NRS
7 116.31164(3)(a). Most importantly, because the HOA had no duty to disclose
8 payments/attempted payments, its failure to do so does not constitute a violation of
9 NRS 116.1113. See *South Shores Community Association*, 473 P.3d 1046, 2020 WL
10 6130913 (“[i]n particular, appellant’s claims for misrepresentation and breach of NRS
11 116.1113 fail because respondents had no duty to proactively disclose whether a
12 superpriority tender had been made.”). As such, Plaintiff’s Second Cause of Action fails
13 to state a claim upon which relief can be granted, and should be dismissed accordingly.
14 Alternatively, Sunrise Ridge is entitled to summary judgment in its favor on this cause of
15 action because Plaintiff’s discovery responses from the Federal Action demonstrate that
16 there cannot have been any misrepresentation made by the HOA and/or NAS, and
17 therefore there is no basis for finding that they breached the duty of good faith under
18 NRS 116.1113.

19 **C. Daisy Trust’s Conspiracy Claim Fails as a Matter of Law.**

20 To establish a claim for civil conspiracy, a plaintiff must show (1) that
21 Defendants, **by acting in concert**, intended to accomplish an unlawful objective for the
22 purpose of harming plaintiff; and (2) that plaintiff sustained damages resulting from
23 defendants’ act or acts. See *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*,
24 114 Nev. 1304, 971 P.2d 1251 (1999) (emphasis added); see also *Dow Chemical Co. v.*
25 *Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998). Daisy Trust cannot meet this evidentiary
26 burden.

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1 There can be no conspiracy between Sunrise Ridge and NAS under the
2 preclusive weight of the intra-corporate conspiracy doctrine, which stands for the
3 proposition that “agents and employees of a corporation cannot conspire with their
4 corporate principal or employer where they act in their official capacities on behalf of the
5 corporation and not as individuals for their individual advantage.” See *Collins v. Union*
6 *Federal Sav. & Loan Ass’n*, 662 P.2d 610, 622, 99 Nev. 284, 303 (Nev.,1983).
7 Therefore, to sustain a claim for conspiracy against agents and their corporation, a
8 plaintiff must prove that one or more of the agents acted outside of the scope of their
9 employment “to render them a separate person for the purposes of conspiracy.” See
10 *Faulkner v. Arkansas Children's Hosp.*, 69 S.W.3d 393, 407, 347 Ark. 941, 962
11 (Ark.,2002).

12 Daisy Trust has not plead facts sufficient to meet this standard. To the contrary,
13 Daisy Trust pleads that Sunrise Ridge and NAS, “acting together ... reached an implicit
14 or express agreement amongst themselves whereby they agreed to withhold the
15 information concerning the Attempted Payment of the Super-Priority Lien Amount...”
16 See Complaint ¶ 88. It makes no allegations whatsoever that NAS acted outside of its
17 scope as Sunrise Ridge’s agent or for its individual advantage. Its conspiracy claim
18 must be dismissed accordingly. Alternatively, Sunrise Ridge is entitled to summary
19 judgment in its favor on this cause of action because Plaintiff’s discovery responses
20 from the Federal Action demonstrate that there cannot have been any
21 misrepresentation made by the HOA and/or NAS; thus, Plaintiff is unable to
22 demonstrate the “unlawful objective” needed to support his conspiracy claim.

23 **D. Daisy Trust’s Claim for Breach of NRS 113 Must Be Dismissed Because**
24 **it was Specifically Disallowed by This Court**

25 In its October 14, 2020 Order, this Court specifically held that “[t]he Court will not
26 allow the fourth claim for relief (Violation of NRS 113) to be stated in the first amended
27 complaint.” See **Exhibit “C.”** Nevertheless, Plaintiff asserts as his Fourth Cause of
28 Action a claim for Violation of NRS 113, in direct contravention of this Court’s Order. On

1 this basis alone, Plaintiff's claim for NRS 113 must be dismissed. Moreover, the
2 Nevada Supreme Court has previously rejected the exact arguments asserted by
3 Plaintiff here. See *Mountain Gate Homeowners' Ass'n*, 473 P.3d 1046 (stating that
4 "NRS 113.130 requires a seller to disclose 'defect[s],' not superpriority tenders," and
5 that the bank's deed of trust does not constitute a "defect" because "the subject property
6 technically has the same 'value' regardless of whether it is encumbered by the deed of
7 trust."). Plaintiff's claim for Breach of NRS 113 must be dismissed.

8 **E. Plaintiff's Claim for Unjust Enrichment Must be Dismissed**

9 In Nevada, to state a claim for unjust enrichment, a plaintiff must allege 1) a
10 benefit conferred on the defendant by the plaintiff; 2) appreciation by the defendant of
11 such benefit; and 3) acceptance and retention by the defendant of such benefit under
12 circumstances such that it would be inequitable for him to retain the benefit without
13 payment of the value thereof. *LeasePartners Corp. v. Robert L. Brooks Tr. Dated Nov.*
14 *12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

15 Here, the FAC alleges that Plaintiff has conferred benefits on Defendants in the
16 form of the payment of the HOA lien, that Defendants have appreciated said benefits,
17 and that they have retained those benefits under inequitable circumstances. See FAC
18 at ¶¶109 – 112. Given that Defendants had no obligation to affirmatively disclose the
19 fact of any payments or attempted payments to potential purchasers such as Plaintiff,
20 and the fact that Plaintiff does not allege to have specifically been advised by Sunrise
21 Ridge or NAS here regarding the existence of such payments, there was nothing
22 inequitable about Sunrise Ridge receiving and retaining the amounts it was paid for the
23 Property at the foreclosure sale. Plaintiff does not deny that the Property was
24 transferred to him after the foreclosure sale and a Foreclosure Deed confirming this was
25 recorded. See FAC at ¶25. He received what he paid for. There is nothing inequitable
26 about the HOA/NAS receiving and retaining the \$5,470.00 Plaintiff paid for the Property.

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1 Alternatively, Sunrise Ridge is entitled to summary judgment in its favor on this
2 cause of action because Plaintiff's discovery responses from the Federal Action
3 demonstrate that there cannot have been any misrepresentation made by the HOA
4 and/or NAS; consequently, there is nothing inequitable about the HOA/NAS retaining
5 the monies Plaintiff paid for the Property.

6 **F. Daisy Trust's Request for Special Damages Must be Dismissed.**

7 "[W]hen a party claims it has incurred attorney fees as foreseeable damages
8 arising from tortious conduct or a breach of contract, such fees are
9 considered special damages." *Sandy Valley Associates v. Sky Ranch Estates Owners*
10 *Ass'n*, 35 P.3d 964, 969, 117 Nev. 948, 956 (Nev.,2001), overruled on other grounds by
11 *Horgan v. Felton*, 123 Nev. 577 (Nev.,2007). "They must be pleaded as special
12 damages in the complaint pursuant to NRCP 9(g) and proved by competent evidence
13 just as any other element of damages." *Id.*, see also Nev. R. Civ. P. 9(g) ("When items
14 of special damage are claimed, they shall be specifically stated.")

15 Both the fact of the damages and the amount of the damages are crucial to a
16 claim of this nature. *Gramanz v. T-Shirts and Souvenirs, Inc.*, 111 Nev. 478, 484-485,
17 894 P.2d 342, 346-347 (1955); *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet*
18 *Co., Inc.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989); *Horgan v. Felton*, 170 P.3d 982
19 (2007). "As a practical matter, attorney fees are rarely awarded as damages simply
20 because parties have a difficult time demonstrating that the fees were proximately and
21 necessarily caused by the actions of the opposing party." *Sandy Valley Associates, Inc.*,
22 117 Nev. at 956. "[T]he mere fact that a party was forced to file or defend a lawsuit is
23 insufficient to support an award of attorney's fees as damages." *Id.*

24 Here, the only place that special damages is even mentioned in Daisy Trust's
25 complaint is in its prayer for relief. See *id.*, citing *Young v. Nevada Title Co.*, 744 P.2d
26 902, 905, 103 Nev. 436, 442 (Nev.,1987) (the mention of attorney's fees as special
27 damages in a prayer for relief is insufficient to meet the requirements of NRCP 9(g)).
28

1 More importantly, however, when it comes to cases involving disputes over real
2 property, attorney's fees are only available as special damages for slander of title.
3 *Horgan*, 170 P.3d at 988 ("Additionally, we retreat from our statement in [Sandy Valley]
4 and earlier cases that attorney fees as damages may be recovered in action to quiet
5 title or clarify title to real property. Such attorney fees are only available in real property
6 matters only for slander of title"). The instant matter is no exception. Daisy Trust has not
7 pled slander of title in its complaint, and therefore, there is no factual basis for this Court
8 to award attorney's fees as special damages and its request must be dismissed
9 accordingly.

10 **G. Daisy Trust's Request for Punitive Damages is Precluded as a Matter of**
11 **Law.**

12 NRS 116.4117(5) specifically prohibits an award of punitive damages against a
13 homeowners' association. Nev. Rev. Stat. § 116.3117(5) ("Punitive damages may not
14 be awarded against: (a) The association ...") There are no exceptions to this statutory
15 bar. See generally *id.* Even if there were, Daisy Trust has not met the requirements of
16 NRS 42.005, which requires pleading of facts which establish, by clear and convincing
17 evidence, "that the defendant has been guilty of oppression, fraud or malice, express or
18 implied..." Nev. Rev. Stat. § 42.005. Giving Daisy Trust every possible favorable
19 inference, nothing is pled here which even implies this level of scienter is present.

20 Under NRS 42.001, the term "fraud" means an intentional misrepresentation,
21 deception, or concealment of a material fact known to the person with the intent to
22 deprive another of his rights or property. Nev. Rev. Stat. § 42.001(2). "Malice, express
23 or implied" means conduct intended to injure a person or despicable conduct which a
24 party engages in with a conscious disregard of the rights or safety of another. Nev. Rev.
25 Stat. § 42.001(3). Oppression is defined in the same section as despicable conduct that
26 subjects someone to cruel and unjust hardship with conscious disregard of the rights of
27 that person. Nev. Rev. Stat. § 42.001(4). All of these definitions focus on "the
28

1 knowledge of probably harmful consequences ... and deliberate failure to act to avoid
2 those consequences.” *Countrywide Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 252,
3 124 Nev. 725, 739 (Nev.,2008), citing Nev. Rev. Stat. § 42.001(1).

4 There is no evidence in this matter that Sunrise Ridge or NAS acted in conscious
5 disregard of Daisy Trust’s rights to the Property, or with the intent to misrepresent,
6 deceive, or conceal information from third-party bidders at the foreclosure sale.
7 Specifically, at the time of the foreclosure sale at issue in this lawsuit, there was no
8 guidance from the Nevada legislature or the Supreme Court regarding the effect of a
9 conditional, partial payment of the lien prior to the sale. The statute itself was not clear
10 as to what amounts were considered part of the “super-priority lien” and as a result,
11 NAS and most other collection agencies had different legal opinions than lenders as to
12 the amount necessary to release the lien.

13 In the absence of any statutory requirements or guidance from the Supreme
14 Court, there were no “probable harmful consequences” for Sunrise Ridge or NAS to
15 consider, nor were there any deliberate acts to hide the existence of the Miles Bauer
16 tender. In fact, the conventional wisdom at this time (and the only judicial opinion on the
17 issue) was that the superpriority lien included nine months of assessments, plus late
18 fees, interest, and costs of collection. See *Korbel Family Trust v. Spring Mountain*
19 *Ranch Master Ass’n*, Case No. A523959, Eighth Judicial Court, Clark County, Nevada,
20 Order of December 22, 2006 and *the Commission for Common Interest Communities*
21 *and Condominium Hotels issued an advisory opinion, dated December 8, 2010*
22 (indicating that an HOA may include collection costs in the super-priority portion of its
23 lien). Against this background, an award of punitive damages is improper as a matter of
24 law.

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VI. CONCLUSION

Based on the foregoing, Defendant Sunrise Ridge respectfully requests this Court dismiss Plaintiff's FAC pursuant to NRCP 12(b)(5), or alternatively, grant summary judgment in its favor pursuant to NRCP 56 on all of Plaintiff's causes of action.

DATED this 28th day of June, 2021.

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

By:

J. William Ebert, Esq. (Bar No. 2697)
Jonathan K. Wong, Esq. (Bar No. 13621)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 28th day of June, 2019, I electronically transmitted the foregoing **DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Roger P. Croteau, Esq.
Chris Benner, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Suite 75
Las Vegas, NV 89148
croteaulaw@croteaulaw.com

*Attorneys for Plaintiff,
Daisy Trust*

/s/ Juan Cerezo
An Employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
376 E. Warm Springs Rd., Ste. 140
4 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
5
6 Attorney for defendant Daisy Trust

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 BANK OF AMERICA, N.A.,
10 Plaintiff,

CASE NO.: 2:16-CV-00467

11 vs.

12 SUNRISE RIDGE MASTER HOMEOWNERS
ASSOCIATION; DAISY TRUST; and NEVADA
13 ASSOCIATION SERVICES, INC.,

14 Defendants.

15 DAISY TRUST,

16 Counterclaimant,

17 vs.

18 BANK OF AMERICA, N.A.,

19 Counterdefendant.

20 **DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

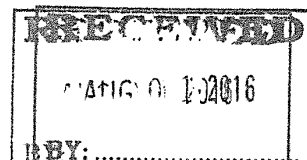
21 TO: Plaintiff above-named

22 TO: Melanie D. Morgan, Esq. and Natalie L. Winslow, Esq. of Akerman LLP, attorneys for plaintiff:

23 Comes now, Defendant, Daisy Trust, by and through its attorney, Michael F. Bohn, Esq., answers
24 plaintiff's interrogatories as follows:

25 **INTERROGATORY NO. 1:**

26 Identify any person who assisted in responding to BANA's requests for production of documents,
27 requests for admissions, and these interrogatories, including identifying the specific requests or
28 interrogatories with which that person assisted.



1 **ANSWER TO INTERROGATORY NO. 1:**

2 Eddie Haddad.

3 **INTERROGATORY NO. 2:**

4 Describe what your business does to generate revenue, income, and profit, and how your business
5 generates revenue, income, and profit.

6 **ANSWER TO INTERROGATORY NO. 2:**

7 The business is real estate investments intended to generate revenue, income and profit through
8 rental and eventual sale.

9 **INTERROGATORY NO. 3:**

10 Identify your managers, officers, directors, owners, members, trustees, beneficiaries, and/or
11 employees (whether individuals or entities) and describe their roles and/or responsibilities with respect
12 to you.

13 **ANSWER TO INTERROGATORY NO. 3:**

14 Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, and is an
15 unwarranted intrusion into private and confidential financial matters. Without waiving this objection,
16 the trustee of the Daisy Trust is Resources Group, LLC. The manager of Resources Group, LLC is Eddie
17 Haddad.

18 **INTERROGATORY NO. 4:**

19 State the facts that support any allegations or contentions you have made or intend to make that
20 the foreclosure of the HOA Lien extinguished BANA's security interest in the Property.

21 **ANSWER TO INTERROGATORY NO. 4:**

22 Objection. Calls for a legal conclusion. Without waiving this objection. NRS 116.3116 as
23 interpreted in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75, 334
24 P.3d 408 (2014) provides for extinguishment of the BANA's security interest.

25 **INTERROGATORY NO. 5:**

26 State the facts, including any communications, that support any allegations or contentions you have
27 made or intend to make that BANA had actual or constructive knowledge of any assessments or costs
28 allegedly owed to the HOA related to the Property prior to the HOA Foreclosure Sale.

1 **ANSWER TO INTERROGATORY NO. 5:**

2 The notices were properly recorded. The recitals in the foreclosure deed state that notices were
3 sent. Additionally, the allegations made by the plaintiff is that they made an attempt at a tender of the
4 super priority portion of the lien, which indicates that they had notice.

5 **INTERROGATORY NO. 6:**

6 State the facts, including any communications, that support any allegations or contentions you have
7 made or intend to make that BANA had actual or constructive knowledge of the HOA Foreclosure Sale.

8 **ANSWER TO INTERROGATORY NO. 6:**

9 See answer to Interrogatory No. 5.

10 **INTERROGATORY NO. 7:**

11 State the facts, including any communications, that support any allegations or contentions you have
12 made or intend to make that the HOA or the HOA Trustee properly noticed the HOA Foreclosure Sale.

13 **ANSWER TO INTERROGATORY NO. 7:**

14 See answer to interrogatory no. 5.

15 **INTERROGATORY NO. 8:**

16 Identify what you believed to be the fair market value of the Property at the time of the HOA
17 Foreclosure Sale, including the reasons for your belief.

18 **ANSWER TO INTERROGATORY NO. 8:**

19 The value was the price paid. BFP v. Resolution Trust Corporation, 511 U.S. 531, 548-49 (1994).

20 **INTERROGATORY NO. 9:**

21 Describe all research you performed prior to the HOA Foreclosure Sale to determine the value of
22 the Property, including all steps you took as part of that research, all documents you created as a result
23 of that research, and the present location of those documents.

24 **ANSWER TO INTERROGATORY NO. 9:**

25 Any research is done paperless and nothing has been retained. Generally, a review is made of the
26 county recorders website or the MLS.

27 . . .

28 . . .

1 **INTERROGATORY NO. 10:**

2 Do you contend you were a *bona fide* purchaser of the Property? If so, state the facts supporting
3 that contention.

4 **ANSWER TO INTERROGATORY NO. 10:**

5 Yes. There is no evidence of any "prior equity" regarding any claim on title.

6 **INTERROGATORY NO. 11:**

7 Describe your involvement in the HOA Foreclosure Sale.

8 **ANSWER TO INTERROGATORY NO. 11:**

9 The only involvement was as a bidder at a public auction.

10 **INTERROGATORY NO. 12:**

11 Describe how the HOA Foreclosure Sale transpired, including without limitation the location of
12 the sale, the bidders present, who bid and what amounts, and when and by what means the successful bid
13 was paid.

14 **ANSWER TO INTERROGATORY NO. 12:**

15 The notice of sale states the sale was to be conducted at Nevada Legal News, 930 S. 4th Street,
16 Las Vegas, Nevada; bidders present and who bid are unknown; records were not kept of the amount of
17 each bid at the sale; the property was paid for with a cashier's check.

18 **INTERROGATORY NO. 13:**

19 State whether you have sold, conveyed or otherwise transferred any interest in the Property and,
20 if yes, identify the name and primary address of the person or entity and date of transfer.

21 **ANSWER TO INTERROGATORY NO. 13:**

22 Not applicable.

23 **INTERROGATORY NO. 14:**

24 Identify all funds or resources you have expended related to the Property, including the date,
25 amount, and reasons for each expenditure.

26 **ANSWER TO INTERROGATORY NO. 14:**

27 Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, is an unwarranted
28 intrusion into private financial and confidential matters, and is not proportional to the needs of the case.

1 **INTERROGATORY NO. 15:**

2 Identify all rent or other income received by you related to the Property, including the date,
3 amount, and source of the income.

4 **ANSWER TO INTERROGATORY NO. 15:**

5 See answer to Interrogatory No. 14.

6 **INTERROGATORY NO. 16:**

7 From the date you acquired an interest in the property to the present, state whether the Property
8 has been inhabited and identify:

- 9 (a) by whom the Property has been or is inhabited,
10 (b) the following terms of all past and current rental or lease agreements:
11 (i) the date the agreement began,
12 (ii) when it expired or expires,
13 (iii) the frequency, term or period of rental payments,
14 (iv) the amount of the periodic payments, and,
15 (v) the total amount of rent received/collected.

16 **ANSWER TO INTERROGATORY NO. 16:**

17 See answer to Interrogatory No. 14.

18 **INTERROGATORY NO. 17:**

19 Identify all agreements, written or oral, between you and either or both the HOA Trustee and/or
20 the HOA (including any tri-party agreements) and state the terms of the agreement and identify any
21 writing memorializing it.

22 **ANSWER TO INTERROGATORY NO. 17:**

23 None.

24 **INTERROGATORY NO. 18:**

25 Identify all agreements, written or oral, between you and all other persons or entities regarding the
26 Property, the HOA Lien and/or the HOA Foreclosure Sale. Your response should include all agreements
27 that in any way affect the Property, the HOA Lien or the HOA Foreclosure Sale, whether or not the
28 Property, the HOA lien, or the HOA Foreclosure Sale is/are mentioned in the agreement.

1 **ANSWER TO INTERROGATORY NO. 18:**

2 None.

3 **INTERROGATORY NO. 19:**

4 Describe all communications between you and all persons or entities concerning the Property, the
5 HOA Foreclosure Sale, the HOA Lien, including the date of the communication, the parties to the
6 communication, and the substance of the communication.

7 **ANSWER TO INTERROGATORY NO. 19:**

8 None.

9 **INTERROGATORY NO. 20:**

10 Identify all properties you purchased at foreclosure sale in the five years before the HOA
11 Foreclosure Sale to present, including the property address, the foreclosing entity, date and amount of
12 each purchase.

13 **ANSWER TO INTERROGATORY NO. 20:**

14 Objection. Overly burdensome and disproportionate to the needs of the case. Without waiving
15 this objection, the trustee of the Daisy Trust is Resources Group, LLC. Resources Group has acquired
16 literally hundreds of properties at both trust deed and HOA foreclosure sales.

17 **INTERROGATORY NO. 21:**

18 Explain how you learned of the HOA Foreclosure Sale and identify all related communications
19 and documents or writings.

20 **ANSWER TO INTERROGATORY NO. 21:**

21 Nevada Legal News.

22 **INTERROGATORY NO. 22:**

23 Explain how you determined what amount to bid at the HOA Foreclosure Sale, including what was
24 your maximum bid and how you determined that amount.

25 ...

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27

28 ...

1 ANSWER TO INTERROGATORY NO. 22:

2 Objection. The methodology used to determine the amount bid is a trade secret and is privileged
3 under NRS Chapter 600A.

4 DATED this 29 of July, 2016

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8

Prepared by:

9

10 LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

11

12 By: Michael F. Bohn

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MICHAEL F. BOHN, ESQ.
376 E. Warm Springs Rd., Ste. 140
Las Vegas, NV 89119
Attorney for defendant Daisey Trust

Eddie Haddad, pmk for defendant
Daisey Trust

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That he is the defendant's person most knowledgeable in the above entitled action; that he has read the foregoing answers to interrogatories and knows the contents thereof; that the same is true of his own knowledge and information, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.



MAURIZIO MAZZA
 Notary Public State of Nevada
 No. 05-94588-1
 My Appt. Exp. Feb. 1, 2017

Z:\Haddad.OT\Winter Whitetail St 3883 216-cv-00467\discovery\Answers\Interrogs.wpd

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that on the 29 day of July 2016, I served a photocopy of the
3 foregoing DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES by
4 placing the same in a sealed envelope with first-class postage fully prepaid thereon and deposited in
5 the United States mails addressed as follows:

6 Melanie D. Morgan, Esq.
7 Natalie L. Winslow, Esq.
8 Akerman LLP
9 1160 Town Center Drive, Suite 330
10 Las Vegas, Nevada 89144
11 Attorney for plaintiff

Chris Yergensen, Esq.
Nevada Association Services, Inc.
6224 West Desert Inn Road
Las Vegas, Nevada 89145
Attorneys for defendant,
Nevada Association Services, Inc.

12 Joseph P. Garin, Esq.
13 J. William Ebert, Esq.
14 Lipson, Neilson, Cole,
15 Seltzer & Garin, P.C.
16 9900 Covington Cross Drive, Suite 120
17 Las Vegas, Nevada 89144
18 Attorneys for defendant,
19 Sunrise Ridge Master Homeowners Assoc.

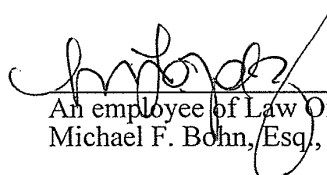
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An employee of Law Offices of
Michael F. Bohn, Esq., Ltd.

EXHIBIT “B”

EXHIBIT “B”

1 MICHAEL F. BOHN, ESQ.
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2 mbohn@bohnlawfirm.com
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4 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

5 Attorney for defendant Daisey Trust

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 BANK OF AMERICA, N.A.,

CASE NO.: 2:16-CV-00467

10 Plaintiff,

11 vs.

12 SUNRISE RIDGE MASTER HOMEOWNERS
13 ASSOCIATION; DAISEY TRUST; and NEVADA
ASSOCIATION SERVICES, INC.,

14 Defendants.

15 DAISEY TRUST,

16 Counterclaimant,

17 vs.

18 BANK OF AMERICA, N.A.,

19 Counterdefendant.

20
21 **DEFENDANT, DAISEY TRUST'S RESPONSES TO PLAINTIFF'S**
FIRST SET OF REQUESTS FOR ADMISSIONS

22 TO: Plaintiff above-named

23 TO: Melanie D. Morgan, Esq. and Natalie L. Winslow, Esq. of Akerman LLP, attorneys for plaintiff.

24 Comes now, Defendant, Daisey Trust, by and through its attorney, Michael F. Bohn, Esq., hereby
25 responds to the plaintiff's requests for admissions as follows:

26 **REQUEST FOR ADMISSION NO. 1:**

27 Admit you are not a citizen of North Carolina.

28 ...

1 **RESPONSE TO REQUEST NO. 1:**
2 Admit.

3 **REQUEST FOR ADMISSION NO. 2:**
4 Admit, from August 1, 2007 to the present, you received income derived from properties you
5 purchased at foreclosure sales held pursuant to NRS 116.31162 .

6 **RESPONSE TO REQUEST NO. 2:**
7 Admit.

8 **REQUEST FOR ADMISSION NO. 3:**
9 Admit that you attended the HOA Foreclosure Sale.

10 **RESPONSE TO REQUEST NO. 3:**
11 Admit.

12 **REQUEST FOR ADMISSION NO. 4:**
13 Admit that you were the highest bidder on the Property at the HOA Foreclosure Sale.

14 **RESPONSE TO REQUEST NO. 4:**
15 Admit.

16 **REQUEST FOR ADMISSION NO. 5:**
17 Admit that, in the 30 days preceding the HOA Foreclosure Sale, you identified properties that
18 would be available for sale at auction by the HOA within a month of the HOA Foreclosure Sale date.

19 **RESPONSE TO REQUEST NO. 5:**
20 Objection, vague.

21 **REQUEST FOR ADMISSION NO. 6:**
22 Admit that, on or before August 1, 2011 you had knowledge that the Property would be placed
23 up for auction.

24 **RESPONSE TO REQUEST NO. 6:**
25 Deny. Date of auction was August 24, 2012

26 **REQUEST FOR ADMISSION NO. 7:**
27 Admit that prior to the HOA Foreclosure Sale, you sought information pertaining to the fair
28 market value of the Property.

1 **RESPONSE TO REQUEST NO. 7:**
2 Admit.

3 **REQUEST FOR ADMISSION NO. 8:**
4 Admit that you communicated with the HOA Trustee regarding the Property prior to the HOA
5 Foreclosure Sale.

6 **RESPONSE TO REQUEST NO. 8:**
7 Deny.

8 **REQUEST FOR ADMISSION NO. 9:**
9 Admit that, prior to the HOA Foreclosure Sale, you communicated with the HOA regarding the
10 HOA Foreclosure Sale.

11 **RESPONSE TO REQUEST NO. 9:**
12 Deny.

13 **REQUEST FOR ADMISSION NO. 10:**
14 Admit that, prior to the HOA Foreclosure Sale, you had an agreement with the HOA or HOA
15 Trustee to purchase some or any part of the HOA's rights in the HOA Lien.

16 **RESPONSE TO REQUEST NO. 10:**
17 Deny.

18 **REQUEST FOR ADMISSION NO. 11:**
19 Admit that before you acquired your interest in the Property, you reviewed publicly recorded
20 documents on file with the Clark County Recorder's office that related to the Property.

21 **RESPONSE TO REQUEST NO. 11:**
22 Admit.

23 **REQUEST FOR ADMISSION NO. 12:**
24 Admit that before you acquired your interest in the Property, you knew the Deed of Trust had been
25 recorded against the Property.

26 **RESPONSE TO REQUEST NO. 12:**
27 Admit.
28 ...

1 **REQUEST FOR ADMISSION NO. 13:**

2 Admit that before you acquired your interest in the Property, you believed the Deed of Trust had
3 been recorded against the Property.

4 **RESPONSE TO REQUEST NO. 13:**

5 Admit.

6 **REQUEST FOR ADMISSION NO. 14:**

7 Admit that prior to you acquiring your interest in the Property, BANA held a beneficial interest
8 in the Deed of Trust.

9 **RESPONSE TO REQUEST NO. 14:**

10 Admit.

11 **REQUEST FOR ADMISSION NO. 15:**

12 Admit that, prior to the HOA Foreclosure Sale, you did not communicate with the HOA or HOA
13 Trustee concerning whether any person or entity offered to pay any portion of the HOA Lien.

14 **RESPONSE TO REQUEST NO. 15:**

15 Admit.

16 **REQUEST FOR ADMISSION NO. 16:**

17 Admit that, prior to the HOA Foreclosure Sale, you did not communicate with the HOA or HOA
18 Trustee concerning whether any person or entity tendered funds relating to any portion of the HOA Lien.

19 **RESPONSE TO REQUEST NO. 16:**

20 Admit.

21 **REQUEST FOR ADMISSION NO. 17:**

22 Admit that, prior to the HOA Foreclosure Sale, you did not communicate with the HOA or HOA
23 Trustee concerning whether they accepted any funds relating to any portion of the HOA Lien.

24 **RESPONSE TO REQUEST NO. 17:**

25 Admit.

26 ...

27

28 ...

1 **REQUEST FOR ADMISSION NO. 18:**

2 Admit that, prior to the HOA Foreclosure Sale, you did not communicate with the HOA or HOA
3 Trustee concerning whether they accepted any funds relating to the super priority portion of the HOA
4 Lien.

5 **RESPONSE TO REQUEST NO. 18:**

6 Admit.

7 **REQUEST FOR ADMISSION NO. 19:**

8 Admit that, prior to the HOA Foreclosure Sale, you believed a person or entity tendered funds
9 relating to any portion of the HOA Lien.

10 **RESPONSE TO REQUEST NO. 19:**

11 Deny.

12 **REQUEST FOR ADMISSION NO. 20:**

13 Admit that you paid \$5,470.00 for your interest in the Property.

14 **RESPONSE TO REQUEST NO. 20:**

15 Admit.

16 **REQUEST FOR ADMISSION NO. 21:**

17 Admit that at the time of the HOA Foreclosure Sale you believed the fair market value of the
18 Property was at least \$27,500.00.

19 **RESPONSE TO REQUEST NO. 21:**

20 Deny.

21 **REQUEST FOR ADMISSION NO. 22:**

22 Admit that at the time you purchased your interest in the Property, you had knowledge that your
23 title to the Property was without warranty, express or implied, regarding title, possession or
24 encumbrances.

25 **RESPONSE TO REQUEST NO. 22:**

26 Deny.

27 **REQUEST FOR ADMISSION NO. 23:**

28 Admit that you have received funds from the rental or lease of the Property.

1 **RESPONSE TO REQUEST NO. 23:**

2 Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, is an unwarranted
3 intrusion into private financial and confidential matters, and is not proportional to the needs of the case.

4 **REQUEST FOR ADMISSION NO. 24:**

5 Admit that the Property is currently rented or leased.

6 **RESPONSE TO REQUEST NO. 24:**

7 See response to Request No. 23.

8 **REQUEST FOR ADMISSION NO. 25:**

9 Admit that, from August 1, 2007 to the present, you have purchased other properties at
10 homeowner's association foreclosure sales in Nevada.

11 **RESPONSE TO REQUEST NO. 25:**

12 Deny.

13 **REQUEST FOR ADMISSION NO. 26:**

14 Admit that, from August 1, 2007 to the present, you have purchased other properties at
15 homeowner's association foreclosure sales conducted by HOA Trustee.

16 **RESPONSE TO REQUEST NO. 26:**

17 Admit.

18 **REQUEST FOR ADMISSION NO. 27:**

19 Admit that, prior to the foreclosure sale date, you were aware Rock K. Jung had delivered more
20 than one dollar (\$1.00) to the HOA or HOA trustee relating to the HOA lien.

21 **RESPONSE TO REQUEST NO. 27:**

22 Deny.

23 DATED this 27th of July, 2016

24 LAW OFFICES OF
25 MICHAEL F. BOHN, ESQ., LTD.

26 By: /s/ Michael F. Bohn, Esq./
27 Michael F. Bohn, Esq.
28 376 E. Warm Springs Road, Ste. 140
 Las Vegas, NV 89119
 Attorney for Daisey Trust

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 27th day of July 2016, I served a photocopy of the foregoing DEFENDANT, DAISEY TRUST'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS by placing the same in a sealed envelope with first-class postage fully prepaid thereon and deposited in the United States mails addressed as follows:

Melanie D. Morgan, Esq.
Natalie L. Winslow, Esq.
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorney for plaintiff

Chris Yergensen, Esq.
Nevada Association Services, Inc.
6224 West Desert Inn Road
Las Vegas, Nevada 89145
Attorneys for defendant,
Nevada Association Services, Inc.

Joseph P. Garin, Esq.
J. William Ebert, Esq.
Lipson, Neilson, Cole,
Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for defendant,
Sunrise Ridge Master Homeowners Assoc.


/s/ /Maggie Lopez/
An employee of Law Offices of
Michael F. Bohn, Esq., Ltd.

EXHIBIT “C”

EXHIBIT “C”

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

Electronically Filed
10/14/2020 9:35 AM
Steven D. Grierson
CLERK OF THE COURT



NEOJ
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
RAYMOND JEREZA, ESQ.
Nevada Bar No. 11823
ROGER P. CROTEAU & ASSOCIATES, LTD
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
ray@croteaulaw.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Case No. A-19-790395-C

Dept No. 18

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada non-profit corporation,

NOTICE OF ENTRY OF ORDER

Defendants.

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 NOTICE IS HEREBY GIVEN that an Order *DENYING MOTION TO DISMISS, OR*
2 *ALTERNATIVELY, MOTION FOR PARTIAL SUMMARY JUDGMENT; AND GRANTING IN*
3 *PART AND DENYING IN PART MOTION TO AMEND COMPLAINT* was entered in the above-
4 entitled case on October 13th, 2020. A true and accurate copy is attached hereto as Exhibit 1.
5

6 DATED this 14th day of October, 2020.

7 ROGER P. CROTEAU & ASSOCIATES, LTD.

8 /s/ Roger P. Croteau
9 ROGER P. CROTEAU, ESQ.
10 Nevada Bar No. 4958
11 2810 West Charleston Blvd., Suite 75
12 Las Vegas, Nevada 89102
13 (702) 254-7775
14 *Attorney for Plaintiff*
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ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

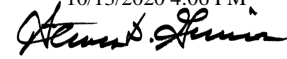
CERTIFICATE OF SERVICE

I hereby certify that on October 14th, 2020 I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle
An employee of
ROGER P. CROTEAU & ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

ORDR

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
RAYMOND JEREZA, ESQ.
Nevada Bar No. 11823
ROGER P. CROTEAU & ASSOCIATES, LTD
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
ray@croteaulaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION; and
NEVADA ASSOCIATION SERVICES, INC.,
a Nevada non-profit corporation,

Defendants.

Case No. A-19-790395-C
Dept No. 18

ORDER:

**1) DENYING MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
PARTIAL SUMMARY JUDGMENT; AND

2) GRANTING IN PART AND DENYING
IN PART MOTION TO AMEND
COMPLAINT**

On July 1, 2020 at 10:00 a.m., the Honorable Mary Kay Holthus heard oral argument on Plaintiff Daisy Trust's ("**Plaintiff**") Motion to Amend Complaint ("**Motion to Amend**") and Defendant Sunrise Ridge Master Homeowners' (the "**HOA**") Motion to Dismiss, or Alternatively, Motion for Partial Summary Judgment ("**Motion to Dismiss**"). Roger P. Croteau, Esq. appeared as counsel for Plaintiff. Jonathan K. Wong, Esq. appeared as counsel for the HOA. The Court having reviewed and considered the moving papers, having heard oral argument of the parties, and good cause appearing therefore, the Court enters the following:

...


...

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion to
2 Amend is GRANTED in part and DENIED in part. The Court will allow Plaintiff's first, second,
3 and third claims for relief to be stated in the first amended complaint, as they are stated in the
4 proposed first amended complaint attached to the Motion to Amend. The Court will not allow the
5 fourth claim for relief (Violation of NRS 113) to be stated in the first amended complaint.
6

7 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the HOA's Motion
8 to Dismiss is DENIED.

9 Dated this ____ day of _____, 2020.

Dated this 13th day of October, 2020



DISTRICT COURT JUDGE

12 Submitted by:

13 ROGER P. CROTEAU & ASSOCIATES, LTD

14 /s/ Raymond Jereza

15 Roger P. Croteau, Esq.
16 Nevada Bar No. 4958
17 Raymond Jereza, Esq.
18 Nevada Bar No. 11823
19 2810 W. Charleston Blvd., Ste. 75
20 Las Vegas, Nevada 89102
21 Attorneys for Plaintiff

22 Reviewed by:

23 LIPSON NEILSON P.C.

24 /s/ Jonathan K. Wong

25 J. William Ebert, Esq.
26 Nevada Bar No. 2697
27 Jonathan K. Wong, Esq.
28 Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for the HOA

Chet Glover

From: Jonathan Wong <JWong@lipsonneilson.com>
Sent: Tuesday, July 7, 2020 8:42 AM
To: Chet Glover
Cc: Bill Ebert; Roger Croteau
Subject: RE: Daisy Trust (3883 Winter Whitetail) v. Sunrise HOA re: proposed order

Good morning Chet,

I'm OK with this order, you can go ahead and use my e-signature. Thanks.

Jonathan K. Wong, Esq.

Lipson Neilson P.C.

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144-7052

(702) 382-1500

(702) 382-1512 (fax)

E-Mail: jwong@lipsonneilson.com

Website: www.lipsonneilson.com

Important Message: The health and safety of our community is our primary focus during these challenging times. Our established and tested contingency plan permits continued and uninterrupted delivery of legal services as our team works from home. While "face to face" meetings are not possible for the foreseeable future, we remain available to you at any time. Please do not hesitate to email, call or text me at (702) 595-7745 if you have any questions or concerns. While we continue to work, we also wish you the very best of health and safety.

From: Chet Glover <chet@croteaulaw.com>
Sent: Thursday, July 2, 2020 2:03 PM
To: Jonathan Wong <JWong@lipsonneilson.com>
Cc: Bill Ebert <BEbert@lipsonneilson.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: Daisy Trust (3883 Winter Whitetail) v. Sunrise HOA re: proposed order

Jonathan,

I hope all is well. Please let me know if I may affix your e-signature to the attached. Thanks.

Chet A. Glover, Esq.

Roger P. Croteau & Associates

2810 Charleston Boulevard, No. H-75

Las Vegas, NV 89102

(702) 254-7775

chet@croteaulaw.com

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-790395-C

7 vs.

DEPT. NO. Department 18

8 Sunrise Ridge Master
9 Homeowners Association,
10 Defendant(s)

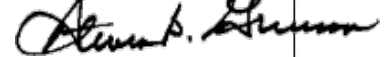
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/13/2020

16 Susana Nutt	snutt@lipsonneilson.com
17 Brandon Wood	brandon@nas-inc.com
18 Roger Croteau	croteaulaw@croteaulaw.com
19 Susan Moses	susanm@nas-inc.com
20 Croteau Admin	receptionist@croteaulaw.com
21 Jonathan Wong	jwong@lipsonneilson.com
22 Juan Cerezo	jcerezo@lipsonneilson.com
23 Ray Jereza	ray@croteaulaw.com

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26
27
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1 **JOIN**
2 BRANDON E. WOOD
3 Nevada State Bar Number 12900
4 NEVADA ASSOCIATION SERVICES, INC.
5 6625 S. Valley View Blvd. Suite 300
6 Las Vegas, NV 89118
7 Telephone: (702) 804-8885
8 Facsimile: (702) 804-8887
9 Email: brandon@nas-inc.com

10 *Attorney for Defendant Nevada Association*
11 *Services, Inc.*

12 **DISTRICT COURT FOR THE STATE OF NEVADA**

13 **IN AND FOR THE COUNTY OF CLARK**

14 DAISY TRUST, a Nevada trust,

15 Plaintiff,

16 vs.

17 SUNRISE RIDGE MASTER
18 HOMEOWNERS ASSOCIATION, a Nevada
19 non-profit corporation; and NEVADA
20 ASSOCIATION SERVICES, INC., a Nevada
21 corporation,

22 Defendants.

CASE NO.: A-19-790395-C

DEPT. NO.: XVIII

**NEVADA ASSOCIATION SERVICES,
INC.'S JOINDER TO DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

23 COMES NOW, NEVADA ASSOCIATION SERVICES, INC. (hereinafter "NAS"), and
24 hereby submits its Joinder to SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S
25 Motion to Dismiss DAISY TRUST'S First Amended Complaint. NAS incorporates the arguments,
26 points and authorities, and Exhibits set forth by SUNRISE RIDGE MASTER HOMEOWNERS'
27 ASSOCIATION as though fully set forth herein.

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CONCLUSION

For all the reasons set forth in its Motion, SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S Motion to Dismiss DAISY TRUST'S Complaint should be **GRANTED** as to Daisy Trust and NAS.

Dated this 29th day of June, 2021.

By: 

BRANDON E. WOOD
Nevada State Bar Number 12900
NEVADA ASSOCIATION SERVICES, INC.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
*Attorney for Defendant Nevada Association
Services, Inc.*

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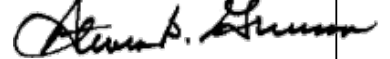
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of June, 2021, and pursuant to N.R.C.P. 5(b), I served a true and correct copy of the foregoing *Nevada Association Services, Inc.'s Joinder to Sunrise Ridge Master Homeowners' Association's Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment* upon the parties listed below and all parties/counsel set up to receive notice via electronic service in this matter in the following manner:

- ☐ Hand Delivery
☐ Facsimile Transmission
☐ U.S. Mail, Postage Pre-Paid
☒ Served upon opposing counsel via the Court's electronic service system to the following counsel of record:

Roger Croteau, Esq. croteaulaw@croteaulaw.com	Croteau Admin receptionist@croteaulaw.com
Jonathan Wong, Esq. jonathan@lipsonneilson.com	J. William Ebert, Esq. bebert@lipsonneilson.com

/s/Susan E. Moses
Employee of Nevada Association Services, Inc.



OPP

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
ROGER P. CROTEAU & ASSOCIATES, LTD
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION; and
NEVADA ASSOCIATION SERVICES, INC.,
a Nevada non-profit corporation,

Defendants.

Case No. A-19-790395-C
Dept No. 18

**OPPOSITION TO DEFENDANT SUNRISE
RIDGE MASTER HOMEOWNERS'
ASSOCIATION MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT, OR ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT
AND REQUEST FOR NRCP 56(D)
RELIEF**

Plaintiff Daisy Trust ("Plaintiff"), by and through its attorneys, Roger P. Croteau & Associates, Ltd., submits this Opposition ("Opposition") to Sunrise Ridge Master Homeowners' Association (the "HOA") Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment ("Motion"). This Opposition is based on the following points and authorities, the authenticated exhibits attached, the pleadings, other documents on file in this case, and any oral argument the Court may entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

The HOA goes to great lengths to interpret Plaintiff's statements as avoiding any inquiry into the attempted payment of the HOA lien by the beneficiary of the first deed of trust. Plaintiff's basis for this action, as set forth in the First Amended Complaint, is that Plaintiff would inquire as to payments towards the lien as part of his standard policy, but that those inquiries would not result in informative replies. A close examination of the material presented by the HOA indicates that Plaintiff's prior testimony does not contradict, and indeed supports, Plaintiff's position. This failure to respond to Plaintiff's inquiry, withholding relevant information and ultimately misrepresenting the nature of the interest being sold, led to Plaintiff purchasing the subject property which was still encumbered by a first deed of trust. This negates the HOA's legal analysis as to the lack of a duty, as such analysis focuses upon the lack of an affirmative duty, as opposed to a reactive duty. Thus, there also remain questions as to the derivative claims of conspiracy and good faith. The associated claims for damages must also survive, as the extent and basis for damages is related to the underlying claims. Taking account of the legal standard for a motion to dismiss, thus making factual inferences in favor of Plaintiff, the Motion should be denied. In the alternative reading of the Motion as request summary judgment, there are significant questions of fact as to the issues set forth, requiring the matter to proceed to trial, and thus denial of the Motion is also proper.

STATEMENT OF FACTS

1. Plaintiff is the current owner of real property located at 3883 Winter Whitetail Street, Las Vegas, Nevada 89122 (APN 161-15-811-066) (the "Property"). Plaintiff acquired title to Property from the HOA following the foreclosure sale on August 24, 2012 ("HOA Foreclosure Sale") conducted by Defendant Nevada Association Services, Inc. d/b/a Assessment Management Services, (the "HOA Trustee") on behalf of HOA.

2. On or about January 25, 2005, Michael F. Delapaz and Carolyn T. Delapaz, husband and wife and Ludivina C. Catacutan, a single woman (collectively “the Former Owner”) purchased the Property and obtained a loan secured by the Property from Bank of America, N.A., (“BANA” or “Lender”), for the loan amount of \$220,864.00, which was evidenced by a deed of trust (the “Deed of Trust”). The Deed of Trust was recorded in the Clark County Recorder’s Office on January 28, 2005.

3. The Former Owner executed a Planned Unit Development Rider along with the Deed of Trust.

4. On May 20, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Claim of Delinquent Assessment Lien (“NODAL”). The NODAL stated that the amount due to the HOA was \$1,117.00 (the “HOA Lien”), plus accruing assessments, interest, late charges, costs, fees, and other charges.

5. On July 13, 2010, HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell (“NOD”) against the Property. The NOD stated the amount due to the HOA was \$2,214.50 plus late fees, collection costs, and interest.

6. On March 21, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure Sale against the Property (“NOS”). The NOS stated that the total amount due the HOA was \$4,648.67 and set a sale date for the Property of April 20, 2012 at 10:00 a.m., to be held at 930 South Fourth Street, Las Vegas, Nevada 89101

7. After the NOD was recorded, BANA, through counsel Miles, Bauer, Bergstrom & Winters, LLP (“Miles Bauer”), contacted the HOA Trustee and HOA via U.S. Mail and requested adequate proof of the superpriority amount of assessments by providing a breakdown of nine (9) months of common assessments (“Super-Priority Lien Amount”) in order for BANA to calculate the

1 ostensible attempt to determine and pay the amount of the HOA Lien entitled to priority over the
2 Deed of Trust.

3 8. On or about April 19, 2012, BANA, through Miles Bauer, provided a payment of
4 \$378.00 to the HOA Trustee, which included payment of up to nine months of delinquent assessments
5 (the “Attempted Payment”), and which Attempted Payment the HOA Trustee rejected.
6

7 9. On August 24, 2012, HOA Trustee conducted the HOA Foreclosure Sale on the
8 Property and recorded a Foreclosure Deed on August 30, 2012 (“HOA Foreclosure Deed”), which
9 stated that the HOA Trustee sold the HOA’s interest in the Property to Moonlight Garden Street Trust
10 for the highest bid amount of \$5,470.00.

11 10. Neither the HOA nor the HOA Trustee disclosed the Attempted Payment to bidders,
12 Moonlight Street Trust, Plaintiff, or the public, either in writing or orally, before the HOA
13 Foreclosure Sale, despite reasonable inquiry by Mr. Haddad (on behalf of Plaintiff), which was his
14 practice at the time when attending NRS Chapter 116 foreclosure sales. *See* Exhibit 2 attached to
15 first Amended Complaint, Declaration of Mr. Haddad.
16

17 11. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee
18 in Lender’s Complaint filed against Plaintiff and the HOA on March 3, 2016 (“Discovery”) in the
19 United States District Court for the District of Nevada, Civil Action No. 2:16-cv-00467MMD-CWH
20 (the “Case”)
21

22 **LEGAL ARGUMENT**

23 **A. LEGAL STANDARD**

24 A complaint should not be dismissed for insufficiency, for failure to state a cause of action,
25 unless it appears to a certainty that the Plaintiff is entitled to no relief under any set of facts which
26 could be proven in support of the claim. *Zalk-Josephs Co. V. Wells Cargo, Inc.*, 81 Nev. 163,400
27 P.2d 621 (1965). On a motion to dismiss for failure to state a claim for relief, the trial court, and the
28

1 Supreme Court must draw every fair intendment in favor of the plaintiff. *Merluzzi v. Larson*, 96 Nev.
2 409, 610 P.2d 739 (1980), overruled on the other grounds, 106 Nev. 568, 796 P.2d 592 (1990). When
3 tested by a subdivision (b)(5) motion to dismiss for failure to state a claim upon which relief can be
4 granted the allegations of the complaint must be accepted as true. *Hynds Plumbing & Heating Co. V.*
5 *Clark County School District*, 94 Nev. 776, 587 P.2d 131 (1978). A trial court may dismiss a
6 complaint **only if it appears to a certainty that a plaintiff can prove no set of facts which would**
7 **entitle him to relief**; all allegations pled must be accepted as true. *Bergmann v. Boyce*, 109 Nev.
8 670, 856 P.2d 560 (1993) (Emphasis added). In the event that a motion asserting N.R.C.P. §12(b)(5)
9 presents matters outside the pleading which are not excluded by the court, the motion shall be treated
10 as one for summary judgment and disposed of as provided in N.R.C.P. §56. *See* NRCP §12(b).

11
12 Pursuant to NRCP 56, two substantive requirements must be met before a Court may grant a
13 motion for summary judgment: (1) there must be no genuine issue as to any material fact; and, (2)
14 the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight Equipment*
15 *Corp.*, 108 Nev. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under NRCP 56 when
16 the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are
17 properly before the court demonstrate that no genuine issue of material fact exists, and the moving
18 party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 NEV. Adv. Op. 73, 121 P.3d
19 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at 713, 57 P.3d at 87 (2003).
20 In deciding whether these requirements have been met, the Court must first determine, in the light
21 most favorable to the non-moving party “whether issues of material fact exist, thus precluding
22 judgment by summary proceeding.” *National Union Fire Ins. Co. of Pittsburgh v. Pratt & Whitney*
23 *Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

24 The Nevada Supreme Court has also indicated that summary judgment is a drastic remedy
25 and that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84 Nev.
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1 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d 168 (1995).
2 “Actions for declaratory relief are governed by the same liberal pleading standards that are applied
3 in other civil actions.” *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258,
4 1260-61 (1993). “The formal sufficiency of a claim is governed by NRCP 8(a), which requires only
5 that the claim, shall contain (1) a short and plain statement of the claim showing that the pleader is
6 entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.’
7
8 *Id.* (quoting NRCP 8(a)).

9 **B. PLAINTIFF’S CLAIMS FOR MISREPRESENTATION SHOULD BE SUSTAINED**

10 In this case, Plaintiff asserts that the HOA and HOA Trustee intentionally/negligently made
11 the determination not to disclose the Attempted Payment despite their actual knowledge to the
12 contrary known only to the HOA, HOA Trustee, and the Lender. In *Nelson v. Heer*, the Court defined
13 intentional misrepresentation as being established by demonstrating:
14

15 (1) a false representation that is made with either knowledge or belief that it is false
16 or without a sufficient foundation, (2) an intent to induce another’s reliance, and (3)
17 damages that result from this reliance.

18 With respect to the false representation element, the suppression or omission of a
19 material fact which a party is bound in good faith to disclose is equivalent to a false
20 representation, since it constitutes an indirect representation that such fact does not
21 exist.” And, with respect to the damage element, this court has concluded that the
22 damages alleged must be proximately caused by reliance on the original
23 misrepresentation or omission. Proximate cause limits liability to foreseeable
24 consequences that are reasonably connected to both the defendant’s misrepresentation
25 or omission and the harm that the misrepresentation or omission created.

26 123 Nev. 217, 225 (2007). The Court in *Nelson* provided that the omission of a material fact such as
27 the Lender’s Attempted Payment of the HOA Lien is deemed to be a false representation which
28 Defendants are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to potential
bidders upon **reasonable inquiry** from potential bidders at the HOA Foreclosure Sale, and such
intentional omission is equivalent to a false representation under the facts of this case.

Plaintiff has demonstrated that the HOA, by and through its agent, the HOA Trustee,

1 intentionally did not disclose the Attempted Payment to Plaintiff or the potential bidders at the HOA
2 Foreclosure Sale. Unlike NRS Chapter 107 sales, NRS Chapter 116 sales provide for a super and
3 subpriority lien portion related the Deed of Trust. Absent the recording of any notice of payment of
4 the Super Priority Lien Amount, as is mandated with the NRS Chapter 116 amendments in 2015, the
5 only way Plaintiff and/or potential bidders at the HOA Foreclosure Sale would know if any party
6 tendered the Super Priority Lien Amount and/or Attempted Payment is if the HOA and/or the HOA
7 Trustee informed the bidders of the Attempted Payment, especially when asked. It is clear from the
8 facts of this case that the HOA Trustee was aware of the Attempted Payment and its rejection by the
9 HOA Trustee.
10

11 Since the HOA Trustee is the disclosed agent of the HOA, the HOA is imputed with
12 knowledge held by the HOA Trustee. In the First Amended Complaint, Plaintiff sets forth the duty,
13 breach of that duty, the improper purpose, and the resulting failure to make a statement regarding the
14 Attempted Payment. The material omission of the Attempted Payment, the breach of the obligation
15 of good faith and candor, and the failure to provide notice pursuant to NRS Chapter 116, led the
16 damages suffered by Plaintiff.
17

18 In this case, Defendants are not guilty of an affirmative false representation, but they are
19 guilty of intentionally not disclosing a material fact regarding the payment of the Attempted Payment
20 concerning the Deed of Trust that they are required to make. Thus, Defendants are guilty of making
21 a material omission of a fact subject to this claim. As Mr. Haddad sets forth in his declaration, which
22 is attached and incorporated into the First Amended Complaint, he relied upon the non-disclosure of
23 the Attempted Payment to indicate that no tender had been attempted or accomplished. The
24 discrepancy is underscored by the fact that the HOA Trustee had a policy for responding to inquiries,
25 as set forth in Exhibit 1, the Declaration of Susan Moses (from a similar matter), of refusing to
26 provide information, that would have directly led to preventing Mr. Haddad from obtaining
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1 information from the HOA Trustee. The fact that a policy existed substantiates that inquiries were a
2 regular occurrence, and thus was not an uncommon occurrence. Furthermore, the response of the
3 HOA Trustee, to refuse to provide information, clearly shows that Plaintiff was not informed of the
4 Attempted Tender.

5
6 This shows the HOA, by way of the HOA Trustee's actions, leading up to and at the HOA
7 Foreclosure Sale, intentionally obstructed Plaintiff's opportunity to conduct its own due diligence
8 regarding the Property and specifically the priority of the lien being foreclosed upon. This obstruction
9 ultimately affected Plaintiff's decision whether to actually submit a bid on the Property or not. Had
10 Mr. Haddad known that he was purchasing the Property subject to the Deed of Trust, he would have
11 never submitted a bid in the first place, thus avoiding this entire controversy, as set forth in Mr.
12 Haddad's Declaration.

13
14 In the present case, at the time of the Foreclosure Sale, the HOA and HOA Trustee knew that
15 Lender had made the Attempted Payment of the HOA Lien but did not inform the bidders. Neither
16 the HOA nor the HOA Trustee ever disclosed, or responded to Plaintiff's inquires. Indeed, there was
17 a policy to not provide the information, as set forth in the declaration of Susan Moses for NAS, that
18 Lender had in fact made the Attempted Payment of the HOA Lien.

19
20 In support of it argument, the HOA relies on *Noonan v. Bayview Loan Serv'g*, 438 P.3d 335
21 (Nev. 2019) (unpublished disposition). However, the HOA's reliance on *Noonan* is misplaced,
22 because it is factually distinguishable from this case. It is true the *Noonan* court stated, "Hampton
23 neither made an affirmative false statement nor omitted a material fact it was bound to disclose,"
24 *Noonan*, 438 P.3d at 335, certainly the HOA and the HOA Trustee were bound to tell the truth here
25 when Plaintiff inquired whether a tender/payment had been attempted or made. *See* Declaration of
26 Iyad Haddad attached to First Amended Complaint The *Noonan* decision is based upon a factual
27 determination of whether a material, factual, question had been asked and if it was answered or there
28

1 was a material omission of fact. The *Noonan* court did not consider the arguments presented in this
2 matter about NRS 116.1113, NRS Chapter 113 (below), and their relevant analysis regarding
3 Plaintiff's inquiry, and the HOA Trustee's unwillingness, to respond.

4 The HOA's reference to case law regarding an *affirmative* duty to disclose an attempted or
5 rejected tender by a lender is irrelevant here. The HOA's reliance upon *Saticoy Bay, Ltd. Liab. Co.*
6 *v. Mountain Gate Homeowners' Ass'n*, 473 P.3d 1046 (Nev. 2020) fails to take account of this
7 difference. The Order of Affirmance in Mountain Gate addresses the requirement of a "proactive"
8 duty to volunteer information. Plaintiff's allegations, when taken as true as required on a motion to
9 dismiss, does not require the HOA or HOA Trustee to "proactively" disclose the relevant
10 information, but simply to respond to the inquiry of Mr. Haddad. As shown by the attached
11 declaration of Susan Moses and the allegations of Plaintiff, included in Mr. Haddad's declaration as
12 well, the HOA Trustee had a practice of refusing to provide the information, a very different issue
13 then not volunteering the information.
14

15 The Plaintiff is not alleging that the HOA and HOA failed to *volunteer* the information, but
16 that the HOA, through the HOA Trustee, failed to respond to Plaintiff's inquiry, and through this
17 failure, misrepresented the interest sold. The HOA and HOA Trustee did not respond to inquiries, as
18 the discovery responses also show. This difference, either taken as a fact pursuant to the motion to
19 dismiss standard or as a disputed fact pursuant to the motion for summary judgment request, requires
20 denial of the HOA's Motion.
21

22
23 **C. PLAINTIFF'S TESTIMONY IS CONSISTENT**

24 Plaintiff's discovery responses as set forth by the HOA, allegations in this matter, and
25 testimony by way of the Declaration is consistent; the HOA and HOA Trustee are simply overeager
26 in their reading of the responses. First, a simple point of clarification before going into the analysis;
27 there is a difference between asking a question and receiving an answer, as Susan Moses' Declaration
28

1 makes clear. Mr. Haddad can ask the HOA Trustee regarding a sale, in a related matter Susan Moses
2 stated that it was the policy of the HOA Trustee that it would not respond. Thus, When Plaintiff
3 responded that it did not receive information on the Subject Property from the HOA or HOA Trustee
4 other than that provided in the Notice of Foreclosure Sale prior to the HOA Sale, as set forth in
5 Exhibit “A” and Exhibit “B” of the HOA’s motion, he was relating the exact problem; that Mr.
6 Haddad requested information and was denied information. Indeed, the fact that that the HOA
7 provides this testimony and now holds it up in their motion, in light of the Declaration of the HOA
8 Trustee in a similar matter, proves that the HOA Trustee recognized Mr. Haddad *did in fact* ask and
9 that they did not provide the information, taking this matter beyond the prior case law of “affirmative”
10 duty to produce the information and into “withholding” of information in response to an inquiry.
11

12 The various admissions, in the limited format that admissions allow, show that there was no
13 communication between the HOA and HOA Trustee and Plaintiff. However, the lack of
14 communication is shown to be due to the policies and procedures of the HOA Trustee; refusing to
15 respond to questions due to their interpretation of the law means that Plaintiff did not get the
16 information Plaintiff sought, not that Plaintiff did not inquire. Furthermore, the fact that there was a
17 policy and procedure of not responding indicates that Mr. Haddad did inquire, so often in fact, that
18 there became a policy and procedure of how to respond.
19

20
21 **D. PLAINTIFF RETRACTS THE CLAIM FOR RELIEF UNDER NRS 113.**

22 Plaintiff agrees to dismissal of the claim for relief under NRS 113, as that matter has already
23 been decided by this Court; the claim was left in the First Amended Complaint by error.
24

25 **E. PLAINTIFF’S CLAIM FOR CIVIL CONSPIRACY AND UNJUST ENRICHMENT**
26 **SHOULD BE SUSTAINED**

27 The Supreme Court of Nevada has recognized that co-conspirators, like the HOA and the
28 HOA Trustee in this matter, are deemed to be each other’s agents while acting in furtherance of the

1 conspiracy. *Tricarichi v. Cooperative Rabobank, U.A.*, 440 P.3d 645, 653 (Nev. 2019) (observing
2 in the context of a conspiracy claim for purposes of establishing personal jurisdiction, “co-
3 conspirators are deemed to be each other’s agents, the contacts that one co-conspirator made with a
4 forum while acting in furtherance of the conspiracy may be attributed for jurisdictional purposes to
5 the other co-conspirators.”). Likewise, Plaintiff here contends in its First Amended Complaint – at
6 least under any fair reading of it under the applicable standard set forth in NRCP 12(b)(5) – that the
7 HOA and the HOA Trustee were co-conspirators of one another in failing or refusing to disclose the
8 Attempted Payment to Plaintiff.

10 The actions of one co-conspirator, those of the HOA Trustee, are properly attributable to the
11 other co-conspirator, the HOA, and vice versa. *See id.* As the HOA and the HOA Trustee are separate
12 legal entities, the legal bar which Defendants will likely assert exists to a conspiracy between the
13 HOA Trustee and the HOA simply does not exist. *See, e.g., Nanopierce Techs. Inc. v. Depository*
14 *Trust and Clearing Corp.*, 168 P.3d 73, 85 n.49 (Nev. 2007). The HOA’s Motion should be denied
15 on this basis, as well. If the court deems the parties to be in an agency relationship, with the HOA
16 responsible pursuant to Respondeat Superior liability, then the conspiracy claim need not lie,
17 however, if the parties are deemed to not be liable for its agent, then the conspiracy theory stands.

19 Similar logic applies to the Unjust Enrichment claim by Plaintiff. Both the HOA and HOA
20 Trustee benefited from the completion of the sale; Plaintiff states that he would not have bid at the
21 sale if he had been informed of the Attempted Tender, and did inquire as to the possibility of payment
22 towards the lien. *See* Declaration of Haddad attached to First Amended Complaint and paragraph 60
23 of the First Amended Complaint. Furthermore, both the HOA and HOA Trustee received funds from
24 the Sale, funds that would not have been provided had the Plaintiff been informed of the Attempted
25 Tender in response to the inquiries made. *See* paragraph 58 of the First Amended Complaint. While
26 Plaintiff acknowledges that the Property was transferred, the HOA’s assertion that Plaintiff “received
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1 what he paid for” is simply circular reasoning. Plaintiff sets forth in the First Amended Complaint
2 that inquiries were made to determine what it would acquire; Plaintiff was not answered when he
3 inquired as to what was being sold. The HOA cites to *LeasePartners Corp. v. Robert L. Brooks Tr.*
4 *Dated Nov. 12, 1975*, 113 Nev. 747, 942 P.2d 182 (1997)(“*LeasePartners*”) regarding the elements
5 of unjust enrichment; the facts of *LeasePartners* underscores the factual analysis that must take place
6 in such matter. In *LeasePartners*, an old, but serviceable, sign was replaced by a newer sign,
7 Plaintiff’s argued that the new sign unjustly enriched the defendant, who refused payment for the
8 new, unwanted, sign as the old sign was serviceable. In this matter, the HOA received the benefit of
9 a payment of the lien, where Defendant would not have bid if it had been apprised, in response to its
10 inquiries, of the Attempted Tender. The fact that Plaintiff received *something* in exchange for bidding
11 at the HOA Sale is not dispositive of the unjust enrichment claim, whether the HOA and HOA
12 Trustee obtained more than it was entitled to by the misrepresentation, either negligent or intentional,
13 of not responding to Plaintiff’s inquiry is where the analysis must focus.

14 **F. PLAINTIFF’S CLAIMS FOR SPECIAL DAMAGES SHOULD BE DETERMINED**
15 **AT TIME OF TRIAL**

16 The attorney fees and costs allegations as set forth in each cause of action references any
17 claims that may be able to be adduced from the discovery in this case and/or the CC&R’s if the
18 Plaintiff is successful in its argument under NRS 116.4117(6), “the court may award reasonable
19 attorney’s fees to the prevailing party” if the matter is subject to the CC&R’s. The HOA’s arguments
20 that attorney fees are only available in real property matters alleging slander of title, pursuant to
21 *Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007)(“*Horgan*”), fails to note that this matter asserts
22 claims beyond simply quiet title, namely misrepresentation, such that the narrow rule prescribed by
23 *Horgan* as to quiet title actions, requiring a claim of slander of title, simply does not apply. In this
24 matter, Plaintiff is not seeking to remove a cloud upon title, as in *Horgan*, but is seeking to address
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1 the misrepresentations made by the HOA and HOA Trustee, separate and apart from any claim to
2 title in the Property. All parties acknowledge the HOA cannot, due to the Attempted Tender and prior
3 litigation, present any claim to the Property. However, the possibility of attorney fees, as special
4 damages, remains a possibility that should be preserved for trial in this matter.

5
6 **G. PLAINTIFF'S CLAIMS FOR PUNITIVE DAMAGES ARE NOT PRECLUDED IN**
7 **THIS CASE**

8 As it relates to the HOA, punitive damages are allowed pursuant to NRS 116.4117 in certain
9 cases as follows:

10 1. Subject to the requirements set forth in subsection 2, if a declarant,
11 community manager or any other person subject to this chapter fails to comply with
12 any of its provisions or any provision of the declaration or bylaws, any person or
13 class of persons suffering actual damages from the failure to comply may bring a
civil action for damages or other appropriate relief.

14 2. Subject to the requirements set forth in NRS 38.310 and except as
15 otherwise provided in NRS 116.3111, a civil action for damages or other
16 appropriate relief for a failure or refusal to comply with any provision of this
chapter or the governing documents of an association may be brought:

17 (a) By the association against:

- 18 (1) A declarant;
19 (2) A community manager; or
20 (3) A unit's owner.

21 (b) By a unit's owner against:

- 22 (1) The association;
23 (2) A declarant; or
24 (3) Another unit's owner of the association.

25 (c) By a class of units' owners constituting at least 10 percent of the
26 total number of voting members of the association against a community manager.

27 3. Members of the executive board are not personally liable to the
28 victims of crimes occurring on the property.

4. Except as otherwise provided in subsection 5, **punitive damages may be awarded for a willful and material failure to comply with any provision of this chapter if the failure is established by clear and convincing evidence.**

5. Punitive damages may not be awarded against:

- (a) The association;
(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or

1 (c) The officers of the association for acts or omissions that occur in
2 their capacity as officers of the association.

3 **6. The court may award reasonable attorney's fees to the prevailing**
4 **party.**

5 7. The civil remedy provided by this section is in addition to, and not
6 exclusive of, any other available remedy or penalty.

7 8. The provisions of this section do not prohibit the Commission from
8 taking any disciplinary action against a member of an executive board pursuant to
9 NRS 116.745 to 116.795, inclusive.

10 Emphasis added.

11 Punitive damages are an available award under NRS 116.4117(4)-(5); however, it is on a case
12 by case analysis and to be determined by the Court after the introduction of evidence. Plaintiff does
13 contend that the HOA and HOA Trustee acted in "conscious disregard" as set forth in the First
14 Amended Complaint claims for Intention Misrepresentation. Taking the factual inferences in a light
15 most favorable to the non-moving party, the intentional misrepresentation by withholding
16 information regarding the Attempted Tender, following Plaintiff's inquiry, operates as the necessary
17 deception to justify punitive damages.

18 **COUNTERMOTION FOR NRCP 56(d) RELIEF**

19 The above issues are pertinent in light of the allegations of the Complaint, and require factual
20 development. Since the allegations of the First Amended Complaint are to be taken as true, and as
21 the Declaration of Mr. Haddad as attached to the First Amended Complaint present facts sufficient
22 to support the claims of the First Amended Complaint, the Motion should be denied, either as a
23 motion to dismiss or for summary judgment, due to factual issues raised herein. Alternatively, the
24 Plaintiff seeks relief under NRCP 56(d). Pursuant to NRCP 56(d):

25 When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by
26 affidavit or declaration that, for specified reasons, it cannot present facts essential
27 to justify its opposition, the court may:
28 (1) defer considering the motion or deny it;
(2) allow time to obtain affidavits or declarations or to take discovery; or
(3) issue any other appropriate order.

1 Plaintiff has not had the opportunity to address discovery, as no party has answered the
2 complaint. *See* Declaration of Christopher L. Benner, attached as Exhibit 2. Furthermore, as set
3 forth above and in the attached declaration, there are clearly issues of fact which the parties do not
4 agree upon, and no stipulation concerning those issues has been submitted.

5
6 **CONCLUSION**

7 Based on the foregoing, the Court should deny the HOA's Motion and allow this matter to
8 proceed to discovery.

9 DATED this July 12, 2021.
10 ROGER P. CROTEAU & ASSOCIATES, LTD.
11 /s/ Christopher L. Benner
12 ROGER P. CROTEAU, ESQ.
13 Nevada Bar No. 4958
14 CHRISTOPHER L. BENNER, ESQ.
15 Nevada Bar No. 8963
16 2810 W. Charleston Blvd., Ste. 75
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18 (702) 254-7775
19 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle

An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1

1 DECLARATION

2 STATE OF NEVADA)
3) ss.
4 COUNTY OF CLARK)

5 I, Susan Moses, declare that:

6 1. I am designated by Nevada Association Services, Inc. ("NAS") as the Person Most
7 Knowledgeable regarding NAS' policies, procedures, and business practices.

8 2. NAS' has a specific policy, procedure, and business practice for documenting when
9 individuals or entities communicate with NAS regarding properties and accounts, including telephone
10 calls.

11 3. When NAS receives communications, including telephone calls, such communications
12 are documented by entering notations in NAS' collection file as phone notes.

13 4. NAS has a specific policy, procedure, and business practice for responding to
14 individuals or entities who 1) contact NAS regarding properties and accounts and 2) are not identified
15 as individuals or entities associated with the property (named on the deed of trust) or who have not
16 previously been identified, in writing, as individuals or entities authorized to discuss the account.

17 5. When individuals or entities who are not associated with the property (named on the
18 deed of trust) or who have not previously been identified, in writing, as individuals or entities
19 authorized to discuss the account contact NAS and inquire about the account, NAS informed such
20 parties that NAS is prohibited by federal law from disclosing collection account details without
21 receiving 1) written consent from the debtor to communicate with the third party, 2) express
22 permission of a court of competent jurisdiction, or 3) unless reasonably necessary to effectuate a post
23 judgment judicial remedy. *See* 15 U.S.C.A. § 1692c.

24 6. I am the Custodian of Records for NAS and in that capacity, am the Custodian of
25 Records for the documents produced in case number A -19-796729-C.

26 7. On or about November 13, 2020, NAS produced the entire collection file associated
27 with the property commonly known as 5526 Moonlight Garden Street, Las Vegas, Nevada 89130 (the
28 "Subject Property").

8. I have reviewed the entire collection file associated with Subject Property.

9. My review revealed that Mr. Eddie Haddad or individuals on behalf of Saticoy Bay LLC Series 5526 Moonlight Garden Street did not contact NAS regarding the Subject Property to inquire if any payments were made prior to the foreclosure sale of the Subject Property.

10. My review further revealed that Mr. Eddie Haddad or individuals on behalf of Saticoy Bay LLC Series 5526 Moonlight Garden Street are not individuals or entities associated with the property (named on the deed of trust) or have previously been identified, in writing, as individuals or entities authorized to discuss the account contact NAS.

11. If Mr. Eddied Haddad or individuals on behalf of Saticoy Bay LLC Series 5526 Moonlight Garden Street attempted to inquire about the account, NAS would have informed him/them that NAS is prohibited by federal law from disclosing collection account details without receiving 1) written consent from the debtor to communicate with the third party, 2) express permission of a court of competent jurisdiction, or 3) unless reasonably necessary to effectuate a post judgment judicial remedy. *See* 15 U.S.C.A. § 1692c.

12. I declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 04 day of June, 2021.

Signature Mrs. Mores

Susan Moses
Print Name

EXHIBIT 2

EXHIBIT 2

DECLARATION IN SUPPORT OF NRCP 56(D) RELIEF

1. I, Christopher L Benner, Esq., declare under penalty of perjury of the laws of the State of Nevada as follows:

2. I am one of the attorneys for Plaintiff in this matter and have personal knowledge of and am competent to testify as to the matters set forth herein.

3. Plaintiff's Complaint was filed on March 1, 2019; Plaintiff's First Amended Complaint was filed on June 14, 2021.

4. Defendant Venezia Community Association ("HOA") has filed a Motion to Dismiss, alternatively Motion for Summary Judgment to the First Amended Complaint on June 28, 2021.

5. Defendant Nevada Association Services, Inc. d/b/a Assessment Management Services ("HOA Trustee") filed a Joinder on June 30, 2021.

6. Because neither Defendant has answered the Complaint, discovery has not yet commenced.

7. Because discovery has not yet commenced, Plaintiff has not had the chance to obtain copies of the HOA or HOA Trustee's files related to the HOA Foreclosure Sale, which Plaintiff anticipates will include call logs and records about conversations with Plaintiff and or its representative(s) about the Attempted Payment.

8. Additionally, as set forth in the Declaration of Susan Moses attached separately, it appears that Mr. Haddad's practices as to attending sales and making inquiries were common knowledge, and that the HOA Trustee routinely did not respond to Mr. Haddad's inquiries. As this was the HOA Trustee's policies, it is reasonable to conclude that a similar situation occurred in this matter, but without discovery as to the records of the HOA Trustee, the factual issue remains

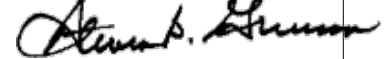
disputed.

9. Furthermore, because no discovery has taken place in this case, Plaintiff has not had the opportunity to depose the HOA Trustee's corporate designees about communications Defendants had with each other, BANA, Plaintiff, and others about the Attempted Payment, which is very relevant to the resolution of this case and will create a genuine issue of material fact that precludes summary judgment in favor of the HOA Trustee.

10. I declare under penalty of perjury that the foregoing is true and correct.

Dated this July 12, 2021.

/s/ Christopher L. Benner
Christopher L. Benner, Esq.



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Sunrise Ridge Master Homeowners Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust
Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;
Defendants.

Case No.: A-19-790395-C
Dept.: XVIII

**DEFENDANT SUNRISE RIDGE
MASTER HOMEOWNERS'
ASSOCIATION'S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT, OR ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant Sunrise Ridge Master Homeowners' Association ("Defendant" or "Sunrise Ridge") by and through its counsel of record, LIPSON NEILSON P.C., and hereby submits its Reply in Support of its Motion to Dismiss Plaintiff's First Amended Complaint, or alternatively, Motion for Summary Judgment ("Reply"). This Motion is made and based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument that may be presented in this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Opposition confirms that there are no material facts in dispute, and shows that the parties are in agreement that: 1) Plaintiff purchased the Property at a foreclosure sale for \$5,470.00; 2) prior to the foreclosure sale, Plaintiff did not communicate with Sunrise Ridge or NAS regarding whether any person or entity offered to pay or tender any portion of the HOA's lien; 3) prior to the foreclosure sale, Plaintiff did not communicate with Sunrise Ridge or NAS regarding whether they accepted any funds relating to the HOA's lien; and 4) there were no other communications between Plaintiff and the HOA/NAS.

Rather, the Opposition's arguments are solely legal in character, arguing that the fact that neither the HOA nor NAS provided Plaintiff with information on attempted payments upon "reasonable inquiry" constitutes a material omission of a fact that they were bound in good faith to disclose. Plaintiff does not point to a single paragraph in its First Amended Complaint wherein it is alleged that Plaintiff specifically made any such inquiry of the HOA or NAS. Even if such inquiry was made, Plaintiff does not explain how the HOA/NAS's refusal to provide such information deceived or misled Plaintiff into purchasing the Property. Moreover, to the extent that the HOA/NAS's response could be deemed a material omission or misrepresentation, the same was not made with the intent to deceive, as the affidavit of Susan Moses attached to Plaintiff's Opposition indicates that NAS's reason for doing this was because it was prohibited under the law from doing so. The only questions remaining in this case are ones of law, not fact, and as set forth below and in the HOA's MTD/MSJ, these questions should be resolved in the HOA's favor.

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1 **II. LEGAL ARGUMENT**

2 **A. Plaintiff's Misrepresentation Claim Fails Because Plaintiff Does Not**
3 **Actually Allege That It Inquired Regarding the Same**

4 Plaintiff does not dispute that, under the pre-2015 version of NRS 116, Sunrise
5 Ridge had no duty to affirmatively disclose the existence of attempted payments on the
6 HOA Lien, but argues that failure to provide this information upon inquiry is tantamount
7 to a false representation, citing to *Nelson v. Heer*, 123 Nev. 217, 225 (2007) (stating
8 that "the suppression or omission of a material fact which a party is bound in good faith
9 to disclose is equivalent to a false representation"). Plaintiff's reliance on *Nelson* is
10 entirely misplaced. Under *Nelson*, not every omission of a material fact constitutes a
11 false representation; rather, only omission of material facts that a party is "bound in
12 good faith to disclose" constitutes a false representation. Plaintiff fails to establish that
13 Sunrise Ridge and/or NAS were "bound in good faith" to disclose the fact of the bank's
14 attempted payment, and the case law cited by Sunrise Ridge in fact indicates the exact
15 opposite. Furthermore, Plaintiff does not actually allege that it made any such inquiry
16 of the HOA or NAS, and its own discovery responses confirm it did not.

17 1. Plaintiff's First Amended Complaint Does Not Allege Specific Inquiry

18 Plaintiff does not dispute the rule of law set forth by the Nevada Supreme Court
19 in *Noonan v. Bayview Loan Servicing, LLC*, 2019 WL 1552690, 438 P.3d 335 (Nev.
20 2019)¹ and the string of recent unpublished Nevada Supreme Court decisions that pre-
21 2015 NRS 116 does not require disclosure of payments on the HOA's lien; rather,
22 Plaintiff maintains that all of these cases apply only to an affirmative duty, and proffers
23 that the HOAs still are required to provide such information reactively "upon reasonable
24 inquiry."

25 _____
26 ¹ Plaintiff's attempt to distinguish *Noonan* because the Court there was not presented with
27 arguments about NRS 116.1113 and NRS 113 is nonsensical; the NRS 116.1113 claim derives
28 from the Intentional/Negligent Misrepresentation claim, and the NRS 113 arguments are entirely
 independent of the issues under the Misrepresentation analysis. Thus, it is of no consequence
 that the Court in *Noonan* was not presented with those issues.

1 Despite the Opposition's assertions about "reasonable inquiry," it does not point
2 to a single paragraph in the First Amended Complaint wherein Plaintiff alleges that he
3 specifically made any such inquiry of the HOA or NAS. As discussed in the HOA's
4 moving papers, the allegations in the First Amended Complaint only allege that Plaintiff
5 had a "practice and procedure" of making such inquiries, which the Nevada Supreme
6 Court has held is inadequate to state a claim for misrepresentation under NRS 116.
7 See *Mountain Gate Homeowners' Ass'n*, 473 P.3d at 1046, fn 2 (noting that "although
8 appellant's complaint alleges generally that appellant had a 'pattern and practice' of
9 'attempt[ing] to ascertain whether anyone had attempted to or did tender any payment,
10 **the complaint does not allege that appellant specifically asked respondents**
11 **whether a superpriority tender had been made in this case...**") (emphasis added).

12 Additionally, even if the FAC were to have alleged that Plaintiff made inquiry, it
13 would need to also allege that the HOA/NAS made a false representation in response to
14 such inquiry, that the HOA/NAS believed its representation was false, and that the
15 HOA/NAS intended to induce Plaintiff to act. The FAC does not explain how the
16 HOA's/NAS's refusal to disclose information about payments on the HOA lien to
17 potential bidders was false or misleading; if Plaintiff interpreted the refusal to disclose
18 information as meaning "no person or entity has attempted payment on the HOA's lien,
19 go ahead and bid," that is his own problem. None of the authority cited by Plaintiff
20 stands for the proposition that the HOA/NAS were obligated to provide Plaintiff this
21 information. Taking all of the allegations in the FAC as true, they still fail to state a claim
22 for misrepresentation under NRS 116, and Plaintiff's claim for Misrepresentation should
23 be dismissed.

24 2. Plaintiff's Allegations and Discovery Responses Preclude Any
25 Assertions Here That It Made Any Inquiry Regarding the Attempted
26 Payment

26 Plaintiff's discovery responses in the Federal Action confirm that it did not make
27 any such inquiries. In its Opposition, Plaintiff misrepresents its responses as admissions
28

1 “that Plaintiff did not get the information Plaintiff sought, not that Plaintiff did not inquire.”
2 See Opp’n at 10:15-17. Such an argument is disingenuous at best, as even a cursory
3 reading of the RFAs in question indicate that the request was not “admit that you did not
4 receive any information from the HOA”, but rather “admit that, prior to the HOA
5 foreclosure sale, you did not communicate with the HOA or HOA Trustee concerning
6 [various topics relating to the foreclosure sale].” See **Exhibit “B”** to the MTD/MSJ, RFA
7 Nos. 15–18. Plaintiff’s response to each such RFA was an unqualified “Admit.” *Id.*
8 Plaintiff is bound to its discovery responses, which unequivocally indicate that it did not
9 communicate with the HOA or NAS regarding any payments made or attempted on the
10 HOA’s lien.

11 Even if *arguendo* Plaintiff had made inquiry here, NAS’s refusal to provide
12 information was not intended to induce Plaintiff to bid at the foreclosure sale, which is a
13 key element of the misrepresentation claim that Plaintiff cannot establish. *Barmettler v.*
14 *Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441, 447 (Nev.,1998) (setting forth the
15 elements of a claim for misrepresentation). As indicated by Susan Moses in her
16 declaration, the reason NAS refused to disclose information about payments on the
17 HOA’s account to potential bidders was because they were prohibited under federal law
18 from doing so. See Susan Moses Declaration, attached to Plaintiff’s Opposition, at ¶15.
19 Plaintiff himself recognizes in his Opposition that NAS “refus[ed] to respond to questions
20 due to their interpretation of the law,” and not some ill-spirited desire to deceive Plaintiff
21 and other potential bidders. Opp’n at 10:15-17 (emphasis added). Plaintiff is unable to
22 establish his claim for Misrepresentation based on the undisputed facts, and the HOA is
23 entitled to summary judgment on the same as a matter of law.

24 **B. The HOA is Entitled to Dismissal of or Summary Judgment on**
25 **Plaintiff’s Throwaway Causes of Action**

26 Plaintiff’s FAC contains three throwaway causes of action that essentially stand
27 or fall with the Misrepresentation cause of action: Breach of NRS 116.1113 (duty of
28 good faith), Conspiracy, and Unjust Enrichment. On the claim for Breach of the Duty of

1 Good Faith, because the Nevada Supreme Court has established that there was no
2 duty under the pre-2015 version of NRS 116 to disclose the fact of attempted payments
3 on the HOA lien, the HOA did not breach any “duty” by not doing so. As such, there is
4 no basis for finding that the HOA breached its duty of good faith under NRS 116.1113.
5 See *Mountain Gate*, 473 P.3d 1046, (“[i]n particular, appellant’s claims for
6 misrepresentation **and breach of NRS 116.1113** fail because respondents had no duty
7 to proactively disclose whether a superpriority tender had been made.”) (emphasis
8 added).

9 Likewise, the Conspiracy cause of action requires that the HOA and NAS have
10 conspired in furtherance of an unlawful objective. *Consol. Generator-Nevada, Inc. v.*
11 *Cummins Engine Co.*, 114 Nev. 1304, 971 P.2d 1251 (setting forth the elements of a
12 conspiracy claim). As the Nevada Supreme Court has made abundantly clear, there
13 was nothing unlawful about the HOA/NAS not disclosing the fact of the bank’s
14 attempted payment on the HOA’s lien. Accordingly, there can be no conspiracy as a
15 matter of law.

16 Finally, with respect to Plaintiff’s claim for unjust enrichment, Plaintiff cannot
17 establish that there was anything unjust about the HOA’s retention of Plaintiff’s payment
18 for the Property. It had no reason to believe that the Property was being sold clear of
19 the first deed of trust; neither the HOA nor NAS made such a representation, the
20 foreclosure deed specifically indicated it was being made without warranty, and as set
21 forth above and at length in the HOA’s original moving papers, the HOA and NAS had
22 no duty to inform Plaintiff about any attempted payments or tenders on the HOA’s lien.
23 The analysis arguably would be different if the HOA/NAS had knowledge of Plaintiff’s
24 expectations and specifically advised it that there had been no attempted payments, but
25 that is not the case here. The HOA is accordingly entitled to dismissal or summary
26 judgment on Plaintiff’s claims for Breach of NRS 116.1113, Conspiracy, and Unjust
27 Enrichment.

28 ///

C. Plaintiff's Request for Rule 56(d) Relief Should be Denied

NRCP 56(d) allows courts to grant relief to the requesting party when the party shows that it cannot present facts "essential to justify its opposition." NRCP 56(d). Plaintiff makes an alternative request for Rule 56(d) relief in its Opposition on the grounds that Plaintiff has not had the opportunity to address discovery. In the supporting affidavit thereto, counsel for Plaintiff indicates that he needs to conduct discovery to 1) obtain call logs and records from the HOA and/or NAS about any conversations with Plaintiff; 2) ascertain whether Plaintiff made an inquiry and was refused information; and 3) depose NAS about communications with the HOA, BANA, Plaintiff, and others about the Attempted Payment. None of these categories contain facts "essential to justify" Plaintiff's opposition.

With respect to categories 1 and 2, there is no need for this discovery because Plaintiff itself stated in its discovery responses from the Federal Action that it did not communicate with the HOA or NAS prior to the Foreclosure Sale. The Federal Action involved the same property, the same plaintiff, and the same foreclosure sale, so there is no valid reason why the facts as represented by Plaintiff at that time should be any different now; indeed, given the passage of time, any testimony offered by Plaintiff during the time of the Federal Action is likely more accurate than any testimony Plaintiff would offer now. Moreover, even if *arguendo* NAS has call logs indicating that Plaintiff called and inquired about attempted payments, this would not be a fact "essential to justify" Plaintiff's opposition, because there was nothing wrongful or unlawful about NAS's procedure for responding to such inquiries as set forth in Susan Moses' Declaration.

With respect to category 3, none of this information is "essential to justify" Plaintiff's opposition either. Any communications between NAS and other entities, to the extent such communications exist, have no bearing on Plaintiff's causes of action, especially because Plaintiff did not actually communicate with NAS or the HOA regarding the foreclosure sale or Attempted Payment.

1 Additionally, allowing Plaintiff Rule 56(d) relief would do nothing more than
2 increase costs and burden the resources of the HOA, of NAS, and of this Court. It
3 bears emphasizing that there is a myriad of other NRS 116 cases inundating the Eighth
4 Judicial District Court, filed by the same Plaintiff (who is often times represented by the
5 same counsel) and containing similar facts and identical legal issues and arguments.
6 Time and time again, the Nevada Supreme Court has ruled against Plaintiff on these
7 claims, and the number of such decisions only continues to grow. On the other hand,
8 Plaintiff has not been able to bring before this court a single Nevada Supreme Court
9 case wherein the Court ruled for Plaintiff and against the HOA on any NRS 116-related
10 claim. There is no reason to believe that the instant case would not meet the same fate
11 before the Nevada Supreme Court. For all of these reasons, Plaintiff is not entitled to
12 Rule 56(d) relief, and the HOA respectfully requests that it be denied the same.

III. CONCLUSION

Based on the foregoing, Defendant Sunrise Ridge respectfully requests this Court dismiss Plaintiff's FAC pursuant to NRCP 12(b)(5), or alternatively, grant summary judgment in its favor pursuant to NRCP 56 on all of Plaintiff's causes of action.

DATED this 25th day of August, 2021.

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

By:

J. William Ebert, Esq. (Bar No. 2697)
Jonathan K. Wong, Esq. (Bar No. 13621)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

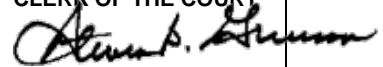
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 25th day of August, 2021, I electronically transmitted the foregoing **DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Roger P. Croteau, Esq.
Chris Benner, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Suite 75
Las Vegas, NV 89148
croteaulaw@croteaulaw.com

*Attorneys for Plaintiff,
Daisy Trust*

/s/ Juan Cerezo
An Employee of LIPSON NEILSON P.C.



1 RTRAN

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3
4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7)
8 DAISY TRUST,)

9 Plaintiff,)

10 vs.)

11 SUNRISE RIDGE MASTER
12 HOMEOWNERS ASSOCIATION, ET)
13 AL.,)

Defendant.)

CASE#: A-19-790395-C

DEPT. XVIII

14 BEFORE THE HONORABLE MARY KAY HOLTHUS
15 DISTRICT COURT JUDGE
WEDNESDAY, SEPTEMBER 1, 2021

16 **RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

17
18 APPEARANCES

19 For the Plaintiff: CHRISTOPHER L. BENNER, ESQ.

20 For Defendant Nevada
21 Association Services, Inc: BRANDON E. WOOD, ESQ.

22 For Defendant Sunrise Ridge
23 Master Homeowners: JONATHAN K. WONG, ESQ.

24
25 RECORDED BY: YVETTE G. SISON, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, September 1, 2021

2

3 [Case called at 10:51 a.m.]

4 THE CLERK: A-790395, Daisy Trust v. Sunrise Ridge Master
5 Homeowners Association.

6 MR. WONG: Good morning, Your Honor. Jonathan Wong,
7 bar number 13621, on behalf of Sunrise Ridge HOA.

8 THE COURT: Good morning.

9 MR. BENNER: Good morning, Your Honor. Christopher
10 Benner on behalf of Daisy Trust. Bar number 8963.

11 THE COURT: Good morning.

12 MR. WOOD: Good morning, Your Honor. Brandon Wood on
13 behalf of Defendant Nevada Association Services. Bar number 12900.

14 THE COURT: Good morning. Mr. Benner, what actual facts
15 are in dispute?

16 MR. BENNER: Your Honor, the declaration of the client is
17 attached to the amended complaint, but, essentially, the factual dispute
18 on this one is if there was a response to the client's inquiries regarding if
19 an any amount was paid towards the loan before the foreclosure sale
20 commenced.

21 THE COURT: Give me the exhibit.

22 MR. BENNER: The amended complaint -- the declaration is
23 attached to the end of the amended complaint. I believe it's the only
24 exhibit.

25 THE COURT: Thank you. And so is he alleging that he

1 actually asked about the tender?

2 MR. BENNER: Yes. In the opposition we attached -- I'm
3 sorry, not to jump ahead, but, yes, in the declaration of Mr. Haddad,
4 attached to the amended complaint, he alleged that he asked if any
5 amount was paid towards the lien prior to the sale. And in the
6 declaration that's attached to the opposition, which is from Susan
7 Moses, the declaration states that they would not say, but by inference
8 people would -- they wouldn't say if anyone did ask. So the question is,
9 is not whether he asked, but more whether they responded or not.

10 THE COURT: Well, if he didn't ask, they don't respond.

11 MR. BENNER: And his declaration states --

12 THE COURT: And --

13 MR. BENNER: -- that his practice and procedure was to, Your
14 Honor, yes.

15 THE COURT: All right. And my second question is if you're
16 alleging they didn't respond, that's different than responding with a
17 misrepresentation.

18 MR. BENNER: Our argument would be that the failure to
19 respond also takes us out of the duty to disclose. That there's a
20 distinction between -- if he didn't ask, obviously, there's no duty for them
21 to proactively disclose it. If he asked, and they simply refused to tell
22 them anything or respond to it, which is what Ms. Moses is saying in her
23 declaration. In a related matter -- not this matter, but a related matter --
24 was that it was their practice was to not respond, then it becomes one of
25 -- it leaves it open as a question of, okay, if you simply don't inform or

1 answer an inquiry before the sale, what is the impact of that. And also,
2 did they stick to that procedure, et cetera. It's a general one.

3 THE COURT: Okay. Anybody else want to --

4 MR. WONG: Your Honor, Jonathan Wong for the HOA here.
5 I guess -- if you've got no more questions, I'm happy to sort of address
6 those concerns from the HOA's perspective, if it would assist the Court.

7 THE COURT: Well, what's your response to Mr. Benner's
8 argument?

9 MR. WONG: Sure. So with respect to the actual facts in
10 dispute, as far as that declaration attached to the complaint goes, Your
11 Honor, I am not seeing any part in that actual declaration where he says,
12 yes, I specifically inquired of NAS for HOA. I spoke to such and such
13 individual and was specifically advised that no person or entity had
14 attempted or made payment on the HOA lien.

15 And, you know, we also have to remember he -- we have the
16 discovery responses of Plaintiff from the federal action where, you know,
17 there were multiple requests for admission, asking the same question,
18 basically, in different ways.

19 So Plaintiff -- you know, he had many opportunities to deny
20 or to clarify it, but each response to, you know, this essential question of
21 did you communicate with the HOA or NAS prior to the foreclosure sale
22 regarding the HOA lien, each one was an unqualified admit that he did
23 not have such communication.

24 So based on that, it's our position that there is no dispute
25 that he did not communicate with the HOA beforehand and, quite

1 frankly, the declaration of Susan Moses that they attached to their
2 opposition only further solidifies that. You know, given that NAS had
3 this general practice and procedure of not providing this information to
4 bidders, you know, absent a few exceptions that are not at issue here,
5 that further confirms that there -- they did not make any such
6 communication or representation to Plaintiff regarding payment or
7 attempted payment on the HOA lien.

8 And, again, as far as Plaintiff trying to paint this as a material
9 omission rather than, you know, a proactive misrepresentation, again,
10 this presupposes that the HOA had a duty to provide this information,
11 whether it be proactively or on inquiry. And that's just not supported by
12 the version of NRS 116 that was in effect at the time. And especially
13 here where we see from the Susan Moses declaration, the reason that
14 they had this policy of not disclosing this information was not to mislead
15 or deceive potential bidders, but was to protect themselves under, you
16 know, what they believed the law to be for [indiscernible] that there can
17 be no misrepresentation. There was no intent to mislead or deceive
18 them.

19 So for all of these reasons, Your Honor, we believe that
20 there's -- even under this first amended complaint there's just -- it fails to
21 state a claim for misrepresentation and by extension the other causes of
22 action also fail. Thank you.

23 THE COURT: Thank you. All right. Anything further?

24 All right. I'm going to go ahead and grant the motion to
25 dismiss. I don't feel that that affidavit really says what you say it says. If

1 his practice and procedure is to ask, I don't see that he would attempt to
2 ascertain. I don't see anything about that. And I certainly don't see any
3 affirmative misrepresentation evidence whatsoever. So that would be
4 my order. Counsel, if you'll prepare and have Plaintiff sign off, please.

5 MR. WONG: Thank you, Your Honor. And just to clarify, do
6 you want any findings of fact or conclusions of law in there or is it just
7 granted?

8 THE COURT: Put your findings in, please.

9 MR. WONG: Understood. Thank you, Your Honor.

10 THE COURT: Thank you.

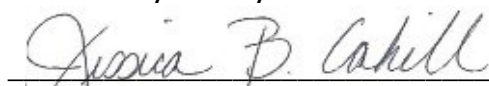
11 MR. BENNER: Understood.

12 THE COURT: As set forth in your papers.

13 MR. WONG: Thank you, Your Honor.

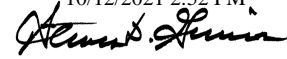
14 [Proceedings concluded at 10:59 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708


CLERK OF THE COURT

LIPSON NEILSON P.C.
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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust,
Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790395-C
Dept No.: XVIII

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT, AND
DEFENDANT NEVADA ASSOCIATION
SERVICES' JOINDER THERETO**

Hearing Date: September 1, 2021
Hearing Time: 10:00 a.m.

On September 1, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Chris L. Benner, Esq., appeared on behalf of Plaintiff, Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"), and Brandon E. Wood, Esq., appeared on behalf of defendant Nevada Association Services, Inc. ("NAS"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

FINDINGS OF FACT

1. On or about January 25, 2005, Michael Delapaz, Carolyn Delapaz, and Ludivina Catacutan (the "Former Owners") obtained a loan to purchase real property located at 3883 Winter Whitetail Ave., Las Vegas, Nevada 89122 (the "Property").

2. The Property was subject to the HOA's Covenants, Conditions, and Restrictions ("CC&Rs").

3. Sometime after purchasing the Property, the Former Owners defaulted on their homeowners' assessments.

4. On May 20, 2010, Nevada Association Services ("NAS"), on behalf of Sunrise Ridge Master Homeowners Association ("Sunrise Ridge"), recorded a Notice of Claim of Delinquent Assessment Lien.

5. On July 13, 2010, NAS, on behalf of Sunrise Ridge, recorded a Notice of Default and Election to Sell.

6. On or around March 21, 2012, Sunrise Ridge, through NAS, recorded a Notice of Sale.

7. On or around March 30, 2012, Bank of America ("BANA"), through counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted NAS and the HOA and requested a breakdown of nine (9) months of common HOA assessments in order to calculate the Super Priority Lien Amount.

8. On April 19, 2012, Miles Bauer sent NAS supplemental correspondence, wherein it offered to pay \$378.00 to discharge Sunrise Ridge's superpriority lien on the Property.

9. On or around August 24, 2012, Sunrise Ridge, through NAS, foreclosed on the Property. A foreclosure deed in favor of Daisy Trust was recorded on August 30, 2012.

10. On March 3, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS, and Daisy Trust in the United States District Court, District of Nevada, Case No. 2:16-cv-00467-MMD-CWH ("Federal Action"). The complaint alleged causes of action for

1 Quiet Title/Declaratory Relief, Breach of NRS 116.1113, and Wrongful Foreclosure, and
2 Injunctive Relief.

3 11. On January 22, 2019, Sunrise Ridge, Daisy Trust, and BANA filed
4 competing motions for summary judgment. On March 1, 2019, while dispositive motions
5 remained pending in the Federal Action, Daisy Trust filed the instant lawsuit against
6 Sunrise Ridge and NAS alleging causes of action for Intentional/Negligent
7 Misrepresentation, Breach of NRS 116, and Conspiracy.

8 12. On March 18, 2019, the district court in the Federal Action issued an
9 order granting summary judgment in BANA's favor on its cause of action for quiet title,
10 as well as Daisy Trust's counterclaims. The district court denied summary judgment on
11 BANA's claims against Sunrise Ridge for Breach of NRS 116 and Wrongful
12 Foreclosure.

13 13. On March 1, 2019, Plaintiff filed a complaint in the instant matter, alleging
14 causes of action for 1) Intentional/Negligent Misrepresentation; 2) Breach of the Duty of
15 Good Faith; and 3) Conspiracy. Sunrise Ridge filed a Motion to Dismiss, or
16 Alternatively, Motion for Summary Judgment (the "MTD/MSJ") on April 9, 2019. The
17 MTD/MSJ was ultimately heard on July 1, 2020. This Court denied the MTD/MSJ and
18 allowed Plaintiff leave to file an amended complaint, but specifically ordered that it
19 would not allow addition of a claim for Violation of NRS 113. A formal order was
20 entered on October 14, 2020.

21 14. On June 22, 2021, Plaintiff filed its First Amended Complaint (the "FAC"),
22 asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS
23 116.1113; 3) Conspiracy; 4) Violation of NRS 113 (subsequently withdrawn by Plaintiff);
24 and 5) Unjust Enrichment.

25 15. Any finding of fact that should be a conclusion of law shall be treated as
26 such.

27 ///

28 ///

CONCLUSIONS OF LAW

1. The Court reviews Sunrise Ridge's Motion under Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP"). NRCP 12(b)(5) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Nev. R. Civ. P. 12(b)(5). When ruling on such a motion, the factual allegations in the complaint are treated as true and all inferences are drawn in favor of the plaintiff. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014). A complaint should be dismissed when the allegations are insufficient to entitle the plaintiff to relief. *Id.*

2. Nevada has adopted the Uniform Common Interest Owner Act through Nevada Revised Statutes ("NRS") Chapter 116.

3. NRS 116 establishes that homeowners' associations ("HOA" or "HOAs") may impose assessments. See NRS 116.3115.

4. NRS 116 establishes that HOAs have a lien against units for assessments. See generally NRS 116.3116.

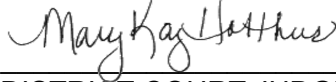
5. Sunrise Ridge foreclosed on the Property pursuant to NRS 116.

6. Under the version of NRS 116 in effect at the time of the Foreclosure Sale, neither Sunrise Ridge nor NAS had an affirmative duty to disclose to potential bidders the existence of payments or attempted payments on the HOA's lien.

7. Under Nevada law, intentional misrepresentation requires three elements: "(1) a false representation that is made with either knowledge or belief that it is false or without a sufficient foundation, (2) an intent to induce another's reliance, and (3) damages that result from this reliance." *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) (citations omitted). As for negligent misrepresentation, Nevada law requires a plaintiff to show that the defendant is "one who, without exercising reasonable care or competence, 'supplies false information for the guidance of others in their business transactions' is liable for 'pecuniary loss caused to them by their justifiable reliance upon the information.'" *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) (citations omitted).

1 reach or address any of the parties' arguments relating to NRCP 56, including Plaintiff's
2 request for NRCP 56(d) relief.

3
4 Dated this 12th day of October, 2021

5 

6 DISTRICT COURT JUDGE

7 E78 D5A 4E2D 4282
8 Mary Kay Holthus
District Court Judge

8 Submitted by:

9 LIPSON NEILSON P.C.

10 /s/ Jonathan Wong

11 J. WILLIAM EBERT, ESQ.
12 Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
13 Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
14 Las Vegas, Nevada 89144
Attorneys for Defendant Sunrise Ridge Master
Homeowner's Association

15 Approved as to form and content by:

16 ROGER P. CROTEAU & ASSOCIATES, LTD.

17 /s/ Christopher Benner

18 ROGER P. CROTEAU, ESQ.
19 Nevada Bar No. 4958
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20 Nevada Bar No. 8963
2810 W. Charleston Blvd., Ste. 75
21 Las Vegas, Nevada 89148
Attorney for Plaintiff

22 NEVADA ASSOCIATION SERVICES, INC.

23 /s/ Brandon Wood

24 BRANDON E. WOOD, ESQ.
25 Nevada Bar No. 12900
6625 S. Valley View Blvd., Suite 300
26 Las Vegas, Nevada 89118
Attorney for Defendant Nevada Association Services, Inc.

Juan Cerezo

From: Chris Benner <chris@croteaulaw.com>
Sent: Wednesday, September 22, 2021 4:38 PM
To: Jonathan Wong; 'Brandon Wood'
Subject: RE: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

You may use my e-signature.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
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chris@croteaulaw.com

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Counsel,

Attached is a proposed order granting the HOA's MTD and NAS's Joinder. Please confirm I have your authority to use your electronic signatures in submission to the court. Thanks.

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Las Vegas, Nevada 89144-7052
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E-Mail: jwong@lipsonneilson.com
Website: www.lipsonneilson.com

Juan Cerezo

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, September 24, 2021 9:30 AM
To: Jonathan Wong; 'Chris Benner'
Subject: RE: Daisy Trust v. Sunrise Ridge et al (A-19-790395-C): order granting MTD

You may use my electronic signature.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

Our office hours are Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available for payments in front of our office during normal business hours and lunch.



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E-Mail: jwong@lipsonneilson.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-790395-C

7 vs.

DEPT. NO. Department 18

8 Sunrise Ridge Master
9 Homeowners Association,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/12/2021

16 Susana Nutt snutt@lipsonneilson.com

17 Brandon Wood brandon@nas-inc.com

18 Roger Croteau croteaulaw@croteaulaw.com

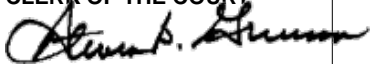
19 Susan Moses susanm@nas-inc.com

20 Croteau Admin receptionist@croteaulaw.com

21 Sydney Ochoa sochoa@lipsonneilson.com

22 Jonathan Wong jwong@lipsonneilson.com

23 Juan Cerezo jcerezo@lipsonneilson.com



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bebert@lipsonneilson.com
jwong@lipsonneilson.com

*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,
Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790395-C
Dept No.: XVIII

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT SUNRISE
RIDGE MASTER HOMEOWNERS'
ASSOCIATION'S MOTION TO DISMISS,
OR ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT, AND
DEFENDANT NEVADA ASSOCIATION
SERVICES' JOINDER THERETO**

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1 TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on the 12th day of October, 2021, an Order
3 Granting Defendant Sunrise Ridge Master Homeowners Association's Motion to
4 Dismiss, or Alternatively, Motion for Summary Judgment, and Defendant Nevada
5 Association Services' Joinder Thereto was entered in the above-captioned matter, a
6 true and correct copy of which is attached hereto as **Exhibit A**.

7 DATED this 12th day of October, 2021.

8 LIPSON NEILSON P.C.

9 */s/ Jonathan K. Wong*

10 By:

11 J. William Ebert, Esq. (Bar No. 2697)
12 Jonathan K. Wong, Esq. (Bar No. 13621)
9900 Covington Cross Drive, Suite 120
13 Las Vegas, Nevada 89144

14 *Attorneys for Defendant,*
15 *Sunrise Ridge Master Homeowners Association*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 12th day of October, 2021, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT, AND DEFENDANT NEVADA ASSOCIATION SERVICES' JOINDER THERETO** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

Roger P. Croteau, Esq.
Chris Benner, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Suite 75
Las Vegas, NV 89148
croteaulaw@croteaulaw.com

*Attorneys for Plaintiff,
Daisy Trust*

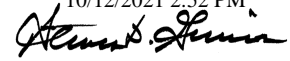
Brandon Wood, Esq.
NEVADA ASSOCIATION SERVICES, INC.
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
brandon@nas-inc.com

Attorney for Defendant Nevada Association Services, Inc.

/s/ Juan Cerezo
An Employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”


CLERK OF THE COURT

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
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bebert@lipsonneilson.com
jwong@lipsonneilson.com

*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust,
Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790395-C
Dept No.: XVIII

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT, AND
DEFENDANT NEVADA ASSOCIATION
SERVICES' JOINDER THERETO**

Hearing Date: September 1, 2021
Hearing Time: 10:00 a.m.

On September 1, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Chris L. Benner, Esq., appeared on behalf of Plaintiff, Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"), and Brandon E. Wood, Esq., appeared on behalf of defendant Nevada Association Services, Inc. ("NAS"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

FINDINGS OF FACT

1. On or about January 25, 2005, Michael Delapaz, Carolyn Delapaz, and Ludivina Catacutan (the "Former Owners") obtained a loan to purchase real property located at 3883 Winter Whitetail Ave., Las Vegas, Nevada 89122 (the "Property").

2. The Property was subject to the HOA's Covenants, Conditions, and Restrictions ("CC&Rs").

3. Sometime after purchasing the Property, the Former Owners defaulted on their homeowners' assessments.

4. On May 20, 2010, Nevada Association Services ("NAS"), on behalf of Sunrise Ridge Master Homeowners Association ("Sunrise Ridge"), recorded a Notice of Claim of Delinquent Assessment Lien.

5. On July 13, 2010, NAS, on behalf of Sunrise Ridge, recorded a Notice of Default and Election to Sell.

6. On or around March 21, 2012, Sunrise Ridge, through NAS, recorded a Notice of Sale.

7. On or around March 30, 2012, Bank of America ("BANA"), through counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted NAS and the HOA and requested a breakdown of nine (9) months of common HOA assessments in order to calculate the Super Priority Lien Amount.

8. On April 19, 2012, Miles Bauer sent NAS supplemental correspondence, wherein it offered to pay \$378.00 to discharge Sunrise Ridge's superpriority lien on the Property.

9. On or around August 24, 2012, Sunrise Ridge, through NAS, foreclosed on the Property. A foreclosure deed in favor of Daisy Trust was recorded on August 30, 2012.

10. On March 3, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS, and Daisy Trust in the United States District Court, District of Nevada, Case No. 2:16-cv-00467-MMD-CWH ("Federal Action"). The complaint alleged causes of action for

1 Quiet Title/Declaratory Relief, Breach of NRS 116.1113, and Wrongful Foreclosure, and
2 Injunctive Relief.

3 11. On January 22, 2019, Sunrise Ridge, Daisy Trust, and BANA filed
4 competing motions for summary judgment. On March 1, 2019, while dispositive motions
5 remained pending in the Federal Action, Daisy Trust filed the instant lawsuit against
6 Sunrise Ridge and NAS alleging causes of action for Intentional/Negligent
7 Misrepresentation, Breach of NRS 116, and Conspiracy.

8 12. On March 18, 2019, the district court in the Federal Action issued an
9 order granting summary judgment in BANA's favor on its cause of action for quiet title,
10 as well as Daisy Trust's counterclaims. The district court denied summary judgment on
11 BANA's claims against Sunrise Ridge for Breach of NRS 116 and Wrongful
12 Foreclosure.

13 13. On March 1, 2019, Plaintiff filed a complaint in the instant matter, alleging
14 causes of action for 1) Intentional/Negligent Misrepresentation; 2) Breach of the Duty of
15 Good Faith; and 3) Conspiracy. Sunrise Ridge filed a Motion to Dismiss, or
16 Alternatively, Motion for Summary Judgment (the "MTD/MSJ") on April 9, 2019. The
17 MTD/MSJ was ultimately heard on July 1, 2020. This Court denied the MTD/MSJ and
18 allowed Plaintiff leave to file an amended complaint, but specifically ordered that it
19 would not allow addition of a claim for Violation of NRS 113. A formal order was
20 entered on October 14, 2020.

21 14. On June 22, 2021, Plaintiff filed its First Amended Complaint (the "FAC"),
22 asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS
23 116.1113; 3) Conspiracy; 4) Violation of NRS 113 (subsequently withdrawn by Plaintiff);
24 and 5) Unjust Enrichment.

25 15. Any finding of fact that should be a conclusion of law shall be treated as
26 such.

27 ///

28 ///

CONCLUSIONS OF LAW

1. The Court reviews Sunrise Ridge's Motion under Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP"). NRCP 12(b)(5) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Nev. R. Civ. P. 12(b)(5). When ruling on such a motion, the factual allegations in the complaint are treated as true and all inferences are drawn in favor of the plaintiff. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014). A complaint should be dismissed when the allegations are insufficient to entitle the plaintiff to relief. *Id.*

2. Nevada has adopted the Uniform Common Interest Owner Act through Nevada Revised Statutes ("NRS") Chapter 116.

3. NRS 116 establishes that homeowners' associations ("HOA" or "HOAs") may impose assessments. See NRS 116.3115.

4. NRS 116 establishes that HOAs have a lien against units for assessments. See generally NRS 116.3116.

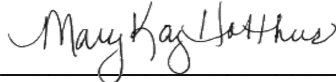
5. Sunrise Ridge foreclosed on the Property pursuant to NRS 116.

6. Under the version of NRS 116 in effect at the time of the Foreclosure Sale, neither Sunrise Ridge nor NAS had an affirmative duty to disclose to potential bidders the existence of payments or attempted payments on the HOA's lien.

7. Under Nevada law, intentional misrepresentation requires three elements: "(1) a false representation that is made with either knowledge or belief that it is false or without a sufficient foundation, (2) an intent to induce another's reliance, and (3) damages that result from this reliance." *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) (citations omitted). As for negligent misrepresentation, Nevada law requires a plaintiff to show that the defendant is "one who, without exercising reasonable care or competence, 'supplies false information for the guidance of others in their business transactions' is liable for 'pecuniary loss caused to them by their justifiable reliance upon the information.'" *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) (citations omitted).

1 reach or address any of the parties' arguments relating to NRCP 56, including Plaintiff's
2 request for NRCP 56(d) relief.

3
4 Dated this 12th day of October, 2021

5 

6 DISTRICT COURT JUDGE

7 E78 D5A 4E2D 4282
8 Mary Kay Holthus
District Court Judge

8 Submitted by:

9 LIPSON NEILSON P.C.

10 /s/ Jonathan Wong

11 J. WILLIAM EBERT, ESQ.
12 Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
13 Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
14 Las Vegas, Nevada 89144
Attorneys for Defendant Sunrise Ridge Master
Homeowner's Association

15 Approved as to form and content by:

16 ROGER P. CROTEAU & ASSOCIATES, LTD.

17 /s/ Christopher Benner

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23 NEVADA ASSOCIATION SERVICES, INC.

24 /s/ Brandon Wood

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E-Mail: jwong@lipsonneilson.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-790395-C

7 vs.

DEPT. NO. Department 18

8 Sunrise Ridge Master
9 Homeowners Association,
10 Defendant(s)

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18 Roger Croteau croteaulaw@croteaulaw.com

19 Susan Moses susanm@nas-inc.com

20 Croteau Admin receptionist@croteaulaw.com

21 Sydney Ochoa sochoa@lipsonneilson.com

22 Jonathan Wong jwong@lipsonneilson.com

23 Juan Cerezo jcerezo@lipsonneilson.com



1 **NOAS**
2 ROGER P. CROTEAU, ESQ.
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4 CHRISTOPHER L. BENNER, ESQ.
5 Nevada Bar No. 8963
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11 croteaulaw@croteaulaw.com
12 chris@croteaulaw.com
13 *Attorneys for Plaintiff*

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21
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23
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25
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27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada non-profit corporation,

Defendants.

Case No. A-19-790395-C
Dept No. 18

NOTICE OF APPEAL

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ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 NOTICE IS HEREBY GIVEN that Plaintiff DAISY TRUST, by and through its attorneys,
2 Roger P. Croteau & Associates, Ltd., hereby appeals to the Supreme Court of Nevada the Order
3 Granting Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss and
4 Defendant Nevada Association Services' Joinder thereto, and all rulings and interlocutory orders
5 giving rise to or made appealable by the final judgment.
6

7 Dated November 10, 2021.

8 ROGER P. CROTEAU & ASSOCIATES, LTD.

9 /s/ Christopher L. Benner

10 Roger P. Croteau, Esq.

11 Nevada Bar No. 4958

12 Christopher L. Benner, Esq.

13 Nevada Bar No. 8963

14 2810 W. Charleston Blvd., Suite 75

15 Las Vegas, Nevada 89102

16 *Plaintiff Daisy Trust*
17
18
19
20
21
22
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ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle

An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.