

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

<p>EL CAPITAN RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a domestic non-profit corporation, Appellant, vs. DAISY TRUST, a Nevada Trust Respondent</p>	<p>No. 84037</p> <hr/> <p>DOCKETING STATEMENT CIVIL APPEALS</p>	<p>Electronically Filed Jan 27 2022 08:52 a.m. Elizabeth N Brown Clerk of Supreme Court</p>
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GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 14
County Clark Judge Honorable Adriana Escobar
District Ct. Case No. A-19-789474-C

2. Attorney filing this docketing statement:

Attorney T. Chase Pittsenbarger Telephone (702) 538-9074
Firm Leach Kern Gruchow Anderson Song
Address 2525 Box Canyon Drive
Las Vegas, Nevada 89128

Client(s) El Capitan Ranch Landscape Maintenance Association

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Roger P. Croteau; Christopher L. Benner Telephone (702) 254-7775
Firm Roger P. Croteau & Associates
Address 2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89102

Client(s) Daisy Trust

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Denial of MAFC</u> |

5. Does this appeal raise issues concerning any of the following?

- Child Custody
- Venue
- Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Daisy Trust, a Nevada Trust v. El Capitan Ranch Landscape Maintenance Association, a domestic non-profit corporation

Nevada Supreme Court Case Number 83404

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

8. Nature of the action. Briefly describe the nature of the action and the result below:

On or about September 5, 2012 the Association conducted a foreclosure sale upon the real property located at 8721 Country Pines Avenue, Nevada 89129, (the "Property") pursuant to NRS 116. The Plaintiff was the successful bidder at the foreclosure sale taking title to the Property by way of a Foreclosure Deed. On February 19, 2019, Plaintiff filed its Complaint. On or about April 19, 2019, the case was assigned to the Court Annexed Arbitration Program. On March 9, 2020, the Arbitrator issued his decision finding in favor of the Association. On April 6, 2020, Plaintiff requested Trial De Novo. On May 27, 2021, the Association filed a Motion for Summary Judgment. On July 21, 2021, the Court found in favor of the Association and entered Findings of Fact, Conclusions of Law. On August 11, 2021, the Association filed its Motion for Attorneys' Fees and Costs. On October 21, 2021, the Court heard oral argument on the Association's Motion for Attorneys' Fees and Costs. On December 2, 2021, the Court entered an Order Denying El Capitan Landscape Maintenance Association's Motion. This is the Order that the Association is appealing.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in holding that NRS 116.4117 does not allow for an award of attorney's fees in this case.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain: N/A

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

After review of NRAP 17 it is the Association's position that this matter may be assigned to the Court of Appeals. However, the Supreme Court may wish to retain jurisdiction and consolidate this matter with Daisy Trust v. El Capitan Ranch Landscape Maintenance Association, Nevada Supreme Court Case Number 83404.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from December 2, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served December 2, 2021

Was service by:

Delivery

Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

Delivery

Mail

19. Date notice of appeal filed December 30, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---------------------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
This is an appeal from an order denying a Motion for Attorney's Fees and Costs that was entered after Appellant was awarded summary judgment, which was a final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

El Capitan Ranch Landscape Maintenance Association

Daisy Trust

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant believes NRS 116.4117 provides a basis for an award of attorney's fees and costs.

Respondent argues that its claims do not fall within the purview of NRS 116.4117.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:
N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

El Capitan Ranch LMA
Name of appellant

T. Chase Pittsenbarger
Name of counsel of record

January 27, 2022
Date

/s/ T. Chase Pittsenbarger
Signature of counsel of record

Nevada and Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 27th day of January, 2022, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Roger P. Croteau
Christopher L. Benner
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Boulevard, Suite 75
Las Vegas, Nevada 89148
croteaulaw@croteaulaw.com

Dated this 27th day of January, 2022

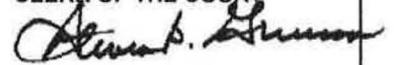
/s/ Yalonda Dekle
Signature

Exhibit 1

Exhibit 1

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

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2/19/2019 7:44 PM
Steven D. Grierson
CLERK OF THE COURT



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11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*

13
14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

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

Case No.: A-19-789674-C
Dept. No. Department 14

19 vs.

20 EL CAPITAN RANCH LANDSCAPE
21 MAINTENANCE ASSOCIATION, a domestic
22 non-profit corporation,

23 Defendants

24
25 **COMPLAINT**

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

28 **PARTIES AND JURISDICTION**

1. Plaintiff, Daisy Trust, ("*Trust*") is a Nevada trust, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Resources Group, LLC, a Nevada limited liability company, as Trustee for the Trust, is authorized to do business and is doing business in the County of Clark, State of Nevada.
3. Daisy Trust is the current owner of real property located at 8721 Country Pines Avenue, Las Vegas, Nevada 89129 (APN 138-08-611-076) (the "*Property*").

- 1 4. Daisy Trust acquired title to Property by Foreclosure Deed dated September 11 2012, by and
2 through a homeowners association lien foreclosure sale on September 5, 2012 (“*HOA*
3 *Foreclosure Sale*”), conducted by Alessi & Koenig, LLC, a domestic limited liability
4 company, authorized to do business and doing business in Clark County, State of Nevada, at
5 the time of the HOA Foreclosure Sale, but as of the filing of this Complaint, the entity is
6 “dissolved” (“*HOA Trustee*”), on behalf of El Capitan Ranch Landscape Maintenance
7 Association, a Nevada domestic non-profit corporation (“*HOA*”).
- 8 5. 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 6. 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 7. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
- 14 8. 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 9. 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 10. 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 11. 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 12. 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 13. On or about December 24, 1996, Patricia Butler, an unmarried woman, (“*the Former*
7 *Owner*”) purchased the Property.

8 14. On or about December 22, 2005, the Former Owner obtained a loan and entered into a deed
9 of trust with First Magnus Financial Corporation. (“*Magnus*” and/or “*Lender*”) recorded
10 against the Property on January 10, 2006, for the loan amount of \$264,750.00 (the “*Deed of*
11 *Trust*”). The Deed of Trust provides that Mortgage Electronic Registration Services
12 (“*MERS*”) is beneficiary, as nominee for Lender and Lender’s successors and assigns. The
13 Deed of Trust was in the amount of \$264,750.00, and the Deed of Trust was recorded in the
14 Clark County Recorder’s office on January 10, 2006.

15 15. The Former Owner executed a Planned Unit Development Rider along with the Deed of
16 Trust, effective as of December 22, 2005.

17 **The HOA Lien and Foreclosure**

18 16. Upon information and belief, the Former Owner of the Property failed to pay to HOA all
19 amounts due to pursuant to HOA’s governing documents.

20 17. Accordingly, on March 31, 2010, HOA, through HOA Trustee, recorded a Notice of
21 Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the
22 HOA was \$643.00, plus accruing assessments, interest, costs and attorney’s fees.

23 18. On June 16, 2010, HOA, through HOA Trustee, recorded a Notice of Default and Election to
24 Sell (“*NOD*”) against the Property. The NOD stated the amount due to the HOA was
25 \$1,703.00 as of May 13, 2010, plus accruing assessments, interest, costs and attorney’s fees.

26 19. On June 18, 2010, the HOA Trustee mailed to BAC Home Loans Servicing, LP, fka
27 Countrywide Home Loans Bank, that eventually by merger was assigned to Bank of America,
28 N.A. (“*BANA*”), the NOD.

- 1 20. Upon information and belief, after the NOD was recorded, on June 16, 2010, BANA, by and
2 through its agent, contacted the HOA Trustee and requested a ledger identifying the super-
3 priority lien amount comprising of 9 months of delinquent assessments that were owed to the
4 HOA prior to the filing of the HOA Lien ("*Super-Priority Lien Amount*").
- 5 21. Upon information and belief, in response to BANA's request sent to the HOA Trustee
6 requesting a ledger identifying the Super-Priority Lien Amount, the HOA Trustee provided
7 an "amended demand on behalf of [the HOA]... through August 22, 2011" dated July 21,
8 2011, to BANA or its agent identifying that \$2,641.00 was due through August 22, 2011.
- 9 22. Upon information and belief, on September 23, 2010, BANA, through Miles, Bauer,
10 Bergstrom & Winter, LLP ("*Miles Bauer*"), provided a payment of \$58.50 to the HOA
11 Trustee, which allegedly included payment of up to nine months of delinquent assessments
12 prior to the HOA Lien comprising the Super-Priority Lien Amount (the "*Attempted*
13 *Payment*").
- 14 23. Upon information and belief, HOA Trustee, on behalf of the HOA, rejected BANA's
15 Attempted Payment of \$58.50.
- 16 24. On August 2, 2012, HOA Trustee, as agent for the HOA, recorded a Notice of
17 Foreclosure Sale against the Property ("*NOS*"). The NOS provided that the total amount due
18 the HOA was \$2,641.00 and set a sale date for the Property of September 5, 2012, at 2:00
19 P.M., to be held at 9500 W. Flamingo Road, Suite 205, Las Vegas, Nevada 89147.
- 20 25. On September 5, 2012, HOA Trustee then proceeded to non-judicial foreclosure sale on the
21 Property and recorded a Foreclosure Deed on September 11, 2012 ("*HOA Foreclosure*
22 *Deed*"), which stated that the HOA Trustee sold the HOA's interest in the Property to the
23 Plaintiff at the HOA Foreclose Sale for the highest bid amount of \$3,700.00.
- 24 27. Upon information and belief, after the NOD was recorded, BANA, the purported holder of
25 the Deed of Trust recorded against the Property, through its counsel, Miles Bauer, contacted
26 HOA Trustee and HOA and requested adequate proof of the super priority amount of
27 assessments by providing a breakdown of nine (9) months of common HOA assessments as
28

- 1 of the HOA Lien in order for BANA to calculate the Super Priority Lien Amount in an
2 ostensible attempt to determine the Super-Priority Lien Amount.
- 3 28. In none of the recorded documents, nor in any other notice recorded with the Clark County
4 Recorder's Office, did the HOA and/or HOA Trustee specify or disclose that any individual
5 or entity, including but not limited to BANA, had attempted to pay any portion of the HOA
6 Lien in advance of the HOA Foreclosure Sale.
- 7 29. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the
8 amount of \$3,700.00, thereby purchasing the Property for said amount.
- 9 30. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the
10 HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted
11 to pay the Super-Priority Lien Amount.
- 12 31. Upon information and belief, the debt owed to Lender by the Former Owner of the Property
13 pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value
14 of the Property at the time of the HOA Foreclosure Sale.
- 15 32. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority
16 Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby
17 changing the priority of the HOA Lien vis a vis the Deed of Trust.
- 18 33. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the
19 Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale
20 acquired title to the Property subject to the Deed of Trust.
- 21 34. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure
22 Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien
23 Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and
24 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders
25 and potential bidders would not have bid on the Property.
- 26 35. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would
27 not have received payment, interest, fees, collection costs and assessments related to the
28 Property would have remained unpaid.

- 1 36. HOA Trustee acted as an agent of HOA.
- 2 37. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of
3 respondeat superior.
- 4 38. HOA and HOA Trustee conspired together to hide material information related to the
5 Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
6 rejection of such payment or Attempted Payment; and the priority of the HOA
7 Lien vis a vis the Deed of Trust, from the bidders and potential bidders at the HOA
8 Foreclosure Sale.
- 9 39. The information related to any Attempted Payment or payments made by Lender, the
10 homeowner or others to the Super Priority Lien Amount was not recorded and would only be
11 known by BANA, Lender, the HOA and HOA Trustees.
- 12 40. The Super-Priority Lien Amount should have included the 9 months of assessments
13 immediately proceeding the filing of the HOA Lien.
- 14 41. The Property was subject to the HOA's governing documents.
- 15 42. The Former Owner failed to pay the HOA.
- 16 43. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide the
17 aforementioned information for their own economic gain to the detriment of the bidders and
18 potential bidders at the HOA Foreclosure Sale.
- 19 44. Lender first disclosed BANA's Attempted Payment to the HOA Trustee in Lender's First
20 Supplemental NRCP 16.1 Disclosure, electronically filed on February 19, 2016, in *Lender v.*
21 *Plaintiff, HOA and HOA Trustee*, filed in District Court, Clark County, Nevada as Case No.
22 A-15-717806-C (the "*Case*"), plus three days for mailing providing a discovery date of
23 February 22, 2016 ("*Discovery*").

24 **FIRST CAUSE OF ACTION**

25 **(Intentional, or Alternatively Negligent, Misrepresentation**

26 **Against the HOA and HOA Trustee)**

- 27 45. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 44
28 hereof as if set forth fully herein.

- 1 46. At no point in time did HOA or HOA Trustee disclose to the bidders and potential bidders at
2 the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the
3 Super-Priority Lien Amount.
- 4 47. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or
5 Miles Bauer, HOA Trustee provided itself with the opportunity to perform and profit from
6 many additional services on behalf of HOA related the Property and proceedings related to
7 the HOA Foreclosure Sale.
- 8 48. By rejecting the Attempted Payment of the Super-Priority Lien Amount from Lender and/or
9 Miles Bauer, HOA received funds in satisfaction of the entire HOA Lien, rather than only the
10 Super-Priority Lien Amount.
- 11 49. Consequently, HOA and HOA Trustee received substantial benefit as a result of their
12 rejection of the Attempted Payment of the Super-Priority Lien Amount from Lender and
13 intentionally failing to disclose that information to the Plaintiff or the other bidders.
- 14 50. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral
15 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any
16 Attempted Payment of the Super-Priority Lien Amount by Lender or any individual or entity.
- 17 51. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA Foreclosure
18 Sale believe that the HOA Lien included amounts entitled to super-priority over the Deed of
19 Trust and that the Deed of Trust would thus be extinguished as a result of the HOA
20 Foreclosure Sale for their own economic gain.
- 21 52. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale
22 believe that the HOA Lien included amounts entitled to super-priority over the Deed of Trust
23 and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure
24 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to
25 the Attempted Payment of the Super-Priority Lien Amount by Lender and did so for their
26 own economic gain.
- 27 53. Alternatively, HOA and HOA Trustee grossly were negligent by failing to disclose material
28 information related to the Attempted Payment of the Super-Priority Lien Amount.

- 1 54. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted
2 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA
3 Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at
4 the HOA Foreclosure Sale.
- 5 55. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the
6 Property.
- 7 56. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,
8 HOA would not have received funds in satisfaction of the HOA Lien.
- 9 57. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,
10 HOA Trustee would not have received payment for the work that it performed on behalf of
11 HOA in association with the HOA Foreclosure Sale and related proceedings.
- 12 58. Plaintiff attended the sale as a ready and willing, and able buyer.
- 13 59. Plaintiff would not have purchased the Property if it had been informed that any individual or
14 entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA
15 Foreclosure Sale.
- 16 60. As a direct result of HOA and HOA Trustee's acceptance of a payment or Attempted
17 Payment of the Super-Priority Lien Amount and their subsequent intentional or grossly
18 negligent failure to advise the bidders and potential bidders at the HOA Foreclosure Sale of
19 the facts related thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale
20 and thereby purchased the Property.
- 21 61. HOA and HOA Trustee each profited from their intentional and/or negligent
22 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing
23 and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 24 62. HOA and HOA Trustee materially misrepresented facts by hiding and failing to advise
25 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the
26 HOA and/or HOA Trustee that was not publicly available which ostensibly changed the
27 priority of Deed of Trust vis a vis the HOA Lien.
- 28

- 1 63. Lender, BANA, HOA and HOA Trustee solely possessed information related to the
2 Attempted Payment of the Super-Priority Lien Amount prior to and at the time of the HOA
3 Foreclosure Sale, and intentionally withheld such information for their own economic gain.
- 4 64. Alternatively, HOA and HOA Trustee were gross negligent when it withheld information
5 related to the Attempted Payment of the Super-Priority Lien Amount.
- 6 65. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly negligent
7 failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 8 66. HOA and HOA Trustee intended that bidders and potential bidders at the HOA Foreclosure
9 Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority Lien
10 Amount at the time of the HOA Sale and that their failure to disclose such information would
11 promote the sale of the Property.
- 12 67. HOA and HOA Trustee further intended that their failure of refusal to inform bidders and
13 potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-
14 Priority Lien Amount would lead such bidders and potential bidders to believe that the Deed
15 of Trust was subordinate to the HOA Lien.
- 16 68. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the Super-
17 Priority Lien Amount.
- 18 69. The HOA and the HOA Trustee breached that duty to disclose to Plaintiff.
- 19 70. As a result of the HOA and HOA Trustee's breach of its duty of care to bidders at he HOA
20 Foreclosure Sale for its own economic gain, Plaintiff has been economically damaged in
21 many aspects.
- 22 71. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff Trust to purchase,
23 maintain, operate, litigate various cases and generally manage the Property would be lost
24 along with the lost opportunity of purchasing other available property offered for sale where a
25 super priority payment had not been attempted, thereby allowing Plaintiff the opportunity to
26 purchase a property free and clear of the deed of trust and all other liens.
- 27 72. As a direct and proximate result of the actions of the Defendants, it has become necessary for
28 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

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

3 **SECOND CAUSE OF ACTION**

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

5 74. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 73
6 as if set forth fully herein.

7 75. NRS 116.113 provides that every duty governed by NRS 116, Nevada's version of the
8 Common-Interest Ownership Uniform Act, must be performed in good faith.

9 76. Prior to the HOA Foreclosure Sale of the Property, Lender purports to have obtained
10 evidence detailing Super-Priority Lien Amount.

11 77. Thereafter, Lender, by and through Miles Bauer attempted to pay the Super-Priority Lien
12 Amount by the Attempted Payment and/or HOA or HOA Trustee.

13 78. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the Attempted
14 Payment.

15 79. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure and
16 refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to
17 breach their duty of good faith dealings pursuant to NRS 116, to the Plaintiff.

18 80. By virtue of its actions and inactions, HOA and HOA Trustee substantially benefitted to the
19 detriment of the Plaintiff.

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

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

24 **THIRD CAUSE OF ACTION**

25 **(Conspiracy)**

26 83. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through
27 82 as if set forth fully herein.

28

- 1 84. HOA and HOA Trustee knew or should have known of BANA's Attempted Payment of the
- 2 Super-Priority Lien Amount.
- 3 85. Upon information and belief, acting together, Defendants reached an implicit or express
- 4 agreement amongst themselves whereby they agreed to withhold the information concerning
- 5 the Attempted Payment of the Super-Priority Lien Amount from bidders and potential
- 6 bidders at the HOA Foreclosure Sale.
- 7 86. Defendants knew or should have known that their actions and omissions would injure the
- 8 successful bidder and purchaser of the Property and benefit HOA and HOA Trustee. To
- 9 further their conspiracy, upon information and belief, Defendants rejected the Attempted
- 10 Payment for the purpose of obtaining more remuneration that they would have otherwise
- 11 obtained by providing notice to potential bidders at the HOA Foreclosure Sale of the
- 12 Attempted Payment.
- 13 87. As a direct and proximate result of the actions of the Defendants, it has become necessary for
- 14 Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
- 15 88. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
- 16 Procedure as further facts become known.
- 17 WHEREFORE, Plaintiff prays for relief as follows:
- 18 1. For damages to be proven at trial in excess of \$15,000;
- 19 2. For punitive damages in an amount to be determined at trial;
- 20 3. For an award of reasonable attorneys' fees as special damages, and otherwise
- 21 under Nevada law;
- 22 ///
- 23 ///
- 24 ///
- 25 ///
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- 27 ///
- 28 ///

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- 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 19th day of February, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
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Exhibit 2

Exhibit 2

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14 *Attorneys for Defendant El Capitan*
15 *Ranch Landscape Maintenance Association*

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

11 DAISY TRUST, a Nevada trust,
12 Plaintiff,

Case No.: A-19-789674-C
Dept. No.: 14

13 vs.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW**

14 EL CAPITAN RANCH LANDSCAPE
15 MAINTENANCE ASSOCIATION, a
16 domestic non-profit corporation,
17 Defendant.

18 On May 27, 2021, El Capitan Ranch Landscape Maintenance Association (the
19 “Association”) filed its Motion for Summary Judgment (“Motion”). On June 10, 2021, Daisy
20 Trust (“Plaintiff”) filed its Opposition to Motion for Summary Judgment. On June 22, 2021, the
21 Association filed its Reply in Support of Motion for Summary Judgment.

22 Said Motion was set for hearing on June 28, 2021, before this Court and the Honorable
23 Adriana Escobar. T. Chase Pittsenbarger appeared for the Association; Christopher L. Benner
24 appeared on behalf of Plaintiff Daisy Trust. The Court, having carefully considered all pleadings
25 and papers on file herein and for good cause appearing, finds as follows:

26 ///

27 ///

28 ///

FINDINGS OF FACT

1
2 1. On or about September 5, 2012, the Association conducted a foreclosure sale
3 pursuant to NRS 116 upon the real property located at 8721 Country Pines Avenue, Las Vegas,
4 Nevada 89129 (the “Property”).

5 2. Plaintiff was the successful bidder at the foreclosure sale taking title to the
6 Property by way of a Foreclosure Deed that conveyed “without warrant or covenant, expressed
7 or implied, regarding title, possession or encumbrances.”

8 3. On February 19, 2019, Plaintiff filed its Complaint against the Association
9 asserting claims for misrepresentation, breach of duty of good faith under NRS 116.1113 and
10 civil conspiracy.

11 4. On or about April 19, 2019, the case was assigned to the Court Annexed
12 Arbitration Program.

13 5. On February 24, 2020, the Arbitration was held.

14 6. On March 9, 2020, the Arbitrator issued his decision finding in favor of the
15 Association.

16 7. On April 6, 2020, Plaintiff requested Trial De Novo.

CONCLUSIONS OF LAW

17
18 1. In Nevada, “summary judgment is appropriate when the moving party is entitled
19 to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*,
20 100 Nev. 178,179, 678 P.2d 674 (1984)(citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676
21 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v.*
22 *Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)).

23 2. Summary judgment is appropriate under NRCP 56 if “the pleadings, depositions,
24 answer to interrogatories, admissions, and affidavits, if any, that are properly before the court
25 demonstrates that no genuine issue of material fact exists, and the moving party is entitled to
26 judgment as a matter of law.” NRCP 56(c); *Cuzze v. Univ. and Cmty Coll. Sys. of Nev.*, 123
27 Nev. 598,602, 172 P.3d 131, 134 (Nev. 2008).

28 3. Summary judgment should not be regarded as a “disfavored procedural short cut;”

1 rather, where appropriate, it furthers the “just, speedy and inexpensive determination of every
2 action.” *Celotex Corp v. Catrell*, 477 U.S. 317, 327, 106 S.Ct. 2548 (1986).

3 4. Plaintiff’s Complaint is premised on the allegations that NRS Chapter 116
4 contains a duty to disclose that a law firm “attempted to contact” a third party to make a partial
5 payment of the Association’s delinquent assessment lien.

6 5. NRS 116.31162 through NRS 116.31168 details the procedures with which an
7 HOA must comply to initiate and complete a foreclosure on its lien.

8 6. Absent from NRS 116.31162 through NRS 116.31168 is any requirement to
9 announce at the foreclosure sale that a law firm “attempted to contact” a third party to make a
10 partial payment of the Association’s lien.

11 7. State foreclosure statutes should not be second guessed or usurped, otherwise
12 “every piece of realty purchased at foreclosure” would be challenged and title would be clouded
13 in contravention of the very policies underlying non-judicial foreclosure sales. *BFP v.*
14 *Resolution Trust Company*, 511 U.S. 531, 539-40, 544, 144 S.Ct. 1757, 128 L.Ed.2d 556 (1994);
15 *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989, 997 (1969).

16 8. Nevada has followed this same line, *i.e.* *Charmicor Inc. v. Bradshaw Finance*
17 *Co.*, 550 P.2d 413, 92 Nev. 310 (1976) (Court did not abuse its discretion in denying an
18 injunction of the foreclosure procedure under the theory that non-judicial foreclosure sales
19 violate the principles of due process and equal protection).

20 9. The Association was simply not required pursuant to NRS 116.31162 through
21 NRS 116.31168 to disclose that a law firm “attempted to contact” a third party to make a partial
22 payment of the Association’s lien.

23 10. There is no Nevada authority creating a separate common law duty to announce
24 that a law firm “attempted to contact” a third party to make a partial payment of the
25 Association’s lien.

26 11. An HOA non-judicial foreclosure sale is a creature of statute.

27 12. NRS Chapter 116 contains a comprehensive statutory scheme regulating non-
28 judicial foreclosures. *See generally* NRS 116.3116-31168.

1 13. The scope and nature of the Association’s duties are exclusively defined by these
2 governing statutes.

3 14. In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the
4 Supreme Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower
5 court’s award of summary judgment in favor of the collection company holding that “[s]ummary
6 judgment was appropriate on the negligent misrepresentation claim because Hampton neither
7 made an affirmative false statement nor omitted a material fact it was bound to disclose.” *Id.*
8 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153
9 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123
10 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a material fact
11 which a party is bound in good faith to disclose is equivalent to a false representation.”(internal
12 quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to
13 disclose if tender of the superpriority portion of the lien has been made), with NRS 116.31162
14 (2013) (not requiring any such disclosure).

15 15. Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions
16 Plaintiff’s allegation that the Association had a duty to disclose that a third party attempted to
17 make a partial payment of the Association’s delinquent assessment lien. See *Mann St. Tr. v.*
18 *Elsinore Homeowners Ass’n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda*
19 *Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at *1 (Nev. Oct.
20 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners’ Association*,
21 No. 80134, 2020 WL 6129970, at *1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El*
22 *Diablo v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 WL 6129887, at *1 (Nev. Oct. 16,
23 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass’n, Inc.*, No.
24 80135, 2020 WL 6130912, at *1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980*
25 *Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL
26 6131470, at *1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald*
27 *Ranch Master Association*, No. 78849, 2020 WL 6131467, at *1 (Nev. Oct. 16, 2020); *Tangiers*
28 *Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78564, 2020 WL

1 6131435, at *1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and*
2 *Montage*, No. 80162, 2020 WL 6129987, at *1 (Nev. Oct. 16, 2020). *LN Management LLC*
3 *Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL
4 620513, at *1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures*
5 *Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at *1 (Nev. Feb. 16, 2021);
6 *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021
7 WL 620978, at *1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at*
8 *Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at *1 (Nev. Feb. 16, 2021).

9 16. In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims
10 asserted against the Association in this matter. *See Saticoy Bay, LLC Series 8320 Bermuda*
11 *Beach*, 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at
12 *1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy Bay, LLC,*
13 *Series 3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339 Colinward,*
14 2020 WL 6129987, at *1.

15 17. Additionally, the Supreme Court of Nevada has unanimously rejected Petitions
16 for Rehearing in the afore-mentioned cases.

17 18. Finally, the Arbitrator expressly rejected Plaintiff’s allegations in his Arbitrator’s
18 Decision.

19 19. Specifically, the Arbitrator held “Plaintiff has cited no statutory authority
20 mandating the Defendant to make disclosure as to any attempted tender.”

21 **Plaintiff’s Claim for Intentional/Negligent Misrepresentation.**

22 20. In *Noonan*, Appellants’ argued the lower court erred in awarding summary
23 judgment in favor of the collection company on Appellants’ claim for negligent
24 misrepresentation. *Id.*

25 21. Appellants’ claim for misrepresentation in *Noonan* was premised on the same
26 allegations asserted by Plaintiff in this matter—that Hampton and Hampton failed to disclose an
27 attempt to pay a portion of the Association’s lien. *Id.*

28 22. The Supreme Court of Nevada affirmed the lowers court’s award of summary

1 judgment in favor of the collection company holding that “[s]ummary judgment was appropriate
2 on the negligent misrepresentation claim because Hampton neither made an affirmative false
3 statement **nor omitted a material fact it was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v.*
4 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the
5 elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d
6 420, 426 (2007) (“[T]he suppression or omission of a material fact which a party is bound in
7 good faith to disclose is equivalent to a false representation.”(internal quotation marks omitted)).
8 *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the
9 superpriority portion of the lien has been made), *with* NRS 116.31162 (2013) (not requiring any
10 such disclosure.) As such, Appellant’s argument that there was a misrepresentation by omission
11 fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

12 23. Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of
13 misrepresentation on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*,
14 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at *1 ;
15 *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy Bay, LLC, Series*
16 *3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL
17 6129987, at *1.

18 **Plaintiff’s Claim for Breach of Good Faith.**

19 24. The Supreme Court of Nevada has affirmed dismissal of the exact claim on
20 numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at
21 *1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail
22 because respondents had no duty to proactively disclose whether a superpriority tender had been
23 made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at *1 (“In
24 particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because
25 respondents had no duty to proactively disclose whether a superpriority tender had been made”);
26 *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude
27 that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing
28 because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to

1 base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS
2 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been
3 made.”).

4 **Plaintiff’s Claim for Civil Conspiracy.**

5 25. Similar to the other claims asserted by Plaintiff in this action, the Supreme Court
6 of Nevada has rejected this claim on numerous occasions. *See Saticoy Bay, LLC Series 8320*
7 *Bermuda Beach*, 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL
8 6129970, at *1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy*
9 *Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339*
10 *Colinward*, 2020 WL 6129987, at *1.

11 26. Specifically, the Supreme Court of Nevada held “because respondent did not do
12 anything unlawful, appellant’s civil conspiracy claim necessarily fails. *See Consol. Generator-*
13 *Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (providing
14 that a civil conspiracy requires, among other things, a “concerted action, intend[ed] to
15 accomplish an unlawful objective for the purpose of harming another”).”

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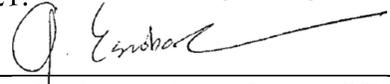
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28 ///

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THEREFORE, IT IS HEREBY ORDERED that the Association’s Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED this ____ day of July 2021 **Dated this 20th day of July, 2021**



HONORABLE ADRIANA ESCOBAR
DISTRICT COURT JUDGE

A1A 4E3 95B7 E9F0
Adriana Escobar
District Court Judge

Submitted By:

Approved as to content and form:

**LEACH KERN GRUCHOW ANDERSON
SONG**

ROGER P. CROTEAU & ASSOCIATES, LTD.

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Attorney for Plaintiff

From: [Chris Benner](#)
To: [Chase Pittsenbarger](#); [Yalonda Dekle](#)
Subject: RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law
Date: Tuesday, July 20, 2021 2:17:06 PM
Attachments: [image001.png](#)

The additional facts are not dispositive, so leaving them out is fine, I just added them present the additional context for the final conclusion. In any case, you can remove them and submit with my e-signature.

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From: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Sent: Monday, July 19, 2021 2:24 PM
To: Chris Benner <chris@croteaulaw.com>; Yalonda Dekle <ydekle@lkglawfirm.com>
Subject: RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Chris,

I will agree to everything but the addition of paragraphs 1-10 to the findings of fact. Let me know.

LKG LEACH | KERN | GRUCHOW
ANDERSON | SONG

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From: Chris Benner <chris@croteaulaw.com>

Sent: Tuesday, July 13, 2021 7:42 AM

To: Yalonda Dekle <ydekle@lkglawfirm.com>; Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>

Subject: RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Sorry for the delay, I added some additional facts and made some minor format edits. If acceptable, please feel free to use my e-signature.

Christopher L. Benner, Esq.

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From: Yalonda Dekle <ydekle@lkglawfirm.com>

Sent: Wednesday, July 07, 2021 3:19 PM

To: Chris Benner <chris@croteaulaw.com>

Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>

Subject: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Good afternoon Mr. Benner:

Please find attached a Findings of Fact, Conclusions of Law in the above-entitled matter. Please review and advise if you have any revisions. Also, please advise if we may use your e-signature to submit to the department.

Thank you.

Our Las Vegas and Reno offices are currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. LKG is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. You may also e-mail our offices at info@lkglawfirm.com.

-



Yalonda Dekle
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

8 El Capitan Ranch Landscape
9 Maintenance 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 Findings of Fact, Conclusions of Law and Judgment was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

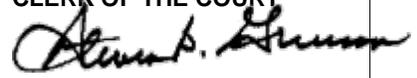
17 Service Date: 7/20/2021

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24 Yalonda Dekle	ydekle@lkglawfirm.com
25 Christopher Benner	chris@croteaulaw.com
26 Matt Pawlowski	matt@croteaulaw.com

27
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Exhibit 3

Exhibit 3



1 **NEFF**
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3 **ANDERSON SONG**
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12 Telephone: (702) 538-9074
13 Facsimile: (702) 538-9113
14 *Attorneys for Defendant El Capitan*
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,
12 Plaintiff,

Case No.: A-19-789674-C
Dept. No.: 14

13 vs.

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW**

14 EL CAPITAN RANCH LANDSCAPE
15 MAINTENANCE ASSOCIATION, a
16 domestic non-profit corporation,
17 Defendant.

18 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW**
19 was entered in the above-entitled case on July 20, 2021, a copy of which is attached hereto.

20 DATED this 21st day of July 2021

LEACH KERN GRUCHOW ANDERSON SONG

/s/ T. Chase Pittsenbarger

21
22 Sean L. Anderson
23 Nevada Bar No. 7259
24 T. Chase Pittsenbarger
25 Nevada Bar No. 13740
26 2525 Box Canyon Drive
27 Las Vegas, Nevada 89128
28 *Attorneys for Defendant El Capitan Ranch
Landscape Maintenance Association*

LEACH KERN GRUCHOW ANDERSON SONG
2525 Box Canyon Drive, Las Vegas, Nevada 89128
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW ANDERSON SONG, hereby certifies that on this 21st day of July 2021, service of the foregoing, **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW**, was made on all parties via the Court’s CM/ECF System, as follows:

Roger P. Croteau
Christopher L. Benner
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Boulevard, Suite 75
Las Vegas, Nevada 89148
croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff

/s/ Yalonda Dekle

An Employee of LEACH KERN GRUCHOW
ANDERSON SONG

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12 Telephone: (702) 538-9074
13 Facsimile: (702) 538-9113
14 *Attorneys for Defendant El Capitan*
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,
12 Plaintiff,

Case No.: A-19-789674-C
Dept. No.: 14

13 vs.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW**

14 EL CAPITAN RANCH LANDSCAPE
15 MAINTENANCE ASSOCIATION, a
16 domestic non-profit corporation,
17 Defendant.

18 On May 27, 2021, El Capitan Ranch Landscape Maintenance Association (the
19 “Association”) filed its Motion for Summary Judgment (“Motion”). On June 10, 2021, Daisy
20 Trust (“Plaintiff”) filed its Opposition to Motion for Summary Judgment. On June 22, 2021, the
21 Association filed its Reply in Support of Motion for Summary Judgment.

22 Said Motion was set for hearing on June 28, 2021, before this Court and the Honorable
23 Adriana Escobar. T. Chase Pittsenbarger appeared for the Association; Christopher L. Benner
24 appeared on behalf of Plaintiff Daisy Trust. The Court, having carefully considered all pleadings
25 and papers on file herein and for good cause appearing, finds as follows:

26 ///

27 ///

28 ///

LEACH KERN GRUCHOW ANDERSON SONG
2525 Box Canyon Drive, Las Vegas, Nevada 89128
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FINDINGS OF FACT

1
2 1. On or about September 5, 2012, the Association conducted a foreclosure sale
3 pursuant to NRS 116 upon the real property located at 8721 Country Pines Avenue, Las Vegas,
4 Nevada 89129 (the “Property”).

5 2. Plaintiff was the successful bidder at the foreclosure sale taking title to the
6 Property by way of a Foreclosure Deed that conveyed “without warrant or covenant, expressed
7 or implied, regarding title, possession or encumbrances.”

8 3. On February 19, 2019, Plaintiff filed its Complaint against the Association
9 asserting claims for misrepresentation, breach of duty of good faith under NRS 116.1113 and
10 civil conspiracy.

11 4. On or about April 19, 2019, the case was assigned to the Court Annexed
12 Arbitration Program.

13 5. On February 24, 2020, the Arbitration was held.

14 6. On March 9, 2020, the Arbitrator issued his decision finding in favor of the
15 Association.

16 7. On April 6, 2020, Plaintiff requested Trial De Novo.

CONCLUSIONS OF LAW

17
18 1. In Nevada, “summary judgment is appropriate when the moving party is entitled
19 to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*,
20 100 Nev. 178,179, 678 P.2d 674 (1984)(citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676
21 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v.*
22 *Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)).

23 2. Summary judgment is appropriate under NRCP 56 if “the pleadings, depositions,
24 answer to interrogatories, admissions, and affidavits, if any, that are properly before the court
25 demonstrates that no genuine issue of material fact exists, and the moving party is entitled to
26 judgment as a matter of law.” NRCP 56(c); *Cuzze v. Univ. and Cmty Coll. Sys. of Nev.*, 123
27 Nev. 598,602, 172 P.3d 131, 134 (Nev. 2008).

28 3. Summary judgment should not be regarded as a “disfavored procedural short cut;”

1 rather, where appropriate, it furthers the “just, speedy and inexpensive determination of every
2 action.” *Celotex Corp v. Catrell*, 477 U.S. 317, 327, 106 S.Ct. 2548 (1986).

3 4. Plaintiff’s Complaint is premised on the allegations that NRS Chapter 116
4 contains a duty to disclose that a law firm “attempted to contact” a third party to make a partial
5 payment of the Association’s delinquent assessment lien.

6 5. NRS 116.31162 through NRS 116.31168 details the procedures with which an
7 HOA must comply to initiate and complete a foreclosure on its lien.

8 6. Absent from NRS 116.31162 through NRS 116.31168 is any requirement to
9 announce at the foreclosure sale that a law firm “attempted to contact” a third party to make a
10 partial payment of the Association’s lien.

11 7. State foreclosure statutes should not be second guessed or usurped, otherwise
12 “every piece of realty purchased at foreclosure” would be challenged and title would be clouded
13 in contravention of the very policies underlying non-judicial foreclosure sales. *BFP v.*
14 *Resolution Trust Company*, 511 U.S. 531, 539-40, 544, 144 S.Ct. 1757, 128 L.Ed.2d 556 (1994);
15 *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989, 997 (1969).

16 8. Nevada has followed this same line, *i.e.* *Charmicor Inc. v. Bradshaw Finance*
17 *Co.*, 550 P.2d 413, 92 Nev. 310 (1976) (Court did not abuse its discretion in denying an
18 injunction of the foreclosure procedure under the theory that non-judicial foreclosure sales
19 violate the principles of due process and equal protection).

20 9. The Association was simply not required pursuant to NRS 116.31162 through
21 NRS 116.31168 to disclose that a law firm “attempted to contact” a third party to make a partial
22 payment of the Association’s lien.

23 10. There is no Nevada authority creating a separate common law duty to announce
24 that a law firm “attempted to contact” a third party to make a partial payment of the
25 Association’s lien.

26 11. An HOA non-judicial foreclosure sale is a creature of statute.

27 12. NRS Chapter 116 contains a comprehensive statutory scheme regulating non-
28 judicial foreclosures. *See generally* NRS 116.3116-31168.

1 13. The scope and nature of the Association’s duties are exclusively defined by these
2 governing statutes.

3 14. In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the
4 Supreme Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower
5 court’s award of summary judgment in favor of the collection company holding that “[s]ummary
6 judgment was appropriate on the negligent misrepresentation claim because Hampton neither
7 made an affirmative false statement nor omitted a material fact it was bound to disclose.” *Id.*
8 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153
9 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123
10 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a material fact
11 which a party is bound in good faith to disclose is equivalent to a false representation.”(internal
12 quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to
13 disclose if tender of the superpriority portion of the lien has been made), with NRS 116.31162
14 (2013) (not requiring any such disclosure).

15 15. Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions
16 Plaintiff’s allegation that the Association had a duty to disclose that a third party attempted to
17 make a partial payment of the Association’s delinquent assessment lien. See *Mann St. Tr. v.*
18 *Elsinore Homeowners Ass’n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda*
19 *Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at *1 (Nev. Oct.
20 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners’ Association*,
21 No. 80134, 2020 WL 6129970, at *1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El*
22 *Diablo v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 WL 6129887, at *1 (Nev. Oct. 16,
23 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass’n, Inc.*, No.
24 80135, 2020 WL 6130912, at *1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980*
25 *Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL
26 6131470, at *1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald*
27 *Ranch Master Association*, No. 78849, 2020 WL 6131467, at *1 (Nev. Oct. 16, 2020); *Tangiers*
28 *Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78564, 2020 WL

1 6131435, at *1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and*
2 *Montage*, No. 80162, 2020 WL 6129987, at *1 (Nev. Oct. 16, 2020). *LN Management LLC*
3 *Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL
4 620513, at *1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures*
5 *Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at *1 (Nev. Feb. 16, 2021);
6 *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021
7 WL 620978, at *1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at*
8 *Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at *1 (Nev. Feb. 16, 2021).

9 16. In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims
10 asserted against the Association in this matter. *See Saticoy Bay, LLC Series 8320 Bermuda*
11 *Beach*, 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at
12 *1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy Bay, LLC,*
13 *Series 3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339 Colinward*,
14 2020 WL 6129987, at *1.

15 17. Additionally, the Supreme Court of Nevada has unanimously rejected Petitions
16 for Rehearing in the afore-mentioned cases.

17 18. Finally, the Arbitrator expressly rejected Plaintiff’s allegations in his Arbitrator’s
18 Decision.

19 19. Specifically, the Arbitrator held “Plaintiff has cited no statutory authority
20 mandating the Defendant to make disclosure as to any attempted tender.”

21 **Plaintiff’s Claim for Intentional/Negligent Misrepresentation.**

22 20. In *Noonan*, Appellants’ argued the lower court erred in awarding summary
23 judgment in favor of the collection company on Appellants’ claim for negligent
24 misrepresentation. *Id.*

25 21. Appellants’ claim for misrepresentation in *Noonan* was premised on the same
26 allegations asserted by Plaintiff in this matter—that Hampton and Hampton failed to disclose an
27 attempt to pay a portion of the Association’s lien. *Id.*

28 22. The Supreme Court of Nevada affirmed the lowers court’s award of summary

1 judgment in favor of the collection company holding that “[s]ummary judgment was appropriate
2 on the negligent misrepresentation claim because Hampton neither made an affirmative false
3 statement **nor omitted a material fact it was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v.*
4 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the
5 elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d
6 420, 426 (2007) (“[T]he suppression or omission of a material fact which a party is bound in
7 good faith to disclose is equivalent to a false representation.”(internal quotation marks omitted)).
8 *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the
9 superpriority portion of the lien has been made), *with* NRS 116.31162 (2013) (not requiring any
10 such disclosure.) As such, Appellant’s argument that there was a misrepresentation by omission
11 fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

12 23. Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of
13 misrepresentation on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*,
14 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at *1 ;
15 *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy Bay, LLC, Series*
16 *3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL
17 6129987, at *1.

18 **Plaintiff’s Claim for Breach of Good Faith.**

19 24. The Supreme Court of Nevada has affirmed dismissal of the exact claim on
20 numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at
21 *1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail
22 because respondents had no duty to proactively disclose whether a superpriority tender had been
23 made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at *1 (“In
24 particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because
25 respondents had no duty to proactively disclose whether a superpriority tender had been made”);
26 *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude
27 that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing
28 because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to

1 base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS
2 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been
3 made.”).

4 **Plaintiff’s Claim for Civil Conspiracy.**

5 25. Similar to the other claims asserted by Plaintiff in this action, the Supreme Court
6 of Nevada has rejected this claim on numerous occasions. *See Saticoy Bay, LLC Series 8320*
7 *Bermuda Beach*, 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL
8 6129970, at *1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy*
9 *Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339*
10 *Colinward*, 2020 WL 6129987, at *1.

11 26. Specifically, the Supreme Court of Nevada held “because respondent did not do
12 anything unlawful, appellant’s civil conspiracy claim necessarily fails. *See Consol. Generator-*
13 *Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (providing
14 that a civil conspiracy requires, among other things, a “concerted action, intend[ed] to
15 accomplish an unlawful objective for the purpose of harming another”).”

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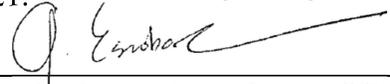
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THEREFORE, IT IS HEREBY ORDERED that the Association’s Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED this ____ day of July 2021 **Dated this 20th day of July, 2021**



HONORABLE ADRIANA ESCOBAR
DISTRICT COURT JUDGE

A1A 4E3 95B7 E9F0
Adriana Escobar
District Court Judge

Submitted By:

Approved as to content and form:

**LEACH KERN GRUCHOW ANDERSON
SONG**

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ T. Chase Pittsenbarger
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*Attorneys for Defendant El Capitan
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/s/ Christopher L. Benner
Roger P. Croteau
Nevada Bar No. 4958
Christopher L. Benner
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2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
Attorney for Plaintiff

From: [Chris Benner](#)
To: [Chase Pittsenbarger](#); [Yalonda Dekle](#)
Subject: RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law
Date: Tuesday, July 20, 2021 2:17:06 PM
Attachments: [image001.png](#)

The additional facts are not dispositive, so leaving them out is fine, I just added them present the additional context for the final conclusion. In any case, you can remove them and submit with my e-signature.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
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chris@croteaulaw.com

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From: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Sent: Monday, July 19, 2021 2:24 PM
To: Chris Benner <chris@croteaulaw.com>; Yalonda Dekle <ydekle@lkglawfirm.com>
Subject: RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Chris,

I will agree to everything but the addition of paragraphs 1-10 to the findings of fact. Let me know.

LKG LEACH | KERN | GRUCHOW
ANDERSON | SONG

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From: Chris Benner <chris@croteaulaw.com>

Sent: Tuesday, July 13, 2021 7:42 AM

To: Yalonda Dekle <ydekle@lkglawfirm.com>; Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>

Subject: RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Sorry for the delay, I added some additional facts and made some minor format edits. If acceptable, please feel free to use my e-signature.

Christopher L. Benner, Esq.

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From: Yalonda Dekle <ydekle@lkglawfirm.com>

Sent: Wednesday, July 07, 2021 3:19 PM

To: Chris Benner <chris@croteaulaw.com>

Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>

Subject: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Good afternoon Mr. Benner:

Please find attached a Findings of Fact, Conclusions of Law in the above-entitled matter. Please review and advise if you have any revisions. Also, please advise if we may use your e-signature to submit to the department.

Thank you.

Our Las Vegas and Reno offices are currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. LKG is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. You may also e-mail our offices at info@lkglawfirm.com.

-



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-

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

8 El Capitan Ranch Landscape
9 Maintenance Association,
10 Defendant(s)

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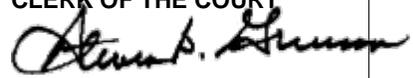
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Exhibit 4

Exhibit 4



1 **MAFC**
2 **LEACH KERN GRUCHOW**
3 **ANDERSON SONG**
4 SEAN L. ANDERSON
5 Nevada Bar No. 7259
6 E-mail: sanderson@lkglawfirm.com
7 T. CHASE PITTSBARGER
8 Nevada Bar No. 13740
9 E-mail: cpittsbarger@lkglawfirm.com
10 2525 Box Canyon Drive
11 Las Vegas, Nevada 89128
12 Telephone: (702) 538-9074
13 Facsimile: (702) 538-9113
14 *Attorneys for Defendant El Capitan*
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,
12 Plaintiff,

13 vs.

14 EL CAPITAN RANCH LANDSCAPE
15 MAINTENANCE ASSOCIATION, a domestic
16 non-profit corporation,
17 Defendant.

Case No.: A-19-789674-C
Dept. No.: 14

**MOTION FOR ATTORNEYS' FEES
AND COSTS**

HEARING REQUESTED

17 Defendant El Capitan Ranch Landscape Maintenance Association (the "Association"), by
18 and through its attorneys of record, Leach Kern Gruchow Anderson Song, hereby moves the
19 Court for an award of attorneys' fees and costs. This Motion is made pursuant to NRCP 68,
20 NRS 116.4117, NRS 18.010(2)(b) and the attached Memorandum of Points and Authorities, the
21 pleadings and papers on file herein, and any oral argument the Court may allow.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION AND FACTUAL BACKGROUND**

24 On February 19, 2019, Plaintiff filed its Complaint against the Association asserting
25 claims of negligent/intentional misrepresentation, breach of the duty of good faith and
26 conspiracy. *See* Compl. On March 13, 2019, the Association filed its Answer to the Complaint.
27 *See* Ans.

1 On April 29, 2019, the Court appointed an Arbitrator to the case. On February 24, 2020,
2 the arbitration hearing was held. *See* Arbitrator’s Decision. On March 9, 2020, the Arbitrator
3 filed his decision in favor of the Association. *Id.* On April 6, 2020, the Plaintiff filed a Request
4 for Trial De Novo. *See* Request for Trial De Novo. On May 21, 2021, the Association filed its
5 Motion for Summary Judgment. *See* Motion for Summary Judgment. On July 20, 2021, the
6 Court entered its Findings of Fact and Conclusions of Law in favor of the Association’s Motion
7 for Summary Judgment. *See* FFCL.

8 On July 23, 2021, the Association submitted its Verified Memorandum of costs in the
9 amount of \$1,876.03, which Plaintiff did not dispute. *See* Memo of Costs. The Association as
10 the prevailing party to this case is entitled to its reasonable attorneys’ fees and costs pursuant to
11 NRCPC 68 and NRS 116.4117.

12 II. LEGAL STANDARD

13 In Nevada, “the method upon which a reasonable fee is determined is subject to the
14 discretion of the court,” which “is tempered only by reasons and fairness.” *Shuette v. Beazer*
15 *Home Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). The lodestar approach is
16 the most appropriate approach for this case and involves the multiplying the number of hours
17 reasonable spent on the case by the reasonable hourly rate. *Herbst v. Humana Health Ins. of*
18 *Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989). The factors the court must consider in its
19 analysis of the required amount of attorneys’ fees include:

- 20 1. The qualities of the advocate: his ability, training, education,
21 experience, professional standing and skills;
- 22 2. The character of the work done; its difficulty, intricacy,
23 importance, time and skill required, the responsibility
24 imposed and the prominence and character of the parties
25 where they affect the importance of the litigation;
- 26 3. The work actually performed by the lawyer, the skill, time
and attention given to the work; and
- 27 4. The result; whether the attorney was successful and what
benefits were derived.

28 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

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III. ARGUMENT

A. **This Court may Award to the Association its Reasonable Attorneys’ Fees pursuant to NRS 116.4117.**

Pursuant to NRS 18.010(2), a party is entitled to attorneys’ fees and costs in "cases where an allowance is authorized by specific statute." NRS 116.4117 provides a basis upon which an award of attorneys’ fees may be granted to the Association as a prevailing party in this matter.

Pursuant to NRS 116.4117(6) “[t]he court may award reasonable attorney’s fees to the prevailing party.” Statutory interpretation is an issue of law that this Court reviews *de novo*. *Washoe Medical Center v. Second Judicial Dist. Court of State of Nev. ex rel. County of Washoe*, 122 Nev. 1298, 1302, 148 P.3d 790, 792-93 (2006). When a statute is clear on its face, a Court “will not look beyond the statute’s plain language.” *Id.* at 793.

On May 21, 2021, the Association filed its Motion for Summary Judgment seeking summary judgment on all claims. The Association, as the prevailing party in this matter, has incurred attorneys’ fees in the amount of \$29,586.50. *See attached* Detailed Itemization Attorneys’ Fees attached to the affidavit of Chase Pittsenbarger as **Exhibit A-1**. Based on the clear and unambiguous language of NRS 116.4117, this Court may award to the Association its reasonable attorneys’ fees as the prevailing party. *See* NRS 116.4117(6).

B. **The Attorneys’ Fees and Costs Incurred by the Association are Reasonable.**

The attorneys’ fees and costs incurred by the Association are reasonable, economical and customarily charged to the clients of Leach Kern Gruchow Anderson Song. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); *see attached* Affidavit of Chase Pittsenbarger, **Exhibit A**. Sean L. Anderson, lead counsel for the Association, is a partner with Leach Kern Gruchow Anderson Song and has practiced extensively in the area of commercial litigation and common-interest community litigation for more than 20 years and enjoys a reputation in the community for quality advocacy. *Id.* Mr. Anderson, where appropriate, made the prudent decision to assign this matter to an associate attorney, Chase Pittsenbarger, to handle the day-to-day management of the case, which lowered the per-hour billing significantly. *Id.* In addition, Mr. Anderson reviews all client billings for reasonableness and makes any and all

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adjustments to ensure that the charges are commensurate with the value of the services provided. *Id.* Leach Kern Gruchow Anderson Song charges hourly rates that are similar to those rates charges by comparable law firms for similar legal services. *Id.* As this Court is aware, this was and has continued to be a heavily litigated matter and the ability, training, education, experience, professional standing and skill of each of the professionals involved with this action were demonstrated in their pleadings, motions and other documents filed with this Court.

IV. CONCLUSION

For the reasons set forth above, the Association, as the prevailing party is entitled to an award of its attorneys’ fees in the amount of \$29,586.50 and costs in the amount of \$1,876.03.

DATED this 11th day of August 2021

LEACH KERN GRUCHOW ANDERSON SONG

/s/ T. Chase Pittsenbarger

Sean L. Anderson
Nevada Bar No. 7259
T. Chase Pittsenbarger
Nevada Bar No. 13740
2525 Box Canyon Drive
Las Vegas, Nevada 89128
*Attorneys for Defendant El Capitan Ranch
Landscape Maintenance Association*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW ANDERSON SONG, hereby certifies that on this 11th day of August 2021, service of the foregoing, **MOTION FOR ATTORNEYS’ FEES AND COSTS**, was made on all parties via the Court’s CM/ECF System, as follows:

Roger P. Croteau
Christopher L. Benner
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Boulevard, Suite 75
Las Vegas, Nevada 89148
croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff

/s/ Yalonda Dekle

An Employee of LEACH KERN GRUCHOW
ANDERSON SONG

Exhibit A

1 **LEACH KERN GRUCHOW**
2 **ANDERSON SONG**
3 SEAN L. ANDERSON
4 Nevada Bar No. 7259
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11 Telephone: (702) 538-9074
12 Facsimile: (702) 538-9113
13 *Attorneys for Defendant El Capitan*
14 *Ranch Landscape Maintenance Association*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 DAISY TRUST, a Nevada trust,
11 Plaintiff,

Case No.: A-19-789674-C
Dept. No.: 14

12 vs.

13 EL CAPITAN RANCH LANDSCAPE
14 MAINTENANCE ASSOCIATION, a domestic
15 non-profit corporation,
16 Defendant.

**AFFIDAVIT OF
T. CHASE PITTSBARGER
IN SUPPORT OF APPLICATION FOR
ATTORNEYS' FEES AND COSTS**

17 STATE OF NEVADA)
18 COUNTY OF CLARK) ss.

19 Chase Pittsenbarger, being duly sworn and under all penalties of perjury do hereby
20 depose and say as follows:

21 1. I am an Associate with the law firm of Leach Kern Gruchow Anderson Song
22 (“LKG”), counsel for El Capitan Ranch Landscape Maintenance Association (the “Association”)
23 in the above action.

24 2. I have personal knowledge of all matters stated herein.

25 3. I am over the age of eighteen (18) years and am competent to testify to the matters
26 set forth herein.

27 4. I hereby submit this Affidavit in Support of the Application for Attorneys’ Fees &
28 Costs (“Motion”).

1 5. LKG has extensive experience in commercial litigation and common-interest
2 community litigation and is an AV rated firm that devotes the vast majority of its practice to the
3 representation of Nevada common-interest communities.

4 6. On February 19, 2019, Plaintiff filed its Complaint for negligent/intentional
5 misrepresentation, breach of the duty of good faith and conspiracy.

6 7. On February 24, 2020, the parties participate in an Arbitration.

7 8. On March 9, 2020, Arbitrator Leung issued the Arbitrator's Decision and Award
8 in favor of the Association.

9 9. The Association, as the prevailing party in this action, is entitled to its attorneys'
10 fees and costs pursuant to NRS 116.4117 and NRS 18.010 in the amount to \$31,462.53.

11 10. The attorneys' fees incurred by the Association in this matter are reasonable,
12 economical and customarily charged to the clients of LKG. *See* Detailed Itemization Attorneys'
13 Fees and costs, **Exhibit A-1**.

14 11. Sean L. Anderson, lead counsel for the Association, is a partner with Leach Kern
15 Gruchow Anderson Song and has practiced extensively in the area of commercial litigation and
16 common-interest community litigation for more than 20 years and enjoys a reputation in the
17 community for quality advocacy.

18 12. Mr. Anderson, where appropriate, made the prudent decision to assign this matter
19 to myself, an associate attorney, to handle the day-to-day management of the case, which
20 lowered the per-hour billing significantly.

21 13. I am an associate with LKG and have practiced extensively in the area of
22 commercial litigation and common-interest community litigation for more than 5 years.

23 14. In addition, Mr. Anderson reviews all client billings for reasonableness and makes
24 any and all adjustments to ensure that the charges are commensurate with the value of the
25 services provided.

26 15. LKG charges hourly rates that are similar to those rates charges by comparable
27 law firms for similar legal services.

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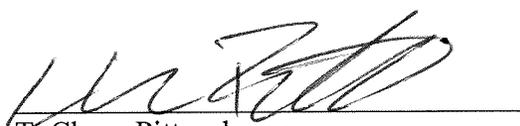
LEACH KERN GRUCHOW ANDERSON SONG
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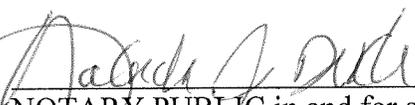
16. I have reviewed the invoice attached as an exhibit to this affidavit and believe them to be correct and accurate reflections of the work performed.

17. Accordingly, the Association should be awarded its attorneys' fees and costs in the total amount of \$31,462.53.

18. These attorneys' fees and costs were necessary in defending this action and will continue to be incurred as a result of this Motion.


T. Chase Pittsenbarger

SUBSCRIBED and SWORN to before me this 11th day of August 2021.


NOTARY PUBLIC in and for said County and State.

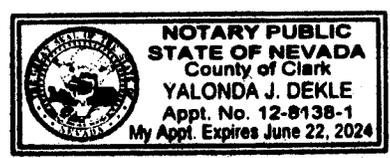


Exhibit A-1

LKG, Ltd.

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
1740.004		04/06/2020	SA	A	1	335.00	0.30	100.50	Review and analyze Request for Trial de Novo El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/07/2020	CP	A	1	275.00	0.70	192.50	Conduct research on the standard for objecting to the Arbitrator's Fees and Costs (.4); Correspond with Mr. Anderson regarding whether the Association has the ability to object to the Arbitrator's Fees and Costs (.3) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/08/2020	CP	A	1	275.00	0.20	55.00	Receive and review Request for Trial De Novo (.2) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/15/2020	SA	A	1	335.00	0.20	67.00	Review and analyze Demand for Removal from the Short Trial Program El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/16/2020	SA	A	1	335.00	0.30	100.50	Review and analyze Plaintiff's Demand for Jury Trial (.2); Review and analyze Correspondence from ADR Office (.1) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/16/2020	CP	A	1	275.00	0.40	110.00	Correspond with opposing counsel regarding the Early Case Conference for this matter (.4) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/16/2020	CP	A	1	275.00	0.20	55.00	Receive and review Demand for Removal from the Short Trial Program (.2) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/17/2020	CP	A	1	275.00	0.20	55.00	Receive and review Correspondence from ADR Commissioner Regarding Proof of Demand Out Fee (.1); receive and review Demand for Jury Trial (.1) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/21/2020	CP	A	1	275.00	0.30	82.50	Review file, draft and send update to the community manager (.3) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/28/2020	CP	A	1	275.00	0.40	110.00	Receive and review email from opposing counsel requesting availability to hold the early case conference (.2); Correspond with opposing counsel regarding the availability of all parties to hold the Early Case Conference (.2) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		04/30/2020	CP	A	1	275.00	0.50	137.50	Prepare for and participate in Early Case Conference (.5) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		05/06/2020	CP	A	1	275.00	1.20	330.00	Conduct research on the standard for a Motion to Strike Request for Trial de Novo (1.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		05/07/2020	CP	A	1	275.00	0.70	192.50	Receive and review proposed Joint Case Conference Report (.7). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		05/08/2020	SA	A	1	335.00	0.70	234.50	Review and analyze email from opposing counsel and attached proposed JCCR (.4); Telephone conference with opposing counsel (.3) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004		05/14/2020	SA	A	1	335.00	0.50	167.50	Review and analyze Joint Case Conference Report	ARCH

LKG, Ltd.

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
1740.004	05/15/2020	CP	A	1	275.00	0.30	82.50	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Joint Case Conference Report (.3).	
1740.004	07/08/2020	CP	A	1	275.00	3.90	1,072.50	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Prepare for and participate in Mandatory Rule 16 Conference (3.9).	
1740.004	07/08/2020	SA	A	1	335.00	1.40	469.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Plaintiff's First Set of Requests for Admissions to El Capitan Ranch Landscape Maintenance Association (.4); Review and analyze Plaintiff's First Set of Requests for Production to El Capitan Ranch Landscape Maintenance Association (.6); Review and analyze Plaintiff's First Set of Interrogatories to El Capitan Ranch Landscape Maintenance Association (.4)	
1740.004	07/15/2020	CP	A	1	275.00	1.20	330.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Request for Production of Documents served on the Association (.4); Review file to determine what documents the community manager has already produced in this matter (.5); Draft and send email forwarding the Request for Production of Documents and requesting the community manager's assistance in gathering certain documents (.3).	
1740.004	07/16/2020	SA	A	1	335.00	0.30	100.50	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Notice of Intent to Serve Subpoena Duces Tecum to Alessi & Koenig	
1740.004	07/16/2020	CP	A	1	275.00	2.90	797.50	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review documents forward by the community manager in response to the Request for Production of Documents served on the Association (1.7); Commence preparing the Association's responses to the Request for Production of Documents (1.2).	
1740.004	07/17/2020	CP	A	1	275.00	0.30	82.50	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Notice of Intent to Serve Subpoena Duces Tecum to Alessi & Koenig.	
1740.004	07/29/2020	CP	A	1	275.00	0.20	55.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Request and obtain extension to respond to written discovery in this matter (.2).	
1740.004	07/31/2020	CP	A	1	275.00	0.20	55.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Order Setting Trial.	
1740.004	07/31/2020	CP	A	1	275.00	1.20	330.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Plaintiff's First Supplement to Initial Disclosures.	
1740.004	08/03/2020	SA	A	1	335.00	0.30	100.50	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Plaintiff's First Supplement to Initial 16.1 Disclosures	
1740.004	08/12/2020	CP	A	1	275.00	5.00	1,375.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Continue drafting the Association's responses to the Request for Production of Documents (1.7); Commence drafting the Association's responses to	

LKG, Ltd.

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Fees								
1740.004	08/24/2020	CP	A	1	275.00	2.50	687.50	ARCH
							the Request for Admissions (1.4); Commence drafting the Association's responses to the Interrogatories (1.9). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Finalize the Association's responses to the Interrogatories (.3); Draft and send email forwarding the same to the community manager for review/comment and execution of the verification page (.1); Finalize and execute the Association's responses to Plaintiff's Request for Production of Documents and Request for Admissions (.6); Receive and review email from opposing counsel taking issue with 2 of the responses to the Requests for Admissions (.2); Conduct research on the standard for Requests for Admissions (.6); Draft and execute Amended Responses to the Requests for Admissions (.3); Draft and send email setting forth the Association's position on the responses to the Requests for Admission and advise opposing counsel that if he disputes the responses we should set a 2.34 conference (.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	08/31/2020	CP	A	1	275.00	0.30	82.50	ARCH
							Finalize and execute the Association's responses to the Interrogatories. El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	11/04/2020	CP	A	1	275.00	0.70	192.50	ARCH
							Receive and review email from the community manager forwarding questions from the Board on this matter (.2); Review file in preparation for respond to the Board's questions (.2); Draft and send email responding to the Board's questions (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	01/04/2021	CP	A	1	275.00	0.30	82.50	ARCH
							Receive and review email from the community manager forwarding a number of questions from the Board and requesting availability to hold a telephonic conference to discuss these topics (.1); Review calendar and send email providing my availability (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	01/06/2021	CP	A	1	275.00	0.50	137.50	ARCH
							Participate in phone call with the community manager (.2); Receive and review email from the community manager requesting to move the phone call (.1); Review calendar and provide my availability (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	01/11/2021	CP	A	1	275.00	1.40	385.00	ARCH
							Prepare for and participate in call with the Board to discuss this matter (1.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	01/28/2021	CP	A	1	275.00	0.60	165.00	ARCH
							Review file to determine whether a supplemental disclosure of witnesses and documents is necessary (.6). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	02/18/2021	CP	A	1	300.00	2.90	870.00	ARCH
							Review file in preparation for drafting written discovery to be served on Plaintiff (1.4); Commence drafting additional Requests for Admissions to be served on Plaintiff (1.5). El Capitan Ranch Landscape Maintenance Association	

LKG, Ltd.

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
1740.004	02/25/2021	CP	A	1	300.00	4.20	1,260.00	ARCH
							Daisy Trust v. El Capitan Ranch (A-19-789674-C) Draft Interrogatories to be served on Plaintiff (2.3); Draft Requests for Production of Documents to be served on Plaintiff (1.9).	
1740.004	02/25/2021	SA	A	1	340.00	1.30	442.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) REvise and edit Interrogatories to Plaintiff (.7) Revise and edit Requests for Production to Plaintiff (.6) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/26/2021	CP	A	1	300.00	0.60	180.00	ARCH
							Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review, finalize and execute written discovery to be served on Plaintiff (.6).	
1740.004	03/24/2021	SA	A	1	340.00	1.80	612.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Plaintiff's Responses to El Capitan's Second Set of Interrogatories to Daisy Trust (.7); Review and analyze Plaintiff's Responses to El Capitan's Second Set of Requests for Production to Daisy Trust (.6); Review and analyze Plaintiff's Responses to El Capitan's Second Set of Requests for Admission to Daisy Trust (.5)	
1740.004	03/25/2021	CP	A	1	300.00	0.30	90.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file to determine whether supplemental disclosure of witnesses and documents is necessary.	
1740.004	03/26/2021	CP	A	1	300.00	2.90	870.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Analyze Plaintiff's responses to written discovery (2.6); Correspond with opposing counsel to set a telephonic conference to discuss the inadequacies of the responses (.3).	
1740.004	03/29/2021	CP	A	1	300.00	1.60	480.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Prepare for and participate in Rule 2.34 conference .	
1740.004	03/30/2021	CP	A	1	300.00	1.70	510.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Draft and send email forwarding the discovery order in which the discovery commissioner ordered the production of rental agreements and rent history and to confirm that opposing counsel will provide amended responses to certain Interrogatories (.4); Draft and execute Notice of Deposition of Plaintiff (1.3).	
1740.004	04/07/2021	CP	A	1	300.00	0.40	120.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file to determine whether additional documents or witnesses need to be disclosed (.4).	
1740.004	04/19/2021	CP	A	1	300.00	1.30	390.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file in preparation for drafting the outline for the deposition of Plaintiff (.5); Follow up with opposing counsel regarding the status of the additional documents requested in preparation for the deposition of his client (.1); Correspond with opposing counsel regarding the same and coordinate resetting the deposition (.4); Draft and execute Amended Notice of Deposition (.3).	
1740.004	04/29/2021	CP	A	1	300.00	0.20	60.00	ARCH
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file to determine whether additional documents or witnesses need to be disclosed in this matter (.2).	
							El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	

LKG, Ltd.

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
1740.004	05/10/2021	CP	A	1	300.00	0.20	60.00	Draft and send email to opposing counsel following up on the production of additional documents regarding rental income (.1); Receive and review email from opposing counsel advising that the documents will be produced today (.1). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/11/2021	CP	A	1	300.00	0.20	60.00	Follow up with opposing counsel regarding additional documents he agreed to produce (.1); Receive and review response advising he should have something by the end of the day (.1). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/12/2021	CP	A	1	300.00	0.80	240.00	Review file to determine whether opposing counsel has produced documents related to rental income for the property (.1); Correspond with opposing counsel regarding his failure to produce this information and the need to move the deposition of his client as a result of the failure to produce this information (.4); Draft and execute Amended Notice of Deposition (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/14/2021	SA	A	1	340.00	0.10	34.00	Review and analyze BlueJeans Link for Hearing El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/14/2021	CP	A	1	300.00	0.20	60.00	Receive and review Bluejeans link regarding Hearing set for 5/18/21. El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/14/2021	CP	A	1	300.00	0.20	60.00	Follow up with opposing counsel regarding the document (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/17/2021	CP	A	1	300.00	0.70	210.00	Correspond with opposing counsel regarding his failure to disclose documents and demand he disclose the same by Wednesday or we would be filing a motion with the discovery commissioner (.4); Draft and execute Notice to Vacate Deposition (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/18/2021	CP	A	1	300.00	2.10	630.00	Prepare for and attend status check (1.8); Correspond with opposing counsel regarding the status of requested documents and the court ordered settlement conference (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/19/2021	CP	A	1	300.00	0.20	60.00	Receive and review email providing proposed response to Interrogatory 5 (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/19/2021	SA	A	1	340.00	0.50	170.00	Review and analyze Plaintiff's Amended Responses to Defendant El Capitan's Second Set of Interrogatories to Daisy Trust El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/21/2021	CP	A	1	300.00	0.30	90.00	Receive and review Plaintiff's Amended Response to HOA's Second Set of Interrogatories. El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH	
1740.004	05/24/2021	CP	A	1	300.00	0.10	30.00	Draft and send email to opposing counsel requesting status on additional documents to be produced (.1). El Capitan Ranch Landscape Maintenance Association	ARCH	

LKG, Ltd.

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
1740.004	05/26/2021	CP	A	1	300.00	5.60	1,680.00	ARCH
							Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file in preparation for drafting the Association's Motion for Summary Judgment (1.4); Commence drafting the Association's Motion for Summary Judgment (4.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	05/27/2021	SA	A	1	340.00	0.10	34.00	ARCH
							Review and analyze Notice of Hearing El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	05/27/2021	CP	A	1	300.00	5.80	1,740.00	ARCH
							Continue drafting the Association's Motion for Summary Judgment (.9); Finalize and execute the Motion for Summary Judgment (.6); Review file in preparation for drafting the Association's Motion to Compel (.7); Commence drafting the Association's Motion to Compel (3.6). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	05/28/2021	SA	A	1	340.00	6.40	2,176.00	ARCH
							Review entire file, discovery and pleadings to date (2.0); Revise and edit El Capitan Ranch Motion for Summary Judgment (3.4) Additional research regarding Intentional/Negligent misrepresentation (1.0) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	05/28/2021	CP	A	1	300.00	0.20	60.00	ARCH
							Receive and review Notice of Hearing of HOA's Motion for Summary Judgment. El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/04/2021	CP	P	1	300.00	2.20	660.00	134
							Continue to draft Motion to Compel (1.3); Finalize and execute the same (.5); Correspond with opposing counsel regarding the settlement conference in this matter and possibility of moving the hearing on the MSJ (.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/07/2021	SA	P	1	340.00	0.10	34.00	149
							Review and analyze Notice of Hearing - El Capitan Ranch Landscape Maintenance Association's Motion to Compel Discovery Responses El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/09/2021	CP	P	1	300.00	0.50	150.00	135
							Receive and review email from opposing counsel forwarding availability to hold the settlement conference (.1); Review calendar for availability and send email to the Association advising of the Court's order to participate in a settlement conference and provide proposed dates to participate in the same (.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/10/2021	SA	P	1	340.00	1.30	442.00	148
							Review and analyze Plaintiff's Opposition to El Capitan Ranch Landscape Maintenance Association's Motion for Summary Judgment El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/11/2021	CP	P	1	300.00	0.90	270.00	143
							Receive and review Plaintiff's Opposition to El Capitan's Motion for Summary Judgment (.7); receive and review Notice of Hearing regarding the Association's Motion to Compel (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/14/2021	CP	P	1	300.00	0.40	120.00	136
							Receive and review email from the community manager regarding the settlement conference (.1); Correspond with opposing counsel regarding the	

Exhibit 5

Exhibit 5

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

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ORDR
ROGER P. CROTEAU, ESQ.
Nevada Bar No.: 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
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Las Vegas, Nevada 89102
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, a domestic
Nevada non-profit corporation,

Defendants.

Case No: A-19-789674-C
Dept. No: 14

**ORDER DENYING EL CAPITAN RANCH
LANDSCAPE MAINTENANCE
ASSOCIATION’S MOTION FOR
ATTORNEY FEES AND COSTS**

Hearing Date: October 21, 2021
Hearing Time: 10:00 a.m.

This matter came before the Court on Defendants El Capitan Ranch Landscape Maintenance Association’s (the “HOA”) Motion for Attorney’s Fees and Costs (the “Motion”) on October 21, 2021 at 10:00 a.m.. Mr. Christopher L. Benner, Esq., appeared on behalf of Plaintiff Daisy Trust (“Plaintiff”). Mr. Chase Pittsenbarger, Esq., appeared on behalf of the HOA. After a review of the pleadings, and good cause shown, the court FINDS and ORDERS as follows:

This action relates to real property commonly known as 8721 Country Pines Avenue, Las Vegas, Nevada 89129 (APN 138-08-611-076) (“Property”). Plaintiff is the current owner of the Property, which Plaintiff acquired at the HOA Foreclosure Sale at issue.

1 Plaintiff filed its Complaint on February 19, 2019, alleging three causes of action: (1)
2 intentional, or alternatively negligent, misrepresentation, (2) breach of the covenant of good faith,
3 and (3) conspiracy. Defendant HOA filed a Motion for Summary Judgment of Plaintiff's
4 Complaint ("MSJ") on May 27, 2021, which was opposed by Plaintiff. The MSJ was granted by
5 this Court on July 20, 2021. The Findings of Fact and Conclusions of Law granting the motion set
6 forth detailed reasons for the dismissal, and do not state Plaintiff's claims were baseless or brought
7 without reasonable ground. The HOA's Motion for Attorney's Fees was filed on August 11, 2021

8
9 NRS 116.4117 provides in relevant part:

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

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

19 (a) By the association against:

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

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

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

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

29 Plaintiff's claims do not arise from the HOA's assessments or operation of the HOA, so
30 Section 116.4117 does not allow for an award of attorney's fees. *See* NRS 116.4117(1), (2).
31 Section 116.4117 allows a civil action to be brought "for a failure or refusal to comply with any
32 provision of this chapter or the governing documents of an association." This lawsuit, for
33 misrepresentation, civil conspiracy, and NRS 116.1113 violations of HOA and HOA's agents, does
34 not fit the types of actions covered by NRS 116.4117.

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The Court ORDERS that Defendant HOA's motion shall be shall be DENIED.

DATED this Q. Escobar day of _____, 2021.

Dated this 30th day of November, 2021

Q. Escobar

DISTRICT COURT JUDGE
F6B B07 A64B 96A5
Adriana Escobar
District Court Judge

Submitted by:

Approved as to Form and Content, all rights reserved:

ROGER P. CROTEAU &
ASSOCIATES, LTD.
/s/ Christopher L. Benner
Roger P. Crogeau, Esq.
Nevada State Bar No. 4958
Christopher L. Benner, Esq.
Nevada State Bar No. 8963
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
Attorney for Plaintiff

LEACH KERN GRUCHOW
ANDERSON SONG
/s/ T. Chase Pittsenbarger
Sean Anderson, Esq.
Nevada State Bar No. 7259
T. Chase Pittsenbarger, Esq.
Nevada State Bar No. 13740
2525 Box Canyon Drive
Las Vegas, NV 89128
(702) 538-9074
Attorneys for Defendant

Receptionist

From: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Sent: Wednesday, November 17, 2021 1:16 PM
To: Chris Benner
Subject: RE: Daisy Trust v. El Capitan Ranch LMA A-19-789674-C Order of Attorney fees

You may file with my e-signature.



Chase Pittsenbarger
Attorney
2525 Box Canyon Drive
Las Vegas, Nevada 89128
Phone: (702) 538-9074
Fax: (702) 538-9113

Reno Office:
5421 Kietzke Lane, Suite 200
Reno, NV 89511
Phone: (775) 324-5930
Fax: (775) 324-6173

Email: cpittsenbarger@lkglawfirm.com
Website: <http://lkglawfirm.com/>

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From: Chris Benner <chris@croteaulaw.com>
Sent: Monday, November 8, 2021 2:37 PM
To: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Cc: Receptionist <receptionist@croteaulaw.com>
Subject: Daisy Trust v. El Capitan Ranch LMA A-19-789674-C Order of Attorney fees

Sorry for the delay; I had really bad cold and this kind slipped past me, but getting back on rails. Please review and let me know of any changes, or, alternatively, if I may submit with your e-signature.

Sincerely,

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

The information contained in this email message is intended for the personal and confidential use of the intended recipient(s) only. This message may be an attorney/client communication and therefore privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any review, use, dissemination, forwarding, or copying of this message is strictly prohibited. If you have received this message in error, please notify us immediately by reply email or telephone and delete the original message and any attachments from your system. Please note that nothing in the accompanying communication is intended to qualify as an "electronic signature."

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

8 El Capitan Ranch Landscape
9 Maintenance 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: 11/30/2021

16 Roger Croteau

croteaulaw@croteaulaw.com

17 Croteau Admin

receptionist@croteaulaw.com

18 Sean Anderson

sanderson@lkglawfirm.com

19 Robin Callaway

rcallaway@lkglawfirm.com

20 Patty Gutierrez

pgutierrez@lkglawfirm.com

21 T. Pittsenbarger

cpittsenbarger@lkglawfirm.com

22 Yalonda Dekle

ydekle@lkglawfirm.com

23 Christopher Benner

chris@croteaulaw.com

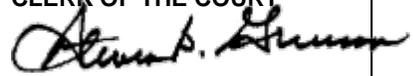
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Exhibit 6

Exhibit 6

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Electronically Filed
12/2/2021 2:42 PM
Steven D. Grierson
CLERK OF THE COURT



1 **NEOJ**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 CHRISTOPHER L. BENNER, ESQ.
5 Nevada Bar No. 8963
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 2810 W. Charleston Blvd., Ste. 75
8 Las Vegas, Nevada 89102
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 chris@croteaulaw.com
13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 *****

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

20 vs.

21 EL CAPITAN RANCH LANDSCAPE
22 MAINTENANCE ASSOCIATION, a
23 domestic Nevada non-profit corporation,
24
25 Defendants.

26 Case No: A-19-789674-C
27 Dept. No: 14

28 **NOTICE OF ENTRY OF ORDER
DENYING EL CAPITAN RANCH
LANDSCAPE MAINTENANCE
ASSOCIATION'S MOTION FOR
ATTORNEY FEES AND COSTS**

///

///

///

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Telephone: (702) 254-7775 • Facsimile (702) 228-7719

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PLEASE TAKE NOTICE that an **ORDER DENYING EL CAPITAN RANCH
LANDSCAPE MAINTENANCE ASSOCIATION’S MOTION FOR ATTORNEY FEES
AND COSTS** was entered in the above-entitled action on November 30th, 2021, a copy of which
is attached hereto.

DATED this 2nd day of December, 2021.

ROGER P. CROTEAU & ASSOCIATES, LTD.

By: /s/ Roger P. Croteau
ROGER P. CROTEAU, ESQ
Nevada Bar No. 4958
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on December 2nd, 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

ROGER P. CROTEAU & ASSOCIATES, LTD.
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ORDR
ROGER P. CROTEAU, ESQ.
Nevada Bar No.: 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
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Las Vegas, Nevada 89102
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, a domestic
Nevada non-profit corporation,

Defendants.

Case No: A-19-789674-C
Dept. No: 14

**ORDER DENYING EL CAPITAN RANCH
LANDSCAPE MAINTENANCE
ASSOCIATION’S MOTION FOR
ATTORNEY FEES AND COSTS**

Hearing Date: October 21, 2021
Hearing Time: 10:00 a.m.

This matter came before the Court on Defendants El Capitan Ranch Landscape Maintenance Association’s (the “HOA”) Motion for Attorney’s Fees and Costs (the “Motion”) on October 21, 2021 at 10:00 a.m.. Mr. Christopher L. Benner, Esq., appeared on behalf of Plaintiff Daisy Trust (“Plaintiff”). Mr. Chase Pittsenbarger, Esq., appeared on behalf of the HOA. After a review of the pleadings, and good cause shown, the court FINDS and ORDERS as follows:

This action relates to real property commonly known as 8721 Country Pines Avenue, Las Vegas, Nevada 89129 (APN 138-08-611-076) (“Property”). Plaintiff is the current owner of the Property, which Plaintiff acquired at the HOA Foreclosure Sale at issue.

1 Plaintiff filed its Complaint on February 19, 2019, alleging three causes of action: (1)
2 intentional, or alternatively negligent, misrepresentation, (2) breach of the covenant of good faith,
3 and (3) conspiracy. Defendant HOA filed a Motion for Summary Judgment of Plaintiff's
4 Complaint ("MSJ") on May 27, 2021, which was opposed by Plaintiff. The MSJ was granted by
5 this Court on July 20, 2021. The Findings of Fact and Conclusions of Law granting the motion set
6 forth detailed reasons for the dismissal, and do not state Plaintiff's claims were baseless or brought
7 without reasonable ground. The HOA's Motion for Attorney's Fees was filed on August 11, 2021

8
9 NRS 116.4117 provides in relevant part:

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

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

19 (a) By the association against:

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

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

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

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

29 Plaintiff's claims do not arise from the HOA's assessments or operation of the HOA, so
30 Section 116.4117 does not allow for an award of attorney's fees. *See* NRS 116.4117(1), (2).
31 Section 116.4117 allows a civil action to be brought "for a failure or refusal to comply with any
32 provision of this chapter or the governing documents of an association." This lawsuit, for
33 misrepresentation, civil conspiracy, and NRS 116.1113 violations of HOA and HOA's agents, does
34 not fit the types of actions covered by NRS 116.4117.

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The Court ORDERS that Defendant HOA's motion shall be shall be DENIED.

DATED this Q. Escobar day of _____, 2021.

Dated this 30th day of November, 2021

Q. Escobar

DISTRICT COURT JUDGE
F6B B07 A64B 96A5
Adriana Escobar
District Court Judge

Submitted by:

Approved as to Form and Content, all rights reserved:

ROGER P. CROTEAU &
ASSOCIATES, LTD.
/s/ Christopher L. Benner
Roger P. Crogeau, Esq.
Nevada State Bar No. 4958
Christopher L. Benner, Esq.
Nevada State Bar No. 8963
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
Attorney for Plaintiff

LEACH KERN GRUCHOW
ANDERSON SONG
/s/ T. Chase Pittsenbarger
Sean Anderson, Esq.
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Receptionist

From: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Sent: Wednesday, November 17, 2021 1:16 PM
To: Chris Benner
Subject: RE: Daisy Trust v. El Capitan Ranch LMA A-19-789674-C Order of Attorney fees

You may file with my e-signature.



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From: Chris Benner <chris@croteaulaw.com>
Sent: Monday, November 8, 2021 2:37 PM
To: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Cc: Receptionist <receptionist@croteaulaw.com>
Subject: Daisy Trust v. El Capitan Ranch LMA A-19-789674-C Order of Attorney fees

Sorry for the delay; I had really bad cold and this kind slipped past me, but getting back on rails. Please review and let me know of any changes, or, alternatively, if I may submit with your e-signature.

Sincerely,

Christopher L. Benner, Esq.
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(702) 254-7775
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

8 El Capitan Ranch Landscape
9 Maintenance 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
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15 Service Date: 11/30/2021

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