

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

1 **NOAS**

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 SATICOY BAY LLC SERIES 7904
17 LIMBWOOD, a Nevada limited liability
18 company,

19 Plaintiff,

20 vs.

21 ELKHORN COMMUNITY ASSOCIATION, a
22 Nevada non-profit corporation; and ATC
23 ASSESSMENT COLLECTION GROUP, a
24 foreign limited liability company,

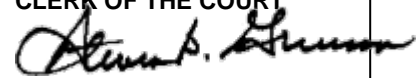
25 Defendants.

Case No: A-21-843991-C

Dept No: 26

NOTICE OF APPEAL

Electronically Filed
3/18/2022 1:06 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Mar 24 2022 09:10 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

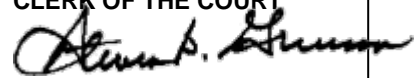
1 NOTICE IS HEREBY GIVEN that Plaintiff Saticoy Bay LLC Series 7904 Limbwood, by
2 and through its attorneys, Roger P. Croteau & Associates, Ltd., hereby appeals to the Supreme
3 Court of Nevada the Order Granting Elkhorn Community Association's Motion to Dismiss, the
4 Joinder thereto by ATC Assessment Collection Group, and all rulings and interlocutory orders
5 giving rise to or made appealable by the final judgment.
6

7
8 Dated this March 18, 2022.
9 ROGER P. CROTEAU & ASSOCIATES, LTD.
10 /s/ Christopher L. Benner
11 Roger P. Croteau, Esq.
12 Nevada Bar No. 4958
13 Christopher L. Benner, Esq.
14 Nevada Bar No. 8963
15 2810 West Charleston Blvd., Suite 75
16 Las Vegas, Nevada 89102
17 Attorney for Plaintiff

18
19
20
21
22
23
24
25
26
27
28
CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2022, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

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



ASTA
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 7904
LIMBWOOD, a Nevada limited liability
company,

Plaintiff,

vs.

ELKHORN COMMUNITY ASSOCIATION, a
Nevada non-profit corporation; and ATC
ASSESSMENT COLLECTION GROUP, a
foreign limited liability company,

Defendants.

Case No: A-21-843991-C

Dept No: 26

CASE APPEAL STATEMENT

Plaintiff Saticoy Bay LLC Series 7904 Limbwood, by and through their attorneys, Roger P. Croteau & Associates, Ltd., submits its Case Appeal Statement.

1. **Name of appellant filing this case appeal statement:**

Saticoy Bay LLC Series 7904 Limbwood

2. **Identify the judge issuing the decision, judgment, or order appealed from:**

The Honorable Gloria Sturman for the granting of the Motion to Dismiss.

3. **Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent:**

a. Saticoy Bay LLC Series 7904 Limbwood

Roger P. Croteau, Esq.
Christopher L. Benner, Esq.
Roger P. Croteau & Associates, Ltd.
2810 West Charleston Blvd., #75
Las Vegas, Nevada 89102
(702) 254-7775

4. **Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

a. ATC Assessment Collection Group, LLC ("ATC")

Respondent's appellate counsel is unknown at this time but will presumably be Respondent's trial counsel.

Brandon E. Wood, Esq.
6625 S. Valley View Blvd, Suite 300
Las Vegas, NV 89118

b. South Shores Community Association ("HOA")

Respondent's appellate counsel is unknown at this time but will presumably be Respondent's trial counsel.

Sean L. Anderson
Ryan D. Hastings
LEACH KERN GRUCHOW ANDERSON SONG
2525 Box Canyon Drive
Las Vegas, Nevada 89128
Attorneys for Defendant South

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that**

attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. **Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Retained counsel.

7. **Indicate whether appellant is represented by appointed or retained counsel on appeal:**

Retained counsel.

8. **Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

N/A

9. **Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:**

The original Complaint in this matter was filed on November 10, 2021, in the Eighth Judicial District Court of the State of Nevada in and for Clark County, Nevada, Case No. A-21-8439918-C

10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

The instant action relates to real property that was the subject of a homeowners' association lien foreclosure sale pursuant to NRS Chapter 116. Generally, based upon current case law, absent some special circumstances, foreclosure trustees performing foreclosure sales pursuant to NRS Chapter 107 have no duty to the bidders and/or purchasers of the property being foreclosed upon. The body of common law has developed from the precept

1 that information exists in the public domain to conduct reasonable due diligence under the
2 circumstances to properly inform a potential bidder; however, that information is not
3 available under any circumstances to the bidder of all liens and their priority in a NRS Chapter
4 116 foreclosure sale.

5 This case focuses on the duties and obligations owed by a homeowners' association
6 by and through its agent, the foreclosure trustee, to inform the bidders and purchasers at the
7 NRS Chapter 116 foreclosure sale as to the bifurcated status of the homeowners' association's
8 lien vis a vis the first deed of trust secured by the property, pursuant to NRS 116.3116. The
9 question is whether, with inquiry from an NRS Chapter 116 bidder, and certainly with actual
10 inquiry by the actual purchaser of the homeowner's foreclosure sale, does that homeowners'
11 association and/or its foreclosure trustee have an obligation of good faith, honesty in fact, and
12 candor pursuant to NRS 116.3116 to the NRS Chapter 116 foreclosure bidders to disclose
13 any attempted and/or actual tender or payment of the superpriority lien amounts, thereby
14 rendering the sale, and the purchaser's interest in the property, subject to the first deed of trust
15 or not?
16

17
18 On December 21, 2021, the HOA filed a Motion to Dismiss Complaint. After briefing
19 and argument, the district court granted the HOA's Motion to Dismiss. On January 13, 2022,
20 ATC filed a Joinder to the Motion to Dismiss Complaint. After briefing and argument, the
21 district court granted the HOA's Motion to Dismiss and ATC's Joinder thereto. Plaintiff
22 contends that the district court erred as a matter of law as to both Motions to Dismiss. The
23 Notice of Entry of Order granting the HOA and ATC's Motion to Dismiss was filed on
24 February 18, 2021.
25
26
27
28

10. **Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:**

N/A.

11. **Indicate whether this appeal involves child custody or visitation:**

N/A

12. **If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

Appellant believes that the possibility of settlement exists.

Dated this March 18, 2022.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Christopher L. Benner

Roger P. Croteau, Esq.

Nevada Bar No. 4958

Christopher L. Benner, Esq.

Nevada Bar No. 8963

2810 West Charleston Blvd., Suite 75

Las Vegas, Nevada 89102

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2022, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

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

CASE SUMMARY**CASE NO. A-21-843991-C**

Saticoy Bay LLC Series 7904 Limbwood, Plaintiff(s)
vs.
Elkhorn Community Association, Defendant(s)

§
§
§
§
§

Location: **Department 26**
 Judicial Officer: **Sturman, Gloria**
 Filed on: **11/10/2021**
 Cross-Reference Case Number: **A843991**

CASE INFORMATION**Statistical Closures**

02/18/2022 Motion to Dismiss by the Defendant(s)

Case Type: **Other Real Property**

Case Status: **02/18/2022 Dismissed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-21-843991-C
 Court Department 26
 Date Assigned 11/10/2021
 Judicial Officer Sturman, Gloria

PARTY INFORMATION**Plaintiff**

Saticoy Bay LLC Series 7904 Limbwood

Lead Attorneys

Croteau, Roger P, ESQ

Retained

702-254-7775(W)

Defendant

ATC Assessment Collection Group

Removed: 02/18/2022

Dismissed

Elkhorn Community Association

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

11/10/2021



Complaint

Filed By: Plaintiff Saticoy Bay LLC Series 7904 Limbwood

[1] Complaint

11/10/2021



Initial Appearance Fee Disclosure

Filed By: Plaintiff Saticoy Bay LLC Series 7904 Limbwood

[2] Initial Appearance Fee Disclosure

11/10/2021



Summons Electronically Issued - Service Pending

Party: Plaintiff Saticoy Bay LLC Series 7904 Limbwood

[3] Summons-Elkhorn

11/10/2021



Summons Electronically Issued - Service Pending

Party: Plaintiff Saticoy Bay LLC Series 7904 Limbwood

[4] Summons-ATC Assessment Collection Group

11/17/2021












Declaration

Filed By: Plaintiff Saticoy Bay LLC Series 7904 Limbwood



[5] Declaration of Service

CASE SUMMARY

CASE NO. A-21-843991-C

11/17/2021	 Declaration Filed By: Plaintiff Saticoy Bay LLC Series 7904 Limbwood <i>[6] Declaration of Service-Elkhorn</i>
12/17/2021	 Stipulation and Order <i>[7] Stipulation and Order Extend Time to Respond</i>
12/21/2021	 Motion to Dismiss Filed By: Defendant Elkhorn Community Association <i>[8] Motion to Dismiss Complaint</i>
12/21/2021	 Initial Appearance Fee Disclosure Filed By: Defendant Elkhorn Community Association <i>[9] Initial Appearance Fee Disclosure</i>
12/29/2021	 Stipulation and Order <i>[10] Stipulation and Order to Extend Time to Respond</i>
12/29/2021	 Clerk's Notice of Hearing <i>[11] Notice of Hearing</i>
01/04/2022	 Opposition to Motion to Dismiss Filed By: Plaintiff Saticoy Bay LLC Series 7904 Limbwood <i>[12] Opposition to Motion to Dismiss</i>
01/10/2022	 Stipulation and Order Filed by: Defendant ATC Assessment Collection Group <i>[13] Stipulation and Order to Extend Time to Join Motion to Dismiss</i>
01/13/2022	 Initial Appearance Fee Disclosure Filed By: Defendant ATC Assessment Collection Group <i>[14] initial Appearance Fee Disclosure (NRS Chapter 19)</i>
01/13/2022	 Joinder To Motion Filed By: Defendant ATC Assessment Collection Group <i>[15] ATC Assessment Collection Group LLC's Joinder to Elkhorn Community Association's Motion to Dismiss Complaint</i>
01/13/2022	 Notice of Entry of Stipulation and Order Filed By: Defendant ATC Assessment Collection Group <i>[16] Notice of Entry of Stipulation and Order</i>
01/25/2022	 Reply in Support Filed By: Defendant Elkhorn Community Association <i>[17] Reply in Support of Motion to Dismiss Complaint</i>
01/26/2022	 Notice of Hearing <i>[18] Instructions for Bluejeans Videoconference</i>
02/18/2022	 Order of Dismissal Without Prejudice <i>[19] Order Granting Elkhorn Community Association's Motion to Dismiss</i>
02/18/2022	 Notice of Entry of Order

CASE SUMMARY**CASE NO. A-21-843991-C**

	Filed By: Defendant Elkhorn Community Association <i>[20] Notice of Entry of Order Granting Elkhorn Community Association's Motion to Dismiss</i>
03/18/2022	 Notice of Appeal Filed By: Plaintiff Saticoy Bay LLC Series 7904 Limbwood <i>[21] Notice of Appeal</i>
03/18/2022	 Case Appeal Statement Filed By: Plaintiff Saticoy Bay LLC Series 7904 Limbwood <i>[22] Case Appeal Statement</i>
	<u>DISPOSITIONS</u>
02/18/2022	Order of Dismissal Without Prejudice (Judicial Officer: Sturman, Gloria) Debtors: Saticoy Bay LLC Series 7904 Limbwood (Plaintiff) Creditors: Elkhorn Community Association (Defendant) Judgment: 02/18/2022, Docketed: 02/22/2022
	<u>HEARINGS</u>
02/01/2022	Motion to Dismiss (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Elkorn Community Association's Motion to Dismiss Complaint</i> Motion Granted;
02/01/2022	Joinder (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>[15] ATC Assessment Collection Group LLC's Joinder to Elkhorn Community Association's Motion to Dismiss Complaint</i> Motion Granted;
02/01/2022	All Pending Motions (9:30 AM) (Judicial Officer: Sturman, Gloria) Matter Heard;

DATE**FINANCIAL INFORMATION**

Defendant ATC Assessment Collection Group	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 3/23/2022	0.00
Defendant Elkhorn Community Association	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 3/23/2022	0.00
Plaintiff Saticoy Bay LLC Series 7904 Limbwood	
Total Charges	294.00
Total Payments and Credits	294.00
Balance Due as of 3/23/2022	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

CASE NO: A-21-843991-C
Department 26

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Saticoy Bay LLC Series 7904 Limbwood 2810 West Charleston Blvd, Suite 75 Las Vegas, NV 89102</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Elkhorn Community Association; ATC Assessment Collection Group</div>
Attorney (name/address/phone): <div style="text-align: center;">Roger P. Croteau & Associates, LTD 2810 West Charleston Blvd, Suite 75 Las Vegas, NV 89102</div>	Attorney (name/address/phone): <div style="height: 40px;"></div>

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input checked="" type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <div style="margin-left: 150px;"> <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ </div>		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

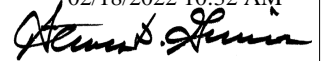
11/10/2021

Date

Roger P. Croteau

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **OGM**
2 **LEACH KERN GRUCHOW**
3 **ANDERSON SONG**
4 SEAN L. ANDERSON
5 Nevada Bar No. 7259
6 sanderson@lkglawfirm.com
7 T. CHASE PITTSBARGER
8 Nevada Bar No. 13740
9 cpittsenbarger@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 Elkhorn*
15 *Community Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 SATICOY BAY LLC SERIES 7904
12 LIMBWOOD, a Nevada limited liability
13 company,

14 Plaintiff,

15 vs.

16 ELKHORN COMMUNITY ASSOCIATION,
17 A Nevada non-profit corporation; and ATC
18 ASSESSMENT COLLECTION GROUP, a
19 foreign limited liability company,

20 Defendants.

Case No.: A-21-843991-C
Dept. No.: 26

**ORDER GRANTING ELKHORN
COMMUNITY ASSOCIATION'S
MOTION TO DISMISS**

21 On December 21, 2021, Defendant Elkhorn Community Association's (the
22 "Association") filed its Motion to Dismiss ("Motion"). On January 4, 2022, the Plaintiff filed its
23 Opposition. On January 13, 2022, Defendant ATC Assessment Collection Group, LLC ("ATC")
24 filed its Joinder to the Associations Motion ("Joinder"). On January 25, 2022, the Association
25 filed its Reply in Support of Motion to Dismiss. The Association's Motion to Dismiss and ATC's
26 Joinder thereto came on for hearing on February 1, 2022, Judge Gloria Sturman presided. The
27 Association was represented by Chase Pittsenbarger of Leach Kern Gruchow Anderson Song.
28 Plaintiff was represented by Christopher Benner of Roger P. Croteau Associates. Ltd. ATC was
represented by Brandon E. Wood.

1 The Court having, read the Motion, Opposition, and Reply, and considering the argument
2 of counsel hereby finds and order as follows:

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

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

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

12 1. In Nevada, “summary judgment is appropriate when the moving party is entitled
13 to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*,
14 100 Nev. 178, 179, 678 P.2d 674 (1984)(citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676
15 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v.*
16 *Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)).

17 2. Nevada Rule of Civil Procedure 12(b)(5) allows a defendant to move for
18 dismissal based on plaintiff’s “failure to state a claim upon which relief can be granted.” Nev. R.
19 Civ. P. 12(b)(5).

20 3. For the purpose of considering a Rule 12(b)(5) motion to dismiss, the Court “is to
21 determine whether or not the challenged pleading sets forth allegations sufficient to make out the
22 elements of a right to relief.” *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 792, 858 P.2d
23 380, 381 (1993).

24 4. Although the Court must construe the pleading liberally and in favor of a
25 plaintiff, a complaint should be dismissed if it appears to a certainty that a plaintiff can prove no
26 set of facts that would entitle a plaintiff to relief. *See Edgar v. Wagner*, 101 Nev. 226, 227-28,
27 699 P.2d 110, 111-12 (1985).

1 5. Plaintiff's Complaint is premised on the allegation that NRS Chapter 116 contains
2 a duty to disclose that a law firm "attempted to contact" a third party to make a partial payment
3 of the Association's delinquent assessment lien.

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

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

9 8. There is no Nevada authority creating a separate common law duty to announce
10 that a law firm "attempted to contact" a third party to make a partial payment of the
11 Association's lien.

12 9. An HOA non-judicial foreclosure sale is a creature of statute.

13 10. NRS Chapter 116 contains a comprehensive statutory scheme regulating non-
14 judicial foreclosures. *See generally* NRS 116.3116-31168.

15 11. The scope and nature of the Association's duties are exclusively defined by these
16 governing statutes.

17 12. In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the
18 Supreme Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower
19 court's award of summary judgment in favor of the collection company holding that "[s]ummary
20 judgment was appropriate on the negligent misrepresentation claim because Hampton neither
21 made an affirmative false statement nor omitted a material fact it was bound to disclose." *Id.*
22 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153
23 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123
24 Nev. 217, 225, 163 P.3d 420, 426 (2007) ("[T]he suppression or omission of a material fact
25 which a party is bound in good faith to disclose is equivalent to a false representation." (internal
26 quotation marks omitted)). *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to
27 disclose if tender of the superpriority portion of the lien has been made), *with* NRS 116.31162
28 (2013) (not requiring any such disclosure).

1 13. Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions
2 Plaintiff's allegation that the Association had a duty to disclose that a third party attempted to
3 make a partial payment of the Association's delinquent assessment lien. *See Mann St. Tr. v.*
4 *Elsinore Homeowners Ass'n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda*
5 *Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at *1 (Nev. Oct.
6 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners' Association*,
7 No. 80134, 2020 WL 6129970, at *1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El*
8 *Diablo v. Silverstone Ranch Cmty. Ass'n*, No. 80039, 2020 WL 6129887, at *1 (Nev. Oct. 16,
9 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass'n, Inc.*, No.
10 80135, 2020 WL 6130912, at *1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980*
11 *Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL
12 6131470, at *1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald*
13 *Ranch Master Assocaition*, No. 78849, 2020 WL 6131467, at *1 (Nev. Oct. 16, 2020); *Tangiers*
14 *Drive Trust v. The Foothills at Macdonald Ranch Master Assocaition*, No. 78564, 2020 WL
15 6131435, at *1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and*
16 *Montage*, No. 80162, 2020 WL 6129987, at *1 (Nev. Oct. 16, 2020). *LN Management LLC*
17 *Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL
18 620513, at *1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures*
19 *Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at *1 (Nev. Feb. 16, 2021);
20 *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021
21 WL 620978, at *1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at*
22 *Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at *1 (Nev. Feb. 16, 2021).

23 14. In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims
24 asserted against the Association in this matter. *See Saticoy Bay, LLC Series 8320 Bermuda*
25 *Beach*, 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at
26 *1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy Bay, LLC,*
27 *Series 3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339 Colinward*,
28 2020 WL 6129987, at *1.

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

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

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

7 17. In *Noonan*, Appellants’ argued the lower court erred in awarding summary
8 judgment in favor of the collection company on Appellants’ claim for negligent
9 misrepresentation. *Id.*

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

13 19. The Supreme Court of Nevada affirmed the lowers court’s award of summary
14 judgment in favor of the collection company holding that “[s]ummary judgment was appropriate
15 on the negligent misrepresentation claim because Hampton neither made an affirmative false
16 statement **nor omitted a material fact it was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v.*
17 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the
18 elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d
19 420, 426 (2007) (“[T]he suppression or omission of a material fact which a party is bound in
20 good faith to disclose is equivalent to a false representation.”(internal quotation marks omitted)).
21 Compare NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the
22 superpriority portion of the lien has been made), with NRS 116.31162 (2013) (not requiring any
23 such disclosure).) As such, Appellant’s argument that there was a misrepresentation by omission
24 fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

25 20. Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of
26 misrepresentation on numerous occasions. See *Saticoy Bay, LLC Series 8320 Bermuda Beach*,
27 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at *1 ;
28 *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy Bay, LLC, Series*

3123 Inlet Bay, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL 6129987, at *1.

Plaintiff s Claim for Breach of Good Faith.

21. The Supreme Court of Nevada has affirmed dismissal of the exact claim on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at *1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because respondents had no duty to proactively disclose whether a superpriority tender had been made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at *1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because respondents had no duty to proactively disclose whether a superpriority tender had been made”); *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been made.”).

Plaintiff s Claim for Civil Conspiracy.

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

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

Plaintiff's Claim for Unjust Enrichment.

4. Plaintiff lacks prudential standing to assert this claim.

5. Prudential standing “encompasses ‘the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.’” *United States v. Lazarenko*, 476 F.3d 642, 649–50 (9th Cir.2007) (quoting *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)).

6. “The question of prudential standing is often resolved by the nature and source of the claim. ‘Essentially, the standing question in such cases is whether the constitutional ... provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief.’” *The Wilderness Soc'y v. Kane Cnty., Utah*, 632 F.3d 1162, 1169 (10th Cir.2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)).

7. Plaintiff's claim for unjust enrichment is premised on the allegation that ATC Assessment Collection Group's has not distributed the excess proceeds from the foreclosure sale.

8. Here, Plaintiff purchased the Property at the Foreclosure Sale.

9. Pursuant to NRS 116.31164, Plaintiff does not have a claim to the excess proceeds arising from the foreclosure sale.

10. In *Saticoy Bay LLC Series 9050 W Warm Springs 2079* the Court held that while it agreed that the funds should be distributed immediately after the foreclosure sale,

Ditech's receipt or non-receipt of the proceeds is not for Saticoy Bay to dispute. . . . Rather, the statute explicitly places responsibility *on the person conducting the sale* (here, NAS) to distribute the proceeds of the sale pursuant to NRS 116.31164(7)(b). . . . Therefore, **whether the proceeds of the sale must be distributed toward a subordinate claim of record pursuant to subsection 4, such as that of Ditech here, or to Markey as remittance of any excess proceeds pursuant to subsection 5, is not for Saticoy Bay to assert because those funds no longer belong to Saticoy Bay.**

Id.

11. As clearly stated by the Supreme Court of Nevada, Plaintiff does not have standing to pursue any claim related to distribution of the proceeds from a foreclosure sale pursuant to NRS 116.31164(7)(b) because Plaintiff has no claim to those proceeds.

IT IS HEREBY ORDERED that the Association's Motion to Dismiss and ATC's Joinder thereto are **GRANTED** without prejudice.

IT IS SO ORDERED this ____ day of February 2022.

Dated this 18th day of February, 2022



DISTRICT COURT JUDGE

DF9 FA8 E988 0FBE
Gloria Sturman
District Court Judge

Submitted by:

Approved as to form and content:

/s/ T. Chase Pittsenbarger

Sean L. Anderson
Nevada Bar No. 7259
Ryan D. Hastings
Nevada Bar No. 12394
LEACH KERN GRUCHOW ANDERSON SONG
2525 Box Canyon Drive
Las Vegas, Nevada 89128
*Attorneys for Defendant South Shores
Community Association*

/s/ Christopher L. Benner

Roger P. Croteau
Nevada Bar No. 4958
Christopher L. Benner
Nevada Bar No. 8963
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff

Approved as to form and content:

/s/ Brandon E. Wood

Brandon E. Wood
Nevada Bar No. 12900
ATC ASSESSMENT COLLECTION GROUP, LLC
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
*Attorneys for Defendant ATC Assessment
Collection Group, LLC*

From: [Chris Benner](#)
To: [Yalonda Dekle](#); [Brandon Wood](#)
Cc: [Chase Pittsenbarger](#)
Subject: RE: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM
Date: Thursday, February 17, 2022 2:51:50 PM
Attachments: [image001.png](#)
[image002.png](#)

No objections, you may use my e-signature.

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."

From: Yalonda Dekle <ydekle@lkglawfirm.com>
Sent: Thursday, February 17, 2022 2:51 PM
To: Brandon Wood <brandon@nas-inc.com>
Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>; Chris Benner <chris@croteaulaw.com>
Subject: RE: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

Thank you.

Mr. Benner, do you have any objections to these revisions? Please advise and thank you.

From: Brandon Wood <brandon@nas-inc.com>
Sent: Thursday, February 17, 2022 9:17 AM
To: Yalonda Dekle <ydekle@lkglawfirm.com>
Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>; Chris Benner <chris@croteaulaw.com>
Subject: RE: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

Good morning Ms. Dekle,

Please find ATC's proposed revisions attached herewith. I included Mr. Benner from Roger P. Croteau & Associates in this email for review as well. You may use my electronic signature if there are no objections.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

Our office hours are Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available for payments in front of our office during normal business hours and lunch.



PERSONAL AND CONFIDENTIAL: Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. This message originates from Nevada Association Services, Inc. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, or is otherwise protected against unauthorized use or disclosure. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. Personal messages express only the view of the sender and are not attributable to Nevada Association Services, Inc.

From: Yalonda Dekle <ydekle@lkglawfirm.com>

Sent: Thursday, February 17, 2022 8:24 AM

To: Brandon Wood <brandon@nas-inc.com>

Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>

Subject: FW: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

Good morning Brandon:

I'm following up with you regarding the attached Order. Please advise if we may use your e-signature.

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
Legal Assistant
Leach Kern Gruchow Anderson Song

Las Vegas Office:
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: ydekle@lkglawfirm.com
Website: www.lkglawfirm.com

-

Notice: This e-mail communication, and any attachments hereto, is intended for the exclusive use of the individual or entity to whom it is addressed, and may contain attorney/client privileged information. If you are not the intended recipient of this communication, or the employee or authorized agent responsible for delivery of this communication to the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please e-mail the sender that you have received this communication in error and/or please notify us immediately by telephone and delete the original message and any attachments. We will reimburse your reasonable expenses incurred in providing such notification.

From: Chris Benner <chris@croteaulaw.com>
Sent: Wednesday, February 16, 2022 9:52 AM
To: Yalonda Dekle <ydekle@lkglawfirm.com>; Brandon Wood <brandon@nas-inc.com>
Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Subject: RE: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

No revisions; you may use my e-signature.

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."

From: Yalonda Dekle <ydekle@lkglawfirm.com>

Sent: Monday, February 14, 2022 3:40 PM

To: Chris Benner <chris@croteaulaw.com>; Brandon Wood <brandon@nas-inc.com>

Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>

Subject: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

Good afternoon Counsel:

Please find attached the Order Granting Elkhorn Community Association's Motion to Dismiss. If you approve, please confirm that 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
Legal Assistant
Leach Kern Gruchow Anderson Song

Las Vegas Office:
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: ydekle@lkglawfirm.com

Website: www.lkglawfirm.com

-

Notice: This e-mail communication, and any attachments hereto, is intended for the exclusive use of the individual or entity to whom it is addressed, and may contain attorney/client privileged information. If you are not the intended recipient of this communication, or the employee or authorized agent responsible for delivery of this communication to the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please e-mail the sender that you have received this communication in error and/or please notify us immediately by telephone and delete the original message and any attachments. We will reimburse your reasonable expenses incurred in providing such notification.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Saticoy Bay LLC Series 7904
Limbwood, Plaintiff(s)

CASE NO: A-21-843991-C

7 vs.

DEPT. NO. Department 26

8
9 Elkhorn Community Association,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

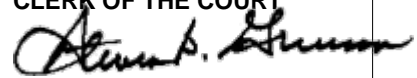
12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order of Dismissal Without Prejudice was served via the court's
electronic eFile system to all recipients registered for e-Service on the above entitled case as
listed below:

15 Service Date: 2/18/2022

16 Brandon Wood	brandon@nas-inc.com
17 Roger Croteau	croteaulaw@croteaulaw.com
18 Susan Moses	susanm@nas-inc.com
19 Croteau Admin	receptionist@croteaulaw.com
20 Sean Anderson	sanderson@lkglawfirm.com
21 Robin Callaway	rcallaway@lkglawfirm.com
22 T. Pittsenbarger	cpittsenbarger@lkglawfirm.com
23 Patty Gutierrez	pgutierrez@lkglawfirm.com
24 Yalonda Dekle	ydekle@lkglawfirm.com
25 Christopher Benner	chris@croteaulaw.com

26
27
28

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	



1 **NEOJ**
2 **LEACH KERN GRUCHOW**
3 **ANDERSON SONG**
4 **SEAN L. ANDERSON**
5 Nevada Bar No. 7259
6 sanderson@lkglawfirm.com
7 **T. CHASE PITTSBARGER**
8 Nevada Bar No. 13740
9 cpittsenbarger@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 Elkhorn*
15 *Community Association*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **SATICOY BAY LLC SERIES 7904**
19 **LIMBWOOD, a Nevada limited liability**
20 **company,**

21 **Plaintiff,**

22 **vs.**

23 **ELKHORN COMMUNITY ASSOCIATION,**
24 **A Nevada non-profit corporation; and ATC**
25 **ASSESSMENT COLLECTION GROUP, a**
26 **foreign limited liability company,**

27 **Defendants.**

Case No.: A-21-843991-C
Dept. No.: 26

**NOTICE OF ENTRY OF ORDER
GRANTING ELKHORN COMMUNITY
ASSOCIATION'S MOTION TO
DISMISS**

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

1 Please take notice that on February 18, 2022 an Order Granting Elkhorn Community
2 Association's Motion to Dismiss was entered in the above-entitled action, a true and correct copy
3 of which is attached hereto.

4 DATED this 18th day of February, 2022.

5 **LEACH KERN GRUCHOW ANDERSON SONG**

6
7 /s/ T. Chase Pittsenbarger

8 Sean L. Anderson

9 Nevada Bar No. 7259

10 T. Chase Pittsenbarger

11 Nevada Bar No. 13740

12 2525 Box Canyon Drive

13 Las Vegas, Nevada 89128

14 *Attorneys for Defendant Elkhorn Community*
15 *Association*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of LEACH KERN GRUCHOW ANDERSON SONG, and that on the 18th day of February, 2022, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING ELKHORN COMMUNITY ASSOCIATION'S MOTION TO DISMISS** in the following manner:

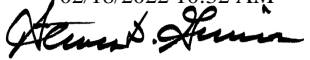
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed below:

Roger P. Croteau
Christopher L. Benner
Roger P. Croteau & Associates, Ltd.
2810 W. Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff

Brandon E. Wood
ATC Assessment Collection Group, LLC
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
brandon@nas-inc.com
*Attorney for Defendants ATC Assessment
Collection Group, LLC*

/s/ Yalonda Dekle
An Employee of LEACH KERN GRUCHOW
ANDERSON SONG

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


CLERK OF THE COURT

1 **OGM**
2 **LEACH KERN GRUCHOW**
3 **ANDERSON SONG**
4 SEAN L. ANDERSON
5 Nevada Bar No. 7259
6 sanderson@lkglawfirm.com
7 T. CHASE PITTSBARGER
8 Nevada Bar No. 13740
9 cpittsenbarger@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 Elkhorn*
15 *Community Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 7904
12 LIMBWOOD, a Nevada limited liability
13 company,

Plaintiff,

vs.

15 ELKHORN COMMUNITY ASSOCIATION,
16 A Nevada non-profit corporation; and ATC
17 ASSESSMENT COLLECTION GROUP, a
18 foreign limited liability company,

Defendants.

Case No.: A-21-843991-C
Dept. No.: 26

**ORDER GRANTING ELKHORN
COMMUNITY ASSOCIATION'S
MOTION TO DISMISS**

20 On December 21, 2021, Defendant Elkhorn Community Association's (the
21 "Association") filed its Motion to Dismiss ("Motion"). On January 4, 2022, the Plaintiff filed its
22 Opposition. On January 13, 2022, Defendant ATC Assessment Collection Group, LLC ("ATC")
23 filed its Joinder to the Associations Motion ("Joinder"). On January 25, 2022, the Association
24 filed its Reply in Support of Motion to Dismiss. The Association's Motion to Dismiss and ATC's
25 Joinder thereto came on for hearing on February 1, 2022, Judge Gloria Sturman presided. The
26 Association was represented by Chase Pittsenbarger of Leach Kern Gruchow Anderson Song.
27 Plaintiff was represented by Christopher Benner of Roger P. Croteau Associates. Ltd. ATC was
28 represented by Brandon E. Wood.

1 The Court having, read the Motion, Opposition, and Reply, and considering the argument
2 of counsel hereby finds and order as follows:

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

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

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

12 1. In Nevada, “summary judgment is appropriate when the moving party is entitled
13 to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*,
14 100 Nev. 178, 179, 678 P.2d 674 (1984)(citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676
15 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v.*
16 *Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)).

17 2. Nevada Rule of Civil Procedure 12(b)(5) allows a defendant to move for
18 dismissal based on plaintiff’s “failure to state a claim upon which relief can be granted.” Nev. R.
19 Civ. P. 12(b)(5).

20 3. For the purpose of considering a Rule 12(b)(5) motion to dismiss, the Court “is to
21 determine whether or not the challenged pleading sets forth allegations sufficient to make out the
22 elements of a right to relief.” *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 792, 858 P.2d
23 380, 381 (1993).

24 4. Although the Court must construe the pleading liberally and in favor of a
25 plaintiff, a complaint should be dismissed if it appears to a certainty that a plaintiff can prove no
26 set of facts that would entitle a plaintiff to relief. *See Edgar v. Wagner*, 101 Nev. 226, 227-28,
27 699 P.2d 110, 111-12 (1985).

1 5. Plaintiff's Complaint is premised on the allegation that NRS Chapter 116 contains
2 a duty to disclose that a law firm "attempted to contact" a third party to make a partial payment
3 of the Association's delinquent assessment lien.

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

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

9 8. There is no Nevada authority creating a separate common law duty to announce
10 that a law firm "attempted to contact" a third party to make a partial payment of the
11 Association's lien.

12 9. An HOA non-judicial foreclosure sale is a creature of statute.

13 10. NRS Chapter 116 contains a comprehensive statutory scheme regulating non-
14 judicial foreclosures. *See generally* NRS 116.3116-31168.

15 11. The scope and nature of the Association's duties are exclusively defined by these
16 governing statutes.

17 12. In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the
18 Supreme Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower
19 court's award of summary judgment in favor of the collection company holding that "[s]ummary
20 judgment was appropriate on the negligent misrepresentation claim because Hampton neither
21 made an affirmative false statement nor omitted a material fact it was bound to disclose." *Id.*
22 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153
23 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123
24 Nev. 217, 225, 163 P.3d 420, 426 (2007) ("[T]he suppression or omission of a material fact
25 which a party is bound in good faith to disclose is equivalent to a false representation." (internal
26 quotation marks omitted)). *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to
27 disclose if tender of the superpriority portion of the lien has been made), *with* NRS 116.31162
28 (2013) (not requiring any such disclosure).

1 13. Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions
2 Plaintiff's allegation that the Association had a duty to disclose that a third party attempted to
3 make a partial payment of the Association's delinquent assessment lien. *See Mann St. Tr. v.*
4 *Elsinore Homeowners Ass'n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda*
5 *Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at *1 (Nev. Oct.
6 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners' Association*,
7 No. 80134, 2020 WL 6129970, at *1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El*
8 *Diablo v. Silverstone Ranch Cmty. Ass'n*, No. 80039, 2020 WL 6129887, at *1 (Nev. Oct. 16,
9 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass'n, Inc.*, No.
10 80135, 2020 WL 6130912, at *1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980*
11 *Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL
12 6131470, at *1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald*
13 *Ranch Master Assocaition*, No. 78849, 2020 WL 6131467, at *1 (Nev. Oct. 16, 2020); *Tangiers*
14 *Drive Trust v. The Foothills at Macdonald Ranch Master Assocaition*, No. 78564, 2020 WL
15 6131435, at *1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and*
16 *Montage*, No. 80162, 2020 WL 6129987, at *1 (Nev. Oct. 16, 2020). *LN Management LLC*
17 *Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL
18 620513, at *1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures*
19 *Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at *1 (Nev. Feb. 16, 2021);
20 *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021
21 WL 620978, at *1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at*
22 *Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at *1 (Nev. Feb. 16, 2021).

23 14. In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims
24 asserted against the Association in this matter. *See Saticoy Bay, LLC Series 8320 Bermuda*
25 *Beach*, 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at
26 *1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy Bay, LLC,*
27 *Series 3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339 Colinward*,
28 2020 WL 6129987, at *1.

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

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

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

7 17. In *Noonan*, Appellants’ argued the lower court erred in awarding summary
8 judgment in favor of the collection company on Appellants’ claim for negligent
9 misrepresentation. *Id.*

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

13 19. The Supreme Court of Nevada affirmed the lowers court’s award of summary
14 judgment in favor of the collection company holding that “[s]ummary judgment was appropriate
15 on the negligent misrepresentation claim because Hampton neither made an affirmative false
16 statement **nor omitted a material fact it was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v.*
17 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the
18 elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d
19 420, 426 (2007) (“[T]he suppression or omission of a material fact which a party is bound in
20 good faith to disclose is equivalent to a false representation.”(internal quotation marks omitted)).
21 Compare NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the
22 superpriority portion of the lien has been made), with NRS 116.31162 (2013) (not requiring any
23 such disclosure).) As such, Appellant’s argument that there was a misrepresentation by omission
24 fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

25 20. Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of
26 misrepresentation on numerous occasions. See *Saticoy Bay, LLC Series 8320 Bermuda Beach*,
27 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at *1 ;
28 *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy Bay, LLC, Series*

1 3123 Inlet Bay, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL
2 6129987, at *1.

3 **Plaintiff s Claim for Breach of Good Faith.**

4 21. The Supreme Court of Nevada has affirmed dismissal of the exact claim on
5 numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at
6 *1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail
7 because respondents had no duty to proactively disclose whether a superpriority tender had been
8 made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at *1 (“In
9 particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because
10 respondents had no duty to proactively disclose whether a superpriority tender had been made”);
11 *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude
12 that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing
13 because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to
14 base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS
15 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been
16 made.”).

17 **Plaintiff s Claim for Civil Conspiracy.**

18 22. Similar to the other claims asserted by Plaintiff in this action, the Supreme Court
19 of Nevada has rejected this claim on numerous occasions. *See Saticoy Bay, LLC Series 8320*
20 *Bermuda Beach*, 2020 WL 6130913, at *1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL
21 6129970, at *1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at *1 ; *Saticoy*
22 *Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at *1; *Saticoy Bay LLC, Series 11339*
23 *Colinward*, 2020 WL 6129987, at *1.

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

Plaintiff s Claim for Unjust Enrichment.

4. Plaintiff lacks prudential standing to assert this claim.

5. Prudential standing “encompasses ‘the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.’” *United States v. Lazarenko*, 476 F.3d 642, 649–50 (9th Cir.2007) (quoting *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)).

6. “The question of prudential standing is often resolved by the nature and source of the claim. ‘Essentially, the standing question in such cases is whether the constitutional ... provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief.’” *The Wilderness Soc'y v. Kane Cnty., Utah*, 632 F.3d 1162, 1169 (10th Cir.2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)).

7. Plaintiff's claim for unjust enrichment is premised on the allegation that ATC Assessment Collection Group's has not distributed the excess proceeds from the foreclosure sale.

8. Here, Plaintiff purchased the Property at the Foreclosure Sale.

9. Pursuant to NRS 116.31164, Plaintiff does not have a claim to the excess proceeds arising from the foreclosure sale.

10. In *Saticoy Bay LLC Series 9050 W Warm Springs 2079* the Court held that while it agreed that the funds should be distributed immediately after the foreclosure sale,

Ditech's receipt or non-receipt of the proceeds is not for Saticoy Bay to dispute. . . . Rather, the statute explicitly places responsibility *on the person conducting the sale* (here, NAS) to distribute the proceeds of the sale pursuant to NRS 116.31164(7)(b). . . . Therefore, **whether the proceeds of the sale must be distributed toward a subordinate claim of record pursuant to subsection 4, such as that of Ditech here, or to Markey as remittance of any excess proceeds pursuant to subsection 5, is not for Saticoy Bay to assert because those funds no longer belong to Saticoy Bay.**

Id.

11. As clearly stated by the Supreme Court of Nevada, Plaintiff does not have standing to pursue any claim related to distribution of the proceeds from a foreclosure sale pursuant to NRS 116.31164(7)(b) because Plaintiff has no claim to those proceeds.

IT IS HEREBY ORDERED that the Association's Motion to Dismiss and ATC's Joinder thereto are **GRANTED** without prejudice.

IT IS SO ORDERED this ____ day of February 2022.

Dated this 18th day of February, 2022



DISTRICT COURT JUDGE

DF9 FA8 E988 0FBE
Gloria Sturman
District Court Judge

Submitted by:

Approved as to form and content:

/s/ T. Chase Pittsenbarger

Sean L. Anderson
Nevada Bar No. 7259
Ryan D. Hastings
Nevada Bar No. 12394
LEACH KERN GRUCHOW ANDERSON SONG
2525 Box Canyon Drive
Las Vegas, Nevada 89128
*Attorneys for Defendant South Shores
Community Association*

/s/ Christopher L. Benner

Roger P. Croteau
Nevada Bar No. 4958
Christopher L. Benner
Nevada Bar No. 8963
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff

Approved as to form and content:

/s/ Brandon E. Wood

Brandon E. Wood
Nevada Bar No. 12900
ATC ASSESSMENT COLLECTION GROUP, LLC
6625 S. Valley View Blvd., Suite 300
Las Vegas, Nevada 89118
*Attorneys for Defendant ATC Assessment
Collection Group, LLC*

From: [Chris Benner](#)
To: [Yalonda Dekle](#); [Brandon Wood](#)
Cc: [Chase Pittsenbarger](#)
Subject: RE: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM
Date: Thursday, February 17, 2022 2:51:50 PM
Attachments: [image001.png](#)
[image002.png](#)

No objections, you may use my e-signature.

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."

From: Yalonda Dekle <ydekle@lkglawfirm.com>
Sent: Thursday, February 17, 2022 2:51 PM
To: Brandon Wood <brandon@nas-inc.com>
Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>; Chris Benner <chris@croteaulaw.com>
Subject: RE: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

Thank you.

Mr. Benner, do you have any objections to these revisions? Please advise and thank you.

From: Brandon Wood <brandon@nas-inc.com>
Sent: Thursday, February 17, 2022 9:17 AM
To: Yalonda Dekle <ydekle@lkglawfirm.com>
Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>; Chris Benner <chris@croteaulaw.com>
Subject: RE: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

Good morning Ms. Dekle,

Please find ATC's proposed revisions attached herewith. I included Mr. Benner from Roger P. Croteau & Associates in this email for review as well. You may use my electronic signature if there are no objections.

Best,

Brandon E. Wood, Esq.

Nevada Association Services, Inc.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office
702-804-8887 Fax

Our office hours are Monday – Thursday 9-5, Friday 9-4:30 and closed for lunch from 12-1 daily. There is a drop-box available for payments in front of our office during normal business hours and lunch.



PERSONAL AND CONFIDENTIAL: Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose. This message originates from Nevada Association Services, Inc. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, or is otherwise protected against unauthorized use or disclosure. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. Personal messages express only the view of the sender and are not attributable to Nevada Association Services, Inc.

From: Yalonda Dekle <ydekle@lkglawfirm.com>
Sent: Thursday, February 17, 2022 8:24 AM
To: Brandon Wood <brandon@nas-inc.com>
Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Subject: FW: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

Good morning Brandon:

I'm following up with you regarding the attached Order. Please advise if we may use your e-signature.

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
Legal Assistant
Leach Kern Gruchow Anderson Song

Las Vegas Office:
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: ydekle@lkglawfirm.com
Website: www.lkglawfirm.com

-

Notice: This e-mail communication, and any attachments hereto, is intended for the exclusive use of the individual or entity to whom it is addressed, and may contain attorney/client privileged information. If you are not the intended recipient of this communication, or the employee or authorized agent responsible for delivery of this communication to the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please e-mail the sender that you have received this communication in error and/or please notify us immediately by telephone and delete the original message and any attachments. We will reimburse your reasonable expenses incurred in providing such notification.

From: Chris Benner <chris@croteaulaw.com>
Sent: Wednesday, February 16, 2022 9:52 AM
To: Yalonda Dekle <ydekle@lkglawfirm.com>; Brandon Wood <brandon@nas-inc.com>
Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Subject: RE: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

No revisions; you may use my e-signature.

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."

From: Yalonda Dekle <ydekle@lkglawfirm.com>

Sent: Monday, February 14, 2022 3:40 PM

To: Chris Benner <chris@croteaulaw.com>; Brandon Wood <brandon@nas-inc.com>

Cc: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>

Subject: Saticoy Bay LLC Series 7904 Limbwood v. Elkhorn CA - A-21-843991-C - OGM

Good afternoon Counsel:

Please find attached the Order Granting Elkhorn Community Association's Motion to Dismiss. If you approve, please confirm that 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
Legal Assistant
Leach Kern Gruchow Anderson Song

Las Vegas Office:
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: ydekle@lkglawfirm.com

Website: www.lkglawfirm.com

-

Notice: This e-mail communication, and any attachments hereto, is intended for the exclusive use of the individual or entity to whom it is addressed, and may contain attorney/client privileged information. If you are not the intended recipient of this communication, or the employee or authorized agent responsible for delivery of this communication to the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please e-mail the sender that you have received this communication in error and/or please notify us immediately by telephone and delete the original message and any attachments. We will reimburse your reasonable expenses incurred in providing such notification.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Saticoy Bay LLC Series 7904
7 Limbwood, Plaintiff(s)

CASE NO: A-21-843991-C

8 vs.

DEPT. NO. Department 26

9 Elkhorn Community 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 of Dismissal Without Prejudice was served via the court's
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as
16 listed below:

17 Service Date: 2/18/2022

18 Brandon Wood	brandon@nas-inc.com
19 Roger Croteau	croteaulaw@croteaulaw.com
20 Susan Moses	susanm@nas-inc.com
21 Croteau Admin	receptionist@croteaulaw.com
22 Sean Anderson	sanderson@lkglawfirm.com
23 Robin Callaway	rcallaway@lkglawfirm.com
24 T. Pittsenbarger	cpittsenbarger@lkglawfirm.com
25 Patty Gutierrez	pgutierrez@lkglawfirm.com
26 Yalonda Dekle	ydekle@lkglawfirm.com
27 Christopher Benner	chris@croteaulaw.com

28

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

ROGER P. CROTEAU. ESQ.
2810 W. CHARLESTON BLVD., STE. 75
LAS VEGAS, NV 89102

DATE: March 23, 2022
CASE: A-21-843991-C

RE CASE: SATICOY BAY LLC SERIES 7904 LIMBWOOD vs. ELKHORN COMMUNITY ASSOCIATION; ATC
ASSESSMENT COLLECTION GROUP

NOTICE OF APPEAL FILED: March 18, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING ELKHORN COMMUNITY
ASSOCIATION'S MOTION TO DISMISS; NOTICE OF ENTRY OF ORDER GRANTING ELKHORN
COMMUNITY ASSOCIATION'S MOTION TO DISMISS; NOTICE OF DEFICIENCY

SATICOY BAY LLC SERIES 7904
LIMBWOOD,

Plaintiff(s),

vs.

ELKHORN COMMUNITY ASSOCIATION;
ATC ASSESSMENT COLLECTION GROUP,

Defendant(s),

Case No: A-21-843991-C

Dept No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 23 day of March 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

March 23, 2022

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: SATICOY BAY LLC SERIES 7904 LIMBWOOD vs. ELKHORN COMMUNITY ASSOCIATION;
ATC ASSESSMENT COLLECTION GROUP
D.C. CASE: A-21-843991-C

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed March 23, 2022. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

February 1, 2022

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk