

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>SATICOY BAY LLC SERIES 7904 LIMBWOOD, a Nevada limited liability company,</p> <p style="text-align: center;">Appellant,</p> <p>v.</p> <p>ELKHORN COMMUNITY ASSOCIATION, a Nevada non-profit corporation; and ATC ASSESSMENT COLLECTION GROUP, a foreign limited liability company,</p> <p style="text-align: center;">Respondents.</p>	<p>No.: 84429</p> <p style="text-align: right;">Electronically Filed Apr 18 2022 10:52 a.m. Elizabeth A. Brown Clerk of Supreme Court</p> <p>DOCKETING STATEMENT CIVIL APPEALS</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 26

County Clark Judge Honorable Gloria Sturman

District Ct. Case No. . A-21-843991-C

2. Attorney filing this docketing statement:

Attorney 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) SATICOY BAY LLC SERIES 7904 LIMBWOOD

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 Sean L. Anderson; T. Chase Pittsenharger

Telephone (702) 538-9074

Firm Leach Kern Gruchow Anderson Song

Address: 2525 Box Canyon Drove, Las Vegas, NV 89128

Client(s) Elkhorn Community Association ("HOA")

Attorney: Brandon E. Wood

Telephone: (702) 804-8885

Address: 6625 S Valley View Blvd, Suite 300, Las Vegas, NV 89118

Client: ATC Assessment Collection Group ("ATC")

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment

- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination

☐ Other disposition (specify): _____

☒ Dismissal

☐ Lack of jurisdiction

☒ Failure to state a claim

☐ Failure to prosecute

☐ Other (specify): _____

☐ Divorce Decree:

☐ Original ☐ Modification

5. Does this appeal rise issues concerning any of the following? No

- ☐ 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:

None.

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:

None

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

The instant action relates to real property that was the subject of a homeowners' association lien foreclosure sale pursuant to NRS Chapter 116, which occurred on May 15, 2014. The district court dismissed all claims against Defendants, with prejudice, pursuant to NRCP 12(b)(5).

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

Pursuant to NRS Chapter 116 and NRS 116.1113, does the HOA by and through its agent, ATC, owe a duty of good faith and candor in its conducting of the NRS Chapter 116 foreclosure sale, especially if the bidders at the sale have inquired, or attempted to inquire, as to any payments to the underlying lien? Specifically, are the HOA and ATC required to disclosed to interested bidders, upon inquiry by a bidder prior to the sale, that a portion of the lien being foreclosed upon has been partially satisfied prior to the sale, with inquiry from the bidders? If they do have any obligation of good faith and candor in their dealings at the HOA Foreclosure Sale, does that obligation extend to NRS Chapter 116 foreclosure sale bidders and purchasers?

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:

OLIVER SAGEBRUSH DR. TR. VS. NEV. ASS'N SERVS., INC.	NVSC #83238
DAISY TR. VS. EL CAPITAN RANCH LANDSCAPE MAINT. ASS'N	NVSC#83404/84037
SATICOY BAY LLC SER. 6387 HAMILTON GROVE VS. SUNRISE RIDGE MASTER HOA	NVSC#83669
RIVER GLIDER AVE. TR. VS. HARBOR COVE HOA	NVSC#83689
SATICOY BAY LLC SER. 2920 BAYLINER AVE. VS. SANDSTONE RIDGE ASS'N	NVSC#83782
DAISY TR. VS. SUNRISE RIDGE MASTER HOA	NVSC#83798

All matters relate to NRS Chapter 116 and foreclosure sale by HOA thereto.

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? No

- ☐ 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

Is so, explain

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 circumstances(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter does not fall into any of the categories in NRCP 17(a) or (b).

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

Was it a bench or jury trial? _____

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

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: February 18, 2022

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

Date written notice of entry of judgment or order was served: February 18, 2022

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/Electronic/Fax

19. Date notice of appeal filed: March 18, 2022

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:

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)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order.

Appellant is appealing from the granting of the Respondent's Motion for Summary Judgment.

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

(a) Parties:

Plaintiff/Appellant: SATICOY BAY LLC SERIES 7904 LIMBWOOD, a Nevada limited liability company,

Defendant/Respondents:

ELKHORN COMMUNITY ASSOCIATION, a Nevada non-profit corporation;

and

ATC ASSESSMENT COLLECTION GROUP, a foreign limited liability company,

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

N/A

23. Give a brief description (3 or 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's Complaint sought damages for (I) intentional and/or negligent misrepresentation, (II) breach of the duty of good faith under NRS 116.1113, (III) civil conspiracy, and (IV) Unjust Enrichment. All claims were dismissed by Order granting the HOA's Motion to Dismiss, and ATC's Joinder thereto, on February 18, 2022. No other claims by any other party were made.

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:

(b) Specify the parties remaining below:

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

☐ 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.

SATICOY BAY LLC SERIES

7904 LIMBWOOD

Name of appellant

Christopher L. Benner

Name of counsel of record

April 18, 2022

Date

/s/Christopher L. Benner, Esq

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on April 18, 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.)

Sean L. Anderson

Ryan D. Hastings

LEACH KERN GRUCHOW ANDERSON SONG

2525 Box Canyon Drive

Las Vegas, Nevada 89128

Attorneys for Defendants/Respondents

Elkhorn Community Association

Brandon E. Wood, Esq.
6625 S. Valley View Blvd, Suite 300
Las Vegas, NV 89118
Attorney for Defendant/Respondent
ATC Assessment Collection Group

Persi J. Mishel
10161 Park Run Dr., Suite 150
Las Vegas, NV 89145
NVSC Settlement Judge

April 18, 2022,

/s/ Joe Koehle

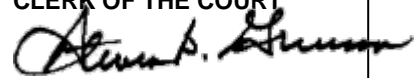
An employee of Roger P. Croteau & Associates

EXHIBIT 1

EXHIBIT 1

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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Steven D. Grierson
CLERK OF THE COURT



COMP

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

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

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:

Dept No:

COMPLAINT

Plaintiff, Saticoy Bay LLC Series 7904 Limbwood, a Nevada Limited Liability Company
("Plaintiff"), by and through its attorneys, Roger P. Croteau & Associates, Ltd., hereby complains
and alleges as follows:

PARTIES

1. At all times relevant to this matter, Plaintiff Saticoy Bay LLC Series 7904 Limbwood, was and is a Nevada limited liability company, licensed to do business and doing business in the County of Clark, State of Nevada.

2. Plaintiff is the current owner of real property located at 7904 Limbwood Court, Las Vegas, Nevada 89131 APN: 125-16-513-061 (the "Property").

3. Plaintiff acquired title to the Property by and through a Trustee's Deed Upon Sale following a homeowners' association lien foreclosure sale conducted on May 15, 2014 (the "HOA Foreclosure Sale"), by Defendant ATC Assessment Collection Group, LLC, a Nevada limited liability company, authorized to do business and doing business in Clark County, State of Nevada ("ATC" or, the "HOA Trustee"), on behalf of Defendant Elkhorn Community Association, a Nevada non-profit corporation (the "HOA").

4. The Foreclosure Deed was recorded in the Clark County Recorder's Office on June 20, 2014 as Instrument Number 20140620-0002296 (the "HOA Foreclosure Deed").

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

6. Upon information and belief, ATC is a debt collection agency doing business in the State of Nevada and is organized and existing under the laws of the State of Nevada.

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

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

9. Plaintiff is unaware of the true names and capacities whether individuals, corporations, associates, or otherwise of Defendants DOES I through X and ROE Corporations I through X, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes and thereupon alleges that the Defendants, and each of them, are engaged in the business of conducting homeowners' association lien foreclosure sales in the State of Nevada. Plaintiff will seek leave of this Court to amend this Complaint to allege the true names and capacities

1 of the DOES and ROE CORPORATIONS Defendants when the true names of the DOES and ROE
2 CORPORATIONS Defendants are ascertained.

3 **GENERAL ALLEGATIONS**

4 10. Under Nevada law, homeowners' associations have the right to charge property
5 owners residing within the community assessments to cover association expenses for maintaining or
6 improving the community, among other things.

7 11. When the assessments are not paid, a homeowners' association may impose a lien
8 against real property which it governs and thereafter foreclose on such lien.

9 12. NRS 116.3116 makes a homeowners' association's lien for assessments junior to a
10 first deed of trust beneficiary's secured interest in the property, with one limited exception; a
11 homeowners' association's lien is senior to a deed of trust beneficiary's secured interest "to the extent
12 of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent
13 of the assessments for common expenses based on the periodic budget adopted by the association
14 pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the
15 9 months immediately preceding institution of an action to enforce the lien." NRS 116.3116(2)(c).

16 13. In Nevada, when a homeowners' association properly forecloses upon a lien
17 containing a superpriority lien component, such foreclosure extinguishes a first deed of trust.

18 14. On or about May 26, 2005, Wendy Fidance (the "Former Owner") purchased the
19 Property. Thereafter, the Former Owner obtained a loan for the Property from Countrywide Home
20 Loans, Inc., ("Lender")¹, that was evidenced by a promissory note and secured by a deed of trust
21 between the Former Owner and Lender, recorded against the Property on May 26, 2005, for the loan
22 amount of \$208,000.00 (the "Deed of Trust").

23 15. The Deed of Trust indicated that Mortgage Electronic Registration Systems, Inc.
24 ("MERS") "is acting solely as a nominee for Lender and Lender's successors and assigns."

25
26
27

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

1 16. The Former Owner also executed a Planned Unit Development Rider along with the
2 Deed of Trust.

3 17. On May 12, 2011, MERS assigned the Deed of Trust to The Bank of New York
4 Mellon fka The Bank of New York as Trustee for the Certificate holders of CWABS, Inc., Asset-
5 backed Certificates, Series 2005-7 (“BONY”), via Assignment of Deed of Trust, which was recorded
6 against the Property on May 17, 2011 as Instrument Number 201105170000517.

7 18. On August 31, 2015, BONY assigned the Deed of Trust to Ditech, then called Green
8 Tree Servicing, LLC, also believed to be the servicer, via Assignment of Deed of Trust, which was
9 recorded against the Property on October 2, 2015 as Instrument Number 20151002-0004091.

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

12 20. On March 2, 2011, ATC, on behalf of HOA, recorded a Notice of Claim of Delinquent
13 Assessment Lien (the “NODAL”). The NODAL stated that the amount due to the HOA was \$711.07,
14 plus continuing assessments, interest, late charges, costs, and attorney’s fees (the “HOA Lien”).

15 21. On April 4, 2011, ATC, on behalf of HOA, recorded a Notice of Default and Election
16 to Sell Under Homeowners Association Lien (the “NOD”). The NOD stated that the HOA Lien
17 amount was \$1,586.07.

18 22. On or about June 10, 2011, Bank of America, N.A. (“**BANA**”), as successor by merger
19 to BAC, and then-servicer, through counsel Miles, Bauer, Bergstrom & Winters, LLP (“**Miles**
20 **Bauer**”), contacted ATC and HOA via U.S. Mail and requested adequate proof of the superpriority
21 amount of assessments by providing a breakdown of up to nine (9) months of common HOA
22 assessments in order for BANA to calculate the Super-Priority Lien Amount in an ostensible attempt
23 to determine and pay the amount of the HOA Lien entitled to priority over the Deed of Trust (“Super-
24 Priority Lien Amount”).

25 23. Upon information and belief, in response to Miles Bauer’s request to ATC for the
26 ledger identifying the Super-Priority Lien Amount, ATC provided a ledger indicating that \$1,670.00
27 was due through June 15 2011.

28 24. The ledger indicated that the HOA’s assessments were \$66.00.

1 25. On or about June 10, 2011, Miles Bauer provided a payment of \$594.00 to ATC,
2 which included payment of up to nine months of delinquent assessments (the “Attempted Payment”).

3 26. ATC rejected the amounts offered and provided by Miles Bauer by way of a
4 correspondence dated June 16, 2011.

5 27. On April 23, 2014, ATC, on behalf of the HOA, recorded a Notice of Sale against the
6 Property (“NOS”). The NOS stated that the total amount due the HOA was \$2,729.50 and set a sale
7 date for the Property of May 15, 2014 at 10:00 a.m., to be held at 930 So. Fourth St., Las Vegas,
8 Nevada 89101.

9 28. On May 15, 2014 ATC then proceeded to conduct the non-judicial foreclosure sale
10 on the Property and recorded the Trustee’s Deed Upon Sale, which stated that ATC sold the HOA’s
11 interest in the Property to Plaintiff at the HOA Foreclosure Sale for the highest bid amount of
12 \$3,321.00.

13 29. The Trustee’s Deed Upon Sale states that ATC “has complied with all requirement of
14 law.”

15 30. In none of the recorded documents, nor in any other notice recorded with the Clark
16 County Recorder’s Office, did HOA and/or AT specify or disclose that any individual or entity,
17 including but not limited to Miles Bauer, had paid any portion of the HOA Lien in advance of the
18 HOA Foreclosure Sale.

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

22 32. Upon information and belief, the debt owed to Lender by the Former Owner of the
23 Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market
24 value of the Property at the time of the HOA Foreclosure Sale.

25 33. Upon information and belief, Lender alleges that the Attempted Tender of the Super-
26 Priority Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby
27 changing the priority of the HOA Lien vis a vis the Deed of Trust.

28

1 34. Upon information and belief, Lender alleges that as a result of the Attempted Tender
2 of the Super-Priority Lien Amount, Plaintiff, as the purchaser of the Property at the HOA Foreclosure
3 Sale, acquired title to the Property subject to the Deed of Trust.

4 35. Upon information and belief, if the bidders and potential bidders at the HOA
5 Foreclosure Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien
6 Amount and/or by means of the Attempted Tender prior to the HOA Foreclosure Sale and that the
7 Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and potential
8 bidders would not have bid on the Property.

9 36. Had the Property not been sold at the HOA Foreclosure Sale, HOA and ATC would
10 not have received payment, interest, fees, collection costs and assessments related to the Property
11 and these sums would have remained unpaid.

12 37. ATC acted as an agent of HOA.

13 38. HOA is responsible for the actions and inactions of ATC pursuant to the doctrine of
14 respondeat superior.

15 39. HOA and ATC conspired together to hide material information related to the
16 Property: the HOA Lien; the Attempted Tender of the Super-Priority Lien Amount; and the priority
17 of the HOA Lien vis a vis the Deed of Trust, from the bidders and potential bidders at the HOA
18 Foreclosure Sale.

19 40. The information related to any Attempted Tender or payments made by the Lender,
20 or others, to the Super-Priority Lien Amount, was not recorded and would only be known by the
21 Lender, the HOA, and ATC.

22 41. Upon information and belief, HOA and ATC conspired to withhold and hide the
23 aforementioned information for their own economic gain and to the detriment of the bidders and
24 potential bidders at the HOA Foreclosure Sale.

25 42. As part of Plaintiff's practice and procedure in both NRS Chapter 107 and NRS
26 Chapter 116 foreclosure sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm
27 whether the sale was going forward on the scheduled date; and in the context of an NRS Chapter 116
28

1 foreclosure sale, Plaintiff would ask if anyone had paid anything on the account, including but not
2 limited to the Attempted Tender. See attached Declaration.

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

6 44. Plaintiff reasonably relied upon the HOA and/or ATC material omission of “tender”
7 of the Super-Priority Lien Amount and/or the Attempted Tender when the Plaintiff purchased the
8 Property

9 45. At the time relevant to this matter, Plaintiff would call the number associated with
10 ATC and attempt to speak with the HOA or the HOA’s agent to make the inquiries which were part
11 of Plaintiff’s practice and procedure.

12 46. Plaintiff would contact the HOA’s agent, here ATC, prior to the HOA Foreclosure
13 Sale to determine if the Property would in fact be sold on the date stated in the NOS, obtain the
14 opening bid, so Plaintiff could determine the amount of funds necessary for the auction and inquire
15 if any payments had been made; however, Plaintiff was told that the HOA Trustee would not give
16 out any financial information regarding the HOA account, including but not limited to if the “Super-
17 Priority Lien Amount” had been paid.

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

21 48. Plaintiff reasonably relied upon the HOA and/or HOA Trustee’s material omission of
22 “tender” of the Super-Priority Lien Amount and/or the Attempted Tender when Plaintiff purchased
23 the Property.

24 49. Plaintiff first discovered the Attempted Tender by the Lender on November 13, 2018,
25 by way of the disclosure by Plaintiff Ditech Financial in the Nevada Federal District Court case 2:17-
26 cv-00860-JAD-CWH, wherein a copy of the Attempted Tender check was disclosed for the first time
27 to Plaintiff.
28

FIRST CLAIM FOR RELIEF

(Intentional, or Alternatively Negligent, Misrepresentation)

50. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully herein.

51. At no point in time did HOA or ATC disclose to the bidders and potential bidders at the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the Super-Priority Lien Amount or provided the Attempted Tender, which was a clear misrepresentation. By retaining the Attempted Tender of the Super-Priority Lien Amount from Lender, ATC provided itself with the opportunity to perform and profit from many additional services on behalf of HOA related to the Property and proceedings related to the HOA Foreclosure Sale.

52. By retaining the Attempted Tender of the Super-Priority Lien Amount from Lender and proceeding with the HOA Foreclosure Sale, HOA received funds in satisfaction of the entire HOA Lien, rather than only the Super-Priority Lien Amount.

53. Consequently, HOA and ATC received substantial benefit because of the Attempted Tender of the Super-Priority Lien Amount from Lender and intentionally failing to disclose that information to the Plaintiff or the other bidders.

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

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

56. As a result of their desire that the bidders and potential bidders at the HOA Foreclosure Sale believe that the HOA Lien included amounts entitled to superpriority over the Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure Sale, HOA and ATC intentionally failed to disclose material information related to the Attempted Tender of the Super-Priority Lien Amount by Lender and did so for their own economic gain.

1 57. Alternatively, HOA and ATC were grossly negligent by failing to disclose material
2 information related to the Attempted Tender of the Super-Priority Lien Amount.

3 58. Upon information and belief, if ATC and/or HOA had disclosed the Attempted Tender
4 of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA Foreclosure Sale,
5 such bidders and potential bidders would not have bid upon the Property at the HOA Foreclosure
6 Sale.

7 59. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on
8 the Property.

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

11 61. Upon information and belief, if the Property had not been sold at the HOA Foreclosure
12 Sale, ATC would not have received payment for the work that it performed on behalf of HOA in
13 connection with the HOA Foreclosure Sale and related proceedings.

14 62. Plaintiff attended the sale as a ready, willing, and able buyer without knowledge of
15 the Attempted Tender.

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

19 64. As a direct result of HOA and ATC's retention of the Attempted Tender of the Super-
20 Priority Lien Amount and their subsequent intentional or grossly negligent failure to advise the
21 bidders and potential bidders at the HOA Foreclosure Sale of the facts related thereto, Plaintiff
22 presented the prevailing bid at the HOA Foreclosure Sale and thereby purchased the Property.

23 65. HOA and ATC each profited from their intentional and/or negligent
24 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing and
25 refusing to disclose the Attempted Tender of the Super-Priority Lien Amount.

26 66. HOA and ATC materially misrepresented the facts by hiding and failing to advise
27 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the HOA
28

1 and/or ATC that was not publicly available which ostensibly changed the priority of the Deed of
2 Trust vis a vis the HOA Lien.

3 67. HOA and ATC solely possessed information related to the Attempted Tender of the
4 Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale and intentionally
5 withheld such information for their own economic gain.

6 68. Alternatively, HOA and ATC were grossly negligent when they withheld information
7 from the bidders and purchaser at the HOA Foreclosure Sale related to the Attempted Tender of the
8 Super-Priority Lien Amount.

9 69. Plaintiff reasonably relied upon HOA and ATC's intentional or grossly negligent
10 failure to disclose the Attempted Tender of the Super-Priority Lien Amount.

11 70. HOA and ATC intended that the bidders and potential bidders at the HOA Foreclosure
12 Sale would rely on the lack of notice of the Attempted Tender of the Super-Priority Lien Amount at
13 the time of the HOA Sale and that their failure to disclose such information promoted the sale of the
14 Property.

15 71. HOA and ATC further intended that their failure of refusal to inform bidders and
16 potential bidders at the HOA Foreclosure Sale of the Attempted Tender of the Super-Priority Lien
17 Amount would lead such bidders and potential bidders to believe that the Deed of Trust was
18 subordinate to the HOA Lien and not being sold subject to the Deed of Trust.

19 72. The HOA and the ATC had a duty to disclose the Attempted Tender of the Super-
20 Priority Lien Amount.

21 73. The HOA and the ATC breached that duty to disclose the Attempted Tender to
22 Plaintiff.

23 74. As a result of the HOA and ATC's breach of its duty of care, duty of good faith, duty
24 of honesty in fact, and their duty of candor to bidders at the HOA Foreclosure Sale for their own
25 economic gain, Plaintiff has been economically damaged in many aspects.

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

1 payment had not been attempted or made, thereby allowing Plaintiff the opportunity to purchase a
2 property free and clear of the Deed of Trust and all other liens.

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

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

7 **SECOND CLAIM FOR RELIEF**

8 (Breach of the Duty of Good Faith)

9 78. Plaintiff repeats and realleges each and every allegation set forth above as if set forth
10 fully herein.

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

14 80. A duty of good faith includes within that term a duty of candor in its dealings.

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

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

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

25 82. Prior to the HOA Foreclosure Sale of the Property, Lender purports to have obtained
26 evidence detailing the Super-Priority Lien Amount.

1 83. Thereafter, Lender attempted to pay the Super-Priority Lien Amount to HOA or ATC
2 by the Attempted Tender.

3 84. HOA and ATC's rejection of the Attempted Tender and subsequent failure and refusal
4 to inform the bidders and potential bidders at the HOA Foreclosure Sale served to breach their duties
5 of good faith, fair dealings, honesty in fact, and candor pursuant to NRS Chapter 116 to Plaintiff.

6 85. HOA and the ATC owed a duty of good faith, fair dealings, honesty in fact, and candor
7 to Plaintiff.

8 86. By virtue of their actions and inactions, HOA and ATC substantially benefitted
9 economically to the detriment of Plaintiff.

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

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

14 **THIRD CLAIM FOR RELIEF**

15 (Conspiracy)

16 89. Plaintiff repeats and realleges each and every allegation set forth above as if set forth
17 fully herein.

18 90. HOA and ATC knew or should have known of Miles Bauer's Attempted Tender of
19 the Super-Priority Lien Amount.

20 91. Upon information and belief, acting together, Defendants reached an implicit or
21 express agreement amongst themselves whereby they agreed to withhold the information concerning
22 the Attempted Tender of the Super-Priority Lien Amount from bidders and potential bidders at the
23 HOA Foreclosure Sale.

24 92. Defendants knew or should have known that their actions and omissions would
25 economically harm the successful bidder and purchaser of the Property and benefit HOA and ATC.
26 To further their conspiracy, upon information and belief, Defendants retained the Attempted Tender
27
28

1 for the purpose of obtaining more remuneration than they would have otherwise obtained at a sale of
2 the subpriority portion of the HOA Lien.

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

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

7 **FOURTH CLAIM FOR RELIEF**

8 (Unjust Enrichment)

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

11 96. Plaintiff has conferred benefits on Defendants in the form of, but not limited to, the
12 payment of the HOA Lien.

13 97. The HOA and ATC are believed to retain the payment of the HOA Lien, and any
14 excess proceeds obtained from the HOA Sale, and have not distributed those proceeds to any
15 Defendant or third party.

16 98. Defendants have appreciated the foregoing benefits and has retained those benefits
17 under inequitable circumstances.

18 99. If Defendants retain the foregoing benefits, Plaintiff has been economically
19 damaged.

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

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

WHEREFORE, Plaintiff prays for judgment as follows:

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

Dated this November 10, 2021.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Christopher L. Benner, Esq.
Nevada Bar No. 8963
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1

DECLARATION OF IYAD HADDAD

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

I, Iyad Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the manager of Saticoy Bay LLC Series 7904 Limbwood (“Plaintiff”) in this matter. Plaintiff obtained its’ interest in the Property from the HOA Foreclosure Sale. In my capacity as set forth above, I have reviewed the foregoing Complaint. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

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

I would and did rely on whatever recital and/or announcements that were made at the HOA Foreclosure Sale. I also relied on the HOA Foreclosure Deed that stated that the HOA and HOA Trustee complied with all requirements of law. I reasonably relied upon the HOA and/or the HOA Trustee’s material omission of the tender and/or Attempted Payment of the Super Priority Lien Amount and/or the Attempted Payment or any portion thereof upon prior inquiry when I purchased the Property on behalf of the Plaintiff. As part of my practice and procedure in both NRS 107 and NRS 116 foreclosure sales, I would call the foreclosing agent/HOA Trustee and confirm whether the sale was going forward on the scheduled date; and in the context of an NRS 116 foreclosure sale, I would ask if anyone had paid anything on the account. I would contact the office of the foreclosing agent/HOA Trustee; I would ask the relevant questions to the employee who answered

1 the phone with the understanding that an employee who answered for the foreclosing agent/HOA
2 Trustee would be able to answer my questions, or direct me to another, appropriate, employee. I
3 would contact the HOA Trustee prior to the HOA Foreclosure Sale to determine if the Property
4 would in fact be sold on the date stated in the Notice of Sale, obtain the opening bid, so I could
5 determine the amount of funds necessary for the auction and inquire if any payments had been made;
6 however, I never inquired if the "Super Priority Lien Amount" had been paid. I would reasonably
7 rely on the information provided by employee representatives of the foreclosing agent/HOA Trustee
8 who was charged with responding to my inquiries. I personally do all of the research on any and all
9 properties that I purchased at the HOA Foreclosure Sales.

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

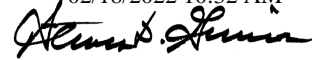
12 Executed this November 10, 2021

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EDDIE HADDAD

EXHIBIT 2

EXHIBIT 2


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 Association*, No. 78849, 2020 WL 6131467, at *1 (Nev. Oct. 16, 2020); *Tangiers*
14 *Drive Trust v. The Foothills at Macdonald Ranch Master Association*, 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

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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

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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

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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

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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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

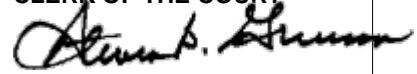
16 Brandon Wood	brandon@nas-inc.com
17 Roger Croteau	croteaulaw@croteaulaw.com
18 Susan Moses	susanm@nas-inc.com
19 Croteau Admin	receptionist@croteaulaw.com
20 Sean Anderson	sanderson@lkglawfirm.com
21 Robin Callaway	rcallaway@lkglawfirm.com
22 T. Pittsenbarger	cpittsenbarger@lkglawfirm.com
23 Patty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

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EXHIBIT 3

EXHIBIT 3



NEOJ
LEACH KERN GRUCHOW
ANDERSON SONG
SEAN L. ANDERSON
Nevada Bar No. 7259
sanderson@lkglawfirm.com
T. CHASE PITTSBARGER
Nevada Bar No. 13740
cpittsbarger@lkglawfirm.com
2525 Box Canyon Drive
Las Vegas, Nevada 89128
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
*Attorneys for Defendant Elkhorn
Community Association*

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

**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*
16
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28

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:

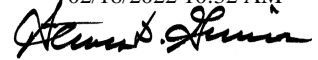
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed below:

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*

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 Association*, No. 78849, 2020 WL 6131467, at *1 (Nev. Oct. 16, 2020); *Tangiers*
14 *Drive Trust v. The Foothills at Macdonald Ranch Master Association*, 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

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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.



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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

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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

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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

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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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

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