

IN THE SUPREME COURT OF NEVADA

SATICOY BAY LLC SERIES 6387
HAMILTON GROVE, A NEVADA
LIMITED LIABILITY COMPANY

Appellant,
v.

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

Respondents.

Supreme Court Case No. 83669

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JOINT APPENDIX

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INDEX OF APPENDIX – CHRONOLOGICAL

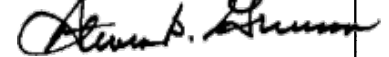
<u>DATE</u>	<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE</u>
02/28/2019	Complaint	1	JA001-012
08/04/2020	Affidavit of Service	1	JA013
08/04/2020	Affidavit of Service	1	JA014
06/22/2021	First Amended Complaint	1	JA015-035
07/06/2021	Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA036-086
07/08/2021	Nevada Association Services , Inc's Joinder to Defendant Sunrise Ridge Master Homeowner's Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA087-089
07/20/2021	Opposition to Defendant Sunrise Ridge Master Homeowners' Association Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment and Request for NRCp 56(D) Relief and Nevada Association Services Joinder	1	JA090-116
08/03/2021	Defendant Sunrise Ridge Master Homeowners' Association's Reply in Support of its Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA117-190
08/10/2021	Transcript of Proceedings Re: All Pending Motions	1	JA191-205
09/06/2021	Order Granting Defendant Sunrise Ridge Master Association's Reply in Support of its Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA206-213

09/13/2021	Errata to Order Granting Defendant Sunrise Ridge Master Association's Reply in Support of its Motion to Dismiss, or Alternatively, Motion for Summary Judgment		JA214-218
09/16/2021	Notice of Entry of Order		JA219-229
10/14/2021	Notice of Appeal		JA230-232

INDEX OF APPENDIX – ALPHABETICAL

<u>DATE</u>	<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE</u>
8/4/2020	Affidavit of Service	1	JA013
8/4/2020	Affidavit of Service	1	JA014
2/28/2019	Complaint	1	JA001-012
7/6/2021	Defendant Sunrise Ridge Master Homeowners' Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA036-086
8/3/2021	Defendant Sunrise Ridge Master Homeowners' Association's Reply in Support of its Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA117-190
9/13/2021	Errata to Order Granting Defendant Sunrise Ridge Master Association's Reply in Support of its Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA214-218
6/22/2021	First Amended Complaint	1	JA015-035
7/8/2021	Nevada Association Services, Inc.'s Joinder to Defendant Sunrise Ridge Master Homeowner's Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA087-089
10/14/2021	Notice of Appeal	1	JA230-232

9/16/2021	Notice of Entry of Order	1	JA219-229
7/20/2021	Opposition to Defendant Sunrise Ridge Master Homeowners' Association Motion to Dismiss Plaintiff's First Amended Complaint, or Alternatively, Motion for Summary Judgment and Request for NRCP 56(D) Relief and Nevada Association Services Joinder	1	JA090-116
9/6/2021	Order Granting Defendant Sunrise Ridge Master Association's Reply in Support of its Motion to Dismiss, or Alternatively, Motion for Summary Judgment	1	JA206-213
8/10/2021	Transcript of Proceedings Re: All Pending Motions	1	JA191-205



COMP

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DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY, LLC, SERIES 6387
HAMILTON GROVE, a Nevada limited
liability company,

Plaintiff,

vs.

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

Defendants

Case No.: A-19-790247-C
Dept. No.:

Department 6

COMPLAINT

COMES NOW, Plaintiff, Saticoy Bay, LLC, Series 6387 Hamilton Grove, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges against Defendants as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Saticoy Bay, LLC, Series 6387 Hamilton Grove ("*Saticoy Bay*"), is a Nevada series limited liability company, authorized to do business and doing business in the County of Clark, State of Nevada.

- 1 2. Saticoy Bay is the current owner of real property located at 6387 Hamilton Grove Avenue,
2 Las Vegas, Nevada 89122 (APN 161-15-711-008) (the "*Property*").
- 3 3. Saticoy Bay acquired title to the Property by Trustee's Deed Upon Sale dated July 11, 2014,
4 by and through a homeowners association lien foreclosure sale conducted on July 11, 2014
5 ("*HOA Foreclosure Sale*"), by Nevada Association Services, Inc., a Nevada corporation,
6 authorized to do business and doing business in Clark County, State of Nevada ("*HOA*
7 *Trustee*"), on behalf of Sunrise Ridge Master Homeowners Association, a Nevada domestic
8 non-profit corporation ("*HOA*"). The HOA Foreclosure Deed was recorded in the Clark
9 County Recorder's Office on July 14, 2014 ("*HOA Foreclosure Deed*").
- 10 4. Upon information and belief, HOA is a Nevada common interest community association or
11 unit owners' association as defined in NRS 116.011, is organized and existing under the laws
12 of the State of Nevada, and transacts business in the State of Nevada.
- 13 5. Upon information and belief, HOA Trustee is a debt collection agency doing business in the
14 State of Nevada, and is organized and existing under the laws of the State of Nevada.
- 15 6. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.
- 16 7. The exercise of jurisdiction by this Court over the parties in this civil action is proper
17 pursuant to NRS 14.065.

18 GENERAL ALLEGATIONS

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

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

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

6 12. On or about September 9, 2009, Salvador Partida Castillo and Veronica Delgado DePartida,
7 husband and wife as joint tenants, (“*the Former Owner*”) purchased the Property and
8 obtained a loan secured by the Property from Venta Financial Group, (“*Lender*”), that is
9 evidenced by a deed of trust between the Former Owner and Lender, recorded against the
10 Property on September 18, 2009, for the loan amount of \$130,001.00 (“*Deed of Trust*”). The
11 Deed of Trust provides that Mortgage Electronic Registration Services (“*MERS*”) is
12 beneficiary, as nominee for Lender and Lender’s successors and assigns. The Deed of Trust
13 was in the amount of \$130,001.00, and the Deed of Trust was recorded in the Clark County
14 Recorder’s office on September 18, 2009.

15 13. The Former Owner executed a Planned Unit Development Rider along with the Deed of
16 Trust, effective as of September 9, 2009.

17 14. On April 8, 2014, MERS, on behalf of Lender, assigned its beneficial interest by Assignment
18 of Deed of Trust to Bank of America, N.A. (“*BANA*”) and recorded the document in Clark
19 County Recorder’s office on April 9, 2014.

20 **The HOA Lien and Foreclosure**

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

23 16. Accordingly, on December 27, 2012, HOA Trustee, on behalf of HOA, recorded a Notice of
24 Delinquent Assessment Lien (“*HOA Lien*”). The HOA Lien stated that the amount due to the
25 HOA was \$1,120.50, as of December 21, 2012, plus interest, late charges, costs, fees for the
26 management body, and attorney’s fees.

27 17. On April 16, 2013, HOA Trustee, on behalf of the HOA, recorded a Notice of Default and
28 Election to Sell (“*NOD*”) against the Property. The NOD stated the amount due to the HOA

- 1 was \$1,708.38 as of April 12, 2013, plus late fees, collection fees and interest.
- 2 18. On September 3, 2013, HOA Trustee, on behalf of the HOA, recorded a Notice of Sale
3 against the Property ("NOS"). The NOS provided that the total amount due the HOA was
4 \$2,304.04 and set a sale date for the Property of September 27, 2013, at 10:00 A.M., to be
5 held at Nevada Association Services, Inc.
- 6 19. On or about September 18, 2013, after the NOS was recorded, BANA, through counsel
7 Miles, Bauer, Bergstrom & Winters, LLP ("*Miles Bauer*") contacted the HOA Trustee and
8 HOA via U.S. Mail and requested adequate proof of the super priority amount of assessments
9 by providing a breakdown of up to nine (9) months of common HOA assessments due at the
10 recording of the HOA Lien in order for BANA to calculate the Super Priority Lien Amount in
11 an ostensible attempt to determine the amount the HOA Lien entitled to super-priority
12 ("*Super-Priority Lien Amount*") .
- 13 20. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt to pay the
14 super-priority amount of the HOA Lien.
- 15 21. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate a
16 response from the HOA and HOA Trustee to the "September 18, 2013, Miles Bauer letter to
17 the HOA, care of the HOA Trustee..."
- 18 20. The Affidavit states that Miles Bauer used a Statement of Account from Nevada Association
19 Services, Inc., for a different property in the same HOA to determine a good faith payoff.
- 20 21. The ledger provided that quarterly HOA assessments were \$126.00.
- 21 22. On September 26, 2013, BANA, through Miles Bauer, provided a payment of \$378.00 to the
22 HOA Trustee, which included payment of up to nine months of delinquent assessments (the
23 "*Attempted Payment*").
- 24 23. HOA Trustee, on behalf of the HOA, rejected BANA's Attempted Payment of \$378.00.
- 25 25. On July 11, 2014, HOA Trustee then proceeded to non-judicial foreclosure sale on the
26 Property and recorded the HOA Foreclosure Deed on July 14, 2014, which stated that the
27 HOA Trustee sold the HOA's interest in the Property to the Plaintiff at the Foreclosure Sale
28 for the highest bid amount of \$22,100.00.

- 1 26. The Foreclosure Sale created excess proceeds.
- 2 27. After the NOS was recorded, BANA, the purported holder of the Deed of Trust recorded
- 3 against the Property, through its counsel, Miles Bauer, contacted HOA Trustee and HOA and
- 4 requested all amounts due the HOA by the Former Owner, upon information and belief,
- 5 Miles Bauer requested the sums due to the HOA by the Former Owner so it could calculate
- 6 the breakdown of nine (9) months of common HOA assessments in order for BANA to
- 7 calculate the Super Priority Lien Amount in an ostensible attempt to determine the amount of
- 8 the HOA Lien entitled to super-priority over the Deed of Trust.
- 9 28. In none of the recorded documents, nor in any other notice recorded with the Clark County
- 10 Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or
- 11 entity, including but not limited to BANA, had attempted to pay any portion of the HOA Lien
- 12 and/or the Super-Priority Lien Amount in advance of the HOA Foreclosure Sale.
- 13 29. Plaintiff appeared at the HOA Foreclosure Sale and presented the prevailing bid in the
- 14 amount of \$22,100.00, thereby purchasing the Property for said amount.
- 15 30. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the
- 16 HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted
- 17 to pay the Super-Priority Lien Amount.
- 18 31. Upon information and belief, the debt owed to Lender by the Former Owners of the Property
- 19 pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market value
- 20 of the Property at the time of the HOA Foreclosure Sale.
- 21 32. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority
- 22 Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby
- 23 changing the priority of the HOA Lien vis a vis the Deed of Trust.
- 24 33. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the
- 25 Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale
- 26 acquired title to the Property subject to the Deed of Trust.
- 27 34. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure
- 28 Sale were aware that an individual or entity had attempted to pay the Super-Priority Lien

1 Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and
2 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders
3 and potential bidders would not have bid on the Property.

4 35. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would
5 not have received payment, interest, fees, collection costs and assessments related to the
6 Property would have remained unpaid.

7 36. HOA Trustee acted as an agent of HOA.

8 37. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of
9 respondeat superior.

10 38. HOA and HOA Trustee conspired together to hide material information related to the
11 Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
12 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis
13 the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.

14 39. The information related to any Attempted Payment or payments made by Lender, BANA, the
15 homeowner or others to the Super Priority Lien Amount was not recorded and would only be
16 known by BANA, Lender, the HOA and HOA Trustees.

17 40. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide the
18 aforementioned information for their own economic gain and to the detriment of the bidders
19 and potential bidders at the HOA Foreclosure Sale.

20 41. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in
21 BANA's Complaint filed against Plaintiff, the HOA and HOA Trustee on February 26, 2016,
22 and served on the Plaintiff on February 29, 2016 ("*Discovery*") in the United States District
23 Court for the District of Nevada, Civil Action No. 2:16-cv-00408 (the "*Case*").

24 **FIRST CAUSE OF ACTION**

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

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

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

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

- 1 51. Upon information and belief, if HOA Trustee and/or HOA had disclosed the Attempted
2 Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the HOA
3 Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at
4 the HOA Foreclosure Sale.
- 5 52. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on the
6 Property.
- 7 53. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,
8 HOA would not have received funds in satisfaction of the HOA Lien.
- 9 54. Upon information and belief, if the Property had not been sold at the HOA Foreclosure Sale,
10 HOA Trustee would not have received payment for the work that it performed on behalf of
11 HOA in association with the HOA Foreclosure Sale and related proceedings.
- 12 55. Plaintiff attended the sale as a ready, willing and able buyer without knowledge of the
13 Attempted Payment.
- 14 56. Plaintiff would not have purchased the Property if it had been informed that any individual or
15 entity had paid or attempted to pay the Super-Priority Lien Amount in advance of the HOA
16 Foreclosure Sale.
- 17 57. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment of the
18 Super-Priority Lien Amount and their subsequent intentional or grossly negligent failure to
19 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related
20 thereto, Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby
21 purchased the Property.
- 22 58. HOA and HOA Trustee each profited from their intentional and/or negligent
23 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing
24 and refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
- 25 59. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to advise
26 bidders and potential bidders at the HOA Foreclosure Sale of information known solely to the
27 HOA and/or HOA Trustee that was not publicly available which ostensibly changed the
28 priority of Deed of Trust vis a vis the HOA Lien.

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

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

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

SECOND CAUSE OF ACTION

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

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 70 as if set forth fully herein.

72. NRS 116.1113 provides that every contract or duty governed by NRS 116, et seq., Nevada's version of the Common-Interest Ownership Uniform Act, must be performed in good faith in its performance or enforcement.

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

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

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

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

77. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure and refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to breach their duty of good faith, fair dealings and candor pursuant to NRS 116, et seq. to Plaintiff.

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

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

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

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

3 **THIRD CAUSE OF ACTION**

4 **(Conspiracy)**

5 82. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through
6 81 as if set forth fully herein.

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

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

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

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

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

22 WHEREFORE, Plaintiff prays for relief as follows:

- 23 1. For damages to be proven at trial in excess of \$15,000;
24 2. For punitive damages in an amount to be determined at trial;
25 3. For an award of reasonable attorneys' fees as special damages, and otherwise
26 under Nevada law;

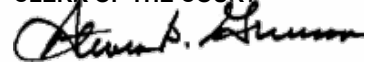
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- 1 4. For pre-judgment and post-judgment interest at the statutory rate of interest; and
2 5. For such other and further relief that the Court deems just and proper.

3 DATED this 28th day of February, 2019.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5 /s/ Roger P. Croteau
6 ROGER P. CROTEAU, ESQ.
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DISTRICT COURT

CLARK COUNTY, NEVADA

Saticoy Bay, LLC, Series 6387 Hamilton Grove, a
Nevada limited liability company

Plaintiff(s),

vs.

Sunrise Ridge aka Sunrise Ridge Master HOA, a
Nevada non-profit corporation, et al.

Defendant(s).

Case No.: A-19-790247-C

Dept. No.: 6

Date:
Time:

AFFIDAVIT OF SERVICE

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




State of Nevada, County of Clark
SIGNED AND SWORN to before me on this
6th day of March, 2019

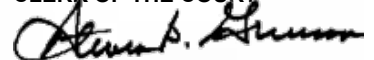
By: Susan Kruse

Notary Public:




Affiant: Susan Kruse
#: 1469

J & L Process Service, License # 1926
Work Order No: 19-7063



AFFT

Roger P. Croteau & Associates, Ltd.
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State Bar No.: 4958
Attorney(s) for: Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Saticoy Bay, LLC, Series 6387 Hamilton Grove, a
Nevada limited liability company

Plaintiff(s),

vs.

Sunrise Ridge aka Sunrise Ridge Master HOA, a
Nevada non-profit corporation, et al.

Defendant(s).

Case No.: A-19-790247-C

Dept. No.: 6

Date:
Time:


AFFIDAVIT OF SERVICE

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



State of Nevada, County of Clark
SIGNED AND SWORN to before me on this
6th day of March, 2019

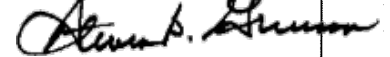
By: Diana Brown


Notary Public:
Affiant: Diana Brown
#: R-033810

J & L Process Service, License # 1926
Work Order No: 19-7064

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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY, LLC, SERIES 6387
HAMILTON GROVE, a Nevada limited liability
company,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-790247-C

Dept. No.: 6

FIRST AMENDED COMPLAINT

Plaintiff, SATICOY BAY, LLC, SERIES 6387 HAMILTON GROVE, a Nevada limited liability company ("Plaintiff"), by and through its attorneys, Roger P. Croteau & Associates, Ltd., hereby complains and alleges as follows:

PARTIES AND JURISDICTION

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

1 2. Plaintiff is the current owner of real property located at 6387 Hamilton Grove
2 Avenue, Las Vegas, Nevada 89122 (APN 161-15-711-008) (the "Property").

3 3. Plaintiff acquired title to the Property by and through a Trustee's Deed Upon Sale
4 following a homeowners' association lien foreclosure sale conducted on July 11, 2014 (the "HOA
5 Foreclosure Sale"), by Defendant Nevada Association Services, Inc. d/b/a Assessment Management
6 Services, a Nevada non-profit corporation, authorized to do business and doing business in Clark
7 County, State of Nevada (the "HOA Trustee"), on behalf of Defendant Sunrise Ridge Master
8 Homeowners Association, a Nevada domestic non-profit corporation (the "HOA").

9 4. The Foreclosure Deed was recorded in the Clark County Recorder's Office on July
10 14, 2014 (the "HOA Foreclosure Deed").

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

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

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

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

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21
22 **GENERAL ALLEGATIONS**

23 9. Under Nevada law, homeowners' associations have the right to charge property
24 owners residing within the community assessments to cover association expenses for maintaining
25 or improving the community, among other things.
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1 10. When the assessments are not paid, a homeowners' association may impose a lien
2 against real property which it governs and thereafter foreclose on such lien.

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

12 12. In Nevada, when a homeowners' association properly forecloses upon a lien
13 containing a superpriority lien component, such foreclosure extinguishes a first deed of trust.
14

15 13. On or about September 9, 2009, Salvador Partida Castillo and Veronica Delgado
16 DePartida, husband and wife as joint tenants (the "Former Owners") purchased the Property.
17 Thereafter, the Former Owners obtained a loan for the Property from Venta Financial Group,
18 ("Lender"),¹ that was evidenced by a promissory note and secured by a deed of trust between the
19 Former Owners and Lender, recorded against the Property on September 18, 2009, for the loan
20 amount of \$130,001.00 (the "Deed of Trust").
21

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

25 15. The Former Owners also executed a Planned Unit Development Rider along with the
26 Deed of Trust.
27

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

1 16. On April 8, 2014, MERS assigned the Deed of Trust to Bank of America, N.A.
2 ("BANA")² via Assignment of Deed of Trust, which was recorded against the Property on April 9,
3 2014.

4 17. Upon information and belief, the Former Owners of the Property failed to pay to the
5 HOA all amounts due pursuant to the HOA's governing documents.

6 18. On December 27, 2012, HOA Trustee, on behalf of HOA, recorded a Notice of Claim
7 of Delinquent Assessment Lien (the "NODAL"). The NODAL stated that the amount due to the
8 HOA was \$1,120.50, including late fees, collection fees and interest (the "HOA Lien").
9

10 19. On or about September 18, 2013, after the NOS was recorded, BANA, through
11 counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted the HOA Trustee and
12 HOA via U.S. Mail and requested adequate proof of the super priority amount of assessments
13 ("Super-Priority Lien Amount") by providing a breakdown of nine (9) months of common HOA
14 assessments in order for Lender to calculate the Super Priority Lien Amount, in an ostensible attempt
15 to determine the amount the HOA Lien entitled to super-priority.
16

17 20. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt
18 to pay the Super-Priority Lien Amount.
19

20 21. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate
21 a response from the HOA and HOA Trustee to the September 18, 2013 Miles Bauer letter to the
22 HOA, care of the HOA Trustee.

23 22. The Affidavit states that Miles Bauer used a Statement of Account from Nevada
24 Association Services, Inc., for a different property in the same HOA to determine a good faith
25 payoff.
26

27
28 ² Upon information and belief, BANA was the servicer of the loan secured by the Deed of Trust.

1 23. On September 26, 2013, BANA, through Miles Bauer, provided a payment of
2 \$378.00 to the HOA Trustee, which included payment of up to nine months of delinquent
3 assessments (the "Attempted Payment").

4 24. HOA Trustee, on behalf of the HOA, rejected Lender's Attempted Payment of
5 \$378.00.
6

7 25. On January 9, 2014, HOA Trustee, on behalf of HOA, recorded a Notice of Default
8 and Election to Sell Under Homeowners Association Lien (the "NOD"). The NOD stated that the
9 HOA Lien amount was \$1,708.38.

10 26. On May 20, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of
11 Foreclosure Sale against the Property ("NOS"). The NOS stated that the total amount due the HOA
12 was \$2,415.24 and set a sale date for the Property of June 11, 2014 at 10:00 a.m., to be held at 6224
13 West Desert Inn Road, Las Vegas, Nevada.
14

15 27. Despite Lender's Attempted Payment, on, HOA Trustee then proceeded to conduct
16 the non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure Deed, which
17 stated that the HOA Trustee sold the HOA's interest in the Property to Plaintiff at the HOA
18 Foreclosure Sale for the highest bid amount of \$22,100.00.
19

20 28. The Foreclosure Sale created excess proceeds.

21 29. The HOA Foreclosure Deed states that HOA Trustee "all requirement of law... have
22 been complied with."

23 30. In none of the recorded documents, nor in any other notice recorded with the Clark
24 County Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or
25 entity, including but not limited to the Lender, had attempted to pay any portion of the HOA Lien
26 in advance of the HOA Foreclosure Sale.
27
28

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

4 32. Upon information and belief, the debt owed to Lender by the Former Owners of the
5 Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market
6 value of the Property at the time of the HOA Foreclosure Sale.

7 33. Upon information and belief, Lender alleges that the Attempted Payment of the
8 Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien Amount,
9 thereby changing the priority of the HOA Lien vis a vis the Deed of Trust.

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

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

18 36. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee
19 would not have received payment, interest, fees, collection costs and assessments related to the
20 Property and these sums would have remained unpaid.

21 37. HOA Trustee acted as an agent of HOA.

22 38. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the
23 doctrine of respondeat superior.
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1 39. HOA and HOA Trustee conspired together to hide material information related to
2 the Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
3 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis the
4 Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.

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

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

12
13 42. As part of Plaintiff's practice and procedure in both NRS Chapter 107 and NRS
14 Chapter 116 foreclosure sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm
15 whether the sale was going forward on the scheduled date; and in the context of an NRS Chapter
16 116 foreclosure sale, Plaintiff would ask if anyone had paid anything on the account.

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

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

24 45. At all times relevant to this matter, if Plaintiff learned of a "tender" or payment either
25 having been attempted or made, Plaintiff would not purchase the Property offered in that HOA
26 Foreclosure Sale.
27
28

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

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

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

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

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

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

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

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

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

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

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

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

20 65. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to
21 advise bidders and potential bidders at the HOA Foreclosure Sale of information known solely to
22 the HOA and/or HOA Trustee that was not publicly available which ostensibly changed the priority
23 of Deed of Trust vis a vis the HOA Lien.
24

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

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

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

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

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

16 71. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the
17 Super-Priority Lien Amount.
18

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

21 73. As a result of the HOA and HOA Trustee's breach of their duties of care, honesty in
22 fact, good faith, and candor to bidders at the HOA Foreclosure Sale for their own economic gain,
23 Plaintiff has been economically damaged in many aspects.
24

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

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

3 75. 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

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

8 **SECOND CLAIM FOR RELIEF**

9 (Breach of the Duty of Good Faith)

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

12 78. In the State of Nevada, every contract must be performed in good faith in its
13 performance or enforcement.
14

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

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

18 81. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the
19 Attempted Payment.
20

21 82. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure
22 and refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to breach
23 their duty of good faith, fair dealings, honesty in fact, and candor.

24 83. HOA and the HOA Trustee owed a duty of good faith, fair dealings, honesty in fact,
25 and candor to Plaintiff.
26
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1 84. By virtue of their actions and inactions, HOA and HOA Trustee substantially
2 benefitted economically to the detriment of Plaintiff.

3 85. 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 86. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
6 Procedure as further facts become known.

7
8 **THIRD CLAIM FOR RELIEF**

9 (Conspiracy)

10 87. Plaintiff repeats and re-alleges each and every allegation contained above as if set
11 forth fully herein.

12 88. Defendants knew or should have known of the Attempted Payment of the Super-
13 Priority Lien Amount.

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

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

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

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

3 **FOURTH CLAIM FOR RELIEF**

4 (Violation of NRS Chapter 113)

5
6 93. Plaintiff repeats and realleges each and every allegation contained above as if set
7 forth fully herein.

8 94. Pursuant to NRS Chapter 113, Defendants must disclose the Attempted Payment
9 and/or any payments made or attempted to be made by Lender, the Former Owner, or any agents of
10 any other party to the bidders and Plaintiff at the HOA Foreclosure Sale.

11 95. Defendants were required, but failed, to provide a Seller's Real Property Disclosure
12 Form ("SRPDF") to the "Purchaser," as defined in NRS Chapter 116, at the time of the HOA
13 Foreclosure Sale.

14 96. Defendants were a "seller" under NRS Chapter 113.

15 97. NRS Chapter 116 foreclosure sales are not exempt from the disclosure mandates of
16 NRS Chapter 113.

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

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

23 (a) Common Interest Community Declaration and Bylaws available?

24 (b) Any periodic or recurring association fees?

25 (c) Any unpaid assessments, fines or liens, and any warnings or notices
26 that may give rise to an assessment, fine or lien?
27
28

(d) Any litigation, arbitration, or mediation related to property or common areas?

(e) Any assessments associated with the property (excluding property tax)?

(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?

...

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

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

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

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

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

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

The content of the disclosure is based on what the seller is aware of at the time. If, after completion of the disclosure form, the seller discovers a new defect or notices that a previously disclosed condition has worsened, the seller must inform the

1 purchaser, in writing, as soon as practicable after discovery of the condition, or
2 before conveyance of the property.

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

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

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

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

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

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

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

19 106. As a result of Defendants' failure to provide Plaintiff with the mandated SRPDF, and
20 disclosures required therein, that were known to Defendants, Plaintiff has been economically
21 damaged.

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

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

26 ///

27 ///

FIFTH CLAIM FOR RELIEF

(Unjust Enrichment)

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

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

111. The HOA and HOA Trustee are believed to retain the payment of the HOA Lien, and any excess proceeds obtained from the HOA Sale, and have not distributed those proceeds to any Defendant or third party.

112. Defendants have appreciated the foregoing benefits and has retained those benefits under inequitable circumstances.

113. If Defendants retain the foregoing benefits, Plaintiff has been economically damaged.

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

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

WHEREFORE, Plaintiff prays for relief as follows:

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

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5. For such other and further relief that the Court deems just and proper.

Dated this 22nd day of June, 2021.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau

Roger P. Croteau, Esq.

Nevada Bar No. 4958

Christopher L. Benner, Esq.

Nevada Bar No. 8963

2810 W. Charleston Blvd., Ste. 75

Las Vegas, Nevada 89102

Attorneys for Plaintiff

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 6387 Hamilton Grove (“*Saticoy*”). Saticoy obtained its’ interest in the Property from the HOA Foreclosure Sale. In my capacity as set forth above, I have reviewed the foregoing Amended Complaint. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

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

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

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

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1 would ask the relevant questions to the employee who answered the phone with the understanding
2 that an employee who answered for the foreclosing agent/HOA Trustee would be able to answer my
3 questions, or direct me to another, appropriate, employee.

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

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

13 Executed this 14 day of June, 2021.

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17 EDDIE HADDAD
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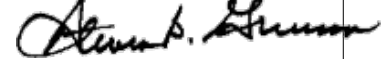
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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/Joe Koehle

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



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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-790247-C
Dept.: VI

**DEFENDANT SUNRISE RIDGE
MASTER HOMEOWNERS'
ASSOCIATION'S MOTION TO DISMISS,
OR ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

(HEARING DATE REQUESTED)

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises from a non-judicial foreclosure sale conducted on real property located at 6387 Hamilton Grove Avenue in Las Vegas, Nevada 89122 ("Property"). The sale took place on July 11, 2014, wherein the Property sold to Plaintiff Saticoy Bay LLC Series 6387 Hamilton Grove ("Saticoy Bay") for \$22,100.

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

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

Sunrise Ridge filed a Motion to Dismiss the Original Complaint (the "MTD/MSJ"), and the parties thereafter filed supplemental briefing. Before the MTD/MSJ could be heard, a stay was entered, and remained in effect for approximately a year. Following the lifting of the stay, the parties stipulated to take the MTD/MSJ off calendar and allow Plaintiff to amend its Complaint.

Plaintiff has now filed its First Amended Complaint (the "FAC"), but it suffers from the same issues that plagued the Original Complaint, namely that Plaintiff does not allege that he actually spoke with someone from Sunrise Ridge or NAS and was specifically advised that no payment or attempted payment had been made on the

1 HOA's account. Rather, Plaintiff's allegations are still limited to vague and general
2 assertions about Plaintiff's "practice and procedure." Moreover, the FAC asserts as its
3 Fourth Cause of Action a claim for Violation of NRS 113, but the Nevada Supreme
4 Court has specifically determined that attempted tenders on an HOA's lien by lenders
5 do not constitute a "defect" in need of disclosure under NRS 113. The FAC also tacks
6 on a claim for unjust enrichment, but this claim is untenable; because there was nothing
7 illegal about Sunrise Ridge's or NAS' conduct, it was not inequitable for them to retain
8 Plaintiff's payment for purchasing the Property. As set forth in detail herein, these
9 arguments are without merit, and the Court should dismiss Plaintiff's FAC in its entirety,
10 or alternatively grant summary judgment in Sunrise Ridge's favor on all of Plaintiff's
11 causes of action given key factual representations by Plaintiff in written discovery
12 responses.

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

14 On or around September 9, 2009, Salvador Castillo and Veronica Delgado de
15 Partida ("Borrowers") purchased the Property. See FAC ¶ 13. Borrowers' home loan
16 was secured by a Deed of Trust executed in favor of Venta Financial Group, Inc.
17 ("Venta"). *Id.*

18 Sometime thereafter, Borrowers' defaulted on their homeowners' assessments.
19 *Id.* ¶ 17. Therefore, on December 27, 2012, Sunrise Ridge, through NAS, recorded a
20 notice of delinquent assessment lien against the Property. *Id.* ¶ 18.

21 On or about September 18, 2013, BANA, through counsel Miles Bauer
22 Bergstrom & Winters LLP ("Miles Bauer") contacted NAS and requested proof of the
23 super priority amount of assessments to calculate the superpriority lien amount. *Id.* ¶ 19.
24 On September 26, 2013, BANA, through Miles Bauer, provided a payment of \$378.00 to
25 NAS in an attempt to pay off the nine months of delinquent assessments (the
26 "Attempted Payment"). *Id.* ¶ 23. NAS, on behalf of Sunrise Ridge, rejected the
27 Attempted Payment. *Id.* ¶ 24.

28 ///

1 On January 9, 2014, Sunrise Ridge, through NAS, recorded a notice of default
2 and election to sell. See FAC ¶ 25. On or around May 20, 2014, Sunrise Ridge, through
3 NAS, recorded a notice of sale. See FAC ¶ 26. On July 11, 2014, Sunrise Ridge,
4 through NAS, sold the Property to Saticoy Bay for \$22,100. *Id.* ¶ 27.

5 **III. PROCEDURAL BACKGROUND**

6 On February 26, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS, and
7 Saticoy Bay in the United States District Court, District of Nevada, Case No. 2:16-cv-
8 00408-RFB-PAL ("Federal Action"). The complaint alleged causes of action for Quiet
9 Title/Declaratory Judgment, Breach of NRS 116.1113, Wrongful Foreclosure, and
10 Injunctive Relief.

11 On February 28, 2019, Sunrise Ridge and BANA filed competing motions for
12 summary judgment. That same day, Saticoy Bay filed the instant lawsuit against
13 Sunrise Ridge and NAS alleging causes of action for Intentional/Negligent
14 Misrepresentation, Breach of NRS 116, and Conspiracy. On April 15, 2019, Sunrise
15 Ridge filed a Motion to Dismiss Plaintiff's Complaint or in the Alternative Motion for
16 Summary Judgment ("MTD/MSJ"). On July 16, 2019, this matter was stayed for six
17 months pending resolution of proceedings in the Federal Action.

18 On July 15, 2020, the stay was lifted. On October 14, 2020, at the time set for
19 hearing argument on Sunrise Ridge's MTD/MSJ, the parties stipulated to take the
20 hearing off calendar and allow Plaintiff to amend its Complaint (the "SAO"). The SAO
21 was filed on June 17, 2021.

22 On June 22, 2021, Plaintiff filed its First Amended Complaint (the "FAC"),
23 asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS
24 116.1113; 3) Conspiracy; 4) Violation of NRS 113; and 5) Unjust Enrichment.

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1 **IV. STANDARD OF REVIEW**

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

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

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

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

20 “The purpose of summary judgment is to pierce the pleading and to assess the
21 proof in order to see whether there is a genuine need for trial.” *Matushita Elec. Indus.*
22 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is appropriate
23 when the pleadings, the discovery and disclosure materials on file, and any affidavits
24 “show [] that there is no genuine disputes as to any material fact and the movant is
25 entitled to judgment as a matter of law.” Nev. R. Civ. P. 56(b); see also *Celotex v.*
26 *Catrett*, 477 U.S. 317, 330 (1986); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608,
27 610, 894 P.2d 988 (1995).

28 ///

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

8 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable
9 jury to return a verdict for the nonmoving party. See *Anderson*, 477 U.S. at 248 (1986).
10 Further, a dispute will only preclude the entry of summary judgment if it could affect the
11 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to
12 raise a genuine issue of material fact is enough to require a judge or jury to resolve the
13 parties’ differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary
14 judgment ion, a court views all facts and draws all inferences in a light most favorable to
15 the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 100,
16 1103 (9th Cir. 1986).

17 **C. Saticoy Bay’s Misrepresentation Claim Fails as a Matter of Law**

18 a. Plaintiff Fails to State a Claim for Relief for Intentional/Negligent 19 Misrepresentation

20 To establish a claim for misrepresentation, the plaintiff carries the burden of
21 proving each of the following elements: (1) a false representation was made by the
22 defendant; (2) defendant’s knowledge or belief that its representation was false or that
23 defendant has an insufficient basis of information for making the representation; (3)
24 defendant intended to induce plaintiff to act or refrain from acting upon the
25 misrepresentation; and (4) damage to the plaintiff as a result of relying on the
26 misrepresentation. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441,
27 447 (Nev.,1998). Here, even with the new allegations in the FAC, Plaintiff is unable to
28 demonstrate a false representation under the undisputed facts.

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

12 In a recent string of unpublished opinions issued by the Nevada Supreme Court
13 last year, the Court erased any doubt as to whether the pre-2015 NRS 116 required
14 HOAs and their agents to affirmatively disclose payments to potential purchasers. See,
15 e.g., *Saticoy Bay, Ltd. Liab. Co. v. Mountain Gate Homeowners' Ass'n*, 473 P.3d 1046,
16 2020 WL 6129970 (Nev. 2020) (stating that "appellant's claims for misrepresentation
17 and breach of NRS 116.1113 fail because respondent had no duty to proactively
18 disclose whether a superpriority tender had been made"); see also *Saticoy Bay v.*
19 *Silverstone Ranch Cmty. Ass'n*, 473 P.3d 1045 (Nev. 2020); *Bay v. Travata & Montage*
20 *at Summerlin Ctr. Homeowners' Ass'n*, 474 P.3d 333 (Nev. 2020); and *Saticoy Bay v.*
21 *South Shores Community Association*, 473 P.3d 1046, 2020 WL 6130913 (Nev. 2020).

22 Given that the pre-2015 version of NRS 116 imposed no duty on either the HOA
23 or NAS to affirmatively disclose payments or attempted payments on the HOA's lien, the
24 only way a misrepresentation could be made is for Plaintiff to have affirmatively inquired
25 about the same, and be advised specifically that there were no such payments. Here,
26 none of the allegations in the FAC allege that Plaintiff actually asked the HOA or NAS
27 whether any person or entity had attempted payment on the HOA lien, and that Plaintiff
28 was specifically informed that there had been no such payments. Rather, the FAC

1 merely asserts that Plaintiff had a “practice and procedure” of contacting the HOA
2 Trustee prior to foreclosure sales and making this inquiry:

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

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

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

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

18 See FAC at ¶¶42-45 (emphasis added). The Nevada Supreme Court explicitly found
19 such language inadequate to plead a claim for misrepresentation under NRS 116. See
20 *Mountain Gate Homeowners’ Ass’n*, 473 P.3d at 1046, fn 2 (noting that “although
21 appellant’s complaint alleges generally that appellant had a ‘pattern and practice’ of
22 ‘attempt[ing] to ascertain whether anyone had attempted to or did tender any payment,
23 **the complaint does not allege that appellant specifically asked respondents**
24 **whether a superpriority tender had been made in this case...**”) (emphasis added).
25 Accordingly, Plaintiff’s First Cause of Action for Intentional/Negligent Misrepresentation
26 fails (again) to state a claim, and must be dismissed.

27 b. Plaintiff’s Discovery Responses Confirm That There Was No
28 Misrepresentation

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

///

INTERROGATORY NO. 21:

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

ANSWER TO INTERROGATORY NO. 21:

None.

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

REQUEST FOR ADMISSION NO. 15:

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

RESPONSE TO REQUEST NO. 15:

Admit.

REQUEST FOR ADMISSION NO. 16:

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

RESPONSE TO REQUEST NO. 16:

Admit.

REQUEST FOR ADMISSION NO. 17:

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

RESPONSE TO REQUEST NO. 17:

Admit.

REQUEST FOR ADMISSION NO. 18:

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

RESPONSE TO REQUEST NO. 18:

Admit.

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

10
11 **D. Saticoy Bay's Claim for Breach of the Duty of Good Faith Fails as a
Matter of Law.**

12 In addition to misrepresentation, Plaintiff alleges that the HOA breached its duty
13 of good faith under NRS 116.1113 by failing to affirmatively disclose the bank's
14 attempted tender. This allegation is simply without merit. While NRS 116.1113 imposes
15 a duty of good faith in the performance of every contract or duty governed by the
16 statute, the only "duties" owed to Plaintiff are outlined in sections 116.3116 through
17 116.31168. Here, the HOA fully complied with these duties by complying with all notice
18 and recording requirements set forth in NRS 116 as it existed at the time of the sale. As
19 discussed above, the HOA was not required to disclose the existence of a pre-sale
20 tender of the superpriority portion of the lien. Further, it was specifically prohibited from
21 giving any purchaser at the auction a so-called warranty deed—the only type of deed it
22 could give to any purchaser was one made "without warranty" pursuant to NRS
23 116.31164(3)(a).

24 Most importantly, because the HOA had no duty to disclose payments/attempted
25 payments, its failure to do so does not constitute a violation of NRS 116.1113. See
26 *South Shores Community Association*, 473 P.3d 1046, 2020 WL 6130913 ("[i]n
27 particular, appellant's claims for misrepresentation and breach of NRS 116.1113 fail
28

1 because respondents had no duty to proactively disclose whether a superpriority tender
2 had been made.”).

3 As such, Plaintiff’s Second Cause of Action fails to state a claim upon which relief
4 can be granted, and should be dismissed accordingly. Alternatively, Sunrise Ridge is
5 entitled to summary judgment in its favor on this cause of action because Plaintiff’s
6 discovery responses from the Federal Action demonstrate that there cannot have been
7 any misrepresentation made by the HOA and/or NAS, and therefore there is no basis
8 for finding that they breached the duty of good faith under NRS 116.1113.

9 **E. Saticoy Bay’s Conspiracy Claim Fails as a Matter of Law.**

10 To establish a claim for civil conspiracy, a plaintiff must show (1) that
11 Defendants, **by acting in concert**, intended to accomplish an unlawful objective for the
12 purpose of harming plaintiff; and (2) that plaintiff sustained damages resulting from
13 defendants’ act or acts. See *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*,
14 114 Nev. 1304, 971 P.2d 1251 (1999) (emphasis added); see also *Dow Chemical Co. v.*
15 *Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998). Saticoy Bay cannot meet this evidentiary
16 burden.

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

28 ///

1 Saticoy Bay has not plead facts sufficient to meet this standard. To the contrary,
2 Saticoy Bay pleads that Sunrise Ridge and NAS, "acting together ... reached an implicit
3 or express agreement amongst themselves whereby they agreed to withhold the
4 information concerning the Attempted Payment of the Super-Priority Lien Amount..."
5 See FAC ¶ 89. It makes no allegations whatsoever that NAS acted outside of its scope
6 as Sunrise Ridge's agent or for its individual advantage. Its conspiracy claim must be
7 dismissed accordingly. Alternatively, Sunrise Ridge is entitled to summary judgment in
8 its favor on this cause of action because Plaintiff's discovery responses from the
9 Federal Action demonstrate that there cannot have been any misrepresentation made
10 by the HOA and/or NAS; thus, Plaintiff is unable to demonstrate the "unlawful objective"
11 needed to support his conspiracy claim.

12 **F. Saticoy Bay's Claim for Breach of NRS 113 Must Be Dismissed Because**
13 **BANA's Tender is Not a "Defect" on the Property**

14 Plaintiff argues that Sunrise Ridge was required to disclose the existence of the
15 tender pursuant to NRS 113.130, a statute which governs the disclosure of certain
16 defects on residential property, as well as services, land uses (open range), and zoning
17 classifications. See FAC at ¶¶98 – 108. Plaintiff's claim is premised on the notion that
18 the fact of a payment or attempted payment of the HOA lien constitutes a "defect"
19 required to be disclosed under NRS 113.130. The Nevada Supreme Court has
20 provided much-needed guidance on this area, and has determined that "NRS 113.130
21 requires a seller to disclose 'defect[s]', not superpriority tenders." *Mountain Gate*, 473
22 P.3d 1046, 2020 WL 6130913 at *2. In affirming dismissal of the plaintiff's Violation of
23 NRS 113 claim, the Court stated that "[t]o the extent that a deed of trust could
24 conceivably constitute a 'condition,' we note that the subject property technically has the
25 same 'value' regardless of whether it is encumbered by the deed of trust." *Id.* This
26 further confirms that a payment or attempted payment of the HOA's super-priority lien is
27 not a fact required to be disclosed under NRS 113 et seq. The Nevada Supreme Court
28 also refuted the notion that disclosure was required under the Seller's Real Property

1 Disclosure Form ("SRPDF"), stating "[n]or are we persuaded that the Seller's Real
2 Property Disclosure Form would require disclosure of a superpriority tender." *Id* at fn. 5.

3 Plaintiff's arguments on this point have all previously been considered and
4 rejected by the Nevada Supreme Court, and Sunrise Ridge is entitled to dismissal of
5 Plaintiff's claim for Violation of NRS 113.

6 **G. Plaintiff's Claim for Unjust Enrichment Must be Dismissed**

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

13 Here, the FAC alleges that Plaintiff has conferred benefits on Defendants in the
14 form of the payment of the HOA lien and excess proceeds from the Foreclosure Sale,
15 that Defendants have appreciated said benefits, and that they have retained those
16 benefits under inequitable circumstances. See FAC at ¶¶109 – 113. Given that
17 Defendants had no obligation to affirmatively disclose the fact of any payments or
18 attempted payments to potential purchasers such as Plaintiff, and the fact that Plaintiff
19 does not allege to have specifically been advised by Sunrise Ridge or NAS here
20 regarding the existence of such payments, there was nothing inequitable about Sunrise
21 Ridge receiving and retaining the amounts it was paid for the Property at the foreclosure
22 sale. Plaintiff does not deny that the Property was transferred to him after the
23 foreclosure sale and a Foreclosure Deed confirming this was recorded. See FAC at
24 ¶25. He received what he paid for. There is nothing inequitable about the HOA/NAS
25 receiving and retaining the amounts Plaintiff paid for the Property.

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1 Further, the Nevada Supreme Court has previously found that Plaintiff lacks
2 standing to assert claims relating to proceeds of NRS 116 foreclosure sales. In *Saticoy*
3 *Bay LLC Series 9050 W Warm Springs 2079 v. Nevada Ass'n Servs.*, 135 Nev. 180,
4 185, 444 P.3d 428, 433 (2019), in contesting the original owner's efforts to redeem the
5 foreclosed property under NRS 116.31166(3), Plaintiff argued that the owner did not
6 comply with the redemption statute when he directed NAS to put the proceeds of the
7 foreclosure sale toward redemption of the property. In rejecting this argument, the
8 Nevada Supreme Court stated as follows:

9 This court agrees with *Saticoy Bay* that the statute required NAS to
10 distribute the proceeds of the sale to Ditech immediately following the sale,
11 **however, Ditech's receipt or non-receipt of the proceeds is not for**
12 **Saticoy Bay to dispute.** . . . Rather, the statute explicitly places
13 responsibility on the person conducting the sale to distribute the proceeds of
14 the sale pursuant to NRS 116.31164(7)(b). . . . Therefore, whether the
15 proceeds of the sale must be distributed toward a subordinate claim of record
16 pursuant to subsection 4, such as that of Ditech here, or to Markey as
17 remittance of any excess proceeds pursuant to subsection 5, **is not for**
18 **Saticoy Bay to assert because those funds no longer belong to Saticoy**
19 **Bay.**

20 *Id.* at 433 (emphasis added). While *Saticoy Bay LLC Series 9050 W Warm Springs*
21 *2079* did not involve a claim for unjust enrichment, the Court's analysis with respect to
22 Plaintiff's standing to assert claims regarding the sale proceeds remains relevant. It
23 was NAS's duty alone to distribute the proceeds of the sale pursuant to NRS
24 116.31164(7), and the proceeds no longer belonged to Plaintiff following the sale. As
25 such, Plaintiff has no standing to assert a claim for unjust enrichment here.

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

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///

H. Saticoy Bay's Request for Special Damages Must be Dismissed.

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

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

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

More importantly, however, when it comes to cases involving disputes over real property, attorney's fees are only available as special damages for slander of title. *Horgan*, 170 P.3d at 988 ("Additionally, we retreat from our statement in [*Sandy Valley*] and earlier cases that attorney fees as damages may be recovered in action to quiet title or clarify title to real property. Such attorney fees are only available in real property matters only for slander of title"). The instant matter is no exception. Saticoy Bay has

1 not pled slander of title in its complaint, and therefore, there is no factual basis for this
2 Court to award attorney's fees as special damages and its claim must be dismissed
3 accordingly.

4 **I. Saticoy Bay's Request for Punitive Damages is Precluded as a Matter of**
5 **Law.**

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

14 Under NRS 42.001, the term "fraud" means an intentional misrepresentation,
15 deception, or concealment of a material fact known to the person with the intent to
16 deprive another of his rights or property. Nev. Rev. Stat. § 42.001(2). "Malice, express
17 or implied" means conduct intended to injure a person or despicable conduct which a
18 party engages in with a conscious disregard of the rights or safety of another. Nev. Rev.
19 Stat. § 42.001(3). Oppression is defined in the same section as despicable conduct that
20 subjects someone to cruel and unjust hardship with conscious disregard of the rights of
21 that person. Nev. Rev. Stat. § 42.001(4). All of these definitions focus on "the
22 knowledge of probably harmful consequences ... and deliberate failure to act to avoid
23 those consequences." *Countrywide Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 252,
24 124 Nev. 725, 739 (Nev.,2008), citing Nev. Rev. Stat. § 42.001(1).

25 There is no evidence in this matter that Sunrise Ridge or NAS acted in conscious
26 disregard of Saticoy Bay's rights to the Property, or with the intent to misrepresent,
27 deceive, or conceal information from third-party bidders at the foreclosure sale.
28 Specifically, at the time of the foreclosure sale at issue in this lawsuit, there was no

1 guidance from the Nevada legislature or the Supreme Court regarding the effect of a
2 conditional, partial payment of the lien prior to the sale. The statute itself was not clear
3 as to what amounts were considered part of the “super-priority lien” and as a result,
4 NAS and most other collection agencies had different legal opinions than lenders as to
5 the amount necessary to release the lien.

6 In the absence of any statutory requirements or guidance from the Supreme
7 Court, there were no “probable harmful consequences” for Sunrise Ridge or NAS to
8 consider, nor were there any deliberate acts to hide the existence of the Miles Bauer
9 tender.

10 In fact, the conventional wisdom at this time (and the only judicial opinion on the
11 issue) was that the superpriority lien included nine months of assessments, plus late
12 fees, interest, and costs of collection. See Ex. 7, p:16:14-18; see also *Korbel Family*
13 *Trust v. Spring Mountain Ranch Master Ass’n*, Case No. A523959, Eighth Judicial
14 Court, Clark County, Nevada, Order of December 22, 2006 and *the Commission for*
15 *Common Interest Communities and Condominium Hotels issued an advisory opinion,*
16 *dated December 8, 2010* (indicating that an HOA may include collection costs in the
17 super-priority portion of its lien). Against this background, an award of punitive damages
18 is improper as a matter of law.

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1 **V. CONCLUSION**

2 Based on the foregoing, Defendant Sunrise Ridge respectfully requests this
3 Court dismiss Plaintiff's FAC in its entirety pursuant to NRCP 12(b)(5). Alternatively,
4 Sunrise Ridge requests summary judgment on each of Plaintiff's causes of action in its
5 FAC in light of its representations and admissions in its discovery responses from the
6 Federal Action.

7 DATED this 6th day of July, 2021.

8 LIPSON NEILSON P.C.

9 */s/ Jonathan K. Wong*

10 By:

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

11 *Attorneys for Defendant,*
12 *Sunrise Ridge Master Homeowners Association*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 6th day of July, 2021, I electronically transmitted the foregoing **MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

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

Attorneys for Plaintiff

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

EXHIBIT “A”

EXHIBIT “A”

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
376 E. Warm Springs Rd., Ste. 140
4 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
5 Attorney for defendant Saticoy Bay LLC
6 Series 6387 Hamilton Grove

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 BANK OF AMERICA, N.A.,

11 Plaintiff,

12 vs.

13 SUNRISE RIDGE AKA SUNRISE RIDGE
MASTER HOA; SATICOY BAY LLC SERIES
14 6387 HAMILTON GROVE; NEVADA
ASSOCIATION SERVICES, INC.,

15 Defendants.

CASE NO.: 2:16-CV-00408

16 SATICOY BAY LLC SERIES 6387 HAMILTON
17 GROVE,

18 Counterclaimant,

19 vs.

20 BANK OF AMERICA, N.A.,

21 Counterdefendant.

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

23 Comes now defendant, Saticoy Bay LLC Series 6387 Hamilton Grove, by and through its attorney,
24 Michael F. Bohn, Esq., answers plaintiff's interrogatories as follows:

25 **INTERROGATORY NO. 1:**

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

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

2 Eddie Haddad, c/o Law Offices of Michael F. Bohn, Esq., LTD, 376 E. Warm Springs Road, Las
3 Vegas, Nevada 89119.

4 **INTERROGATORY NO. 2:**

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

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

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

10 **INTERROGATORY NO. 3:**

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

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

15 Objection. Irrelevant, not reasonably calculated to lead to admissible evidence, and is an
16 unwarranted intrusion into private and confidential financial matters. Without waiving this objection,
17 defendant responds that the manager of Saticoy Bay LLC Series 6387 Hamilton Grove is the Bay Harbor
18 Trust. The trustee of Bay Harbor Trust is Resources Group, LLC. The manager of Resources Group, LLC
19 is Eddie Haddad.

20 **INTERROGATORY NO. 4:**

21 Identify all your members (and members' members, *ad infinitum*) and their address of primary
22 residence (if a natural person) or principal place of business and state of incorporation or organization
23 (if the entity is not a natural person). For any member that is a limited liability company or partnership,
24 identify its members/partners and their address of primary residence (if a natural person) or principal
25 place of business and state of incorporation or organization (if the entity is not a natural person). Continue
26 to identify the members/partners and their address of primary residence (if a natural person) or principal
27 place of business and state of incorporation or organization (if the entity is not a natural person) for every
28 limited liability company or partnership identified until you have identified the names and address of

1 primary residence (if a natural person) or principal place of business and state of incorporation or
2 organization (if the entity is not a natural person) for all members/partners.

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

4 See answer to interrogatory no. 3.

5 **INTERROGATORY NO. 5:**

6 For any members/partners identified in Interrogatory No.4 that are trusts, identify any and all of
7 their trustees and beneficiaries and, for each, provide the following information:

8 (a) For any trustee or beneficiary that is a natural person, provide their primary residence;

9 (b) For any trustee or beneficiary that is a limited liability company or partnership, identify its
10 members/partners and their address of primary residence (if a natural person) or principal place of
11 business and state of incorporation or organization (if the entity is not a natural person). Continue to
12 identify the members/partners and their address of primary residence (if a natural person) or principal
13 place of business and state of incorporation or organization (if the entity is not a natural person) for every
14 limited liability company or partnership identified until you have identified the names and address of
15 primary residence (if a natural person) or principal place of business and state of incorporation or
16 organization (if the entity is not a natural person) for all members/partners. For any members/partners that
17 are trusts, identify any and all of their trustees and beneficiaries and, for each, provide the information
18 requested in parts (a), (b), and (c) of this interrogatory;

19 (c) For any trustee or beneficiary that is a corporation, provide its state of incorporation and
20 principal place of business.

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

22 See answer to interrogatory no. 3.

23 **INTERROGATORY NO. 6:**

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

26 ...

27

28 ...

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

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

5 **INTERROGATORY NO. 7:**

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

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

10 The notices were properly recorded. The recitals in the foreclosure deed state that notices were
11 sent.

12 **INTERROGATORY NO. 8:**

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

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

16 See answer to interrogatory no. 7.

17 **INTERROGATORY NO. 9:**

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

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

21 See answer to interrogatory no. 7.

22 **INTERROGATORY NO. 10:**

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

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

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

27 ...

28 ...

1 **INTERROGATORY NO. 11:**

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

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

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

8 **INTERROGATORY NO. 12:**

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

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

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

13 **INTERROGATORY NO. 13:**

14 Describe your involvement in the HOA Foreclosure Sale.

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

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

17 **INTERROGATORY NO. 14:**

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

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

22 The notice of sale states the location of the sale; bidders present and who bid are unknown; records
23 were not kept of the amount of each bid at the sale; the property was paid for with a cashier's check.

24 **INTERROGATORY NO. 15:**

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

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

28 Not applicable.

1 **INTERROGATORY NO. 16:**

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

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

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

7 **INTERROGATORY NO. 17:**

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

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

11 See answer to interrogatory no. 16.

12 **INTERROGATORY NO. 18:**

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

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

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

23 See answer to interrogatory no. 16.

24 **INTERROGATORY NO. 19:**

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

28 . . .

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

2 None.

3 **INTERROGATORY NO. 20:**

4 Identify all agreements, written or oral, between you and all other persons or entities regarding the
5 Property, the HOA Lien and/or the HOA Foreclosure Sale. Your response should include all agreements
6 that affects the Property, the HOA Lien or the HOA Foreclosure Sale, whether or not the Property, the
7 HOA lien, or the HOA Foreclosure Sale is/are mentioned in the agreement.

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

9 None.

10 **INTERROGATORY NO. 21:**

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

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

15 None.

16 **INTERROGATORY NO. 22:**

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

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

21 See attached list of properties obtained from the assessors office currently held by Saticoy Bay,
22 LLC.

23 **INTERROGATORY NO. 23:**

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

26 **ANSWER TO INTERROGATORY NO. 23:**

27 Nevada Legal News.

28 ...

1 **INTERROGATORY NO. 24:**

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

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

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

7 DATED this 9 day of September 2016.

8

9

10

Eddie Haddad, pmk for defendant,
Saticoy Bay LLC Series 6387 Hamilton Grove

11

Prepared by:

12

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

14

15 By: 

MICHAEL F. BOHN, ESQ.
376 E. Warm Springs Rd., Ste. 140
Las Vegas, NV 89119
Attorney for defendant,
Saticoy Bay LLC Series 6387 Hamilton Grove

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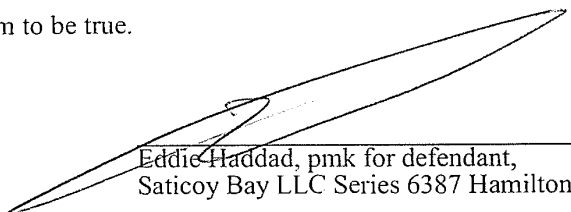
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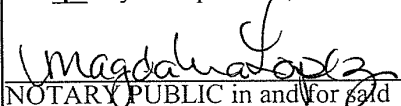
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Eddie Haddad, being first duly sworn, deposes and says:

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


Eddie Haddad, pmk for defendant,
Saticoy Bay LLC Series 6387 Hamilton Grove

SUBSCRIBED and SWORN to before me
this 9 day of September, 2016.


NOTARY PUBLIC in and for said
County and State


CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 13 day of September 2016, I served a photocopy of the foregoing DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES placing the same in a sealed envelope with first-class postage fully prepaid thereon and deposited in the United States mails addressed as follows:

Ariel E. Stern, Esq.
Allison R. Schmidt, Esq.
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorney for Bank of America

Megan H. Hummel, Esq.
Joseph P. Garin, Esq.
J. William Ebert, Esq.
Lipson Neilson Cole Seltzer & Garin
9900 Covington Cross Dr., Ste. 120
Las Vegas, NV 89144
Attorney for Sunrise Ridge Master
Homeowners Association

Christopher V. Yergensen, Esq.
Nevada Association Services, Inc.
62234 W. Desert Inn Rd.
Las Vegas, NV 89146
Attorney for Nevada Association Services, Inc.


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

Clark County / Assessor / Property Records

**Assessor****Michele W. Shafe, Assessor****PARCEL NUMBER INQUIRY - SEARCH BY OWNER'S NAME**

OWNER NAME	OWNER NAME 2	TAX DISTRICT	PARCEL NUMBER
SATICOY BAY LLC SER 465 CANYON		DST-901	<u>001-08-815-038</u>
SATICOY BAY L L C SERIES 4340 BACARA RIDGE VE		DST-254	<u>123-29-210-200</u>
SATICOY BAY LLC SER 6212 LUMBER		DST-254	<u>123-30-512-067</u>
SATICOY BAY LLC-SERIES 3665 REMINGTON DROVE		DST-254	<u>123-31-112-099</u>
SATICOY BAY L L C		DST-250	<u>124-20-111-161</u>
SATICOY BAY L L C SERIES 6704 TUMBLER		DST-250	<u>124-20-712-014</u>
SATICOY BAY L L C		DST-250	<u>124-21-314-138</u>
SATICOY BAY L L C SERIES 6425 WINTER MOON		DST-254	<u>124-22-414-055</u>
SATICOY BAY LLC SER 5862 HOLLING		DST-254	<u>124-25-311-033</u>
SATICOY BAY L L C		DST-254	<u>124-25-412-114</u>
SATICOY BAY L L C SERIES 3416 BRAYTON MIST DR		DST-254	<u>124-25-511-022</u>
SATICOY BAY L L C SERIES 3208 ASPINWALL CT		DST-254	<u>124-25-615-011</u>
SATICOY BAY L L C SERIES 1023 SUNNY ACRES		DST-254	<u>124-26-115-093</u>
SATICOY BAY L L C SERIES 5937 GREY GOOSE		DST-254	<u>124-26-313-007</u>
SATICOY BAY L L C SERIES 6231 BRICK OVEN ST		DST-254	<u>124-27-113-010</u>
SATICOY BAY LLC SER 6119 MESA ST		DST-254	<u>124-27-211-035</u>
SATICOY BAY LLC SER 5733 OASIS		DST-254	<u>124-27-412-049</u>
SATICOY BAY L L C SERIES 5841 FERAL GARDEN		DST-254	<u>124-27-714-006</u>
SATICOY BAY L L C SER 1915		DST-250	<u>124-28-113-022</u>
SATICOY BAY L L C		DST-250	<u>124-28-412-005</u>
SATICOY BAY L L C SERIES 5738 BEAR SPRINGS ST		DST-250	<u>124-28-419-040</u>
SATICOY BAY L L C		DST-250	<u>124-28-419-069</u>
SATICOY BAY L L C SERIES 3119 SENTIMENTAL		DST-250	<u>124-29-210-032</u>
SATICOY BAY L L C SERIES 2920 BAYLINER AVE		DST-250	<u>124-29-212-017</u>
SATICOY BAY L L C SER 3123 INLET		DST-254	<u>124-29-411-036</u>

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**Assessor****Michele W. Shafe, Assessor****PARCEL NUMBER INQUIRY - SEARCH BY OWNER'S NAME**

OWNER NAME	OWNER NAME 2	TAX DISTRICT	PARCEL NUMBER
SATICOY BAY LLC SER 4456 ACROPOL		DST-250	<u>124-30-410-087</u>
SATICOY BAY LLC-SER 5451 AUTUMN		DST-250	<u>124-31-114-002</u>
SATICOY BAY L L C SERIES 5236 ADORATO DR		DST-250	<u>124-31-610-080</u>
SATICOY BAY L L C		DST-254	<u>124-32-315-019</u>
SATICOY BAY L L C		DST-250	<u>124-33-115-076</u>
SATICOY BAY L L C		DST-254	<u>124-34-118-016</u>
SATICOY BAY LLC SER 5509 MERIDIA		DST-254	<u>124-34-118-044</u>
SATICOY BAY L L C		DST-254	<u>124-35-411-047</u>
SATICOY BAY L L C		DST-254	<u>124-35-711-036</u>
SATICOY BAY L L C		DST-254	<u>125-05-310-040</u>
SATICOY BAY L L C SERIES 8829 REINING SPUR		DST-200	<u>125-05-310-040</u>
SATICOY BAY L L C SERIES 9538 DIAMOND BRIDGE		DST-200	<u>125-07-712-009</u>
SATICOY BAY L L C SERIES 8250 GRAND CANYON		DST-200	<u>125-07-715-158</u>
SATICOY BAY LLC SER 8101 SIENNA		DST-200	<u>125-08-811-036</u>
SATICOY BAY L L C SER 7728		DST-200	<u>125-09-810-058</u>
SATICOY BAY L L C		DST-200	<u>125-10-310-085</u>
SATICOY BAY L L C SERIES 8920		DST-200	<u>125-10-511-054</u>
SATICOY BAY LLC SER 6120 MATISSE		DST-200	<u>125-11-710-052</u>
SATICOY BAY LLC SERS 5032 WHISTLING ACRES		DST-200	<u>125-12-611-014</u>
SATICOY BAY L L C SERIES 7612 CERTITUDE AVE		DST-200	<u>125-16-512-010</u>
SATICOY BAY L L C		DST-200	<u>125-16-513-061</u>
SATICOY BAY LLC SER 9125 CAREFUL		DST-200	<u>125-17-210-252</u>
SATICOY BAY L L C SER 9157		DST-200	<u>125-17-310-040</u>
SATICOY BAY L L C SERIES 9303 GILCREASE 1118		DST-200	<u>125-18-615-070</u>
SATICOY BAY LLC SERS 7524 MIDNI		DST-200	<u>125-18-710-040</u>
SATICOY BAY L L C SERIES 9004 SPOTTED TAIL AVE		DST-200	<u>125-20-113-043</u>
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OWNER NAME	OWNER NAME 2	TAX DISTRICT	PARCEL NUMBER
ATICOY BAY L L C SERIES 6868 SKY POINTE		DST-200	125-21-213-201
ATICOY BAY L L C		DST-200	125-25-111-009
ATICOY BAY L L C SER 5501 WELLS		DST-200	125-25-210-050
ATICOY BAY L L C		DST-200	125-25-312-030
ATICOY BAY L L C SERIES 6132 PEGGOTTY		DST-200	125-26-510-012
ATICOY BAY LLC SER 7540 MAIDEN		DST-200	125-27-217-033
ATICOY BAY LLC SER 5633 DESERT		DST-200	125-28-814-001
ATICOY BAY L L C		DST-200	125-28-816-014
ATICOY BAY L L C SERIES 7320 CAMROSE RIDGE		DST-200	125-34-117-121
ATICOY BAY L L C		DST-200	125-35-111-030
ATICOY BAY L L C SERIES 6408 HILLSIDE BROOK		DST-200	125-35-413-038
ATICOY BAY L L C		DST-200	125-36-311-018
ATICOY BAY LLC SER 5328 LOCHMOR		DST-200	125-36-511-001
ATICOY BAY LLC SERS 4856 MINTUR		DST-200	125-36-516-009
ATICOY BAY L L C SERIES 4913 BRAEBURN DR		DST-200	125-36-711-042
ATICOY BAY L L C SERIES 4801		DST-200	125-36-812-033
ATICOY BAY LLC SERS 4800 FIESTA		DST-200	125-36-812-104
ATICOY BAY LLC SER 10727 MASON		DST-200	126-13-312-144
ATICOY BAY LLC SER 10841 PEARL		DST-200	126-13-313-034
ATICOY BAY LLC SER 7342 TANGLEW		DST-200	126-13-412-130
ATICOY BAY L L C SERIES 6647 BROOKLYN HEIGHTS ST		DST-200	126-24-314-024
ATICOY BAY LLC SER 7112 WHTFRD		DST-200	126-24-512-015
ATICOY BAY L L C SERIES 3810 JUNO BEACH 103		DST-200	137-12-510-214
ATICOY BAY LLC SERS 10372 PINK		DST-200	137-12-714-056
ATICOY BAY L L C SER 10404 FROS		DST-200	137-13-815-010

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SATICOY BAY L L C		DST-200	137-23-612-027
SATICOY BAY L L C SERIES 1917 HOT OAK RIDGE		DST-200	137-23-711-066
SATICOY BAY L L C SER 10250		DST-200	137-25-714-049
SATICOY BAY L L C SERIES 452 CROCUS HILL		DST-200	137-35-514-018
SATICOY BAY L L C		DST-200	138-03-819-063
SATICOY BAY LLC SERS 9641 CHRIS		DST-200	138-07-622-006
SATICOY BAY LLC SER 9320 MT CASH		DST-200	138-07-817-066
SATICOY BAY L L C		DST-200	138-08-610-032
SATICOY BAY L L C		DST-200	138-09-323-109
SATICOY BAY L L C SERIES 3333 HILLINGDON		DST-200	138-09-413-008
SATICOY BAY L L C 6701		DST-200	138-10-614-106
SATICOY BAY L L C		DST-200	138-10-615-032
SATICOY BAY L L C		DST-200	138-11-111-096
SATICOY BAY L L C SERIES 2708 STARGATE		DST-200	138-13-710-001
SATICOY BAY L L C SERIES 2764		DST-200	138-14-311-018
SATICOY BAY L L C		DST-200	138-16-617-008
SATICOY BAY LLC SER 2604 GOLDEN		DST-200	138-16-713-037
SATICOY BAY L L C SERIES 2637 SEAHORSE		DST-200	138-16-713-073
SATICOY BAY LLC SERS 1916 SUMMER		DST-200	138-19-323-003
SATICOY BAY L L C 8320 BERMUDA		DST-200	138-21-118-001
SATICOY BAY LLC SER 7920		DST-200	138-21-512-012
SATICOY BAY LLC SER 2121 BLUE		DST-200	138-21-613-251
SATICOY BAY L L C		DST-200	138-21-613-467
SATICOY BAY LLC SERS 7709 BAUBLE		DST-200	138-21-716-070
SATICOY BAY L L C SERIES 2136 BAVINGTON #A		DST-200	138-23-210-001
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OWNER NAME	OWNER NAME 2	TAX DISTRICT	PARCEL NUMBER
SATICOY BAY LLC SER 1617 JOSHUA		DST-200	138-23-817-019
SATICOY BAY LLC SER 241 MISTY		DST-200	138-26-410-124
SATICOY BAY L L C SERIES 300 CROSSWIND		DST-200	138-27-810-122
SATICOY BAY L L C		DST-200	138-28-224-084
SATICOY BAY L L C SERIES 1104 PINTO ROCK		DST-200	138-28-511-007
SATICOY BAY L L C SERIES 1105 SULPHUR SPRINGS LANE		DST-200	138-28-611-102
SATICOY BAY L L C SERIES 1120 OBSERVATION		DST-200	138-28-615-013
SATICOY BAY L L C SERIES 936 BOULDER MESA		DST-200	138-28-616-039
SATICOY BAY LLC		DST-200	138-30-317-062
SATICOY BAY L L C SER 10013		DST-200	138-30-416-044
SATICOY BAY L L C SERIES 1109 STORKE LN		DST-200	138-30-614-013
SATICOY BAY LLC SERS 350 DURANGO		DST-200	138-33-226-042
SATICOY BAY LLC SERS 5220 MISSIO		DST-200	138-36-515-493
SATICOY BAY LLC SER 452 WNDRSTN		DST-200	138-36-611-075
SATICOY BAY LLC SERS 716 FIESTA		DST-250	139-02-117-093
SATICOY BAY L L C		DST-250	139-03-710-052
SATICOY BAY L L C SERIES 4109 LIBERAL		DST-250	139-03-811-064
SATICOY BAY L L C SER 3338		DST-250	139-07-416-048
SATICOY BAY LLC SERIES 1606 WOODWARD HEIGHTS WY		DST-250	139-09-310-005
SATICOY BAY L L C-SERIES 1715 FALL POINTE		DST-250	139-09-311-035
SATICOY BAY L L C-SERIES 3409 FLATS		DST-250	139-09-313-033
SATICOY BAY LLC-SERIES 3421 ROSE VALLEY		DST-250	139-09-314-055
SATICOY BAY L L C		DST-250	139-10-115-047
SATICOY BAY L L C-SERIES 2802 ALBATA		DST-250	139-12-311-046
SATICOY BAY L L C SERIES 3537 RIO ROBLES		DST-250	139-12-710-010

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SATICOY BAY L L C SERIES 3501 RIO ROBLES D		DST-250	<u>139-12-710-041</u>
SATICOY BAY L L C SERIES 1854 DECATUR 202		DST-200	<u>139-19-311-038</u>
SATICOY BAY LLC SERS 2141 GOLDEN		DST-200	<u>139-20-713-015</u>
SATICOY BAY L L C		DST-200	<u>139-20-715-026</u>
SATICOY BAY L L C		DST-200	<u>139-20-715-081</u>
SATICOY BAY L L C SERIES 2100 FRED BROWN		DST-200	<u>139-21-211-030</u>
SATICOY BAY L L C SERIES 1202 COACH		DST-200	<u>139-25-210-040</u>
SATICOY BAY L L C SERIES 244 VERTIGO TULIP		DST-200	<u>139-33-212-011</u>
SATICOY BAY L L C SER 200 HOOVER		DST-203	<u>139-34-412-140</u>
SATICOY BAY LLC SER 6014 STONE H		DST-340	<u>140-15-320-021</u>
SATICOY BAY LLC SERS 3769 CARLYL		DST-340	<u>140-18-211-075</u>
SATICOY BAY L L C SERIES 6800 E LAKE MEAD		DST-340	<u>140-23-217-049</u>
SATICOY BAY L L C SERIES 1891 BALZAC DR		DST-340	<u>140-23-712-036</u>
SATICOY BAY LLC SER 1083 STERKIN		DST-340	<u>140-27-714-028</u>
SATICOY BAY L L C SERIES 6526		DST-340	<u>140-27-814-014</u>
SATICOY BAY L L C SERIES 1401 LINNBAKER		DST-200	<u>140-30-519-029</u>
SATICOY BAY L L C SERIES 413 LAMB		DST-200	<u>140-31-612-066</u>
SATICOY BAY L L C		DST-200	<u>140-31-816-007</u>
SATICOY BAY L L C SERS 5361 SIR RICHARD		DST-340	<u>140-33-313-063</u>
SATICOY BAY LLC SER 5982 SPINNAK		DST-340	<u>140-34-312-001</u>
SATICOY BAY L L C		DST-500	<u>160-22-117-148</u>
SATICOY BAY L L C SERIES 29 MONTELAGO		DST-500	<u>160-22-318-053</u>
SATICOY BAY LLC SER 1168 ASPEN		DST-516	<u>160-31-512-022</u>
SATICOY BAY L L C SERIES 1405 S NELLIS 1038		DST-340	<u>161-04-219-026</u>
SATICOY BAY L L C		DST-340	<u>161-09-611-192</u>
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ATICOY BAY L L C SERIES 2820 EVERGLADE		DST-340	<u>161-09-611-199</u>
ATICOY BAY L L C SER 3084		DST-340	<u>161-09-710-062</u>
ATICOY BAY LLC SER 2794 MURRAY		DST-340	<u>161-11-211-038</u>
ATICOY BAY L L C SERS 6513 DUCK		DST-570	<u>161-15-511-053</u>
ATICOY BAY LLC SER 6387 HAM GRV		DST-570	<u>161-15-711-008</u>
ATICOY BAY LLC SERS 3608 TUNDRA		DST-570	<u>161-15-715-071</u>
ATICOY BAY LLC SER 3884 SQUIRRE		DST-570	<u>161-15-811-039</u>
ATICOY BAY LLC SER 3984 MEADOW		DST-570	<u>161-15-814-067</u>
ATICOY BAY LLC SER 4039 MEADOW		DST-570	<u>161-15-814-154</u>
ATICOY BAY L L C SERIES 3384 DEATH VALLEY		DST-340	<u>161-16-110-133</u>
ATICOY BAY L L C SERIES TOWNHOUSE		DST-470	<u>161-18-117-009</u>
ATICOY BAY LLC SERS 3797 MONUME		DST-470	<u>161-18-310-161</u>
ATICOY BAY LLC SER 5710 E TROI		DST-570	<u>161-21-813-071</u>
ATICOY BAY L L C SERIES 4683 CALIFA		DST-570	<u>161-22-713-030</u>
ATICOY BAY L L C SERS 6267 ELVIDO		DST-570	<u>161-22-811-006</u>
ATICOY BAY LLC SER 4930 MINERS		DST-570	<u>161-26-111-062</u>
ATICOY BAY LLC SERS 4952 MINERS		DST-570	<u>161-26-111-071</u>
ATICOY BAY L L C BRICK HOUSE		DST-570	<u>161-26-312-040</u>
ATICOY BAY LLC SER 6773 GRANITE		DST-570	<u>161-26-410-002</u>
ATICOY BAY L L C SERIES 6915		DST-570	<u>161-26-410-082</u>
ATICOY BAY L L C SERIES 5750 HACIENDA 120		DST-570	<u>161-28-614-036</u>
ATICOY BAY L L C SER 5751 E HACIENDA		DST-570	<u>161-28-712-174</u>
ATICOY BAY L L C SERIES 5231		DST-470	<u>161-30-220-038</u>
ATICOY BAY LLC SER 5733 LARKDAL		DST-470	<u>161-31-513-015</u>
ATICOY BAY L L C SERIES 6480 ANNIE OAKLEY		DST-516	<u>161-31-811-015</u>
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SATICOY BAY LLC SER 1423 ORANGE		DST-505	<u>161-33-718-030</u>
SATICOY BAY L L C SERIES 5969 HIGH STEED		DST-570	<u>161-34-613-031</u>
SATICOY BAY L L C		DST-570	<u>161-34-614-060</u>
SATICOY BAY L L C		DST-570	<u>161-34-616-097</u>
SATICOY BAY LLC SER 6629 TUMBLEW		DST-570	<u>161-35-212-063</u>
SATICOY BAY LLC SER 6944 DANCING		DST-570	<u>161-35-213-119</u>
SATICOY BAY LLC SER 1013 ADOBE F		DST-516	<u>161-35-613-031</u>
SATICOY BAY LLC SER 4455 SIRIUS		DST-410	<u>162-07-411-058</u>
SATICOY BAY LLC SER 3125 PINE		DST-410	<u>162-10-717-021</u>
SATICOY BAY L L C SERIES 3930 SWENSON		DST-470	<u>162-15-810-092</u>
SATICOY BAY L L C SERIES 2120 PINEBREEZE		DST-470	<u>162-23-614-032</u>
SATICOY BAY L L C SERIES 4738 MOUNTAIN ALLEY		DST-470	<u>162-24-810-057</u>
SATICOY BAY L L C		DST-470	<u>162-24-811-030</u>
SATICOY BAY L L C		DST-470	<u>162-26-512-095</u>
SATICOY BAY L L C SER 6727		DST-200	<u>163-02-111-029</u>
SATICOY BAY LLC SER 1401 MARB		DST-200	<u>163-03-213-007</u>
SATICOY BAY L L C SERIES 1304 KINGDOM		DST-200	<u>163-04-513-004</u>
SATICOY BAY L L C		DST-200	<u>163-06-110-095</u>
SATICOY BAY L L C		DST-200	<u>163-06-220-021</u>
SATICOY BAY L L C SERIES 8326 STERLING HARBOR		DST-417	<u>163-09-313-035</u>
SATICOY BAY L L C		DST-417	<u>163-09-817-050</u>
SATICOY BAY L L C		DST-417	<u>163-12-110-018</u>
SATICOY BAY LLC SER 4946 MOZART		DST-417	<u>163-12-817-052</u>
SATICOY BAY LLC SERS 4641 VIAREG		DST-417	<u>163-19-311-015</u>
SATICOY BAY LLC SER 8467 OPAL SP		DST-417	<u>163-21-113-046</u>

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ATICOY BAY L L C		DST-417	<u>163-21-515-206</u>
ATICOY BAY L L C		DST-417	<u>163-21-515-382</u>
ATICOY BAY L L C		DST-417	<u>163-23-411-047</u>
ATICOY BAY L L C SERIES 4865 S TORREY PINES		DST-417	<u>163-23-416-006</u>
ATICOY BAY LLC SER 4208 ROLLING		DST-417	<u>163-24-111-002</u>
ATICOY BAY L L C SERIES 5126 S JONES		DST-417	<u>163-25-210-173</u>
ATICOY BAY LLC SER 5273 WAVE		DST-417	<u>163-25-215-109</u>
ATICOY BAY LLC SER 5155 TROPICA		DST-417	<u>163-25-510-154</u>
ATICOY BAY L L C SERIES 6671 W TROPICANA 03		DST-417	<u>163-26-111-154</u>
ATICOY BAY LLC SERS 6974 EMERAL		DST-417	<u>163-27-511-034</u>
ATICOY BAY L L C SER 6902		DST-417	<u>163-27-513-001</u>
ATICOY BAY L L C SERIES 34 INNISBROOK		DST-417	<u>163-28-614-007</u>
ATICOY BAY LLC SER 10007 LIBERT		DST-417	<u>163-31-213-072</u>
ATICOY BAY L L C SERIES 7413 W RUSSELL		DST-417	<u>163-34-113-013</u>
ATICOY BAY L L C		DST-420	<u>164-01-412-010</u>
ATICOY BAY L L C		DST-420	<u>164-02-224-144</u>
ATICOY BAY L L C SER 11489 BELMONT LAKE 106		DST-420	<u>164-02-224-151</u>
ATICOY BAY LLC SER 11339 COLIN		DST-420	<u>164-02-713-040</u>
ATICOY BAY L L C SER 11358 CEDAR LOG		DST-420	<u>164-02-810-001</u>
ATICOY BAY L L C SERIES 3030 AMERICAN RIVER LN		DST-420	<u>164-12-312-007</u>
ATICOY BAY L L C SERIES 10717		DST-420	<u>164-12-414-029</u>
ATICOY BAY L L C SERIES 5413 BRISTOL BEND CT		DST-420	<u>164-25-713-018</u>
ATICOY BAY LLC SER 10450 LYRIC		DST-420	<u>164-25-813-006</u>
ATICOY BAY LLC SERS 9229 MILLIK		DST-635	<u>176-08-117-111</u>
ATICOY BAY L L C SERIES 6684 CORONADO CREST		DST-635	<u>176-11-310-004</u>

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ATICOY BAY L L C SERIES 7928 AVALON MIST		DST-635	<u>176-11-810-040</u>
ATICOY BAY L L C SER 9288 CABIN		DST-635	<u>176-20-111-125</u>
ATICOY BAY L L C SERIES 9387 STOCK ST		DST-635	<u>176-20-315-028</u>
ATICOY BAY LLC SER 9014 SALVATO		DST-635	<u>176-20-510-027</u>
ATICOY BAY LLC SERS 8952 COLLEG		DST-635	<u>176-20-512-055</u>
ATICOY BAY LLC SER 8336 CREEK		DST-635	<u>176-21-110-025</u>
ATICOY BAY LLC SER 10371 CALYPS		DST-635	<u>176-25-812-024</u>
ATICOY BAY L L C SERIES 10289 RAINY BREEZE		DST-635	<u>176-27-410-004</u>
ATICOY BAY LLC SER 8252 SETT		DST-635	<u>176-28-112-014</u>
ATICOY BAY LLC SER 9855 BIG WIN		DST-635	<u>176-28-113-031</u>
ATICOY BAY LLC		DST-635	<u>176-28-613-066</u>
ATICOY BAY LLC SER 9960 MORPETH		DST-635	<u>176-28-614-055</u>
ATICOY BAY L L C SERIES 9338 WILDERNESS GLEN AVE		DST-635	<u>176-29-310-021</u>
ATICOY BAY L L C		DST-635	<u>176-29-511-033</u>
ATICOY BAY LLC SER 7589 PERIA D		DST-635	<u>176-34-114-091</u>
ATICOY BAY LLC SER 5218 FLORENT		DST-635	<u>176-36-112-014</u>
ATICOY BAY L L C SERIES 10605 SAN BELLACOVA ST		DST-635	<u>176-36-113-035</u>
ATICOY BAY L L C SERIES 10777 VESTONE ST		DST-635	<u>176-36-216-037</u>
ATICOY BAY L L C SER 5328 DONO		DST-635	<u>176-36-717-028</u>
ATICOY BAY LLC SER 2995 E SUNSE		DST-470	<u>177-01-111-051</u>
ATICOY BAY LLC SER 4500 PACIFIC		DST-635	<u>177-07-313-001</u>
ATICOY BAY L L C SERIES 1041 HEATHER LYNNETTE		DST-470	<u>177-10-714-005</u>
ATICOY BAY L L C		DST-470	<u>177-11-211-041</u>
ATICOY BAY L L C SERIES 7530		DST-470	<u>177-11-211-046</u>
ATICOY BAY LLC SER 2314 CROOKED		DST-470	<u>177-11-611-014</u>

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**Assessor****Michele W. Shafe, Assessor****PARCEL NUMBER INQUIRY - SEARCH BY OWNER'S NAME**

OWNER NAME	OWNER NAME 2	TAX DISTRICT	PARCEL NUMBER
SATICOY BAY LLC SER 2714 SNAPDRA		DST-516	<u>177-12-410-118</u>
SATICOY BAY LLC SER 2918 CURRANT		DST-505	<u>177-13-215-025</u>
SATICOY BAY L L C SERIES 108 BOYSENBERRY LN		DST-505	<u>177-13-215-042</u>
SATICOY BAY L L C SERIES 4683 AMETRINE		DST-635	<u>177-18-212-023</u>
SATICOY BAY L L C SERIES 8390 PEARL BEACH		DST-635	<u>177-18-214-015</u>
SATICOY BAY L L C SERIES 187		DST-635	<u>177-21-214-042</u>
SATICOY BAY L L C		DST-470	<u>177-22-511-055</u>
SATICOY BAY LLC SERS 8975 SANDY		DST-470	<u>177-22-511-068</u>
SATICOY BAY LLC SERS 9076 QUARRY		DST-470	<u>177-22-514-013</u>
SATICOY BAY L L C		DST-470	<u>177-22-618-039</u>
SATICOY BAY LLC SER 891 BRUNELLO		DST-470	<u>177-22-713-033</u>
SATICOY BAY L L C SERIES 3239 MORNING SPRINGS		DST-470	<u>177-24-514-046</u>
SATICOY BAY LLC 413 NORRIDGEWOCK		DST-505	<u>177-25-113-007</u>
SATICOY BAY L L C SERIES 529		DST-505	<u>177-25-611-024</u>
SATICOY BAY L L C SER 10348 MIDSEASON MIST		DST-635	<u>177-27-415-020</u>
SATICOY BAY LLC SERS 1050 CACTUS		DST-635	<u>177-27-810-126</u>
SATICOY BAY LLC SER 4509 MELROSE		DST-635	<u>177-31-320-009</u>
SATICOY BAY LLC SER 4330 MELROSE		DST-635	<u>177-31-715-059</u>
SATICOY BAY LLC SER 3711 LODINA		DST-635	<u>177-32-213-008</u>
SATICOY BAY LLC SER 2301 HAREN		DST-521	<u>178-01-510-017</u>
SATICOY BAY L L C		DST-521	<u>178-03-512-092</u>
SATICOY BAY L L C SER 1702 EMPIRE MINE		DST-505	<u>178-04-310-072</u>
SATICOY BAY L L C SERIES 1512 BASS		DST-516	<u>178-06-511-061</u>
SATICOY BAY LLC SER 1547 FRISCO		DST-505	<u>178-09-512-031</u>
SATICOY BAY L L C SERIES 1330 CRYSTAL HILL		DST-505	<u>178-15-413-004</u>

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**Assessor****Michele W. Shafe, Assessor****PARCEL NUMBER INQUIRY - SEARCH BY OWNER'S NAME**

OWNER NAME	OWNER NAME 2	TAX DISTRICT	PARCEL NUMBER
SATICOY BAY L L C		DST-505	<u>178-16-116-038</u>
SATICOY BAY LLC SER 133 MCLAREN		DST-505	<u>178-16-215-068</u>
SATICOY BAY LLC SER 1541 MOUNT		DST-512	<u>178-16-712-050</u>
SATICOY BAY LLC SER 2110 CLUB M		DST-505	<u>178-17-417-010</u>
SATICOY BAY L L C SER 75		DST-505	<u>178-17-719-095</u>
SATICOY BAY L L C SERIES 2325 WINDMILL 1014		DST-505	<u>178-18-514-079</u>
SATICOY BAY L L C		DST-505	<u>178-19-314-098</u>
SATICOY BAY LLC SERS 15 BARTON		DST-505	<u>178-20-110-043</u>
SATICOY BAY L L C		DST-505	<u>178-20-613-105</u>
SATICOY BAY LLC SER 274 POINTE		DST-505	<u>178-21-810-049</u>
SATICOY BAY L L C		DST-500	<u>178-23-615-085</u>
SATICOY BAY LLC SER BOWMAN LAIR		DST-500	<u>178-27-115-025</u>
SATICOY BAY L L C SERIES 830 CARNEGIE STREET		DST-505	<u>178-30-810-101</u>
SATICOY BAY L L C SERIES 206 VALERIAN		DST-505	<u>179-16-217-025</u>
SATICOY BAY LLC SERS 346 S MILAN		DST-505	<u>179-16-710-006</u>
SATICOY BAY L L C		DST-503	<u>179-17-116-030</u>
SATICOY BAY LLC SERS 741 HERITAG		DST-505	<u>179-20-811-002</u>
SATICOY BAY L L C SERIES 625 BLUE CRYSTAL CREEK		DST-505	<u>179-28-712-003</u>
SATICOY BAY L L C		DST-505	<u>179-30-418-018</u>
SATICOY BAY L L C 93 SER 164 GOLDEN CROWN		DST-505	<u>179-31-211-019</u>
SATICOY BAY LLC SER 227 BIG HORN		DST-050	<u>186-04-514-017</u>
SATICOY BAY SER 2227 SHADOW CANY		DST-514	<u>190-17-310-002</u>
SATICOY BAY L L C		DST-516	<u>190-18-312-003</u>
SATICOY BAY L L C SERIES 2212 LAKE CANDLEWOOD		DST-516	<u>190-18-617-026</u>
SATICOY BAY L L C SERIES 3018 VIA SARAFINA DR		DST-505	<u>191-02-522-040</u>

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**Assessor****Michele W. Shafe, Assessor****PARCEL NUMBER INQUIRY - SEARCH BY OWNER'S NAME**

OWNER NAME	OWNER NAME 2	TAX DISTRICT	PARCEL NUMBER
ATICOY BAY L L C SERS 1489 SILVER SUNSET		DST-505	<u>191-02-718-068</u>
ATICOY BAY LLC SERS 3546 ALCUDI		DST-635	<u>191-05-114-030</u>
ATICOY BAY LLC SER 2080 ARTISTIC FLAIR WALK		DST-516	<u>191-14-516-019</u>
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EXHIBIT “B”

EXHIBIT “B”

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW-OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
376 E. Warm Springs Rd., Ste. 140
4 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
5 Attorney for defendant Saticoy Bay LLC
6 Series 6387 Hamilton Grove

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 BANK OF AMERICA, N.A.,

11 Plaintiff,

12 vs.

13 SUNRISE RIDGE AKA SUNRISE RIDGE
MASTER HOA; SATICOY BAY LLC SERIES
14 6387 HAMILTON GROVE; NEVADA
ASSOCIATION SERVICES, INC.,

15 Defendants.

CASE NO.: 2:16-CV-00408

16 SATICOY BAY LLC SERIES 6387 HAMILTON
17 GROVE,

18 Counterclaimant,

19 vs.

20 BANK OF AMERICA, N.A.,

21 Counterdefendant.

22 **DEFENDANT'S RESPONSES TO PLAINTIFF'S**
FIRST SET OF REQUESTS FOR ADMISSIONS

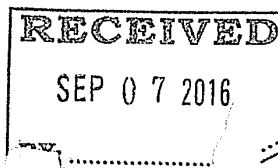
23 Comes now defendant, Saticoy Bay LLC Series 6387 Hamilton Grove, by and through its
24 attorney, Michael F. Bohn, Esq., hereby responds to the plaintiff's requests for admissions as follows:

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

26 Admit you are not a citizen of North Carolina.

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

28 Admit.



1 **REQUEST FOR ADMISSION NO. 2:**

2 Admit, from July 11, 2009 to the present, you received income derived from properties you
3 purchased at foreclosure sales held pursuant to NRS 116.31162.

4 **RESPONSE TO REQUEST NO. 2:**

5 Deny.

6 **REQUEST FOR ADMISSION NO. 3:**

7 Admit that you attended the HOA Foreclosure Sale.

8 **RESPONSE TO REQUEST NO. 3:**

9 Admit.

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

11 Admit that you were the highest bidder on the Property at the HOA Foreclosure Sale.

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

13 Admit.

14 **REQUEST FOR ADMISSION NO. 5:**

15 Admit that, in the 30 days preceding the HOA Foreclosure Sale, you identified properties that
16 would be available for sale at auction by the HOA within a month of the HOA Foreclosure Sale date.

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

18 Objection, vague.

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

20 Admit that, on or before July 10, 2014 you had knowledge that the Property would be placed
21 up for auction.

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

23 Admit.

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

25 Admit that prior to the HOA Foreclosure Sale, you sought information pertaining to the fair
26 market value of the Property.

27 **RESPONSE TO REQUEST NO. 7:**

28 Admit.

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

2 Admit that you communicated with the HOA Trustee regarding the Property prior to the HOA
3 Foreclosure Sale.

4 **RESPONSE TO REQUEST NO. 8:**

5 Deny.

6 **REQUEST FOR ADMISSION NO. 9:**

7 Admit that, prior to the HOA Foreclosure Sale, you communicated with the HOA regarding
8 the HOA Foreclosure Sale.

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

10 Deny.

11 **REQUEST FOR ADMISSION NO. 10:**

12 Admit that, prior to the HOA Foreclosure Sale, you had an agreement with the HOA or HOA
13 Trustee to purchase some or any part of the HOA's rights in the HOA Lien.

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

15 Deny.

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

17 Admit that before you acquired your interest in the Property, you reviewed publicly recorded
18 documents on file with the Clark County Recorder's office that related to the Property.

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

20 Admit.

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

22 Admit that before you acquired your interest in the Property, you knew the Deed of Trust had
23 been recorded against the Property.

24 **RESPONSE TO REQUEST NO. 12:**

25 Admit.

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

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

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

2 Admit.

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

4 Admit that prior to you acquiring your interest in the Property, Plaintiff held a beneficial
5 interest in the Deed of Trust.

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

7 Admit.

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

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

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

12 Admit.

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

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

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

18 Admit.

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

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

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

23 Admit.

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

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

28 ...

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

2 Admit.

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

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

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

7 Deny.

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

9 Admit that you paid \$22,100 for your interest in the Property.

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

11 Admit.

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

13 Admit that at the time of the HOA Foreclosure Sale you believed the fair market value of the
14 Property was at least \$110,500.

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

16 Deny.

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

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

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

22 Deny.

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

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

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

26 Admit.

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

28 Admit that the Property is currently rented or leased.

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

2 Admit.

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

4 Admit that, from July 11, 2009 to the present, you have purchased other properties at
5 homeowner's association foreclosure sales in Nevada.

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

7 Deny.

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

9 Admit that, from July 11, 2009 to the present, you have purchased other properties
10 homeowner's association foreclosure sales conducted by HOA Trustee.

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

12 Admit.

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

14 Admit that, prior to the foreclosure sale date, you were aware Plaintiff had delivered more than
15 one dollar (\$1.00) to the HOA or HOA Trustee relating to the HOA Lien.

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

17 Deny.

18 DATED this 6th of September, 2016.

19 LAW OFFICES OF
20 MICHAEL F. BOHN, ESQ., LTD.

21
22 By: /s/ Michael F. Bohn, Esq./
23 Michael F. Bohn, Esq.
24 376 E. Warm Springs Road, Ste. 140
25 Las Vegas, NV 89119
26 Attorney for Saticoy Bay LLC Series 6387
27 Hamilton Grove
28

1 CERTIFICATE OF MAILING

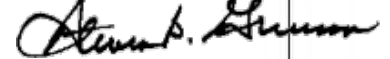
2 I HEREBY CERTIFY that on the 6th day of September 2016, I served a photocopy of
3 the foregoing DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR
4 ADMISSIONS by placing the same in a sealed envelope with first-class postage fully prepaid thereon and
5 deposited in the United States mails addressed as follows:

6 Ariel E. Stern, Esq.
7 Allison R. Schmidt, Esq.
8 Akerman LLP
9 1160 Town Center Drive, Suite 330
10 Las Vegas, Nevada 89144
11 Attorney for Bank of America

Megan H. Hummel, Esq.
Joseph P. Garin, Esq.
J. William Ebert, Esq.
Lipson Neilson Cole Seltzer & Garin
9900 Covington Cross Dr., Ste. 120
Las Vegas, NV 89144
Attorney for Sunrise Ridge Master
Homeowners Association

11 Christopher V. Yergensen, Esq.
12 Nevada Association Services, Inc.
13 62234 W. Desert Inn Rd.
14 Las Vegas, NV 89146
15 Attorney for Nevada Association Services, Inc.

16 /s/ Maggie Lopez/
17 An employee of Law Offices of
18 Michael F. Bohn, Esq., Ltd.
19
20
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28



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

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

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

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

14 SATICOY BAY LLC SERIES 6387
15 HAMILTON, a Nevada limited liability
16 company,

17 Plaintiff,

18 vs.

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

24 Defendants.

CASE NO.: A-19-790247-C

DEPT. NO.: VI

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

25 COMES NOW, NEVADA ASSOCIATION SERVICES, INC. (hereinafter "NAS"), and
26 hereby submits its Joinder to SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S
27 (hereinafter "SUNRISE RIDGE") Motion to Dismiss SATICOY BAY LLC SERIES 6387
28 HAMILTON'S Complaint. NAS incorporates the arguments, points and authorities, and Exhibits set
forth by SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION as though fully set forth
herein.

CONCLUSION

For all the reasons set forth in its Motion, SUNRISE RIDGE MASTER HOMEOWNERS'

///

1 ASSOCIATION'S Motion to Dismiss SATICOY BAY LLC SERIES 6387 HAMILTON'S Complaint
2 should be **GRANTED** as to SUNRISE RIDGE and NAS.

3 Dated this 8th day of July, 2021.

4

5

By: 

6

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

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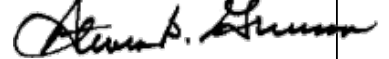
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of July, 2021, and pursuant to N.R.C.P. 5(b), I served a true and correct copy of the foregoing *Nevada Association Services, Inc.'s Joinder to Sunrise Ridge Master Homeowners' Association's Motion to Dismiss or Alternatively, Motion for Summary Judgment* upon the parties listed below and all parties/counsel set up to receive notice via electronic service in this matter in the following manner:

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

Roger Croteau, Esq. croteaulaw@croteaulaw.com	Christopher Benner, Esq. chris@croteaulaw.com
Jonathan Wong, Esq. jwong@lipsonneilson.com	J. William Ebert, Esq. bebert@lipsonneilson.com

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



OPP

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

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY, LLC, SERIES 6387
HAMILTON GROVE, a Nevada limited
liability company,

Plaintiff,

vs.

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

Defendants.

Case No. A-19-790247-C
Dept No. 6

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

Plaintiff Saticoy Bay LLC, Series 6387 Hamilton ("Plaintiff"), by and through its attorneys,
Roger P. Croteau & Associates, Ltd., submits this Opposition ("Opposition") to Sunrise Ridge
Master Homeowners' Association (the "HOA") Motion to Dismiss Plaintiff's First Amended
Complaint, or Alternatively, Motion for Summary Judgment ("Motion") and the Joinder
("Joinder") by Nevada Association Services Inc. This Opposition is based on the following points
and authorities, the authenticated exhibits attached, the pleadings, other documents on file in this
case, and any oral argument the Court may entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

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

STATEMENT OF FACTS

1. Plaintiff is the current owner of real property located at 6387 Hamilton Grove Avenue, Las Vegas, Nevada 89122 (APN 161-15-711-008) (the "Property"). Plaintiff acquired title to Property from the HOA following the foreclosure sale on July 11, 2014 ("HOA Foreclosure Sale") conducted by Defendant Nevada Association Services, Inc. d/b/a Assessment Management Services, (the "HOA Trustee") on behalf of HOA.

2. On or about September 9, 2009, Salvador Partida Castillo and Veronica Delgado DePartida, husband and wife as joint tenants (the “Former Owners”) purchased the Property. Thereafter, the Former Owners obtained a loan for the Property from Venta Financial Group, (“Lender”), that was evidenced by a promissory note and secured by a deed of trust between the Former Owners and Lender, recorded against the Property on September 18, 2009, for the loan amount of \$130,001.00 (the “Deed of Trust”).

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

4. On April 8, 2014, MERS assigned the Deed of Trust to Bank of America, N.A. (“BANA”)¹ via Assignment of Deed of Trust, which was recorded against the Property on April 9, 2014.

5. On December 27, 2012, HOA Trustee, on behalf of HOA, recorded a Notice of Claim of Delinquent Assessment Lien (the “NODAL”). The NODAL stated that the amount due to the HOA was \$1,120.50, including late fees, collection fees and interest (the “HOA Lien”), plus accruing assessments, interest, late charges, costs, fees, and other charges.

6. On January 9, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell (“NOD”) against the Property. The NOD stated the amount due to the HOA was \$1,708.38 plus late fees, collection costs, and interest.

7. On May 20, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure Sale against the Property (“NOS”). The NOS stated that the total amount due the HOA was \$2,415.24 and set a sale date for the Property of June 11, 2014 at 10:00 a.m., to be held at 6224 West Desert Inn Road, Las Vegas, Nevada.

¹ Upon information and belief, BANA was the servicer of the loan secured by the Deed of Trust.

1 8. Before the NOS was recorded, BANA, through counsel Miles, Bauer, Bergstrom &
2 Winters, LLP (“Miles Bauer”) contacted the HOA Trustee and HOA via U.S. Mail and requested
3 adequate proof of the super priority amount of assessments (“Super-Priority Lien Amount”) by
4 providing a breakdown of nine (9) months of common HOA assessments in order for BANA to
5 calculate the Super Priority Lien Amount, in an ostensible attempt to determine the amount the HOA
6 Lien entitled to super-priority.

7
8 9. By way of an Affidavit by Adam Kendis of Miles Bauer, Miles Bauer provided that
9 they could not locate a response from the HOA and HOA Trustee to the September 18, 2013 Miles
10 Bauer letter to the HOA, care of the HOA Trustee. Thus, Miles Bauer used a Statement of Account
11 from Nevada Association Services, Inc., for a different property in the same HOA to determine a
12 good faith payoff

13
14 10. On September 26, 2013, BANA, through Miles Bauer, provided a payment of \$378.00
15 to the HOA Trustee, which included payment of up to nine months of delinquent assessments (the
16 “Attempted Payment”). HOA Trustee, on behalf of the HOA, rejected BANA’s Attempted Payment
17 of \$378.00.

18
19 11. HOA Trustee then proceeded to conduct the non-judicial foreclosure sale on the
20 Property on July 11, 2014, and recorded the HOA Foreclosure Deed, which stated that the HOA
21 Trustee sold the HOA’s interest in the Property to Plaintiff at the HOA Foreclosure Sale for the
22 highest bid amount of \$22,100.00.

23 12. Neither the HOA nor the HOA Trustee disclosed the Attempted Payment to bidders,
24 Plaintiff, or the public, either in writing or orally, before the HOA Foreclosure Sale, despite
25 reasonable inquiry by Mr. Haddad (on behalf of Plaintiff), which was his practice at the time when
26 attending NRS Chapter 116 foreclosure sales. *See* Declaration of Iyad Haddad attached to first
27 Amended Complaint, Declaration of Mr. Haddad.
28

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

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

22 The Nevada Supreme Court has also indicated that summary judgment is a drastic remedy
23 and that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84 Nev.
24 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d 168 (1995).

1 “Actions for declaratory relief are governed by the same liberal pleading standards that are applied
2 in other civil actions.” *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258,
3 1260-61 (1993). “The formal sufficiency of a claim is governed by NRCP 8(a), which requires only
4 that the claim, shall contain (1) a short and plain statement of the claim showing that the pleader is
5 entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.’
6 *Id.* (quoting NRCP 8(a)).
7

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

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

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

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

25 123 Nev. 217, 225 (2007). The Court in *Nelson* provided that the omission of a material fact such as
26 the Attempted Payment of the HOA Lien is deemed to be a false representation which Defendants
27 are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to potential bidders upon
28 **reasonable inquiry** from potential bidders at the HOA Foreclosure Sale, and such intentional
omission is equivalent to a false representation under the facts of this case.

Plaintiff has demonstrated that the HOA, by and through its agent, the HOA Trustee,
intentionally did not disclose the Attempted Payment to Plaintiff or the potential bidders at the HOA

1 Foreclosure Sale. Unlike NRS Chapter 107 sales, NRS Chapter 116 sales provide for a super and
2 subpriority lien portion related the Deed of Trust. Absent the recording of any notice of payment of
3 the Super Priority Lien Amount, as is mandated with the NRS Chapter 116 amendments in 2015, the
4 only way Plaintiff and/or potential bidders at the HOA Foreclosure Sale would know if any party
5 tendered the Super Priority Lien Amount and/or Attempted Payment is if the HOA and/or the HOA
6 Trustee informed the bidders of the Attempted Payment, especially when asked. It is clear from the
7 facts of this case that the HOA Trustee was aware of the Attempted Payment and its rejection by the
8 HOA Trustee.

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

17 In this case, Defendants are not guilty of an affirmative false representation, but they are
18 guilty of intentionally not disclosing a material fact regarding the payment of the Attempted Payment
19 concerning the Deed of Trust in response to Plaintiff's inquiry (with any question of fact regarding
20 Plaintiff's inquiry being viewed in a light favorable to Plaintiff, or taken as true, depending upon
21 whether the question is posed in the context of a Motion for Summary Judgment of Dismissal). Thus,
22 Defendants are guilty of making a material omission of a fact subject to this claim. As Mr. Haddad
23 sets forth in his declaration, which is attached and incorporated into the First Amended Complaint,
24 he relied upon the non-disclosure of the Attempted Payment to indicate that no tender had been
25 attempted or accomplished. The discrepancy is underscored by the fact that the HOA Trustee had a
26 policy for responding to inquiries, as set forth in Exhibit 1, the Declaration of Susan Moses (from a
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28

1 similar matter), of refusing to provide information, that would have directly led to preventing Mr.
2 Haddad from obtaining information from the HOA Trustee. The fact that a policy existed
3 substantiates that inquiries were a regular occurrence, and thus was not an uncommon occurrence.
4 Furthermore, the response of the HOA Trustee, to refuse to provide information, clearly shows that
5 Plaintiff was not informed of the Attempted Tender.
6

7 This shows the HOA, by way of the HOA Trustee's actions, leading up to and at the HOA
8 Foreclosure Sale, intentionally obstructed Plaintiff's opportunity to conduct its own due diligence
9 regarding the Property and specifically the priority of the lien being foreclosed upon. This obstruction
10 ultimately affected Plaintiff's decision whether to actually submit a bid on the Property or not. Had
11 Mr. Haddad known that he was purchasing the Property subject to the Deed of Trust, he would have
12 never submitted a bid in the first place, thus avoiding this entire controversy, as set forth in Mr.
13 Haddad's Declaration, as attached to the First Amended Complaint.
14

15 In the present case, at the time of the Foreclosure Sale, the HOA and HOA Trustee knew that
16 BANA had made the Attempted Payment of the HOA Lien but did not inform the bidders. Neither
17 the HOA nor the HOA Trustee ever disclosed, or responded to Plaintiff's inquires, regarding the
18 Attempted Tender. Indeed, there was a policy to *not* provide the information, as set forth in the
19 declaration of Susan Moses for NAS, that BANA had in fact made the Attempted Payment of the
20 HOA Lien.
21

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

1 Iyad Haddad attached to First Amended Complaint The *Noonan* decision is based upon a factual
2 determination of whether a material, factual, question had been asked and if it was answered or there
3 was a material omission of fact. The *Noonan* court did not consider the arguments presented in this
4 matter about NRS 116.1113, NRS Chapter 113 (below), and their relevant analysis regarding
5 Plaintiff's inquiry, and the HOA Trustee's unwillingness, to respond.
6

7 The HOA's reference to case law regarding an *affirmative* duty to disclose an attempted or
8 rejected tender by a lender is irrelevant here. The HOA's reliance upon *Saticoy Bay, Ltd. Liab. Co.*
9 *v. Mountain Gate Homeowners' Ass'n*, 473 P.3d 1046 (Nev. 2020) fails to take account of this
10 difference. The Order of Affirmance in *Mountain Gate* addresses the requirement of a "proactive"
11 duty to volunteer information. Plaintiff's allegations, when taken as true as required on a motion to
12 dismiss, does not require the HOA or HOA Trustee to "proactively" disclose the relevant
13 information, but simply to respond to the inquiry of Mr. Haddad. As shown by the attached
14 declaration of Susan Moses and the allegations of Plaintiff, included in Mr. Haddad's declaration as
15 well, the HOA Trustee had a practice of refusing to provide the information, a very different issue
16 then not volunteering the information.
17

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

2 Plaintiff's discovery responses as set forth by the HOA, allegations in this matter, and
3 testimony by way of the Declaration is consistent; the HOA and HOA Trustee are simply overeager
4 in their reading of the responses. First, a simple point of clarification before going into the analysis;
5 there is a difference between asking a question and receiving an answer, as Susan Moses' Declaration
6 makes clear. Mr. Haddad can ask the HOA Trustee regarding a sale, in a related matter Susan Moses
7 stated that it was the policy of the HOA Trustee that it would not respond. Thus, When Plaintiff
8 responded that it did not receive information on the Subject Property from the HOA or HOA Trustee
9 other than that provided in the Notice of Foreclosure Sale prior to the HOA Sale, as set forth in
10 Exhibit "A" and Exhibit "B" of the HOA's motion, he was relating the exact problem; that Mr.
11 Haddad requested information and was denied information. Indeed, the fact that that the HOA
12 provides this testimony and now holds it up in their motion, in light of the Declaration of the HOA
13 Trustee in a similar matter, proves that the HOA Trustee recognized Mr. Haddad *did in fact* ask and
14 that they did not provide the information, taking this matter beyond the prior case law of "affirmative"
15 duty to produce the information and into "withholding" of information in response to an inquiry.
16

17
18 The various admissions, in the limited format that admissions allow, show that there was no
19 communication between the HOA and HOA Trustee and Plaintiff. However, the lack of
20 communication is shown to be due to the policies and procedures of the HOA Trustee; refusing to
21 respond to questions due to their interpretation of the law means that Plaintiff did not get the
22 information Plaintiff sought, not that Plaintiff did not inquire. Furthermore, the fact that there was a
23 policy and procedure of not responding indicates that Mr. Haddad did inquire, so often in fact, that
24 there became a policy and procedure of how to respond.
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1 **D. PLAINTIFF PROPERLY SET FORTH THE CLAIM FOR RELIEF UNDER NRS 113.**

2 As additional proof of the intentional/negligent misrepresentation, the HOA and HOA
3 Trustee are obligated to follow the disclosures mandated by NRS Chapter 113. NRS Chapter 113
4 also requires disclosures by the HOA and HOA Trustee. NRS Chapter 113 is not generally applicable
5 to NRS Chapter 107 foreclosure sales, but it does have certain provisions that do apply in NRS
6 Chapter 116 foreclosure sales. NRS Chapter 116 foreclosure sales are not exempted from NRS
7 Chapter 113's disclosure requirements to the extent that the HOA and the HOA Trustee, as agent for
8 the HOA, have specific knowledge of the facts required for disclosure. Pursuant to Chapter 113, the
9 HOA and the HOA Trustee must disclose the Attempted Payment and/or any payments made or
10 attempted to be made by BANA, the Former Owner, or any agents of any other party to the bidders
11 and Plaintiff at the HOA Foreclosure Sale. NRS 113.130 provides as follows:

14 NRS 113.130 Completion and service of disclosure form before conveyance of
15 property; discovery or worsening of defect after service of form; exceptions;
16 waiver.

17 1. Except as otherwise provided in subsection 2:

18 (a) At least 10 days before residential property is conveyed to a purchaser:

19 (1) The seller shall complete a disclosure form regarding the residential property;
20 and

21 (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent
22 with the completed disclosure form.

23 (b) If, after service of the completed disclosure form but before conveyance of the
24 property to the purchaser, a seller or the seller's agent discovers a new defect in the
25 residential property that was not identified on the completed disclosure form or
26 discovers that a defect identified on the completed disclosure form has become
27 worse than was indicated on the form, the seller or the seller's agent shall inform
28 the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable
after the discovery of that fact but in no event later than the conveyance of the
property to the purchaser. If the seller does not agree to repair or replace the defect,
the purchaser may:

(1) Rescind the agreement to purchase the property; or

(2) Close escrow and accept the property with the defect as revealed by the seller
or the seller's agent without further recourse.

**2. Subsection 1 does not apply to a sale or intended sale of residential
property:**

(a) By foreclosure pursuant to chapter 107 of NRS.

1 (b) Between any co-owners of the property, spouses or persons related within the
2 third degree of consanguinity.

3 (c) Which is the first sale of a residence that was constructed by a licensed
4 contractor.

5 (d) By a person who takes temporary possession or control of or title to the property
6 solely to facilitate the sale of the property on behalf of a person who relocates to
7 another county, state or country before title to the property is transferred to a
8 purchaser.

9 3. A purchaser of residential property may not waive any of the requirements of
10 subsection 1. A seller of residential property may not require a purchaser to waive
11 any of the requirements of subsection 1 as a condition of sale or for any other
12 purpose.

13 4. If a sale or intended sale of residential property is exempted from the
14 requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee
15 and the beneficiary of the deed of trust shall, not later than at the time of the
16 conveyance of the property to the purchaser of the residential property, or upon the
17 request of the purchaser of the residential property, provide:

18 (a) Written notice to the purchaser of any defects in the property of which the trustee
19 or beneficiary, respectively, is aware; and

20 (b) If any defects are repaired or replaced or attempted to be repaired or replaced,
21 the contact information of any asset management company who provided asset
22 management services for the property. The asset management company shall
23 provide a service report to the purchaser upon request.

24 **5. As used in this section:**

25 (a) **“Seller” includes, without limitation, a client as defined in NRS 645H.060.**

26 (b) **“Service report” has the meaning ascribed to it in NRS 645H.150.**

27 *Id.* (emphasis added). As used in Chapter 113, the term “defect” means a condition that
28 materially affects the value or use of the residential property in an adverse manner. NRS 113.100(1).

The HOA and HOA Trustee are required to, and must, provide a Seller’s Real Property
Disclosure Form (“SRPDF”) to the “Purchaser” as defined in NRS Chapter 116, at the time of the
HOA Foreclosure Sale. See Plaintiff 14-15. NRS Chapter 116 foreclosure sales are not exempt from
the mandates of NRS Chapter 113. To the extent known to the HOA, and the HOA Trustee, as the
agent of the HOA, the HOA and HOA Trustee must complete and answer the questions posed in the
SRPDF in its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) -
(f), and Section 11, that provide as follows:

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

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

...

11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?

Id. (emphasis added). Section 11 of the SRPDF relates directly to information known to the HOA and the HOA Trustee that materially affects the value of the Property and defined as a “defect” in NRS 113.100(1). In this case, if the Super Priority Lien Amount is paid, or if the Attempted Payment is rejected, it would have a materially adverse effect on the overall value of the Property, and therefore, must be disclosed in the SRPDF by the HOA and the HOA Trustee. Section 9(c) - (e) of the SRPDF would provide notice of any payments made by BANA or others on the HOA Lien.

Section 11 of the SRPDF generally deals with the disclosure of the condition of the title to the Property that would only be known by the HOA and the HOA Trustee. Pursuant to the Nevada Real Estate Division’s (“NRED”), Residential Disclosure Guide (the “Guide”), the HOA and HOA Trustee shall provide the following to the purchaser/Plaintiff at the HOA Foreclosure Sale:

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

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

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

- 6 • **written notice of any defects of which the trustee or beneficiary is aware.**

7 (emphasis added). If the HOA and/or HOA Trustee fail to provide the SRPDF to the
8 Plaintiff/purchaser at the time of the HOA Foreclosure Sale, the Guide explains that:

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

14 Id. Pursuant to NRS 113.130(4), the HOA and HOA Trustee are required to provide the
15 information set forth in the SRPDF to the bidders at the HOA Foreclosure Sale and no later than the
16 drop of the gavel. The HOA and the HOA Trustee did not provide an SRPDF to the Plaintiff/Mr.
17 Haddad at the HOA Foreclosure Sale nor did they provide any information orally. The foregoing
18 demonstrates the HOA and the HOA Trustee's duty and obligation to disclose the Attempted
19 Payment to the Plaintiff at the HOA Foreclosure Sale. Failure to make the foregoing disclosures is
20 a breach of duty of good faith and candor and a duty owed by the Defendants to Plaintiff under NRS
21 Chapter 116. The HOA and HOA Trustee's duty is codified pursuant to NRS Chapter 113 and was
22 breached in this case.

23 Thus, while the Nevada Supreme Court Order cited in the HOA's briefing notes that the
24 "value" of the Property technically remains the same whether encumbered or not, to the extent that
25 it differs from a construction defect or other physical impairment that could decrease the value by a
26 fixed amount for repairs of same, it fails to account for the entirety of the definition of "Defect" set
27 forth in NRS 113.100. If the First Deed of Trust remains an encumbrance on the Property, Plaintiff,
28 or any other buyer, cannot know 1) when the First Deed of Trust will be foreclosed and the junior

1 interest eliminated, 2) the price to avert foreclosure under the First Deed of Trust (i.e. what the
2 principal, interest, escrow, fees etc.. are under the First Deed of Trust), and 3) the use during that
3 time period (i.e. short-term rental, long-term rental, sale, etc...). Thus, while the value of the Property
4 as a *res* may remain unchanged by an encumbrance, NRS 113 sets forth “value or use” which implies
5 a more extensive definition than merely the value of the Property as a collection of boards, pipes,
6 and wires. Thus, the failure to make the disclosure did, indeed, impact the “value” of the Property,
7 and thus, Plaintiff’s claims are properly brought and supported at this early juncture.

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

11 The Supreme Court of Nevada has recognized that co-conspirators, like the HOA and the
12 HOA Trustee in this matter, are deemed to be each other’s agents while acting in furtherance of the
13 conspiracy. *Tricarichi v. Cooperative Rabobank, U.A.*, 440 P.3d 645, 653 (Nev. 2019) (observing
14 in the context of a conspiracy claim for purposes of establishing personal jurisdiction, “co-
15 conspirators are deemed to be each other’s agents, the contacts that one co-conspirator made with a
16 forum while acting in furtherance of the conspiracy may be attributed for jurisdictional purposes to
17 the other co-conspirators.”). Likewise, Plaintiff here contends in its First Amended Complaint – at
18 least under any fair reading of it under the applicable standard set forth in NRCP 12(b)(5) – that the
19 HOA and the HOA Trustee were co-conspirators of one another in failing or refusing to disclose the
20 Attempted Payment to Plaintiff.

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

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

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

16 **G. PLAINTIFF'S CLAIMS FOR PUNITIVE DAMAGES ARE NOT PRECLUDED IN**
17 **THIS CASE**

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

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

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

- 1 (a) By the association against:
2 (1) A declarant;
3 (2) A community manager; or
4 (3) A unit's owner.
5 (b) By a unit's owner against:
6 (1) The association;
7 (2) A declarant; or
8 (3) Another unit's owner of the association.
9 (c) By a class of units' owners constituting at least 10 percent of the
10 total number of voting members of the association against a community manager.

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

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

16 5. Punitive damages may not be awarded against:
17 (a) The association;
18 (b) The members of the executive board for acts or omissions that occur
19 in their official capacity as members of the executive board; or
20 (c) The officers of the association for acts or omissions that occur in
21 their capacity as officers of the association.

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

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

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

Emphasis added.

Punitive damages are an available award under NRS 116.4117(4)-(5); however, it is on a case
by case analysis and to be determined by the Court after the introduction of evidence. Plaintiff does
contend that the HOA and HOA Trustee acted in "conscious disregard" as set forth in the First
Amended Complaint claims for Intentional Misrepresentation. Taking the factual inferences in a light
most favorable to the non-moving party, i.e. the intentional misrepresentation by withholding

1 information regarding the Attempted Tender, following Plaintiff's inquiry, operates as the necessary
2 deception to justify punitive damages.

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

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

10 When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by
11 affidavit or declaration that, for specified reasons, it cannot present facts essential
12 to justify its opposition, the court may:

- 13 (1) defer considering the motion or deny it;
14 (2) allow time to obtain affidavits or declarations or to take discovery; or
15 (3) issue any other appropriate order.

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

20 **CONCLUSION**

21 Based on the foregoing, the Court should deny the HOA's Motion, and the joinder of NAS
22 thereto, and allow this matter to proceed to discovery.

23 DATED this July 20, 2021.
24 ROGER P. CROTEAU & ASSOCIATES, LTD.
25 /s/ Christopher L. Benner
26 ROGER P. CROTEAU, ESQ. NVBAR 4958
27 CHRISTOPHER L. BENNER, ESQ. NVBAR 8963
28 2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
Attorneys for Plaintiff

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• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle

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

EXHIBIT 1

EXHIBIT 1

1 DECLARATION

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

5 I, Susan Moses, declare that:

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

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

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

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

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

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

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

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

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

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

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

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

EXECUTED this 04 day of June, 2021.

Signature Mrs. Jones

Susan Moses
Print Name

EXHIBIT 2

EXHIBIT 2

DECLARATION IN SUPPORT OF NRCP 56(D) RELIEF

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

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

3. Plaintiff's Complaint was filed on February 28, 2019; Plaintiff's First Amended Complaint was filed on June 22, 2021.

4. Defendant Sunrise Ridge Master Homeowners' Association ("HOA") has filed a Motion to Dismiss, alternatively Motion for Summary Judgment to the First Amended Complaint on July 6, 2021.

5. Defendant Nevada Association Services, Inc., ("HOA Trustee") filed a Joinder on July 8, 2021.

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

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

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

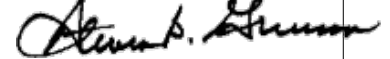
disputed.

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

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

Dated this July 20, 2021.

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



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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-790247-C
Dept.: VI

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

Hearing Date: August 10, 2021
Hearing Time: 9:30 a.m.

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

///

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Opposition confirms that there are no material facts in dispute, and shows that the parties are in agreement that: 1) Plaintiff purchased the Property at a foreclosure sale for \$22,100.00; 2) prior to the foreclosure sale, Plaintiff did not communicate with Sunrise Ridge or NAS regarding whether any person or entity offered to pay or tender any portion of the HOA's lien; 3) prior to the foreclosure sale, Plaintiff did not communicate with Sunrise Ridge or NAS regarding whether they accepted any funds relating to the HOA's lien; and 4) there were no other communications between Plaintiff and the HOA/NAS.

Rather, the Opposition's arguments are solely legal in character, arguing that the fact that neither the HOA nor NAS provided Plaintiff with information on attempted payments upon "reasonable inquiry" constitutes a material omission of a fact that they were bound in good faith to disclose. Plaintiff's attempt to parse the issue as being one of a reactive duty rather than an affirmative duty is unavailing; the case law cited by the HOA in the MSJ indicates that under the pre-2015 version of NRS 116, there was no duty to disclose the fact of attempted payments on the HOA's lien, either proactively or upon inquiry by potential purchasers. Moreover, there is no question of whether the bank's attempted payment and the existence of its deed of trust constitute a "defect" under NRS 113, as the Nevada Supreme Court has already found that it does not. The only questions remaining in this case are ones of law, not fact, and as set forth below and in the HOA's MSJ, these questions should be resolved in the HOA's favor.

II. LEGAL ARGUMENT

A. Plaintiff's Misrepresentation Claim Fails Because the HOA Was Not Bound in Good Faith to Disclose BANA's Attempted Payment, and Plaintiff Does Not Actually Allege That It Inquired Regarding the Same

Plaintiff does not dispute that, under the pre-2015 version of NRS 116, Sunrise Ridge had no duty to affirmatively disclose the existence of attempted payments on the HOA Lien, but argues that failure to provide this information upon inquiry is tantamount

1 to a false representation, citing to *Nelson v. Heer*, 123 Nev. 217, 225 (2007) (stating
2 that “the suppression or omission of a material fact which a party is bound in good faith
3 to disclose is equivalent to a false representation”). Plaintiff’s reliance on *Nelson* is
4 entirely misplaced. To begin with, Plaintiff’s attempt to create a distinction between an
5 omission without prior inquiry and an omission following inquiry is unavailing and finds
6 no support in *Nelson*. Under *Nelson*, not every omission of a material fact constitutes a
7 false representation; rather, only omission of material facts that a party is “bound in
8 good faith to disclose” constitutes a false representation. Plaintiff fails to establish that
9 Sunrise Ridge and/or NAS were “bound in good faith” to disclose the fact of the bank’s
10 attempted payment, and the case law cited by Sunrise Ridge in fact indicates the exact
11 opposite. Furthermore, Plaintiff does not actually allege that it made any such inquiry
12 of the HOA or NAS, and its own discovery responses confirm it did not.

13 1. The Pre-2015 Version of NRS 116 Did Not Require Disclosure of
14 Attempted Tenders, Either Affirmatively or Upon Inquiry

15 The Nevada Supreme Court in *Noonan v. Bayview Loan Servicing, LLC*, 2019
16 WL 1552690, 438 P.3d 335 (Nev. 2019) specifically examined a claim for
17 misrepresentation based on the HOA Trustee’s omission of the fact that a portion of the
18 HOA’s lien had been paid in advance of the foreclosure sale. The Nevada Supreme
19 Court ruled, in no uncertain terms, that “[s]ummary judgment was appropriate on the
20 negligent misrepresentation claim because [the HOA] neither made an affirmative false
21 statement **nor omitted a material fact it was bound to disclose.**”). *Id.* In so holding,
22 the Nevada Supreme Court in fact cited to the same rule in *Nelson* upon which Plaintiff
23 relies, yet still found that the omission of this information was not a false representation,
24 and that the HOA/NAS were not bound to disclose such information. *Id.*¹

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

1 Moreover, contrary to Plaintiff's assertions, the string of recent Nevada Supreme
2 Court cases cited to in the MSJ were not only limited to an affirmative duty to disclose;
3 in issuing its holding, the Court also considered the same material omission arguments
4 set forth by Plaintiff here. For instance, Plaintiff's opening brief in *Saticoy Bay, Ltd.*
5 *Liab. Co. v. Mountain Gate Homeowners' Ass'n*, 473 P.3d 1046, 2020 WL 6129970
6 (Nev. 2020), made the exact same argument that "[t]he *Heer* Court provided that the
7 omission of a material fact, such as the Lender's tender/Attempted Payment of the
8 Super-Priority Lien Amount, is deemed to be a false representation which the HOA and
9 HOA Trustee are bound... to disclose to potential bidders, and this duty is a good faith
10 obligation to disclose upon reasonable inquiry from potential bidders at the HOA
11 Foreclosure Sale, and such intentional omission is equivalent to a false representation
12 under the facts of this case." See Plaintiff's Opening Brief, attached hereto as **Exhibit**
13 **"C,"** at pp. 19-20. This argument was part of the record which the Nevada Supreme
14 Court considered in ruling that "appellant's claims for misrepresentation and breach of
15 NRS 116.1113 fail" and concluded that "the district court properly dismissed appellant's
16 complaint." *Mountain Gate*, 473 P.3d 1046.

17 These cases demonstrate that the HOA had no duty – either proactively or upon
18 inquiry – to inform potential purchasers about attempted payments on the HOA's lien.
19 Moreover, NRS 116 itself (as it existed at the time of the sale) should not be forgotten in
20 all of this; the text of that statute did **not** say "HOAs have no duty to affirmatively
21 disclose the existence of attempted tender." Rather, the statute simply contained no
22 such duty to begin with, either proactively or reactively. Plaintiff's effort to force such a
23 distinction into the analysis is entirely meritless.

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

Plaintiff's arguments in its Opposition are based on the premise that it actually inquired of the HOA and/or NAS whether payment had been made or attempted on the HOA's lien. However, as discussed in the HOA's moving papers, Plaintiff's FAC only alleges that it had a general practice and procedure of making such inquiries. Plaintiff's Opposition fails to point to a specific paragraph in the FAC wherein Plaintiff alleges that it specifically made such an inquiry here. Again, the Nevada Supreme Court has found such pleadings to be inadequate to establish a misrepresentation. See *Mountain Gate Homeowners' Ass'n*, 473 P.3d at 1046, fn 2 (noting that "although appellant's complaint alleges generally that appellant had a 'pattern and practice' of 'attempt[ing] to ascertain whether anyone had attempted to or did tender any payment, **the complaint does not allege that appellant specifically asked respondents whether a superpriority tender had been made in this case...**") (emphasis added).

Plaintiff's discovery responses in the Federal Action confirm that it did not make any such inquiries. In its Opposition, Plaintiff misrepresents its responses as admissions "that Plaintiff did not get the information Plaintiff sought, not that Plaintiff did not inquire." See Opp'n at 11:19-23. Such an argument is disingenuous at best, as even a cursory reading of the RFAs in question indicate that the request was not "admit that you did not receive any information from the HOA", but rather "admit that, prior to the HOA foreclosure sale, you did not communicate with the HOA or HOA Trustee concerning [various topics relating to the foreclosure sale]." See **Exhibit "B"** to the MTD/MSJ, RFA Nos. 15-18. Plaintiff's response to each such RFA was an unqualified "Admit." *Id.* Plaintiff is bound to its discovery responses, which unequivocally indicate that it did not communicate with the HOA or NAS regarding any payments made or attempted on the HOA's lien. As such, Plaintiff is unable to establish any misrepresentation, and the HOA is entitled to summary judgment on this claim.

1 Finally, even if *arguendo* Plaintiff had made inquiry here, NAS's refusal to provide
2 information was not intended to induce Plaintiff to bid at the foreclosure sale, which is a
3 key element of the misrepresentation claim that Plaintiff cannot establish. *Barmettler v.*
4 *Reno Air, Inc.*, 956 P.2d 1382, 1386, 114 Nev. 441, 447 (Nev.,1998) (setting forth the
5 elements of a claim for misrepresentation). As indicated by Susan Moses in her
6 declaration, the reason NAS refused to disclose information about payments on the
7 HOA's account to potential bidders was because they were prohibited under federal law
8 from doing so. See Susan Moses Declaration, attached to Plaintiff's Opposition, at ¶5.
9 NAS's intent was not to deceive Plaintiff and other potential purchasers, but rather to
10 avoid incurring liability under federal law by improperly disclosing information.
11 Moreover, Susan Moses' Declaration indicates that NAS would have provided such
12 information upon receipt of 1) written consent from the debtor to communicate with
13 Plaintiff; 2) express permission from the court; or 3) if necessary to effectuate a post-
14 judgment judicial remedy. Plaintiff has no one to blame but itself for interpreting NAS's
15 refusal to provide information as meaning "no person or entity has attempted to pay the
16 HOA's lien, go ahead and bid on the property."² The HOA is entitled to dismissal or
17 summary judgment on this claim as a matter of law.

18 **B. The HOA is Entitled to Dismissal of or Summary Judgment on Plaintiff's**
19 **Throwaway Causes of Action**

20 Plaintiff's FAC contains three throwaway causes of action that essentially stand
21 or fall with the Misrepresentation cause of action: Breach of NRS 116.1113 (duty of
22 good faith), Conspiracy, and Unjust Enrichment. On the claim for Breach of the Duty of
23 Good Faith, because the Nevada Supreme Court has established that there was no
24 duty under the pre-2015 version of NRS 116 to disclose the fact of attempted payments
25 on the HOA lien, the HOA did not breach any "duty" by not doing so. As such, there is

26 ² Indeed, one does not need to think hard to realize the incredulity of such logic. This would be
27 akin to an employee submitting a PTO request to his boss, his boss not responding, and the
28 employee thereafter going on vacation because he interpreted the boss's non-response as
approval of his PTO request.

1 no basis for finding that the HOA breached its duty of good faith under NRS 116.1113.
2 See *Mountain Gate*, 473 P.3d 1046, (“[i]n particular, appellant’s claims for
3 misrepresentation **and breach of NRS 116.1113** fail because respondents had no duty
4 to proactively disclose whether a superpriority tender had been made.”) (emphasis
5 added).

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

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

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C. Saticoy Bay's Claim for Breach of NRS 113 Must Be Dismissed Because BANA's Tender is Not a "Defect" on the Property

Plaintiff discusses *ad nauseum* in its Opposition why it believes that NRS 113.130 and the Seller's Real Property Disclosure Form ("SRPDF") mandated disclosure by the HOA of the bank's attempted payment, but the Nevada Supreme Court has specifically refuted these arguments. *Mountain Gate*, 473 P.3d 1046, 2020 WL 6130913 at *2, fn 5 (stating "[n]or are we persuaded that the Seller's Real Property Disclosure Form would require disclosure of a superpriority tender."). The Nevada Supreme Court made clear its position on this issue as a whole when it stated that "NRS 113.130 requires a seller to disclose 'defect[s]', **not superpriority tenders.**" *Mountain Gate*, 473 P.3d 1046, 2020 WL 6130913 at *2 (emphasis added).

Plaintiff attempts to circumvent the Nevada Supreme Court's holding by arguing that the first deed of trust should still be deemed a "defect" under the statute because even if its existence does not affect the actual market value of the Property, it nonetheless encumbers the Plaintiff's use of the Property. Opp'n at 15:23 – 16:8. This argument is based off of the Court's statement that "the subject property technically has the same 'value' regardless of whether it is encumbered by the deed of trust." However, the full sentence taken in context provides clarity as to the Court's line of reasoning:

NRS 113.100 defines "Defect" as "a **condition** that materially affects the value or use of residential property in an adverse manner." **To the extent that a deed of trust could conceivably constitute a "condition,"** we note that the subject property technically has the same "value" regardless of whether it is encumbered by the deed of trust.

Id (emphasis added). The Court was not even convinced that a deed of trust constitutes a "condition" under NRS 113.100. By focusing his arguments on a more expansive definition of "value or use," Plaintiff presupposes that the deed of trust does in fact constitute a "condition."

Even giving Plaintiff the benefit of the doubt, there is no authority supporting the notion that NRS 113 *et seq* was intended to encompass anything beyond the physical condition of real property. Indeed, most if not all cases interpreting NRS 113.130

1 involve a seller's obligation to disclose physical defects in real property.³ The plain
2 language of NRS 113 itself suggests that "defect" refers to physical issues with real
3 property; for instance, NRS 113.130(4)(b) makes reference to defects being "repaired or
4 replaced," and NRS 113.150 discusses "the cost of repair or replacement" of a defect in
5 real property. "Repair," in turn, is defined as "[t]he process of restoring something that
6 has been subjected to decay, waste, injury, or partial destruction, dilapidation, etc."
7 *Black's Law Dictionary*, 11th ed. 2019. Accordingly, it stands to reason that "defect," as
8 used in NRS 113 et seq, concerns only physical issues with real property. *Orr Ditch &*
9 *Water Co. v. Justice Court of Reno Twp., Washoe Cty.*, 64 Nev. 138, 146, 178 P.2d
10 558, 562 (1947) ("[T]he meaning of particular terms in a statute may be ascertained by
11 reference to words associated with them in the statute.").

12 The bottom line is that the Nevada Supreme Court has drawn a clear distinction
13 between "defects" under NRS 113.100 and superpriority tenders. Plaintiff's arguments
14 are unavailing, and the HOA is entitled to dismissal of Plaintiff's claim for Violation of
15 NRS 113.

16 **D. Plaintiff's Request for Rule 56(d) Relief Should be Denied**

17 NRCP 56(d) allows courts to grant relief to the requesting party when the party
18 shows that it cannot present facts "essential to justify its opposition." NRCP 56(d).
19 Plaintiff makes an alternative request for Rule 56(d) relief in its Opposition on the
20 grounds that Plaintiff has not had the opportunity to address discovery. In the supporting
21 affidavit thereto, counsel for Plaintiff indicates that he needs to conduct discovery to 1)
22 obtain call logs and records from the HOA and/or NAS about any conversations with
23 Plaintiff; 2) ascertain whether Plaintiff made an inquiry and was refused information; and
24 3) depose NAS about communications with the HOA, BANA, Plaintiff, and others about
25

26 ³ See e.g., cases involving alleged violations of NRS 113.130: *Laurrance v. Deutsche Bank Nat. Trust Co.*
27 *ex rel. American Home Mortg. Assets Trust 2006-5*, 2015 WL 5521879, at *2 (D.Nev.,2015) (failure to
28 disclose existence of pipelines); *Lo v. Federal Nat. Mortg. Ass'n*, 2015 WL 4662630 (D.Nev.,2015) (failure to disclose mold); *Webb v. Shull*, 270 P.3d 1266, 1268, 128 Nev. 85, 88 (Nev.,2012) (failure to disclose soil defects); *Allstate Ins. Co. v. Burney*, 2009 WL 2834954, at *1 (D.Nev.,2009) (faulty construction and repair of driveway and retaining walls); *Nelson*, 123 Nev. 217 (failure to disclose water damage).

1 the Attempted Payment. None of these categories contain facts “essential to justify”
2 Plaintiff’s opposition.

3 With respect to categories 1 and 2, there is no need for this discovery because
4 Plaintiff itself stated in its discovery responses from the Federal Action that it did not
5 communicate with the HOA or NAS prior to the Foreclosure Sale. The Federal Action
6 involved the same property, the same plaintiff, and the same foreclosure sale, so there
7 is no valid reason why the facts as represented by Plaintiff at that time should be any
8 different now. Moreover, even if *arguendo* NAS has call logs indicating that Plaintiff
9 called and inquired about attempted payments, this would not be a fact “essential to
10 justify” Plaintiff’s opposition, because there was nothing wrongful about NAS’s
11 procedure for responding to such inquiries as set forth in Susan Moses’ Declaration.

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

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

1 denied the same.

2 **III. CONCLUSION**

3 Based on the foregoing, Defendant Sunrise Ridge respectfully requests this
4 Court dismiss Plaintiff's FAC in its entirety pursuant to NRCP 12(b)(5). Alternatively,
5 Sunrise Ridge requests summary judgment on each of Plaintiff's causes of action in its
6 FAC in light of its representations and admissions in its discovery responses from the
7 Federal Action.

8 DATED this 3rd day of August, 2021.

9 LIPSON NEILSON P.C.

10 */s/ Jonathan K. Wong*

11 By:

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9900 Covington Cross Drive, Suite 120
13 Las Vegas, Nevada 89144

14 *Attorneys for Defendant,*
15 *Sunrise Ridge Master Homeowners Association*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 3rd day of August, 2021, I electronically transmitted the foregoing **DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV& Serve registrants addressed to:

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EXHIBIT “C”

EXHIBIT “C”

IN THE SUPREME COURT OF NEVADA

SATICOY BAY, LLC, SERIES 6408
HILLSIDE BROOK, A NEVADA
LIMITED LIABILITY COMPANY,

Appellant,

vs.

MOUNTAIN GATE
HOMEOWNERS' ASSOCIATION, A
NEVADA NON-PROFIT
CORPORATION,

Respondent.

Supreme Court Case No. 80134

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APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Law firms that have appeared for Saticoy Bay, LLC, Series 6408 Hillside Brook (“**Appellant**”): Roger P. Croteau & Associates, Ltd.

2. Parent corporations/entities: Appellant is a Nevada series limited liability company. Appellant’s Manager is Bay Harbor Trust, with Iyad Haddad as the trustee of the Bay Harbor Trust. No publicly held corporation owns 10% or more of the beneficial interest in the Appellant and/or the Bay Harbor Trust.

Dated this 21st day of April, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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TABLE OF CONTENTS

I.	TABLE OF AUTHORITIES.....	v
II.	JURISDICTIONAL STATEMENT.....	viii
III.	NRAP 17 ROUTING STATEMENT.....	viii
IV.	STATEMENT OF ISSUES PRESENTED	x
V.	STATEMENT OF THE CASE	1
VI.	STATEMENT OF RELEVANT FACTS.....	1
VII.	STANDARD OF REVIEW	9
VIII.	SUMMARY OF ARGUMENT.....	11
IX.	LEGAL ARGUMENT	11
A.	THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT, BECAUSE APPELLANT’S CLAIMS AGAINST THE HOA AND HOA TRUSTEE WERE NOT TIME BARRED....	11
B.	THE DISTRICT COURT ERRED AS A MATTER OF LAW, BECAUSE APPELLANT PROPERLY STATED A CLAIM FOR RELIEF FOR MISREPRESENTATION	19
C.	THE DISTRICT COURT ERRED IN DISMISSING APPELLANT’S COMPLAINT, BECAUSE THE HOA AND HOA TRUSTEE HAD DUTIES UNDER NRS CHAPTERS 113 AND 116 TO DISCLOSE THE ATTEMPTED PAYMENT/TENDER TO APPELLANT AT THE HOA FORECLOSURE SALE.....	21
1.	THE HOA AND HOA TRUSTEE HAD A DUTY UNDER NRS CHAPTER 116 TO DISCLOSE THE ATTEMPTED PAYMENT/TENDER TO APPELLANT	21
a.	THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT, BECAUSE APPELLANT SUFFICIENTLY ALLEGED THE HOA’S AND HOA TRUSTEE’S BREACH OF THE DUTY OF GOOD FAITH UNDER NRS CHAPTER 116.....	34
2.	THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT, BECAUSE THE HOA AND HOA TRUSTEE	

	HAD A DUTY TO DISCLOSE THE ATTEMPTED PAYMENT/TENDER UNDER NRS CHAPTER 113	37
a.	THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT, BECAUSE APPELLANT SUFFICIENTLY ALLEGED THE HOA’S AND HOA TRUSTEE’S VIOLATION OF NRS CHAPTER 113...	44
D.	APPELLANT’S CLAIM FOR CONSPIRACY DOES NOT FAIL AS A MATTER OF LAW	44
X.	CONCLUSION.....	46
XI.	ATTORNEY’S CERTIFICATE OF COMPLIANCE	47

I. TABLE OF AUTHORITIES

Cases

<i>Alvord Inv., LLC v. Zoning Bd. of Appeals</i> , 920 A.2d 1000 (Conn. 2007)	26
<i>Bank of America N.A. v. SFR Invs. Pool 1, LLC</i> , 427 P.3d 113 (Nev. 2018).....	ix
<i>Barmettler v. Reno Air, Inc.</i> , 114 Nev. 441 (1998)	20
<i>Bemis v. Estate of Bemis</i> , 114 Nev. 1021 (1998).....	17
<i>Boulder Oaks Cmty. Ass’n v. B & J Andrews Enters., LLC</i> , 125 Nev. 397 (2009).	10
<i>Breliant v. Preferred Equities Corp.</i> , 109 Nev. 842 (1993)	10
<i>Brophy v. Cities Service Co.</i> , 70 A.2d 5 (Del. 1949).....	25
<i>Buzz Stew, LLC v. City of N. Las Vegas</i> , 124 Nev. 224 (2008).....	10
<i>Cantonbury Heights Condominium Ass’n., Inc. v. Local Land Dev., LLC</i> , 273 Conn. 724 (2005).....	26
<i>Carrington Mortg. Holdings, LLC v. R Ventures VIII, LLC</i> , 419 P.3d 703 (Nev. 2018).....	23
<i>Chase Plaza Condo. Ass’n v. JP Morgan Chase Bank, N.A.</i> , 98 A.3d 166 (D.C. Ct. App. 2014).....	26
<i>Crucil v. Carson City</i> , 95 Nev. 583 (1979).....	10
<i>Dean v. CMPJ Enters., LLC</i> , 2018 Minn. App. Unpub. LEXIS 642 (Minn. App. 2018).....	23
<i>Dozier v. State</i> , 124 Nev. 125 (2008)	17
<i>Ex parte Arascada</i> , 44 Nev. 30 (1920)	40
<i>G & H Assocs. v. Ernest W. Hahn, Inc.</i> , 113 Nev. 265 (Nev. 1997).....	16
<i>Holten v. Std. Parking Corp.</i> , 98 F. Supp. 3d 444 (Conn. 2015).....	25
<i>Horizons at Seven Hills Homeowners Ass’n v. Ikon Holdings, LLC</i> , 373 P.3d 66 (Nev. 2016).....	41
<i>Horodenski v. Lyndale Green Townhome Ass’n, Inc.</i> , 804 N.W.2d 366 (Minn. App. 2011).....	23
<i>Hunt Club Condos., Inc. v. Mac-Gray Servs., Inc.</i> , 721 N.W.2d 117 (Wis. Ct. App. 2006).....	26

<i>In re CityCenter Constr. & Lien. Master Litig.</i> , 129 Nev. 669 (2013).....	17
<i>Lank v. Steiner</i> , 224 A.2d 242 (Del. Supr. 1966)	25
<i>Lubin v. Kunin</i> , 117 Nev. 107 (2001)	18
<i>Lynch v. Vickers Energy Corp.</i> , 383 A.2d 278 (Del. 1977).....	25
<i>Merluzi v. Larson</i> , 96 Nev. 409 (1980).....	11
<i>Mills Acquisition Co. v. MacMillan, Inc.</i> , 559 A.2d 1261 (Del. 1989).....	25
<i>Nanopierce Techs. Inc. v. Depository Trust and Clearing Corp.</i> , 168 P.3d 73 (Nev. 2007).....	45
<i>Nationstar Mortg., LLC v. Amber Hills II Homeowners Ass’n</i> , 2016 U.S. Dist. LEXIS 43592 (D. Nev. 2016)	18
<i>Nationstar Mortg., LLC v. SFR Investments Pool 1, LLC</i> , 2017 Nev. App. Unpub. LEXIS 229 (Nev. App. Apr. 17, 2017)	31, 32
<i>Nelson v. Heer</i> , 123 Nev. 217 (2007)	19
<i>Nev. Ass’n Servs. v. Eighth Jud. Dist. Ct. of Nev.</i> , 338 P.3d 1250 (Nev. 2014).....	17
<i>Noonan v. Bayview Loan Servicing</i> , 438 P.3d 335 (Nev. 2019)	27
<i>Pack v. LaTourette</i> , 128 Nev. 264 (2012).....	9
<i>Petersen v. Bruen</i> , 106 Nev. 271 (1990).....	16
<i>Platt v. Aspenwood Condo. Ass’n, Inc.</i> , 214 P.3d 1060 (Colo. App. 2009)	26
<i>Shoen v. SAC Holding Corp.</i> , 122 Nev. 621 (2006)	10, 20
<i>Smith v. Clough</i> , 106 Nev. 568 (1990)	11
<i>Tang v. C.A.R.S. Prot. Plus, Inc.</i> , 734 N.W.2d 169 (Wis. Ct. App. 2007).....	25
<i>Tricarichi v. Cooperative Rabobank, U.A.</i> , 440 P.3d 645 (Nev. 2019)	45
<i>Univ. Commons Riverside Home Owners Ass’n v. Univ. Commons Morgantown, LLC</i> , 230 W. Va. 589 (2013).....	26
<i>W & D Acquisition, LLC v. First Union National Bank</i> , 262 Conn. 704 (2003)	26
<i>Weinberger v. Uop</i> , 457 A.2d 701 (Del. 1983)	25
<i>Will v. Mill Condo. Owners’ Ass’n</i> , 176 Vt. 380 (2004)	26
<i>Winn v. Sunrise Hosp. & Med. Ctr.</i> , 128 Nev. 246 (2012).....	17
<i>Zalk-Josephs Co. v. Wells Cargo, Inc.</i> , 81 Nev. 163 (1965)	10

Statutes

NRS 11.190(3)(a).....	xii, 12, 13, 17
NRS 11.190(3)(d).....	xii, 12, 16, 17
NRS 11.220.....	xii, 18
NRS 113.100(1)	40, 42
NRS 113.130.....	20, 38
NRS 113.130(2)(a).....	40
NRS 113.130(4)	44
NRS 113.130(5)	40
NRS 116.079	36
NRS 116.1108.....	ix, x, xi, 30
NRS 116.1109(2)	23
NRS 116.1113	passim
NRS 116.3116.....	2
NRS 116.3116(2)(c).....	3
NRS 116.3116(3)	30
NRS 47.250	33
NRS 654H.060.....	40

Other Authorities

Restat. 2d of Contracts, § 205 (2nd 1981)	22
-------------------------------------------------	----

Rules

NRAP 17(a)(11).....	viii
NRAP 3A(b)(1).....	viii
NRCP 12(b)(5).....	xii, 20, 45
NRCP 8(a).....	10

II. JURISDICTIONAL STATEMENT

(A) Basis for the Supreme Court’s Appellate Jurisdiction: The Notice of Entry of Findings of Fact, Conclusions of Law, and Order (the “**Order**”) Granting Respondent Mountain Gate Homeowners’ Association’s (the “**HOA**”) Motion to Dismiss (the “**MTD**”) is appealable under NRAP 3A(b)(1).

(B) The filing dates establishing the timeliness of the appeal: The Notice of Entry of Findings of Fact, Conclusions of Law, and Order was filed on October 23, 2019. JA173. The Notice of Appeal was filed on November 22, 2019. JA185.

(C) The appeal is from a final judgment.

III. NRAP 17 ROUTING STATEMENT

The instant matter should be retained by the Supreme Court of Nevada, because this appeal raises as a principal issue a question of first impression involving the common law and statutory interpretation of NRS Chapter 116. NRAP 17(a)(11). The issue presented in this appeal represents a case of first impression in the State of Nevada regarding the scope of the duty owed by the HOA and the HOA Trustee of good faith, honesty in fact, observance of reasonable standards of fair dealing, and candor in the conduct and performance of a homeowners association assessment lien foreclosure sale. Specifically, pursuant to common law and/or NRS Chapter 116, and specifically NRS 116.1113, what are the duties and obligations of a

homeowners association, and its agent, the association's foreclosure trustee, in disclosing a "tender" as defined in *Bank of America N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113 (Nev. 2018) to the bidding public at or before a homeowners association's lien foreclosure sale under two factual scenarios:

First, does the homeowners association, and/or the homeowners association's foreclosing trustee, its agent, have an obligation pursuant to NRS 116.1113, NRS 116.1108, and common law to disclose a "tender" or attempted payment to the bidding public without any inquiry from the bidders and/or Appellant before or at the association's assessment lien foreclosure sale?

Second, does the homeowners association, and/or the homeowners association's foreclosing trustee, its agent, have an obligation pursuant to NRS 116.1113, NRS 116.1108, and common law to disclose a "tender" or attempted payment to the bidding public, including the Appellant, upon reasonable inquiry by the bidding parties and/or Appellant if such a tender of the superpriority lien amount had been attempted or in fact paid by any individual or entity prior to the homeowners associations assessment lien foreclosure sale?

Additionally, does the Appellant have the benefit of the discovery rule adopted in Nevada when asserting claims that are subject to statute of limitations set forth in NRS 11.220, NRS 11.190(3)(a), and NRS 11.190(3)(d), when the

homeowners association and the homeowners association's foreclosing trustee were the only parties with actual knowledge of the tender that forms the basis of the discovery rule assertion, but they concealed, failed, and/or refused upon reasonable inquiry by Appellant to disclose such material information regarding the tender of the superpriority lien amount until many years after the foreclosure sale?

IV. STATEMENT OF ISSUES PRESENTED

Whether the district court erred by granting the HOA's MTD in light of the following:

1. Does the homeowners association and/or its agent, the homeowners association's foreclosing trustee, have a duty and obligation generally under the pre-2015 version of NRS Chapter 116, specifically pursuant to NRS 116.1113, NRS 116.1108, and common law, before the assessment lien foreclosure sale, to disclose a lender's tender of the superpriority amount of a homeowners association's lien to the bidders at the foreclosure sale?

2. Does a homeowners association and/or its agent, the homeowners association's foreclosing trustee, have a duty and obligation to disclose a lender's tender of the superpriority amount of a homeowners association's lien prior to the homeowners association's assessment lien foreclosure sale after reasonable inquiry from a bidder and/or Appellant before or at the foreclosure sale?

3. Based on the pre-2015 version of NRS Chapter 116, and after reasonable inquiry by the bidders and/or the Appellant at or before the homeowners association's assessment lien foreclosure sale, are the homeowners association and/or the foreclosing trustee relieved of liability if the homeowners association and/or its foreclosing trustee intentionally withhold materially adverse information of an attempted request or actual tender, or are the homeowners association and the homeowners association's foreclosing agent obligated in good faith pursuant to the mandates of NRS 116.1113, NRS 116.1108, and common law to be truthful and candidly respond to reasonable inquiries of whether a tender had occurred prior to the homeowners association's lien foreclosure sale?

4. When the facts of a tender or attempted payment are concealed from the bidding public and are only known to the homeowners association and the homeowners association's foreclosing agent, and not disclosed in any written information or orally at any point prior to the assessment lien foreclosure sale, when any information regarding tender is not available to bidders at a homeowners association's lien foreclosure sale and not publicly disclosed until after all relevant statute of limitations applicable to the causes of actions raised in the Complaint have expired, or substantially expired, does the damaged party – Appellant – have the

benefit of the discovery rule when applying the statute of limitations set forth NRS 11.190(3)(a), NRS 11.190(3)(d), and NRS 11.220 in the Complaint?

5. Does a homeowners association and/or its foreclosing agent have a duty to disclose a tender or attempted payment under NRS Chapter 113 since a tender and/or attempted payment materially affects the value of the property being sold, and NRS Chapter 113 does not exclude NRS Chapter 116 foreclosure sales from the disclosure requirements contained in Chapter 113?

6. Did the district court commit errors of law and abuse its discretion by granting the MTD on a NRCP 12(b)(5) motion when the Complaint and the record provides facts, which if true, would entitle Appellant to relief?

V. STATEMENT OF THE CASE

On March 11, 2019, Appellant filed its Complaint. JA1. Appellant's Complaint asserted four (4) claims for relief against the HOA and HOA Trustee¹: (i) intentional, or alternatively negligent, misrepresentation; (ii) breach of the duty of good faith; (iii) conspiracy; and (iv) violation of NRS Chapter 113. *See id.* These claims are related to Appellant's purchase of real property commonly known as 6408 Hillside Brook Avenue, Las Vegas, Nevada 89130 (APN: 125-35-413-038) (the "**Property**") at a homeowners association foreclosure conducted by the HOA Trustee on behalf of the HOA.

On May 14, 2019, the HOA filed its MTD. JA21. On June 19, 2019, Appellant filed its Opposition to the MTD. JA38. On July 17, 2019, the HOA filed its reply in support of the MTD. JA157. On September 19, 2019, the district court heard oral argument on the MTD and granted the same. JA165.

VI. STATEMENT OF RELEVANT FACTS

1. Appellant is the record title holder of the Property, which Appellant acquired by Trustee's Deed Upon Sale executed on August 26, 2014 and recorded in the Clark County Recorder's Office on December 3, 2014 (the "**HOA**

¹ Defined in the Complaint as Hampton & Hampton Collections, LLC, *see* JA 2, ¶ 3, and given the same meaning herein.

Foreclosure Deed”), pursuant to a homeowners association lien foreclosure sale conducted on August 20, 2014 (the “**HOA Foreclosure Sale**”) by the HOA Trustee on behalf of the HOA. JA2, ¶¶ 2-3.

2. Upon information and belief, HOA is a Nevada common interest community association or unit owners’ association as defined in NRS 116.011. *See id.* at ¶ 4.

3. Under Nevada law, homeowners associations have the right to charge property owners residing within the community assessments to cover the association’s expenses for maintaining or improving the community, amongst other things. *See id.* at ¶ 8.

4. When the assessments are not paid, the homeowners association may impose a lien against real property which it governs and thereafter foreclose on such lien. *See id.* at ¶ 9.

5. NRS 116.3116 makes a homeowner’s association’s lien for assessments junior to a first deed of trust beneficiary’s secured interest in the property, with one limited exception; a homeowner’s association’s lien is senior to a deed of trust beneficiary’s secured interest “to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the

association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.” NRS 116.3116(2)(c). *See id.* at ¶ 10.

6. On or about November 11, 2009, Laura Greco, an unmarried woman, (the “**Former Owner**”) acquired title to the Property by Grant, Bargain, Sale Deed recorded on December 29, 2009, in the Clark County Recorder’s Office, State of Nevada. JA3, ¶ 11.

7. On or about December 21, 2009, Former Owner obtained a loan secured by the Property from Bank of America, N.A. (“**BANA**” and/or “**Lender**”), that is evidenced by a deed of trust between the Former Owner and Lender, recorded against the Property on December 29, 2009, for the loan amount of \$93,279.00 (“**Deed of Trust**”). The Deed of Trust provides that Mortgage Electronic Registration Services, Inc. (“**MERS**”) is beneficiary, as nominee for Lender and Lender’s successors and assigns. The Deed of Trust was recorded in the Clark County Recorder’s office on December 29, 2009. *See id.* at ¶ 13.

8. Former Owner executed a Planned Unit Development Rider along with the Deed of Trust, effective as of December 21, 2009. *See id.* at ¶ 14.

9. Upon information and belief, the Former Owner of the Property failed to pay to HOA all amounts due pursuant to HOA's governing documents. *See id.* at ¶ 15.

10. Accordingly, on October 1, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Delinquent Assessment Lien ("**NODAL**"). The NODAL stated that the amount due to the HOA was \$998.00, as of September 28, 2010, plus interest, late charges, costs, fees for agent of the management body, and attorney's fees (the "**HOA Lien**"). *See id.* at ¶ 16.

11. On February 28, 2011, HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell Real Property to satisfy Delinquent Assessment Lien ("**NOD**") against the Property. *See id.* at ¶ 17. The NOD stated the amount due to the HOA was \$957.00 as of February 24, 2011, plus accruing assessments, late fees, costs, collection fees, interest, and attorney fees. *See id.*

12. On or about March 24, 2014, after the NOD was recorded, BANA, through counsel Miles, Bauer, Bergstrom & Winters, LLP ("**Miles Bauer**") contacted the HOA Trustee and HOA via U.S. Mail and requested adequate proof of the superpriority amount of assessments by providing a breakdown of up to nine (9) months of common HOA assessments in order for BANA to calculate and pay the

HOA Lien entitled to priority over the Deed of Trust (“**Super-Priority Lien Amount**”). JA4, ¶¶ 18-19.

13. In response to the Miles Bauer correspondence of March 24, 2014, the HOA Trustee responded by providing a Statement of Account dated March 27, 2014, outlining the HOA assessments and a Statement of Account that detailed a total sum due to the HOA of \$765.00. *See id.* at ¶ 20.

14. The ledger provided that the HOA quarterly assessments were \$85.00. *See id.* at ¶ 21.

15. On April 10, 2014, BANA, through Miles Bauer, provided a payment of \$765.00 to the HOA Trustee, which included payment of up to nine months of delinquent assessments (the “**Attempted Payment**”). *See id.* at ¶ 22.

16. Upon information and belief, HOA Trustee, on behalf of the HOA, accepted BANA’s Attempted Payment of \$765.00. *See id.* at ¶ 23.

17. On July 9, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of Trustee’s Sale against the Property (“**NOS**”). *See id.* at ¶ 25. The NOS provided that the total amount due the HOA was \$3,306.50 and set a sale date for the Property of August 20, 2014, at 10:00 A.M., to be held at Nevada Legal News. *See id.*

18. On August 20, 2014, HOA Trustee then proceeded to non-judicial foreclosure sale on the Property and thereafter recorded the HOA Foreclosure Deed, which stated that the HOA Trustee sold the HOA's interest in the Property to the Plaintiff at a foreclosure sale for the highest bid amount of \$21,100.00 (the "**HOA Foreclosure Sale**"). *See id.* at ¶ 26.

19. The HOA Foreclosure Sale created excess proceeds. JA5, ¶ 27.

20. On September 4, 2014, the HOA Trustee sent a letter to BANA and advised BANA that the HOA Trustee was in possession of "surplus funds" as a result of the HOA Foreclosure Sale. *See id.* at ¶ 24.

21. In none of the recorded documents, nor in any other notice recorded with the Clark County Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or entity, including but not limited to BANA, had paid or attempted to pay any portion of the HOA Lien in advance of the HOA Foreclosure Sale. *See id.* at ¶ 29.

22. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted to pay or paid the Super-Priority Lien Amount. *See id.* at ¶ 31.

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

24. Upon information and belief, Lender alleges that its Attempted Payment of the Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby changing the priority of the HOA Lien vis a vis the Deed of Trust. *See id.* at ¶ 33.

25. Upon information and belief, Lender alleges that as a result of its Attempted Payment of the Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale acquired title to the Property subject to the Deed of Trust. *See id.* at ¶ 34.

26. Upon information and belief, if the bidders and potential bidders at the HOA Foreclosure Sale were aware that an individual or entity had attempted to pay and/or paid the Super-Priority Lien Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and potential bidders would not have bid on the Property. JA6, ¶ 35.

27. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would not have received payment, interest, fees, collection costs, and assessments related to the Property, and these sums would have remained unpaid. *See id.* at ¶ 36.

28. HOA Trustee acted as an agent of HOA. *See id.* at ¶ 37.

29. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of respondeat superior. *See id.* at ¶ 38.

30. HOA and HOA Trustee conspired together to hide material information related to the Property, the HOA Lien, the Attempted Payment of the Super-Priority Lien Amount, the acceptance of such payment or Attempted Payment, and the priority of the HOA Lien vis a vis the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale. *See id.* at ¶ 39.

31. The information related to any Attempted Payment or payments made by Lender, BANA, the homeowner or others to the Super Priority Lien Amount was not recorded and would only be known by BANA, Lender, the HOA and HOA Trustees. *See id.* at ¶ 40.

32. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide the aforementioned information for their own economic gain and

to the detriment of the bidders and potential bidders at the HOA Foreclosure Sale. *See id.* at ¶ 41.

33. BANA first disclosed the Attempted Payment by BANA/Lender to the HOA Trustee in BANA's Complaint filed against Plaintiff and the HOA on March 10, 2016, and served upon Appellant on March 11, 2016 ("**Discovery**") in the United States District Court, District of Nevada, Civil Action No. 2:16-cv-00540 (the "**Case**"). *See id.* at ¶ 42.

34. In his Declaration, Mr. Haddad testified that it was his practice and procedure when he would attend NRS Chapter 116 sales at all times relevant to this case, to ask or attempt to ascertain from the homeowner association's foreclosure trustee, whether anyone had attempted to or did tender any payment regarding the homeowner association's delinquent assessment lien. JA74. If Mr. Haddad learned that a "tender" had either been attempted or made, he would not purchase the property offered in that delinquent assessment lien foreclosure sale. *See id.*

VII. STANDARD OF REVIEW

This Court reviews de novo an order granting a motion to dismiss for failure to state a claim, applying a rigorous standard, accepting the plaintiff's factual allegations as true and drawing every intendment in favor of the non-moving party. *Pack v. LaTourette*, 128 Nev. 264, 268 (2012). In asserting a claim in the complaint,

the plaintiff only needs to state “a short and plain statement of the claim showing that the pleader is entitled to relief.” NRCP 8(a). A pleading is sufficient so long as the pleading gives fair notice of the nature and basis of the claim. *Crucil v. Carson City*, 95 Nev. 583, 585 (1979). Based upon *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 635 (2006), the Court must accept the nonmoving party’s factual allegations and true and draw every fair factual inference from there.

Liberal pleading standards apply equally to declaratory relief and other civil claims. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846 (1993). “[A] complaint should be dismissed only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle him to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-228 (2008).

Likewise, when the issue is purely a question of law, such as in cases where statutory construction is at issue, the review is also de novo. *Boulder Oaks Cmty. Ass’n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403 (2009). “[A] complaint should not be dismissed for insufficiency, for failure to state a cause of action, unless it appears to a certainty that plaintiff is entitled to no relief under any set of facts which could be proved in support of the claim.” *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 169 (1965) (citation omitted). On a motion to dismiss for failure to state a claim for relief, the trial court, and the Supreme Court must draw every fair

intendment in favor of the plaintiff. *Merluzzi v. Larson*, 96 Nev. 409, 411 (1980), over ruled on the other grounds, *Smith v. Clough*, 106 Nev. 568 (1990).

VIII. SUMMARY OF ARGUMENT

The district court erred when it granted the HOA's MTD for the following reasons:

1. Appellant's claims against the HOA and HOA Trustee were not time barred.
2. Appellant properly stated a claim for relief for misrepresentation.
3. NRS Chapters 113 and 116 required the HOA and HOA Trustee to disclose the Attempted Payment, and the HOA and HOA Trustee breached those duties.
4. Appellant stated a viable claim for relief for conspiracy.

IX. LEGAL ARGUMENT

A. THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT, BECAUSE APPELLANT'S CLAIMS AGAINST THE HOA AND HOA TRUSTEE WERE NOT TIME BARRED

In the Order, the district court held that Appellant's claims for relief are subject to a three (3) year statute of limitation, which began to accrue at the latest on August 26, 2014, which was the date the HOA Foreclosure Deed was recorded.

JA171, ¶ 35.² However, the district court erred for a number of reasons in determining that the statute of limitations on Appellant’s claims began to accrue on the date the HOA Foreclosure Deed was recorded.

First, NRS 11.190(3)(d) governs Appellant’s claim for “intentional, or alternatively negligent misrepresentation” and provides for a three (3) year statute of limitation for “an action for relief on the ground of fraud or mistake, but the cause of action in such *a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts* constituting the fraud or mistake.” *Id.* (emphasis added). As outlined in detail herein, Appellant discovered the intentional misrepresentation giving rise to the Complaint on March 11, 2016, JA6, ¶ 42, and Appellant’s Complaint was filed on March 11, 2019, JA1. NRS 11.190(3)(d) provides specific language for the “discovery rule” that is applicable in this case – the HOA cannot maintain a purely legal argument that the discovery rule does not apply. At best it is a factual determination.

Second, turning to statutory claims for breach of good faith claim under NRS 116.1113, the discovery rule should apply to these claims due to the conduct of the HOA and HOA Trustee in this case. Pursuant to NRS 11.190(3)(a), a three (3) year

² The August 26, 2014 in the Order is clearly erroneous, because the HOA Foreclosure Deed was not recorded until December 3, 2014. JA35.

statute of limitation applies to “an action upon a liability created by statute, other than a penalty or forfeiture.” Clearly, the obligation of “good faith” under NRS 116.1113, is a duty of good faith performance founded upon a statute that provides that “[e]very contract or duty governed by this chapter imposes an obligation of good faith in the performance or enforcement.”

Appellant asserts that the HOA and HOA Trustee owed a duty of good faith, candor, honesty in fact, and observance of reasonable standards of fair dealing [UCIOA comments to §1-113], in the performance of their duties and during the foreclosure sale process as discussed further *infra*. In this case, Appellant could not have learned of the HOA and HOA Trustee’s breach of their duty of good faith in time to file Appellant’s claim – not due to Appellant’s negligence or failure of due diligence – but because of the HOA’s and the HOA Trustee’s intentional failure to disclose facts of the tender/Attempted Payment to the HOA and HOA Trustee. There is good cause and substantial evidence under the facts of this case to apply the discovery rule to the statute of limitations founded upon a statute in NRS 11.190(3)(a).

The MTD and Order provide a statement of the law and application of NRS 11.190(3)(a) as if Appellant was contesting the conduct of the sale or aspects of the sale that were open, obvious, reviewable, or determinable and not concealed as to

all parties; however, the facts of this case demonstrate that the breach of good faith and the relevant standards is premised on the HOA's and HOA Trustee's intentional failure or unwillingness to tell the truth and disclose those facts known to them upon Appellant's inquiry, that resulted in the belief by Appellant that no tender/Attempted Payment had been attempted or made, and Appellant's reasonable reliance thereon that has damaged Appellant.

Specifically, as Mr. Haddad provided in his Declaration, he would not have bid nor purchased the Property at the HOA Foreclosure Sale had he been aware of a tender/Attempted Payment of the HOA Lien by Lender. JA74. Appellant suffered economic harm as a result of the HOA's and the HOA Trustee's misrepresentation and/or material omission of the tender/Attempted Payment to Appellant. Appellant was damaged as a result of the purchase of the Property subject to the Deed of Trust that at the time of the HOA Foreclosure Sale exceeded the fair market value of the Property.

As noted above, the district court held that the statute of limitations on Appellant's claim began to accrue when the HOA Foreclosure Deed was recorded. JA171, ¶ 35. However, the district court's conclusion is incorrect. Appellant is the third-party purchaser from the HOA Foreclosure Sale. The HOA and/or the HOA Trustee's actions leading up to and at the HOA Foreclosure Sale intentionally

obstructed Appellant's opportunity to conduct its own due diligence regarding the Property and specifically the priority of the lien being foreclosed upon, which ultimately affected Appellant's decision to actually submit a bid on the Property or not. Had Appellant known that it was purchasing the Property subject to the Deed of Trust, Plaintiff would have never submitted a bid in the first place, thus avoiding this entire controversy. *See* JA74.

Here, at the time of the HOA Foreclosure Sale, the HOA and HOA Trustee knew that Lender had tendered the Attempted Payment of the superpriority portion of the HOA Lien, but they did not inform the bidders nor the Appellant, even when asked. Neither the HOA nor the HOA Trustee ever disclosed that Lender had in fact made the Attempted Payment. It was BANA that disclosed the Attempted Payment. JA6, ¶ 42.

Prior to Lender's disclosure of the Attempted Payment in the Case, Appellant believed that the HOA Foreclosure Sale was conducted properly pursuant to the Recitals as set forth in the HOA Foreclosure Deed and that the Deed of Trust was extinguished. Appellant could not have discovered on its own if the Property was being sold subject to Lender's Deed of Trust without first engaging in a quiet title action against Lender, conducting discovery, and finally having Lender disclose the tender after the first *SFR Investments* decision by this Court. As Mr. Haddad stated

in his Declaration, he would inquire and ask if any sums had been paid or offered to satisfy the Super-Priority Lien Amount for properties which he intended to bid, *see* JA74, but neither the HOA nor the HOA Trustee disclosed the Attempted Payment, JA5, ¶ 31.

Appellant initiated this Complaint within the statute of limitations pursuant to NRS 11.190(3)(d), “an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon *the discovery* by the aggrieved party of the facts constituting the fraud or mistake.” (Emphasis added). Thus, the discovery rule is applicable to the present facts.

The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought. An exception to the general rule has been recognized by this court and many others in the form of the so-called “discovery rule.” *Under the discovery rule, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action.*

Petersen v. Bruen, 106 Nev. 271, 274 (1990) (emphasis added) (citations omitted).

Nevada has adopted the discovery rule, and thus time limits generally “do not commence and the cause of action does not ‘accrue’ until the aggrieved party knew, or reasonably should have known, of the facts giving rise to the damage or injury.”

G & H Assocs. v. Ernest W. Hahn, Inc., 113 Nev. 265, 272 (Nev. 1997) (citation omitted). The discovery rule generally applies where the statute of limitations does

not specify when a cause of action accrues. *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, n.1 (1998). Because NRS 11.190(3)(a) is silent as to when accrual occurs, and NRS 11.190(3)(d) expressly incorporates the discovery rule, the discovery rule applies to Appellant's claims. In the present case, the date from which Appellant discovered the HOA and/or HOA Trustee's concealment of Lender's tender/Attempted Payment is the operable date to accrue the statute of limitations. That date is ***March 11, 2016***. JA6, ¶ 42.

Furthermore, the date on which a statute of limitations accrues is normally ***a question of fact***, and the district court may determine that date as a matter of law only when the uncontroverted evidence irrefutably demonstrates the accrual date. *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251-54 (2012). Non-compliance with a statute of limitations is a non-jurisdictional, affirmative defense, *see, e.g., Dozier v. State*, 124 Nev. 125, 129 (2008), and the party asserting an affirmative defense bears the burden of proof. *See Nev. Ass'n Servs. v. Eighth Jud. Dist. Ct. of Nev.*, 338 P.3d 1250, 1254 (Nev. 2014). Because judging the validity of an affirmative defense "often requires consideration of facts outside of the complaint[,]" an affirmative defense generally does not provide grounds for a court to grant a motion to dismiss. *See In re CityCenter Constr. & Lien. Master Litig.*, 129 Nev. 669, 675, , n.3 (2013) (noting courts generally do not consider matters

outside the pleading in determining a motion to dismiss); *Lubin v. Kunin*, 117 Nev. 107, 116 (2001) (noting defenses generally should not be considered on a motion to dismiss).

It is anticipated that the HOA will cite to *Nationstar Mortg., LLC v. Amber Hills II Homeowners Ass'n*, 2016 U.S. Dist. LEXIS 43592 (D. Nev. 2016) as proof that the statute of limitations pursuant to a claim premised on wrongful foreclosure and NRS 116.1113 runs from the recording of the HOA Foreclosure Deed. In the *Nationstar Mortgage* case, the lender sued for breach of NRS 116.1113, alleging damages for the wrongful sale. *Id* at *11. The *Nationstar Mortgage* court determined that the claims related to the wrongful foreclosure emanated from the subject foreclosure sale and it was a date certain, so the lender's claims exceeded the three-year statute of limitations. However, in *Nationstar Mortgage*, unlike here, there were no hidden facts that gave rise to the Complaint, so the discovery rule was not implicated.

Finally, Appellant's conspiracy claim for relief is governed by NRS 11.220 that provides a four-year statute of limitations.³ Thus, none of Appellant's claims

³ The district court did not address the statute of limitations period for Appellant's conspiracy claim in its Order. JA165-72.

are time-barred under the facts alleged in the Complaint, and the district court erred as a matter of law in dismissing the Complaint.

B. THE DISTRICT COURT ERRED AS A MATTER OF LAW, BECAUSE APPELLANT PROPERLY STATED A CLAIM FOR RELIEF FOR MISREPRESENTATION

The district court held that Appellant's misrepresentation claim(s) must be dismissed, because neither the HOA nor the HOA Trustee had a duty to disclose the Attempted Payment. JA168, ¶ 11. However, the district court's conclusion is incorrect. In *Nelson v. Heer*, the Court defined intentional misrepresentation as being established by demonstrating:

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

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

123 Nev. 217, 225 (2007). The *Heer* Court provided that the omission of a material fact, such as the Lender's tender/Attempted Payment of the Super-Priority Lien Amount, is deemed to be a false representation which the HOA and HOA Trustee

are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to potential bidders, and this duty is a good faith obligation to disclose upon reasonable inquiry from potential bidders at the HOA Foreclosure Sale, and such intentional omission is equivalent to a false representation under the facts of this case.

Here, Appellant alleged facts that satisfy the elements identified in *Heer*. See JA7-10, ¶¶ 43-71. Because the district court was bound under Nevada law to accept Appellant's factual assertions as true, see *Shoen, supra*, the district court erred in dismissing this claim for relief.

With regard to Appellant's claim for negligent misrepresentation, the district court also dismissed it for the same reason as the intentional misrepresentation – lack of duty. JA168, ¶ 10. However, the district court also erred in dismissing this claim, because Appellant adequately pled facts sufficient to support a claim for negligent misrepresentation. In, *Barmettler v. Reno Air, Inc.*, this Court defined the tort of negligent misrepresentation as follows:

One who, in the course of his business, profession or employment, or in any other action in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

114 Nev. 441, 449 (1998). Here, Appellant pled facts, that must be taken as true, sufficient to survive a motion to dismiss under NRCP 12(b)(5). Specifically,

Appellant alleged that the HOA and HOA Trustee had a pecuniary interest in the outcome of the HOA Foreclosure Sale and that they supplied false information (or at least omitted information) when asked whether a tender/Attempted Payment had been made, upon which Appellant justifiably relied. JA7-10, ¶¶ 43-71. Therefore, the district court erred in dismissing this claim for relief.

C. **THE DISTRICT COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT, BECAUSE THE HOA AND HOA TRUSTEE HAD DUTIES UNDER NRS CHAPTERS 113 AND 116 TO DISCLOSE THE ATTEMPTED PAYMENT/TENDER TO APPELLANT AT THE HOA FORECLOSURE SALE**

In the Order, the district court held that there is no duty under NRS Chapter 116 to “‘inform bidders and potential bidders at the HOA Foreclosure Sale’ of an attempt to make a partial payment of the Association’s lien.” JA167, ¶ 8. Further, the district court held that the HOA and HOA Trustee had no duty to inform Appellant of the Attempted Payment, because Appellant was given a deed without warranty following the HOA Foreclosure Sale. *See id.* at ¶ 5. However, these holdings are incorrect under NRS Chapter 113 and NRS Chapter 116.

1. **THE HOA AND HOA TRUSTEE HAD A DUTY UNDER NRS CHAPTER 116 TO DISCLOSE THE ATTEMPTED PAYMENT/TENDER TO APPELLANT**

The Complaint adequately states claims for relief consistent with the HOA’s and HOA Trustee’s obligation of good faith, honesty in fact, reasonable standards

of fair dealing, and candor pursuant to NRS 116.1113. The Order states that Appellant failed to cite to any provision within NRS Chapter 116 that contains an obligation or duty of good faith to the Purchaser/Appellant, thus finding that NRS 116.1113 is not implicated. JA167, ¶ 8. However, the Order is incorrect.

NRS 116.1113 is not only implicated but clearly governs the HOA's and HOA Trustee's duties and contracts when dealing with the performance of their duties in foreclosing a lien for delinquent assessments and with a Purchaser at such sale. NRS 116.1113 provides, "[e]very contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." In the actions of the HOA and the HOA Trustee leading up to and at the HOA Foreclosure Sale, the statute imposes a duty of good faith as further clarified by the Comments to Section 1-113 of the UCIOA regarding the HOA's performance in its enforcement of the provisions included in NRS Chapter 116 that constitute the foreclosure sale and selling the Property to a Purchaser that will eventually be a member of the HOA.

The duties of good faith and fair dealing go hand and hand with the duty of candor. For example, the Restatement (Second) of Contracts, § 205, expressly provides that "every contract imposes upon each party a duty of good faith and fair dealing in its performance and in its enforcement." Restat. 2d of Contracts, § 205 (2nd 1981). Comment (d) to Section 205 further suggests: "fair dealing may require

more than honesty.” Accordingly, the duty of candor is an integral component of the duty of fair dealing. Though a contract interpretation, it has application in the HOA Foreclosure Sale. Nevada’s HOA lien statute, NRS 116.3116, is modeled after the UCIOA, § 3-116, 7 U.L.A., part II 121-24 (2009) (amended 1994, 2008), which Nevada adopted in 1991, *see* NRS 116.001. The purpose of the UCIOA is “to make uniform the law with respect to the subject of this chapter among states enacting it.” NRS 116.1109(2). *See Carrington Mortg. Holdings, LLC v. R Ventures VIII, LLC*, 419 P.3d 703, 705 (Nev. 2018) (unpublished disposition). In *Carrington*, this Court made clear that it would turn to case law from other jurisdictions to support its conclusions interpreting the UCIOA. *See id.*

Accordingly, this Court should follow the lead set by Minnesota in holding that the UCIOA imposed the duty of fair dealing which encompasses the duty of candor. For example, the Minnesota Appeals Court stated that, under the Minnesota Common Interest Ownership Act, which is likewise modeled after the UCIOA, good faith “means observance of two standards: ‘honesty in fact,’ and observance of reasonable standards of fair dealing.” *Horodenski v. Lyndale Green Townhome Ass’n, Inc.*, 804 N.W.2d 366, 373 (Minn. App. 2011) (quoting UCIOA, 1982, § 1-113 & cmt.); *see also Dean v. CMPJ Enters., LLC*, 2018 Minn. App. Unpub. LEXIS 642 at *5 (Minn. App. 2018). Turning to the UCIOA’s comments, the UCIOA’s

drafters provided comment to the provision that was enacted in Nevada as NRS 116.1113:

SECTION 1-113. OBLIGATION OF GOOD FAITH.

Every contract or duty governed by this [act] imposes an obligation of good faith in its performance or enforcement.

Comment

This section sets forth a basic principle running throughout this Act: in transactions involving common interest communities, good faith is required in the performance and enforcement of all agreements and duties. *Good faith, as used in this Act, means observance of two standards: “honesty in fact,” and observance of reasonable 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 Transfers Act, and Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

(emphasis added). It is clear that the drafters of the UCIOA intended the definition of “good faith” to include two (2) standards: (1) honesty in fact, and (2) observance of reasonable standards of fair dealing to the Purchaser/Appellant. As other jurisdictions have addressed the good faith provision of the UCIOA, the “two standards” create an obligation of candor that has been adopted by other jurisdictions.

This Court should further follow the lead of Delaware in recognizing that the duty of fair dealing obviously includes the duty of candor. The Delaware courts have concluded that part of “fair dealing” is the obvious duty of candor. The concept

is simple – the information known to the HOA and the HOA Trustee should be disclosed to the Purchaser/Appellant. Moreover, one possessing superior knowledge may not mislead any stockholder by use of corporate information to which the latter is not privy. *Lank v. Steiner*, 224 A.2d 242, 244 (Del. Supr. 1966).

Delaware has long imposed this duty even upon persons who are not corporate officers or directors, but who nonetheless are privy to matters of interest or significance to their company. *See e.g. Weinberger v. Uop*, 457 A.2d 701 (Del. 1983); *Brophy v. Cities Service Co.*, 70 A.2d 5, 7 (Del. 1949). Part of fair dealing is the obvious duty of candor. *Lynch v. Vickers Energy Corp.*, 383 A.2d 278, 281 (Del. 1977).

The duty of candor is one of the elementary principles of fair dealing. *See Mills Acquisition Co. v. MacMillan, Inc.*, 559 A.2d 1261 (Del. 1989); *see also Holten v. Std. Parking Corp.*, 98 F. Supp. 3d 444 (Conn. 2015). In *Osowski v. Howard*, 807 N.W.2d 33 (WI App. Ct. 2011), the Wisconsin Appeals Court noted that the duty of fair dealing is a guarantee by each party that he or she “will not intentionally and purposely do anything to prevent the other party from carrying out his or her part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *See also Tang v. C.A.R.S. Prot. Plus, Inc.*, 734 N.W.2d 169 (Wis. Ct. App. 2007).

Moreover, the official comments by the drafters of the UCIOA provide important guidance in construing NRS 116.1113. *See Chase Plaza Condo. Ass'n v. JP Morgan Chase Bank, N.A.*, 98 A.3d 166, 175 (D.C. Ct. App. 2014); *see e.g. Alvord Inv., LLC v. Zoning Bd. of Appeals*, 920 A.2d 1000 (Conn. 2007); *Cantonbury Heights Condominium Ass'n., Inc. v. Local Land Dev., LLC*, 273 Conn. 724, 739-40 (2005); *W & D Acquisition, LLC v. First Union National Bank*, 262 Conn. 704, 712-13 (2003); *Platt v. Aspenwood Condo. Ass'n, Inc.*, 214 P.3d 1060, 1063-64 (Colo. App. 2009) (relying on drafters' comments to UCIOA for guidance in interpreting state statute modeled on UCIOA; "We accept the intent of the drafters of a uniform act as the [legislature's] intent when it adopts that uniform act.") (internal quotation marks omitted); *Hunt Club Condos., Inc. v. Mac-Gray Servs., Inc.*, 721 N.W.2d 117, 123-25 (Wis. Ct. App. 2006) (official and published comments are "valid indicator" of legislature's intent in enacting corresponding statute); *Univ. Commons Riverside Home Owners Ass'n v. Univ. Commons Morgantown, LLC*, 230 W. Va. 589 (2013); *Will v. Mill Condo. Owners' Ass'n*, 176 Vt. 380 (2004) (turned to commentary to interpret state statute modeled on UCIOA).

In the present matter, UCIOA § 1-113 cmt (1982) explicitly imposes a duty of good faith, which includes the duty of candor, and this Court should rely upon the comment consistent with the above cited case law. Simply put, the HOA and/or the

HOA Trustee could have made a simple announcement that unequivocally stated that the Property was being sold subject to the Deed of Trust to all potential bidders present and/or interested in bidding on the Property at the time of the HOA Foreclosure Sale or even disclosed the Attempted Payment. But even if the foregoing is too much to mandate pursuant to NRS 116.113 and NRS 116.1108, at a minimum, upon reasonable inquiry by the Purchaser/Appellant, the HOA and HOA Trustee had an absolute duty to disclose the Attempted Payment.

In the Order, the district court held that the HOA and HOA Trustee did not have a duty of disclosure pursuant to *Noonan v. Bayview Loan Serv'g*, 438 P.3d 335 (Nev. 2019) (unpublished disposition), which compares the duties contained in the 2013 and 2017 versions of NRS 116.31162. JA166, ¶ 2. However, the district court's reliance on *Noonan* is misplaced, because it is factually distinguishable from the facts of this case. While it is true the *Noonan* court stated, "Hampton neither made an affirmative false statement nor omitted a material fact it was bound to disclose," *Noonan*, 438 P.3d at 335, certainly the HOA and the HOA Trustee were bound to tell the truth when Appellant inquired whether a tender/payment had been attempted or made.

Further, the *Noonan* decision is based upon a factual determination of whether a material fact question had been asked and if it was answered or there was a material

omission of fact. The *Noonan* court did not consider the arguments presented in this appeal about NRS 116.1113 and its relevant analysis. Thus, the HOA's, and district court's, reliance on *Noonan* is, and was, erroneous.

Conversely, the HOA Trustee could have disclosed that the Super-Priority Lien Amount had been satisfied prior to the HOA Foreclosure Sale by the Attempted Payment or at least provided information to the potential bidders regarding the HOA Trustee's acceptance of the Attempted Payment, but it did not. Neither the HOA nor the HOA Trustee did so. The HOA or the HOA Trustee could have provided notice to all potential bidders, and/or the public at large, in their actions leading up to the HOA Foreclosure Sale, such as including a phrase concerning the absence of any superpriority portion of the HOA Lien being foreclosed upon within any and/or all of the notices recorded against the Property and/or advertising the sale, or it could have announced that fact at the foreclosure sale, especially after reasonable inquiry by Appellant.

However, neither the HOA nor the HOA Trustee did so, as that would have had the effect of chilling bidding at the sale. At the time of the HOA Foreclosure Sale, only three parties knew of Lender's Attempted Payment – the HOA, the HOA Trustee, and Lender. Moreover, these same parties knew of Lender's subsequent attempt to satisfy the Super-Priority Lien Amount of the HOA Lien via the letter

from Miles Bauer to the HOA. JA4, ¶ 18. The Attempted Payment was sent directly to the HOA Trustee in response to its recording of the NOD, which Attempted Payment the HOA Trustee accepted. *See id.*

Arguably, the HOA and the HOA Trustee knew that the Attempted Payment may be deemed to have satisfied the HOA Lien, which was determined to extinguish any Super-Priority Lien Amount of the HOA Lien. The HOA and the HOA Trustee knew that fact and intentionally failed to disclose that material fact to the bidders at the HOA Foreclosure Sale and upon inquiry from Appellant. Frankly, the HOA and HOA Trustee knew or should have known that such an omission would drastically affect the financial outcome for the Appellant as the winning bidder at the HOA Foreclosure Sale. An intentional failure to disclose Lender's Attempted Payment had the effect of causing the Property to sell at the HOA Foreclosure Sale.

Therefore, Plaintiff has alleged that the HOA and the HOA Trustee conspired together to intentionally withhold information regarding Lender's Attempted Payment of the HOA Lien that effectively defrauded the public and/or potential bidders concerning the true economic consequence of the HOA Foreclosure Sale. The HOA asserted, and the district court held, that the HOA and HOA Trustee were under no contract or duty to operate under good faith and with candor to disclose such a material fact of the Attempted Payment when asked by potential bidders as

mandated by NRS Chapter 116. *See* JA166-67. If allowed to stand, that interpretation of NRS 116.1113 would serve to emasculate NRS Chapter 116's mandate of good faith and render it completely meaningless and ineffective.

The plain language of NRS 116.1113 does not limit the good faith obligation to those in contractual privity. The HOA and/or HOA Trustee are not given authority to conceal material facts from potential bidders in their efforts to sell the Property to reap the sale proceeds to fund their foreclosure expenses. The obligations of good faith under NRS 116.1113 apply to a "Purchaser" at the foreclosure sale. NRS 116.31166(3) provides that title vests in the Purchaser at an HOA Foreclosure Sale.

The relationship of the HOA Trustee as an agent for the HOA created a new contract at the HOA Foreclosure Sale for the sale of a "unit" to a "Purchaser" that as a result of its purchase shall become a member of the HOA. In the foreclosure section of NRS 116.31162 to NRS 116.3117, the term Purchaser refers to a buyer at an HOA Foreclosure Sale in addition to direct sales and as such the obligation of good faith operates to encompass a successful bidder.

NRS 116.1108 provides for the application of general principles of law to the HOA Foreclosure Sale and the Purchaser as stated below:

NRS 116.1108 Supplemental general principles of law applicable. The principles of law and equity, including the law of corporations, the law of unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain,

estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

NRS 116.1108 actually cites the enumerated claims and issues raised in the Complaint as “supplemental general principles of law applicable” to NRS Chapter 116. The concepts of “law and equity,” “law of real property,” “principal and agent,” “fraud, misrepresentation,” and “mistake” are all at the basis of the claims asserted in the Complaint. ***Here, Appellant relied upon the recital in the HOA Foreclosure Deed.***

The HOA Foreclosure Sale was performed pursuant to NRS 116.31162 through 116.31168, and Appellant reasonably relied upon the recitals included in the HOA Foreclosure Deed that stated that the foreclosure sale was in compliance with all laws and with NRS Chapter 116. *See Nationstar Mortg., LLC v. SFR Investments Pool 1, LLC*, 2017 Nev. App. Unpub. LEXIS 229 at *2 (Nev. App. Apr. 17, 2017) (unpublished disposition) (“And because the recitals were conclusive evidence, the district court did not err in finding that no genuine issues of material fact remained regarding whether the foreclosure sale was proper and granting summary judgment in favor of SFR.”). In this case, Appellant had no reason to question the recitals contained in the HOA Foreclosure Deed and recorded documents. The foreclosure

of the HOA Lien is presumably valid based upon the recitals in the HOA Foreclosure Deed. In *Nationstar Mortgage*, the court explained the foreclosure procedure:

A trustee's deed reciting compliance with the notice provision of NRS 116.31162 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns, and all other persons." NRS 116.31166(2). And, "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption." NRS 116.31166(3).

Nationstar, 2017 Nev. App. Unpub, Lexis 229 at *3-4. As such, there would have been no reason for Appellant to question the legitimacy of the HOA Foreclosure Sale based exclusively upon the recorded documents. At foreclosure sales conducted pursuant to NRS Chapter 116, bidders, potential bidders, and buyers do not have access to any more information than is recorded. Appellant's reliance on the recitations on the HOA Foreclosure Deed was therefore reasonable and foreseeable.

Specifically, the HOA Foreclosure Deed asserted that the HOA Trustee complied with all requirements of law. *See* JA 35. However, the HOA and the HOA Trustee's lack of good faith and candor in conducting the HOA Foreclosure Sale was not immediately evident. It was concealed. It was only upon receipt of BANA's/Lender's disclosure of the Attempted Payment in the Case, that Appellant discovered the facts giving rise to its Complaint in this matter.

Under Nevada law, the HOA Foreclosure Sale and the resulting HOA Foreclosure Deed are both presumed valid. NRS 47.250(16)-(18) (stating that disputable presumptions exist “that the law has been obeyed” “that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to that person, when such presumption is necessary to perfect the title of such person or a successor in interest”; “that private transactions have been fair and regular”; and “that the ordinary course of business has been followed.”). Accordingly, the Appellant possessed a good faith belief that the HOA and/or the HOA Trustee’s actions taken in the ordinary course of business had been followed, and that the HOA Foreclosure Sale was fair and regular.

Here, Appellant was the Purchaser at the HOA Foreclosure Sale. The HOA and/or the HOA Trustee’s actions leading up to and at the HOA Foreclosure Sale intentionally obstructed Appellant’s opportunity to conduct its own due diligence regarding the Property, and ultimately affected Appellant’s decision whether to actually submit a bid on the Property or not. Had Appellant known that it was purchasing the Property subject to the Deed of Trust, Appellant never would have submitted a bid in the first place, thus avoiding this entire controversy. The 2015 Legislature did revise NRS Chapter 116 to codify what the case law has interpreted creating a bright line for the parties to rely upon by mandating that HOA/HOA

Trustee record a satisfaction of the Super-Priority Lien Amount for the bidders to see. For example, the jurisdictions adopting the UCIOA have determined that candor is an additional requirement implicitly contained in the good faith mandate of NRS 116.1113.

Nonetheless, even prior to the amendments to NRS Chapter 116 in 2015, the HOA and the HOA Trustee were required to be truthful in their contracts and duties and to follow the law as set forth in NRS 116.1113. Because Appellant sufficiently pled that the HOA and HOA Trustee did not comply with their duties under NRS Chapters 113 and 116, the district court erred by granting the MTD.

a. **THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT, BECAUSE APPELLANT SUFFICIENTLY ALLEGED THE HOA'S AND HOA TRUSTEE'S BREACH OF THE DUTY OF GOOD FAITH UNDER NRS CHAPTER 116**

In its Complaint, Appellant alleged that the HOA and the HOA Trustee's actions were not conducted in good faith. *See e.g.* JA11, ¶ 78. Appellant further alleged that the HOA and the HOA Trustee intentionally and/or negligently misrepresented tender and the Attempted Payment by the Lender up to and including the time they conducted the HOA Foreclosure Sale. JA7-10, ¶¶ 44-69. Appellant also alleged that the HOA and the HOA Trustee failed to disclose mandated information specifically known to them regarding assessments and any

tender/Attempted Payment as mandated by NRS 116.1113. JA10-11, ¶¶ 73-80. In addition to the foregoing, the following are further examples of the HOA and HOA Trustee's breach of the duty of good faith under NRS Chapter 116.

First, the HOA Foreclosure Deed provides in relevant part, "Grantor complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such law ..." JA35. However, the HOA and HOA Trustee did not comply with all requirements of law. The HOA and HOA Trustee cannot intentionally withhold information known only to the Lender, the HOA, and HOA Trustee that materially, adversely affects the purchaser (Appellant) as defined under NRS Chapter 116 and NRS Chapter 113, as to the value and nature of the bifurcated lien status of the HOA Lien as it relates to the Deed of Trust. Of matters not specifically known to the HOA and HOA Trustee at the time of the HOA Foreclosure Sale that cannot be adduced by a public record review as occurs in NRS Chapter 107 foreclosure sales, Appellant would concede that Respondents would not be liable. However, in the instant case, the HOA and HOA Trustee are the actual parties with the information regarding the Attempted Payment and had an obligation to inform Appellant. This fact alone constitutes sufficient proof of the HOA's, by and through its agent, the HOA Trustee, obligation and duty to disclose the Attempted Payment.

Second, Respondents have a duty to disclose the Attempted Payment to a Purchaser, as defined in NRS 116.079, at an HOA Foreclosure Sale pursuant to NRS 116.1113. At the time and place of the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA Trustee, entered into a sale governed by a statute, NRS Chapter 116, by the function of the auction conducted by the HOA Trustee. Inherently, the material aspects of the factors affecting the lien priority of the secured debt that are only known solely to the HOA, HOA Trustee, and the Lender are material to the HOA Lien being foreclosed upon and must be disclosed to the HOA Foreclosure Sale bidders. To infer otherwise, would destroy the statutory scheme of NRS Chapter 116 sales.

Third, a common argument among all parties to the HOA litigation has been the low prices adduced at the HOA Foreclosure Sales for the real property sold. Typically, the low sales prices have been driven by the mountain of litigation that has occurred over the last eight years seeking to define the rights and obligations of the various parties. However, it is untenable to hold that the HOA does not have a duty to disclose information known only to the HOA and the HOA Trustee that materially affects the value that a willing buyer would be willing to pay for the property offered at auction that relates directly to the status and priority of the Deed of Trust. Essentially, the HOA argues that the HOA will sell to the highest cash

bidder the real property without any way for the bidder to know if it will acquire the real property free and clear of the Deed of Trust or subject thereto, especially when the HOA and HOA Trustee know that a tender or attempted payment was made that affects the lien being foreclosed. Adopting the HOA's argument would effectively forever destroy the HOA Foreclosure Sale process under NRS 116.3116.

Based on the foregoing, it is evident that Appellant sufficiently pled a claim for relief for breach of duty of good faith, pursuant to NRS Chapter 116, and the district court erred as a matter of law in dismissing the claim.

2. THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT, BECAUSE THE HOA AND HOA TRUSTEE HAD A DUTY TO DISCLOSE THE ATTEMPTED PAYMENT/TENDER UNDER NRS CHAPTER 113

As additional proof of the intentional/negligent misrepresentation, the HOA and HOA Trustee are obligated to follow the disclosures mandated by NRS Chapter 113. In the Order, the district court held that NRS Chapter 113 “is not applicable to forced sales such as those conducted pursuant to NRS Chapter 116 and NRS 107.” JA169, ¶ 19. While it is true that NRS Chapter 113 is not generally applicable to NRS Chapter 107 foreclosure sales, Chapter 113 does have certain provisions that *do* apply in NRS Chapter 116 foreclosure sales. NRS Chapter 113 applies to NRS Chapter 116 foreclosure sales, to the extent that the HOA and the HOA Trustee, as agent for the HOA, have specific knowledge of the facts required for disclosure.

Pursuant to Chapter 113, the HOA and the HOA Trustee must disclose the Attempted Payment and/or any payments made or attempted to be made by Lender, the Former Owner, or any agents of any other party to the bidders and Plaintiff at the HOA Foreclosure Sale. NRS 113.130 provides as follows:

NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.

1. Except as otherwise provided in subsection 2:
 - (a) At least 10 days before residential property is conveyed to a purchaser:
 - (1) The seller shall complete a disclosure form regarding the residential property; and
 - (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
 - (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
 - (1) Rescind the agreement to purchase the property; or
 - (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

2. Subsection 1 does not apply to a sale or intended sale of residential property:

- (a) ***By foreclosure pursuant to chapter 107 of NRS.***
- (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.

(c) Which is the first sale of a residence that was constructed by a licensed contractor.

(d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.

3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.

4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:

(a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and

(b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.

5. As used in this section:

(a) “*Seller*” *includes, without limitation, a client as defined in NRS 645H.060.*

(b) “Service report” has the meaning ascribed to it in NRS 645H.150.

Id. (emphasis added). In its MTD, the HOA argued that the term “Seller” defined in NRS 645H.060 does not include a homeowners association or common interest community, and the district court agreed with that conclusion. JA170, ¶ 23.

However, the district court's reliance on this argument fails, because NRS 113.130(5) provides that a "Seller" includes, *but is not limited to*, a "Client" as defined in NRS 654H.060. Additionally, as used in NRS Chapter 113, the term "defect" means a condition that materially affects the value or use of the residential property in an adverse manner. NRS 113.100(1). Therefore, the HOA and HOA Trustee are required to provide a Seller's Real Property Disclosure Form ("SRPDF") to the "Purchaser" as defined in NRS Chapter 116, at the time of the HOA Foreclosure Sale. The HOA and HOA Trustee must provide information known to them.

NRS Chapter 116 foreclosure sales are not exempt from the mandates of NRS Chapter 113. According to the plain language of NRS 113.130(2)(a), only NRS Chapter 107 foreclosure sales are specifically excluded from NRS 113.130(1). *See* NRS 113.130(2)(a). This Court has repeatedly upheld and applied the maxim *expressio unius est exclusio alterius*. *Ex parte Arascada*, 44 Nev. 30, 35 (1920) ("*This a well-recognized rule of statutory construction and one based upon the very soundest of reasoning; for it is fair to assume that, when the legislature enumerates certain instances in which an act or thing may be done, or when certain privileges may be enjoyed, it names all that it contemplates; otherwise what is the necessity of specifying any*"). The rule invoked is so thoroughly recognized,

not only by the courts generally, but by our own court, that it would be puerile to dwell upon the question presented, further than to quote from the decisions of our own court.”) (emphasis added); *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 373 P.3d 66, 71 (Nev. 2016) (“The *maxim expressio unius est exclusio alterius* . . . instructs that, where a statute designates a form of conduct, the manner of its performance and operation, and the persons and things to which it refers, *courts should infer that all omissions were intentional exclusions.*”) (emphasis added) (citation omitted).

By stating expressly that NRS Chapter 107 is excluded from NRS 113.130’s application, the Legislature plainly intended to include NRS Chapter 116 and subject it to NRS 113.130’s scope. This means, of course, that the HOA is a “seller” under NRS Chapter 113, and the HOA should have complied with the disclosure requirements under NRS 113.130(1).

To the extent known to the HOA, and the HOA Trustee, as the agent of the HOA, the HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f), and Section 11, that provide as follows:

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

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

11. *Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?*

See JA12-13 (emphasis added). Section 11 of the SRPDF relates directly to information known to the HOA and the HOA Trustee that materially affects the value of the Property defined as a “defect” in NRS 113.100(1). In this case, if the Super-Priority Lien Amount is paid, or if the Attempted Payment is accepted, it has a materially adverse effect on the overall value of the Property and, therefore, must be disclosed in the SRPDF by the HOA and the HOA Trustee. Section 9(c) - (e) of the SRPDF would provide notice of any payments made by Lender or others on the HOA Lien.

Section 11 of the SRPDF generally deals with the disclosure of the condition of the title to the Property that would only be known by the HOA and the HOA

Trustee. Pursuant to the Nevada Real Estate Division's ("**NRED**"), Residential Disclosure Guide (the "**Guide**"), JA144, at page 20, the HOA and HOA Trustee shall provide the following to the purchaser (Appellant) at the HOA Foreclosure Sale:

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

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

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

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

(emphasis added). If the HOA and/or HOA Trustee fail to provide the SRPDF to the purchaser (Appellant) at the time of the HOA Foreclosure Sale, the Guide explains that:

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

Pursuant to NRS 113.130(4), the HOA and HOA Trustee are required to provide the information set forth in the SRPDF to Appellant at or before the HOA Foreclosure Sale, but no later than the drop of the gavel. Thus, the district court erred in holding that the HOA and HOA Trustee did not have any duties of disclosure under NRS Chapter 113.

a. **THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT, BECAUSE APPELLANT SUFFICIENTLY ALLEGED THE HOA'S AND HOA TRUSTEE'S VIOLATION OF NRS CHAPTER 113**

Here, Appellant sufficiently pled that the HOA and the HOA Trustee did not provide an SRPDF to Appellant at the HOA Foreclosure Sale, nor did the HOA and HOA Trustee provide any information orally to Appellant about the Attempted Payment. *See* JA14 ¶ 100. Therefore, the district court erred as a matter of law in dismissing Appellant's claim for relief for violation of NRS Chapter 113.

D. **APPELLANT'S CLAIM FOR CONSPIRACY DOES NOT FAIL AS A MATTER OF LAW**

In its Order, the district court held that Appellant's conspiracy claim fails as a matter of law, because there is no duty to disclose the Attempted Payment by BANA/Lender. JA169, ¶ 16. However, the district court's conclusion is erroneous. As discussed above, the HOA and HOA Trustee did have duties of disclosure under NRS Chapters 113 and 116.

Moreover, this Court has recognized that co-conspirators, like the HOA and the HOA Trustee in this matter, are deemed to be each other's agents while acting in furtherance of the conspiracy. *Tricarichi v. Cooperative Rabobank, U.A.*, 440 P.3d 645, 653 (Nev. 2019) (observing in the context of a conspiracy claim for purposes of establishing personal jurisdiction, "co- conspirators are deemed to be each other's agents, the contacts that one co-conspirator made with a forum while acting in furtherance of the conspiracy may be attributed for jurisdictional purposes to the other co-conspirators."). Likewise, Appellant here contends in its complaint – at least under any fair reading of it under the applicable standard set forth in NRC 12(b)(5) – that the HOA and the HOA Trustee were co-conspirators of one another in failing or refusing to disclose the alleged tender/Attempted Payment to Appellant, which the HOA and the HOA Trustee had a duty to disclose, as discussed herein. *See e.g.* JA11-12.

The actions of one co-conspirator, those of the HOA Trustee, are properly attributable to the other co-conspirator, the HOA, and vice versa. *See id.* As the HOA and the HOA Trustee are separate legal entities which can form a conspiracy, as alleged here by Appellant. *See, e.g., Nanopierce Techs. Inc. v. Depository Trust and Clearing Corp.*, 168 P.3d 73, 85 n.49 (Nev. 2007). Based on the foregoing, the HOA and HOA Trustee had a duty to disclose the Attempted Payment to Appellant,

and their failure to do so for their financial gain was a conspiracy under Nevada law that resulted in economic damages to Appellant. As such, the district court erred in dismissing this claim for relief.

X. CONCLUSION

Based upon the foregoing, the district court committed reversible error in multiple ways. Appellant respectfully requests that this Honorable Court reverse the Order granting the HOA's MTD.

Dated this 21st day of April, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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XI. ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because:

[a.] This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in Times New Roman font size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is

[a.] Proportionately spaced, has a typeface of 14 points or more, and contains 11,798 words; or

[b.] does not exceed 30 pages.

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3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 21st day of April, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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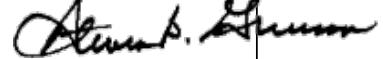
Attorneys for Appellant

CERTIFICATE OF SERVICE

In accordance with NRAP 25, I hereby certify that on April 21, 2020, I caused a copy of **Appellant's Answering Brief** to be filed and served electronically via the Court's E-Flex System to the following:

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY, LLC, SERIES 6387
HAMILTON GROVE,

Plaintiff(s),

vs.

SUNRISE RIDGE MASTER
ASSOCIATION,

Defendant(s).

Case No. A-19-790247-C

Department VI

BEFORE THE HONORABLE MICHAEL A. CHERRY,
DISTRICT COURT JUDGE

TUESDAY, AUGUST 10, 2021

**TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS
(Via Audio Via BlueJeans)**

APPEARANCES:

For the Plaintiff(s): ROGER P. CROTEAU, ESQ.

For the Defendant(s): JONATHAN K. WONG, ESQ.

RECORDED BY: GAIL REIGER, COURT RECORDER

1 **LAS VEGAS, NEVADA, TUESDAY, AUGUST 10, 2021**

2 [Proceeding commenced at 10:01 a.m.]

3
4 THE COURT CLERK: A-19-790247, Saticoy Bay versus
5 Sunrise Ridge Master Association.

6 MR. CROTEAU: Good morning, Your Honor. Roger
7 Croteau for Saticoy Bay, Series 6387 Hamilton Grove.

8 MR. WONG: Good morning, Your Honor. Jonathan
9 Wong on behalf of Defendant Sunrise Ridge Master Homeowners
10 Association, Bar Number 13621.

11 THE COURT: This is Defendant's Motion to Dismiss or
12 Alternatively a Motion for Summary Judgment.

13 Defendant, go ahead.

14 MR. WONG: That's correct, Your Honor.

15 Oh, and I presume, given Your Honor's background, that
16 you're familiar with NRS 116 and the central issues attendant this
17 statute?

18 THE COURT: Yeah.

19 MR. WONG: So I'll avoid boring you with an extensive
20 background. I'll just open by saying, you know, this is just another
21 typical garden-variety NRS 116 case with a disgruntled purchaser
22 who's suing the HOA after receiving a determination from the
23 federal court that the bank's deed of trust survived the foreclosure
24 sale.

25 Now, Plaintiff's case here, basically, hinges on his theory

1 for misrepresentation. Now, whether we look at it under the lens of
2 a 12(b)(5) dismissal or summary judgment under Rule 56, the
3 misrepresentation claim fails. Now, Plaintiff doesn't dispute that
4 the HOA had no duty to proactively disclose the bank's attempted
5 payment, but he argues that the HOA had a duty to do so upon
6 "reasonable inquiry."

7 The problem is that, you know, in looking over Plaintiff's
8 amended complaint, I do not see anywhere wherein he alleges that
9 on such-and-such date, I specifically spoke to so-and-so at NAS and
10 was specifically told that no person or entity had attempted to pay
11 the HOA's lien.

12 The complaint makes general references to Plaintiff's
13 practices and procedures and doing research on these NRS 116
14 foreclosure sales. But, you know, we've cited in our briefs Nevada
15 Supreme Court cases wherein the Court has said that these sorts of
16 allegations about practices and procedures are insufficient to state
17 a claim for misrepresentation under NRS 116.

18 So on that basis, dismissal under 12(b)(5) is proper here.
19 But even if Plaintiff were to have a less specific injury -- or, excuse
20 me, inquiry in his complaint, you know, his own discovery
21 responses from the federal action confirm that he made no such
22 inquiry. We've provided interrogatory responses, as well as
23 responses to Requests for Admission. And to each plaintiff
24 represented that there were no communications between himself
25 and the HOA or NAS regarding the foreclosure sale or the HOA's

1 lien. And he admitted that he did not communicate with either the
2 HOA or NAS regarding any payment or tender being made or
3 attempted on the HOA lien.

4 So, again, that -- his own response is, you know, foreclose
5 the existence of any inquiry that could form the basis, feasibly, of
6 the misrepresentation claim. And moreover, even if he were to
7 have made such an inquiry, as demonstrated in the Susan Moses
8 affidavit that Plaintiff attaches to his opposition, he would not have
9 been provided any information as to whether there was payment or
10 attempted payment on the HOA's lien.

11 Now, Plaintiff argues in his opposition that NAS's policy
12 of refusing to provide this information to potential bidders
13 constitutes a material omission. That serves as the basis for
14 misrepresentation.

15 However, it fails, because, you know, as we can see from
16 the Susan Moses affidavit, NAS's policy for doing this was not to
17 induce bidders, such as Plaintiff, to bid at the foreclosure sale, but
18 was to avoid subjecting itself to liability under the law for disclosing
19 information that it had a duty to keep confidential. So whether it be
20 under 12(b)(5) or summary judgment, Plaintiff's misrepresentation
21 claim has to go.

22 And, moving along, I don't want to spend too much time
23 on what I call the throwaway causes of action, and there's three of
24 those: Breach of duty of good faith, conspiracy, and unjust
25 enrichment. You know, the bottom line is that, because there's no

1 misrepresentation, none of these three claims can stand as well.
2 You know, there's nothing bad faith about how the HOA, noticing
3 and conducting the foreclosure sale, there was nothing unlawful
4 about the HOA and NAS, how they handled noticing and
5 conducting the sale and any enrichment that they realized was
6 certainly not unjust.

7 THE COURT: Why should I treat this as a Motion to
8 Dismiss rather than a summary judgment or vice versa?

9 MR. WONG: Oh, I'm sorry, Your Honor. Can you repeat
10 that?

11 THE COURT: Why should I treat this as a Motion to
12 Dismiss instead of summary judgment, or vice versa, Motion for
13 Summary Judgment instead of a Motion to Dismiss? I mean, it's
14 wonderful to plead --

15 MR. WONG: So, Your Honor --

16 THE COURT: -- alternatives, but tell me why. Which is the
17 best, as far as being -- to make sure this is -- if, in fact, I grant either,
18 that it's correct? Is there stuff outside the pleadings here?
19 Anything outside the pleadings that would talk about a summary
20 judgment?

21 MR. WONG: There is, Your Honor. And it's the discovery
22 responses that I've attached from the federal action.

23 THE COURT: Okay. So it's not a Motion to Dismiss, it's a
24 Motion for Summary Judgment?

25 MR. WONG: Well, whatever Your Honor deems --

1 THE COURT: No, it's not me. It's not my motion; it's
2 yours. So I just want to make sure --

3 MR. WONG: Certainly. Well, Your Honor --

4 THE COURT: -- the record's clear.

5 MR. WONG: -- if I'm -- certainly. And if I may, it's our
6 position that it's, you know, dismissal under 12(b)(5) is sufficient,
7 because I do not see anywhere in the complaint where specific
8 inquiry is made and where, you know, an allegation specifically sets
9 forth that NAS or the HOA, in fact, told Plaintiff that there were no
10 attempted payments on the HOA, even when there were, in fact,
11 payments.

12 So we believe the 12(b)(5) standard is enough here, Your
13 Honor. We are just seeking alternative relief in the form of
14 summary judgment, just in the event that this Court, you know, is
15 hesitant to dismiss the case under 12(b)(5).

16 THE COURT: Could I have Plaintiff's position in this?
17 Opposition?

18 MR. CROTEAU: Yes, Your Honor.

19 Couple of issues. Let's -- I'll begin with your inquiry. If
20 you take a look at our opposition at paragraphs 13, 14, 15, and 16,
21 that articulates and repeats paragraphs 42, 43, and 44, and 45 in our
22 amended complaint, which articulates what, in fact, Mr. Haddad
23 did, it's motions also supported by an affidavit from Mr. Haddad
24 regarding his practice and procedure.

25 The other side of this is, frankly, much of what's been

1 argued is out of context. The case cited in one of the unpublished
2 decisions that they cited for a dismissal, was a case where -- these
3 cases were filed early on and there was no real allegation set forth
4 in the complaint other than he was not informed as to his specific
5 allegations of what he did. That is -- been taken care of in this
6 first-amended complaint to articulate that. So it is defensible as
7 a 12(b)(5) motion.

8 On a 12(b)(5) motion, as the Court's aware, we have to
9 look at the allegations as true and then attack them on a purely
10 legal basis. It is a fact question, even under *Noonan*, as to whether
11 or not he made an inquiry and whether or not they owed him a
12 response that was truthful. And it's our allegation under *Noonan*
13 that this was a material omission that was known to the HOA
14 trustee, specifically, and to the HOA by agency theory, that a tender
15 had been made and that, in fact, the first deed of trust we would not
16 be extinguishing as the property when, in fact, they sold it. That's
17 the ultimately issue in the case. These are what these cases are
18 about in terms of trying to figure this out.

19 There is no dispositive case with the Nevada Supreme
20 Court or the appellate court dismissing this line of case, if you will.
21 As far as Your Honor's request of discussion as to whether or not
22 it's a summary judgment motion, pursuant to everything we had to
23 respond to, extraneous documents in addition to arguments of
24 issues in terms of disclosed files in this case, it clearly goes beyond
25 the pleadings. If it goes beyond the pleadings, I would concur that

1 it is a summary judgment motion.

2 We have respectfully requested 56(d) in the summary
3 judgment argument that we place in this document, as well as our
4 request for 56(d) discovery, supported by the affidavit of Chris
5 Bender in my office stating that Ms. Moses has testified, and,
6 frankly, rather inconsistently, if you get down to it, even in
7 documents they cite, they're saying, well, you know, we're not
8 going to disclose anything to Mr. Haddad anyway.

9 That's not their statement. Their statement is it was never
10 called, it was never told, it was never inquired. Yet her testimony
11 is, well, we're not going to disclose that to him when he does call.
12 And it's probably not earth-shattering to tell Your Honor we've
13 done other cases with NAS and, you know, they don't deny there's
14 calls. What they deny is that they would have said anything. And
15 our issue is, well, did you have a duty to say anything? really
16 becomes the issue. And that duty arises from their knowledge and
17 what obligations and what things are asked.

18 The fact there's a center around this, we're getting into the
19 summary judgment aspect of this, is they come forward and say
20 because of the Fair Debt Collection Act, we can't tell you what
21 someone paid if it's the debtor. We don't ask that. That is not the
22 query. The query is: Has any sum been paid by anybody? And we
23 don't care what the amount is, we simply care if it occurred.

24 If Your Honor recalls, this is a 2014 sale, July of 2014. In
25 July of 2014, if we were to roll back the clock, this Court and no

1 court in the state of Nevada that I'm aware of ever heard about a
2 Miles Bauer letter or a tender letter, because this came out before
3 *SFR*.

4 The truth of the matter is, the first *SFR* letter -- I'm sorry,
5 the first Miles Bauer letter that I'm familiar seeing -- in seeing in
6 some of my cases, and I've done 300, is approximately, at the
7 earliest, January of '15. And they didn't come up with that defense
8 until after they lost the *SFR* decision. And I'm talking globally, the
9 banks.

10 So, ultimately, you know, there was what was reasonable
11 at the time based upon the knowledge at the time, and whether or
12 not my client was unreasonable. And that's really a fact question,
13 whether he was unreasonable in reliance upon their statement that
14 there, you know, that their statement of a omission, if you will, their
15 blanket failure to respond to a -- in a factual question as to whether
16 or not any party had made a payment.

17 In this particular case, realize that under 116.1113, that
18 there is a duty of good faith disclosure. It is also in the scrivener's
19 notes, you know, even after as cited in *SFR*, the *Carrington*
20 [indiscernible], and it says, look, we need to look to what the
21 legislative history is in the case and what the editor's notes are.

22 The editor's notes under 113 -- I'm sorry, 116.1113, is that
23 it is an honesty and fact standard. In other words, can they
24 materially know that their failure to state the truth and whether or
25 not they did, in fact, receive and/or reject a payment, is fair and

1 honest. And it's not. And they can cook themselves in their
2 allegation that they don't have to disclose, because it's a credit
3 reporting issue, because that doesn't -- it belies the issue.

4 Many of the other HOAs were telling bidders that
5 superpriority payment has been tendered. They just won't tell you
6 how much and by who. Didn't care. Frankly, it didn't matter.

7 But what mattered was at the time of these sales, the
8 houses were all under water, they were all upside down, and it
9 made zero sense to buy one in the event that the sales were
10 upside-down in terms of value, unless they were buying it free of
11 the first deed of trust.

12 My clients were involved in the early starts of these cases
13 and involved in 2011 forward. And their view at that point in time,
14 which became the prevailing view in *SFR*, they developed, through
15 legal analysis, through hiring attorneys, through doing background
16 work, to looking at the statute to seeing how the statute operated in
17 other jurisdictions, and felt that they were in a good position to rely
18 upon that information.

19 So, I mean, we can get down into the weeds, but that's
20 really the issue in this case. You know, 113.130, I cited to you the
21 NRED guide that says even in 107 sales, if you -- if the bank knows
22 something about the property, they have a duty to
23 disclose. 113.130 only exempts 107 sales. It does not exempt 116
24 sales. They keep trying to go around that and say, well, it includes
25 that. It includes 116, because it's a foreclosure sale. It does not. If

1 legislature had intended it to, it would have included it. They didn't.

2 And the statutes that [indiscernible] that affects the
3 material value of the property. Well, clearly, if it's being sold
4 subject to the first deed of trust, that is something you'd want to
5 know. In a 107 sale, I get to go down to the recorder's office and
6 look and I'd know if I'm buying a second or first position. Prior to
7 October of '15, I did not. The legislature remedied this problem in
8 October of '15, but I submit to you that's not what gives them relief.
9 I submit to you that the good-faith requirement was always there,
10 they didn't do it. And they -- legislative put a bright-line codification
11 so that there's zero question as to whether or not they had to do it,
12 at which point, then they started recording the superpriority
13 payment when received.

14 So there's a whole lot of facts that go into this. This is not
15 some shotgun complaint that's just trying to overreach and get out
16 into the distance here. They have a lot of years in this area of law,
17 this is -- this area and this particular issue is not resolved. The only
18 thing that's been put out is unpublished decisions from cases that
19 were filed in '18 that were, at that point, that was before the
20 *Noonan* decision, before the *Noonan* decision came out and said,
21 look, I don't see that there's an affirmative duty to tell. But that
22 doesn't negate the fact that there's an obligation, an omission if
23 you're asked. And that's the basis of these cases.

24 I'm assuming Your Honor has gone through the evidence
25 and the arguments, obviously, are well elaborated in my motion, I

1 believe. And if the Court would like me to direct the Court to
2 something else, just to walk this through, if the Court has any
3 questions, but I think that's really the issue for whether the matter is
4 dismissible at this point. It's clearly been presented as a summary
5 judgment motion and we're clearly asking for 56(d) request in this
6 case till you develop the record in this case. Even if it does get
7 dismissed for appeal purposes, and I think that's fair, at least, in
8 both this point based upon the presentation of both counsel and the
9 papers. Thank you.

10 THE COURT: I'd ask for a reply, but it's not necessary,
11 because I'm going to treat this as a Motion to Dismiss, not as a
12 Motion for Summary Judgment. And, of course, there's no reason
13 to talk about 56(d), because I'm not treating it as a Motion for
14 Summary Judgment.

15 I'm going to grant this motion, and I want to tell you why.
16 Under the pre-2015 version of NRS 116, the version that controls
17 here, neither the HOA nor NAS had an affirmative duty to disclose
18 the existence of payments and/or attempted payment on HOA's
19 lien. In *Noonan*, which both parties have looked at, the Court stated
20 that summary judgment was appropriate and Plaintiff's negligent
21 misrepresentation claim, because the HOA either made an
22 affirmative false statement or omitted a material fact that was
23 bound to disclose.

24 Further, the Court noted that under the revised version of
25 NRS 116.31162, an HOA -- and HOA is required to disclose if tender

1 of the superpriority portion of the lien has been made, while the
2 pre-2015 version contained no such requirement.

3 Given that the pre-2015 version of NRS 116 imposed no
4 duty on either the HOA or NAS to affirmatively disclose payments
5 or attempted payments on the HOA's lien, the only way a
6 misrepresentation could be made is for Plaintiff to affirmatively
7 inquire about the same and be advised, specifically, there was no
8 such payments. Here, none of the allegations in the FAC alleged
9 that Plaintiff actually asked the HOA or NAS whether any person or
10 entity had attempted payment on the HOA lien and that Plaintiff
11 was --

12 MR. CROTEAU: Your Honor, I don't mean to interrupt,
13 but --

14 THE COURT: You are interrupting.

15 MR. CROTEAU: -- that is the allegations that are --

16 THE COURT: You are interrupting. I'm making a decision.

17 MR. CROTEAU: My apologies.

18 THE COURT: You bet. I can't believe counsel would do
19 that in the middle of me making a statement. Holy cow. Whatever
20 happened to --

21 MR. CROTEAU: I apologize. It's probably because of the
22 phone-in.

23 THE COURT: Where were you raised? What law school
24 did you go to? I can't believe you did that.

25 MR. CROTEAU: [Indiscernible] University.

1 THE COURT: Here, then the allegations --

2 MR. CROTEAU: I apologize, Your Honor.

3 THE COURT: -- and the FAC allege that the plaintiff
4 actually asked the HOA or NAS whether any person or entity had
5 attempted payment on the HOA lien and the plaintiff specifically
6 informed that there had been no such payment, or rather the FAC
7 merely asserts that Plaintiff had a practice and procedure of
8 contacting the HOA trustee prior to foreclosure sales and making
9 this inquiry.

10 Because I don't find any type of intentional or negligent
11 misrepresentation, there goes the claims of breach of duty of good
12 faith, unjust enrichment, conspiracy, and, of course, there's no
13 punitive damage claim.

14 I understand that the plaintiff is not happy with this
15 decision. I can understand that. We had many, many cases in the
16 Supreme Court when I was there for 12 years involving this. This is
17 a very technical issue. I may be wet -- I may be all wet on this.
18 Plaintiff may be absolutely right and Defendant absolutely wrong.
19 But at least my reading of the -- throughout prior decisions, I can
20 treat this as a Motion to Dismiss, not a Motion for Summary
21 Judgment, and that the -- there's no breach of duty of good faith,
22 no unjust enrichment, no conspiracy, and, of course, no punitive
23 damages. And that's because everything flows from my finding
24 that there was no intentional or negligent misrepresentation, and
25 *Noonan versus Bayview Loan Servicing* is appropriate in this

1 matter.

2 So that's it. I'm sorry I yelled at the plaintiff, that's not a
3 correct thing that I was taught to do. So please accept my apology.
4 But I do want a order prepared by the defense in this matter. And
5 that'll be my order.

6 And if you want to go to the Supreme Court, they love
7 these cases. In fact, it keeps them busy up there. So more power
8 to you. Good luck. Thank you very much.

9 MR. CROTEAU: Your Honor, my apologies. I meant no
10 disrespect. I apologize.

11 THE COURT: I understand. And I apologize to you too.
12 There was -- what I said was uncalled for also. So I'm sorry and
13 you did -- both sides did an excellent job of arguing this case. And I
14 may be absolutely wrong and Defendant may be absolutely wrong,
15 but that's what we have appellate courts for.

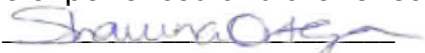
16 So good luck to both sides in this. But, Mr. Defendant,
17 please prepare an order. Thank you very much.

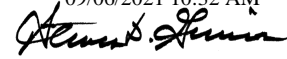
18 MR. WONG: Thank you, Your Honor.

19 [Proceeding concluded at 10:22 a.m.]

20 ///

21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled case
23 to the best of my ability. Please note: Technical glitches in the
24 BlueJeans audio/video which resulted in audio distortion and/or
audio cutting out completely were experienced and are reflected in
the transcript.

25 
Shawna Ortega, CET*562


CLERK OF THE COURT

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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-790247-C
Dept.: VI

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
REPLY IN SUPPORT OF ITS MOTION
TO DISMISS, OR ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT**

Hearing Date: August 10, 2021
Hearing Time: 9:30 a.m.

On August 10, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Roger P. Croteau, Esq., appeared on behalf of Plaintiff, and Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

\\

FINDINGS OF FACT

1. On or about September 9, 2009, Salvador Partida Castillo and Veronica Delgado (the "Former Owners") obtained a loan to purchase real property located at 6387 Hamilton Grove Ave., Las Vegas, Nevada 89122 (APN 161-15-711-008) (the "Property").

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

3. Sometime after purchasing the Property, the Former Owners defaulted on their homeowners' assessments.

4. On December 27, 2012, Nevada Association Services ("NAS"), on behalf of Sunrise Ridge Master Homeowners Association ("Sunrise Ridge"), recorded a Notice of Claim of Delinquent Assessment Lien.

5. On January 9, 2014, NAS, on behalf of Sunrise Ridge, recorded a Notice of Default and Election to Sell.

6. At some point prior to the recordation of the Notice of Foreclosure Sale, Bank of America ("BANA"), through counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted NAS and the HOA and requested a breakdown of nine (9) months of common HOA assessments in order to calculate the Super Priority Lien Amount.

7. On September 26, 2013, BANA, through Miles Bauer, provided a payment of \$378.00 to NAS (the "Attempted Payment"). NAS, on behalf of Sunrise Ridge, rejected BANA's attempted payment of \$378.00.

8. On May 20, 2014, NAS, on behalf of Sunrise Ridge, recorded a Notice of Foreclosure Sale against the Property.

9. On July 11, 2014, NAS conducted the non-judicial foreclosure sale on the Property (the "Foreclosure Sale") and recorded the Foreclosure Deed, which indicated that NAS sold the HOA's interest in the Property to Plaintiff for the highest bid amount of \$22,100.00.

1 10. On February 26, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS,
2 and Plaintiff in the United States District Court, District of Nevada, Case No. 2:16-cv-
3 00408-RFB-PAL (the "Federal Action"). The complaint alleged causes of action for
4 Quiet Title/Declaratory Judgment, Breach of NRS 116.1113, Wrongful Foreclosure, and
5 Injunctive Relief.

6 11. On February 28, 2019, Saticoy Bay filed the instant lawsuit against
7 Sunrise Ridge and NAS, alleging cause of action for Intentional/Negligent
8 Misrepresentation, Breach of NRS 116, and Conspiracy.

9 12. On July 16, 2019, this matter was stayed for six months pending
10 resolution of proceedings in the Federal Action.

11 13. On July 15, 2020, the stay was lifted. The parties in this matter stipulated
12 to allow Plaintiff to file an amended complaint.

13 14. On June 22, 2021, Plaintiff filed its First Amended Complaint (the "FAC"),
14 asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS
15 116.1113; 3) Conspiracy; 4) Violation of NRS 113; and 5) Unjust Enrichment.

16 15. Any finding of fact that should be a conclusion of law shall be treated as
17 such.

18 **CONCLUSIONS OF LAW**

19 1. The Court reviews Sunrise Ridge's Motion under Rule 12(b)(5) of the
20 Nevada Rules of Civil Procedure ("NRCP"). NRCP 12(b)(5) provides that a complaint
21 may be dismissed for "failure to state a claim upon which relief can be granted." Nev. R.
22 Civ. P. 12(b)(5). When ruling on such a motion, the factual allegations in the complaint
23 are treated as true and all inferences are drawn in favor of the plaintiff. *Jacobs v.*
24 *Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014). A complaint should be
25 dismissed when the allegations are insufficient to entitle the plaintiff to relief. *Id.*

26 2. Nevada has adopted the Uniform Common Interest Owner Act through
27 Nevada Revised Statutes ("NRS") Chapter 116.

28 \\

1 3. NRS 116 establishes that homeowners' associations ("HOA" or "HOAs")
2 may impose assessments. See NRS 116.3115.

3 4. NRS 116 establishes that HOAs have a lien against units for
4 assessments. See generally NRS 116.3116.

5 5. Sunrise Ridge foreclosed on the Property pursuant to NRS 116.

6 6. Under the version of NRS 116 in effect at the time of the Foreclosure Sale,
7 neither Sunrise Ridge nor NAS had an affirmative duty to disclose to potential bidders
8 the existence of payments or attempted payments on the HOA's lien.

9 7. Under Nevada law, intentional misrepresentation requires three elements:
10 "(1) a false representation that is made with either knowledge or belief that it is false or
11 without a sufficient foundation, (2) an intent to induce another's reliance, and (3)
12 damages that result from this reliance." *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d
13 420, 426 (2007) (citations omitted). As for negligent misrepresentation, Nevada law
14 requires a plaintiff to show that the defendant is "one who, without exercising
15 reasonable care or competence, 'supplies false information for the guidance of others in
16 their business transactions' is liable for 'pecuniary loss caused to them by their
17 justifiable reliance upon the information.'" *Barnettler v. Reno Air, Inc.*, 114 Nev. 441,
18 449, 956 P.2d 1382, 1387 (1998) (citations omitted).

19 8. Neither Sunrise Ridge nor NAS had an affirmative duty to disclose to
20 Plaintiff the existence of the Attempted Payment. See *Noonan v. Bayview Loan*
21 *Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (finding that summary judgment was
22 appropriate on the plaintiff's negligent misrepresentation claim because the HOA
23 "neither made an affirmative false statement nor omitted a material fact it was bound to
24 disclose.").

25 9. As such, the only way a misrepresentation could have been made would
26 be for Plaintiff to have specifically inquired about whether payment was made on the
27 HOA's lien, and in response be advised specifically that no such payments had been
28 made.

1 Here, Plaintiff does not allege that Defendants made any active
2 misrepresentation; rather, he alleges only that Defendants are guilty of a material
3 omission by failing to advise Plaintiff about BANA's Attempted Payment "upon inquiry."
4 This is insufficient to state a claim for relief for Intentional/Negligent Misrepresentation.

5 10. Because there was no misrepresentation – neither intentional nor
6 negligent – Plaintiff's remaining causes of action necessarily fail to state claims upon
7 which relief can be granted.

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ORDER

In light of the above findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Sunrise Ridge's Motion is GRANTED pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b)(5), and that Plaintiff's Complaint is dismissed with prejudice and judgment entered thereon.

Dated this 6th day of September, 2021



NH

7E8 682 40D8 0DBB
Jacqueline M. Bluth
District Court Judge

Submitted by:

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant

Approved as to form and content by:

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Christopher L. Benner

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Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
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Las Vegas, Nevada 89148
Attorney for Plaintiff

Sydney Ochoa

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, August 27, 2021 2:12 PM
To: Jonathan Wong; Roger Croteau
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

Okay, if there was no discussion of 56(d), I would infer it was moot. You can 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: Jonathan Wong <JWong@lipsonneilson.com>
Sent: Friday, August 27, 2021 2:07 PM
To: Chris Benner <chris@croteaulaw.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

Hi Chris –

The judge granted on the basis of Rule 12(b)(5) and not Rule 56, so the request for 56(d) relief never came into play. That's why it wasn't mentioned in my draft order.

That being the case, please let me know if you are OK with us submitting this order to the court without discussion of 56(d) relief. Thanks.

Jonathan K. Wong, Esq.
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Website: www.lipsonneilson.com

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, August 27, 2021 10:48 AM
To: Jonathan Wong <JWong@lipsonneilson.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Saticoy Bay, LLC, Series 6387
7 Hamilton Grove, Plaintiff(s)

CASE NO: A-19-790247-C

8 vs.

DEPT. NO. Department 17

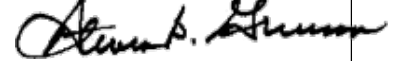
9 Sunrise Ridge Master
10 Association, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 9/6/2021

16 J. William Ebert	bebert@lipsonneilson.com
17 Susana Nutt	snutt@lipsonneilson.com
18 Brandon Wood	brandon@nas-inc.com
19 Roger Croteau	croteaulaw@croteaulaw.com
20 Susan Moses	susanm@nas-inc.com
21 Croteau Admin	receptionist@croteaulaw.com
22 Sydney Ochoa	sochoa@lipsonneilson.com
23 Jonathan Wong	jwong@lipsonneilson.com
24 Juan Cerezo	jcerezo@lipsonneilson.com



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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-790247-C
Dept.: VI

**ERRATA TO ORDER GRANTING
DEFENDANT SUNRISE RIDGE
MASTER HOMEOWNERS'
ASSOCIATIONS' REPLY IN SUPPORT
OF ITS MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Defendant SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION, by and through its counsel, LIPSON NEILSON P.C., hereby submits this Errata to correct the title of the ORDER GRANTING DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT filed with this Court on the 6th day of September, 2021.

Defendants inadvertently titled the Order incorrectly. The title of the Order on the first page should read ***Order Granting Defendant Sunrise Ridge Master Homeowners' Association's Motion To Dismiss, Or Alternatively, Motion For Summary Judgment.***

Attached hereto as **Exhibit "A"** is the first page of the Order with the correct title.
DATED this 13th day of September, 2021.

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

J. WILLIAM EBERT, ESQ.
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JONATHAN K. WONG, ESQ.
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9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 13th day of September, 2021, I electronically served the foregoing **ERRATA TO ORDER GRANTING DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATIONS' REPLY IN SUPPORT OF ITS MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** to the following parties utilizing the Court's E-File/ServeNV System:

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
ROGER P. CROTEAU &
ASSOCIATES, LTD.
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Attorney for Plaintiff

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

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

Defendants.

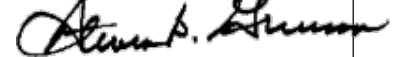
Case No.: A-19-790247-C
Dept.: VI

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

Hearing Date: August 10, 2021
Hearing Time: 9:30 a.m.

On August 10, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Roger P. Croteau, Esq., appeared on behalf of Plaintiff, and Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

\\



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*Attorneys for Defendant,
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-790247-C
Dept.: VI

NOTICE OF ENTRY OF ORDER

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1 PLEASE TAKE NOTICE that the **ORDER GRANTING DEFENDANT SUNRISE**
2 **RIDGE MASTER HOMEOWNERS' ASSOCIATION'S MOTION TO DISMISS, OR**
3 **ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** was filed with the court this 6th
4 day of September, 2021, a true and correct copy of which is attached hereto.

5 DATED this 16th day of September, 2021.

6 LIPSON NEILSON P.C.

7 */s/ Jonathan K. Wong*

8
9 J. WILLIAM EBERT, ESQ.
10 Nevada Bar No. 2697
11 JONATHAN K. WONG, ESQ.
12 Nevada Bar No. 13621
13 9900 Covington Cross Drive, Suite 120
14 Las Vegas, Nevada 89144
15 *Attorneys for Defendant*
16
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CERTIFICATE OF SERVICE

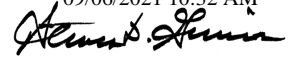
Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 16th day of September, 2021, I electronically served the foregoing **NOTICE OF ENTRY OF ORDER** to the following parties utilizing the Court's E-File/ServeNV System:

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
ROGER P. CROTEAU &
ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148

Attorney for Plaintiff

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.


CLERK OF THE COURT

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
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JONATHAN K. WONG, ESQ.
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9900 Covington Cross Drive, Suite 120
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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-790247-C
Dept.: VI

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
REPLY IN SUPPORT OF ITS MOTION
TO DISMISS, OR ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT**

Hearing Date: August 10, 2021
Hearing Time: 9:30 a.m.

On August 10, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Roger P. Croteau, Esq., appeared on behalf of Plaintiff, and Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

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FINDINGS OF FACT

1. On or about September 9, 2009, Salvador Partida Castillo and Veronica Delgado (the "Former Owners") obtained a loan to purchase real property located at 6387 Hamilton Grove Ave., Las Vegas, Nevada 89122 (APN 161-15-711-008) (the "Property").

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

3. Sometime after purchasing the Property, the Former Owners defaulted on their homeowners' assessments.

4. On December 27, 2012, Nevada Association Services ("NAS"), on behalf of Sunrise Ridge Master Homeowners Association ("Sunrise Ridge"), recorded a Notice of Claim of Delinquent Assessment Lien.

5. On January 9, 2014, NAS, on behalf of Sunrise Ridge, recorded a Notice of Default and Election to Sell.

6. At some point prior to the recordation of the Notice of Foreclosure Sale, Bank of America ("BANA"), through counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted NAS and the HOA and requested a breakdown of nine (9) months of common HOA assessments in order to calculate the Super Priority Lien Amount.

7. On September 26, 2013, BANA, through Miles Bauer, provided a payment of \$378.00 to NAS (the "Attempted Payment"). NAS, on behalf of Sunrise Ridge, rejected BANA's attempted payment of \$378.00.

8. On May 20, 2014, NAS, on behalf of Sunrise Ridge, recorded a Notice of Foreclosure Sale against the Property.

9. On July 11, 2014, NAS conducted the non-judicial foreclosure sale on the Property (the "Foreclosure Sale") and recorded the Foreclosure Deed, which indicated that NAS sold the HOA's interest in the Property to Plaintiff for the highest bid amount of \$22,100.00.

1 10. On February 26, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS,
2 and Plaintiff in the United States District Court, District of Nevada, Case No. 2:16-cv-
3 00408-RFB-PAL (the “Federal Action”). The complaint alleged causes of action for
4 Quiet Title/Declaratory Judgment, Breach of NRS 116.1113, Wrongful Foreclosure, and
5 Injunctive Relief.

11. On February 28, 2019, Saticoy Bay filed the instant lawsuit against Sunrise Ridge and NAS, alleging cause of action for Intentional/Negligent Misrepresentation, Breach of NRS 116, and Conspiracy.

9 12. On July 16, 2019, this matter was stayed for six months pending
10 resolution of proceedings in the Federal Action.

11 13. On July 15, 2020, the stay was lifted. The parties in this matter stipulated
12 to allow Plaintiff to file an amended complaint.

13 14. On June 22, 2021, Plaintiff filed its First Amended Complaint (the “FAC”),
14 asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS
15 116.1113; 3) Conspiracy; 4) Violation of NRS 113; and 5) Unjust Enrichment.

16 15. Any finding of fact that should be a conclusion of law shall be treated as
17 such.

CONCLUSIONS OF LAW

1. The Court reviews Sunrise Ridge's Motion under Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP"). NRCP 12(b)(5) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Nev. R. Civ. P. 12(b)(5). When ruling on such a motion, the factual allegations in the complaint are treated as true and all inferences are drawn in favor of the plaintiff. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014). A complaint should be dismissed when the allegations are insufficient to entitle the plaintiff to relief. *Id.*

26 2. Nevada has adopted the Uniform Common Interest Owner Act through
27 Nevada Revised Statutes ("NRS") Chapter 116.

28 || \ \ \

1 3. NRS 116 establishes that homeowners' associations ("HOA" or "HOAs")
2 may impose assessments. See NRS 116.3115.

3 4. NRS 116 establishes that HOAs have a lien against units for
4 assessments. See generally NRS 116.3116.

5 5. Sunrise Ridge foreclosed on the Property pursuant to NRS 116.

6 6. Under the version of NRS 116 in effect at the time of the Foreclosure Sale,
7 neither Sunrise Ridge nor NAS had an affirmative duty to disclose to potential bidders
8 the existence of payments or attempted payments on the HOA's lien.

9 7. Under Nevada law, intentional misrepresentation requires three elements:
10 "(1) a false representation that is made with either knowledge or belief that it is false or
11 without a sufficient foundation, (2) an intent to induce another's reliance, and (3)
12 damages that result from this reliance." *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d
13 420, 426 (2007) (citations omitted). As for negligent misrepresentation, Nevada law
14 requires a plaintiff to show that the defendant is "one who, without exercising
15 reasonable care or competence, 'supplies false information for the guidance of others in
16 their business transactions' is liable for 'pecuniary loss caused to them by their
17 justifiable reliance upon the information.'" *Barnettler v. Reno Air, Inc.*, 114 Nev. 441,
18 449, 956 P.2d 1382, 1387 (1998) (citations omitted).

19 8. Neither Sunrise Ridge nor NAS had an affirmative duty to disclose to
20 Plaintiff the existence of the Attempted Payment. See *Noonan v. Bayview Loan*
21 *Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (finding that summary judgment was
22 appropriate on the plaintiff's negligent misrepresentation claim because the HOA
23 "neither made an affirmative false statement nor omitted a material fact it was bound to
24 disclose.").

25 9. As such, the only way a misrepresentation could have been made would
26 be for Plaintiff to have specifically inquired about whether payment was made on the
27 HOA's lien, and in response be advised specifically that no such payments had been
28 made.

1 Here, Plaintiff does not allege that Defendants made any active
2 misrepresentation; rather, he alleges only that Defendants are guilty of a material
3 omission by failing to advise Plaintiff about BANA's Attempted Payment "upon inquiry."
4 This is insufficient to state a claim for relief for Intentional/Negligent Misrepresentation.

5 10. Because there was no misrepresentation – neither intentional nor
6 negligent – Plaintiff's remaining causes of action necessarily fail to state claims upon
7 which relief can be granted.

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ORDER

In light of the above findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Sunrise Ridge's Motion is GRANTED pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b)(5), and that Plaintiff's Complaint is dismissed with prejudice and judgment entered thereon.

Dated this 6th day of September, 2021



NH

7E8 682 40D8 0DBB
Jacqueline M. Bluth
District Court Judge

Submitted by:

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant

Approved as to form and content by:

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Christopher L. Benner

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148
Attorney for Plaintiff

Sydney Ochoa

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, August 27, 2021 2:12 PM
To: Jonathan Wong; Roger Croteau
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

Okay, if there was no discussion of 56(d), I would infer it was moot. You can 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: Jonathan Wong <JWong@lipsonneilson.com>
Sent: Friday, August 27, 2021 2:07 PM
To: Chris Benner <chris@croteaulaw.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

Hi Chris –

The judge granted on the basis of Rule 12(b)(5) and not Rule 56, so the request for 56(d) relief never came into play. That's why it wasn't mentioned in my draft order.

That being the case, please let me know if you are OK with us submitting this order to the court without discussion of 56(d) relief. Thanks.

Jonathan K. Wong, Esq.
Lipson Neilson P.C.
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Website: www.lipsonneilson.com

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, August 27, 2021 10:48 AM
To: Jonathan Wong <JWong@lipsonneilson.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Saticoy Bay, LLC, Series 6387
7 Hamilton Grove, Plaintiff(s)

CASE NO: A-19-790247-C

8 vs.

DEPT. NO. Department 17

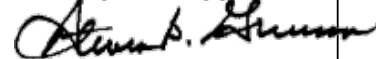
9 Sunrise Ridge Master
10 Association, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 9/6/2021

16 J. William Ebert	bebert@lipsonneilson.com
17 Susana Nutt	snutt@lipsonneilson.com
18 Brandon Wood	brandon@nas-inc.com
19 Roger Croteau	croteaulaw@croteaulaw.com
20 Susan Moses	susanm@nas-inc.com
21 Croteau Admin	receptionist@croteaulaw.com
22 Sydney Ochoa	sochoa@lipsonneilson.com
23 Jonathan Wong	jwong@lipsonneilson.com
24 Juan Cerezo	jcerezo@lipsonneilson.com



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

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

15 SATICOY BAY, LLC, SERIES 6387
16 HAMILTON GROVE, a Nevada limited liability
17 company,

18 Plaintiff,

19 vs.

20 SURNRISE RIDGE MASTER ASSOCIATION,
21 a Nevada non-profit corporation; and NEVADA
22 ASSOCIATION SERVICES, INC., a Nevada
23 Corporation,

24 Defendants.

Case No. A-19-790247-C

Dept No. 17

NOTICE OF APPEAL

25 NOTICE IS HEREBY GIVEN that Defendant SATICOY BAY LLC SERIES 6387
26 HAMILTON GROVE, by and through its attorneys, Roger P. Croteau & Associates, Ltd., hereby
27 appeals to the Supreme Court of Nevada from:
28 (1) the Notice of Entry of Order Granting Defendant Sunrise Ridge Master Homeowners'
Association's Motion to Dismiss or Alternatively, Motion for Summary Judgment, entered by the

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

1 Eighth Judicial District Court, Clark County, Nevada, on September 16, 2021, as joined by Nevada
2 Association Services, Inc., and all interlocutory orders therein.

3 Dated: This October 14, 2021.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5 /s/ Christopher L. Benner

6 Roger P. Croteau, Esq.

7 Nevada Bar No. 4958

8 Christopher L. Benner, Esq.

9 Nevada Bar No. 8963

10 2810 W. Charleston Blvd., Suite 75

11 Las Vegas, Nevada 89102

12 *Attorneys for Plaintiff*

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CERTIFICATE OF SERVICE

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

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