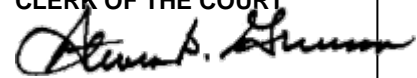


ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

Electronically Filed
10/20/2021 3:48 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Oct 27 2021 02:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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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11 croteaulaw@croteaulaw.com
12 chris@croteaulaw.com
13 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 RIVER GLIDER AVENUE TRUST,

14 Plaintiff,

15 vs.

16
17 HARBOR COVE HOMEOWNERS
18 ASSOCIATION; and NEVADA
19 ASSOCIATION SERVICES, INC.,

20 Defendants

Case No: A-20-819781-C

Dept No: 20

21 **NOTICE OF APPEAL**

22 //

23 //

24 //

25 //

26 //

1 NOTICE IS HEREBY GIVEN that Plaintiff RIVER GLIDER AVENUE TRUST, by and
2 through its attorneys, Roger P. Croteau & Associates, Ltd., hereby appeals to the Supreme Court of
3 Nevada the Order Granting Harbor Cove Homeowners Association's Renewed Motion for
4 Summary Judgment, Nevada Association Services Joinder thereto, and all rulings and interlocutory
5 orders giving rise to or made appealable by the final judgment.
6

7 Dated October 20, 2021.

8 ROGER P. CROTEAU & ASSOCIATES, LTD.

9 /s/ Christopher L. Benner

10 Roger P. Croteau, Esq.

11 Nevada Bar No. 4958

12 Christopher L. Benner, Esq.

13 Nevada Bar No. 8963

14 2810 W. Charleston Blvd., Suite 75

15 Las Vegas, Nevada 89102

16 *Plaintiff Daisy Trust*
17
18
19
20
21
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25
26
27
28

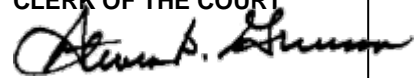
ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

CERTIFICATE OF SERVICE

I hereby certify that on October 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.



ASTA
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
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croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

Case No: A-20-819781-C
Dept No: 20

CASE APPEAL STATEMENT

Plaintiff River Glider Avenue Trust, by and through their attorneys, Roger P. Croteau & Associates, Ltd., submits its Case Appeal Statement.

1. Name of appellant filing this case appeal statement:

River Glider Avenue Trust ("River Glider")

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

The Honorable Eric Johnson

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

a. River Glider Avenue Trust

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

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

a. Harbor Cove Homeowners Association ("Harbor")

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

KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
PETER E. DUNKLEY, ESQ.
Lipson Neilson, P.C.
Nevada Bar No. 11110
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144
(702) 382-1500 phone

b. Nevada Association Services, Inc. ("NAS")

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

Brandon Wood, Esq.
6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
702-804-8885 Office

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

N/A

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

Retained counsel.

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

Retained counsel.

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

N/A

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

The original Complaint in this matter was filed on August 18, 2020 in the Eighth Judicial District Court of the State of Nevada in and for Clark County, Nevada, Case No. A-20-819781-C.

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

The instant action relates to River Glider's claim for damages against Harbor and NAS stemming from an allegation of fraudulent or, alternatively, negligent misrepresentation, breach of the duty of good faith, and conspiracy on the part of Harbor and NAS in failing to disclose to River Glider, upon request, whether or not a superpriority payment had been made or tendered to Harbor, prior to NAS conducting a non-judicial foreclosure sale of the real property identified as 8112 Lake Hills Drive Las Vegas, Nevada 89128 (APN: 138-16-213-034). River Glider's claims also allege statutory violations on the part of Harbor and NAS under NRS 116.113 and NRS 113.

After briefing by the Parties, the District Court granted Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment ("Motion") and NAS' Joinder thereto on September 21, 2021. The Notice of Entry of Order Granting the Motion was filed and served on September 23, 2021.

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

N/A.

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

N/A

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

Appellant believes that the possibility of settlement exists.

Dated this 20th day of October, 2021.

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., Suite 75

Las Vegas, Nevada 89102

Attorneys for Plaintiff

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

CERTIFICATE OF SERVICE

I hereby certify that on October 20th, 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.

CASE SUMMARY**CASE NO. A-20-819781-C****River Glider Avenue Trust, Plaintiff(s)****vs.****Harbor Cover Homeowners Association, Defendant(s)**§
§
§
§
§Location: **Department 20**Judicial Officer: **Johnson, Eric**Filed on: **08/18/2020**Cross-Reference Case **A819781**

Number:

CASE INFORMATION**Statistical Closures**

09/21/2021 Summary Judgment

Case Type: **Intentional Misconduct**Case
Status: **09/21/2021 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-20-819781-C
Court	Department 20
Date Assigned	08/18/2020
Judicial Officer	Johnson, Eric

PARTY INFORMATION**Plaintiff****River Glider Avenue Trust***Lead Attorneys***Croteau, Roger P, ESQ***Retained*

702-254-7775(W)

Defendant**Harbor Cover Homeowners Association****Anderson, Kaleb D.***Retained*

702-382-1500(W)

Nevada Association Services Inc**Wood, Brandon E.***Retained*

702-804-8885(W)

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

08/18/2020



Complaint

Filed By: Plaintiff River Glider Avenue Trust
[1] Complaint

08/19/2020



Initial Appearance Fee Disclosure

Filed By: Plaintiff River Glider Avenue Trust
[2] Initial Appearance Fee Disclosure

08/20/2020



Clerk's Notice of Nonconforming Document

[3] Clerk's Notice of Nonconforming Document

08/20/2020



Summons Electronically Issued - Service Pending

Party: Plaintiff River Glider Avenue Trust
[5] Summons-Harbor Cove HOA

08/20/2020



Summons Electronically Issued - Service Pending

Party: Plaintiff River Glider Avenue Trust
[6] Summons-Nevada Association Services

CASE SUMMARY

CASE NO. A-20-819781-C

08/21/2020	 Clerk's Notice of Nonconforming Document and Curative Action <i>[4] Clerk's Notice of Curative Action & Notice of Change of Case Designation</i>
10/20/2020	 Affidavit of Service Filed By: Plaintiff River Glider Avenue Trust <i>[7] AOS-NAS</i>
10/20/2020	 Affidavit of Service Filed By: Plaintiff River Glider Avenue Trust <i>[8] Affidavit of Service-HOA</i>
11/10/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Harbor Cover Homeowners Association <i>[9] Harbor Cove Homeowners Association's Initial Appearance Fee Disclosure</i>
11/10/2020	 Motion To Dismiss - Alternative Motion For Summary Judgment Filed By: Defendant Harbor Cover Homeowners Association <i>[10] Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment</i>
11/10/2020	 Clerk's Notice of Hearing <i>[11] Notice of Hearing</i>
11/10/2020	 Joinder Filed By: Defendant Nevada Association Services Inc <i>[12] Nevada Association Services, Inc.'s Joinder to Defendant Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative Motion</i>
11/12/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Nevada Association Services Inc <i>[13] Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
11/24/2020	 Opposition Filed By: Plaintiff River Glider Avenue Trust <i>[14] River Glider's Opposition to Harbor Cove HOA Motion to Dismiss</i>
11/24/2020	 Filing Fee Remittance Filed By: Defendant Nevada Association Services Inc <i>[15] Filing Fee Remittance</i>
12/09/2020	 Reply in Support <i>[16] Harbor Cove Homeowners Association's Reply in Support of Motion to Dismiss or in the Alternative, for Summary Judgment</i>
12/10/2020	 Notice of Change of Hearing <i>[17] Notice of Change of Hearing</i>
12/15/2020	 Declaration Filed By: Plaintiff River Glider Avenue Trust <i>[18] Declaration of Eddie Haddad</i>
01/05/2021	 Answer Filed By: Defendant Harbor Cover Homeowners Association

CASE SUMMARY

CASE NO. A-20-819781-C

[19] Harbor Cove Homeowners Association's Answer to Plaintiff's Complaint

02/01/2021



Answer to Complaint

Filed by: Defendant Nevada Association Services Inc

[20] Nevada Association Services, Inc.'s Answer to Complaint

02/22/2021



Appointment of Arbitrator

[21] Appointment of Arbitrator

02/25/2021



Notice of Early Arbitration Conference

Filed By: Arbitrator Luh, Charlie H.

[22] Notice of Early Arbitration Conference

03/08/2021



Notice to Appear for Arbitration Hearing

Filed by: Arbitrator Luh, Charlie H.

[23] Notice to Appear for Arbitration Hearing

03/08/2021



Arbitration Discovery Order

Filed By: Arbitrator Luh, Charlie H.

[24] Arbitration Discovery Order

07/22/2021



Motion for Summary Judgment

Filed By: Defendant Harbor Cover Homeowners Association

[25] Harbor Cove Homeowners Association's Renewed, Motion for Summary Judgment

07/22/2021



Clerk's Notice of Hearing

[26] Notice of Hearing

07/23/2021



Joinder

Filed By: Defendant Nevada Association Services Inc

[27] Nevada Association Services, Inc.'s Joinder to Defendant Harbor Cove Homeowners Association's Renewed, Motion for Summary Judgment

08/05/2021



Opposition to Motion For Summary Judgment

Filed By: Plaintiff River Glider Avenue Trust

[28] Plaintiff's Opposition to Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment and Nevada Association Services, INC's Joinder Thereto

08/09/2021



Reply in Support

Filed By: Defendant Harbor Cover Homeowners Association

[29] Harbor Cove Homeowners Association's Reply In Support of Renewed, Motion for Summary Judgment

08/23/2021



Notice of Change of Hearing

[30] Notice of Change of Hearing

09/14/2021



ADR - Change of Status

Filed by: Arbitrator Luh, Charlie H.

[31] Notice of Change of Status

09/16/2021








Arbitrators Bill for Fees and Costs

Filed By: Arbitrator Luh, Charlie H.

[32] Arbitrator Bill for Fees and Costs

CASE SUMMARY

CASE NO. A-20-819781-C

09/21/2021	 Order Granting Summary Judgment Filed By: Defendant Harbor Cover Homeowners Association <i>[33] Order on Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment</i>
09/23/2021	 Notice of Entry of Order Filed By: Defendant Harbor Cover Homeowners Association <i>[34] Notice of Entry of Order</i>
10/20/2021	 Notice of Appeal Filed By: Plaintiff River Glider Avenue Trust <i>[35] Notice of Appeal</i>
10/20/2021	 Case Appeal Statement Filed By: Plaintiff River Glider Avenue Trust <i>[36] Case Appeal Statement</i>
DISPOSITIONS	
09/21/2021	Summary Judgment (Judicial Officer: Johnson, Eric) Debtors: River Glider Avenue Trust (Plaintiff) Creditors: Harbor Cover Homeowners Association (Defendant), Nevada Association Services Inc (Defendant) Judgment: 09/21/2021, Docketed: 09/22/2021
HEARINGS	
12/15/2020	Motion to Dismiss (8:30 AM) (Judicial Officer: Johnson, Eric) <i>Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment</i> Denied;
12/15/2020	Joinder (8:30 AM) (Judicial Officer: Johnson, Eric) Events: 11/10/2020 Joinder <i>Nevada Association Services, Inc.'s Joinder to Defendant Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative Motion</i> Denied;
12/15/2020	 All Pending Motions (8:30 AM) (Judicial Officer: Johnson, Eric) <i>Nevada Association Services, Inc.'s Joinder to Defendant harbor Cove Homeowners Associations Motion to Dismiss or in the Alternative Motion....Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment...</i> Matter Heard; Journal Entry Details: <i>Roger Croteau, Esq. and Peter Dunkley, Esq. present via Bluejeans video conference. Nevada Association Services, Inc.'s Joinder to Defendant harbor Cove Homeowners Associations Motion to Dismiss or in the Alternative Motion....Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment... Arguments by counsel. Following arguments, COURT STATED ITS FINDINGS, ORDERED, Nevada Association Services, Inc.'s Joinder to Defendant harbor Cove Homeowners Associations Motion to Dismiss or in the Alternative Motion DENIED; Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment DENIED.;</i>
09/08/2021	Motion for Summary Judgment (8:30 AM) (Judicial Officer: Johnson, Eric) <i>Harbor Cove Homeowners Association's Renewed, Motion for Summary Judgment</i> Granted;
09/08/2021	Joinder (8:30 AM) (Judicial Officer: Johnson, Eric) <i>Nevada Association Services, Inc.'s Joinder to Defendant Harbor Cove Homeowners Association's Renewed, Motion for Summary Judgment</i>

CASE SUMMARY**CASE NO. A-20-819781-C**

	Granted;	
09/08/2021	All Pending Motions (8:30 AM) (Judicial Officer: Johnson, Eric) Matter Heard;	
09/15/2021	CANCELED Arbitration Hearing (7:00 AM) <i>Vacated</i>	

DATE	FINANCIAL INFORMATION	
	Defendant Harbor Cover Homeowners Association	
	Total Charges	846.00
	Total Payments and Credits	846.00
	Balance Due as of 10/22/2021	0.00
	Defendant Nevada Association Services Inc	
	Total Charges	423.00
	Total Payments and Credits	423.00
	Balance Due as of 10/22/2021	0.00
	Plaintiff River Glider Avenue Trust	
	Total Charges	294.00
	Total Payments and Credits	294.00
	Balance Due as of 10/22/2021	0.00

DISTRICT COURT CIVIL COVER SHEET

CASE NO: A-20-819781-C

County, Nevada

Department 20

Case No. _____

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

Defendant(s) (name/address/phone):

Attorney (name/address/phone):

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

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

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

Date

Roger P. Croteau
Signature of initiating party or representative

See other side for family-related case filings.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

LIPSON NEILSON P.C.
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kanderson@lipsonneilson.com
pdunkley@lipsonneilson.com
Attorneys for Defendants Harbor Cove Homeowners Association

DISTRICT COURT
CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: 20

[PROPOSED]

**ORDER ON HARBOR COVE
HOMEOWNERS ASSOCIATION'S
RENEWED, MOTION FOR SUMMARY
JUDGMENT**

**Hearing Date: September 8, 2021
Hearing Time: 8:30 A.M.**

Before the Court is Defendant Harbor Cove Homeowners Association's (the "HOA"), Renewed Motion for Summary Judgment, and Nevada Association Services, Inc.'s ("NAS") joinder. Plaintiff, River Glider Avenue Trust, filed a response. The HOA replied.

On December 14, 2020, the Court dismissed claims for civil conspiracy and violation of NRS 113. The remaining claims, misrepresentation and violation of duty of good faith under NRS 116.1113 were subsequently sent to arbitration. After discovery, the HOA re filed the Renewed Motion for Summary Judgment.

On September 8, 2021, the Renewed Motion for Summary judgment came up for hearing. The Court considered the pleadings, exhibits, including orders from case A-13-

683467-C and Appeal No. 76683 (the "Prior Litigation"), as well as argument from counsel. In light of the Prior Litigation, the Court takes judicial notice of facts and law from the Prior Litigation. See NRS 47.130 (judicial notice may be taken of facts); NRS 47.140 (judicial notice may be taken of the Nevada Revised Statutes); NRS 47.150(2) (the court "shall take judicial notice if requested by a party and supplied with the necessary information"). *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 633 (1983) (mandatory judicial notice appropriate where necessary information related to prior decision and order made part of record). See also, *Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009) (providing the court may take judicial notice of facts in a different case when the moving party establishes a valid reason for doing so.) See also, *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) (explaining that "a court may take judicial notice of its own records in other cases"). This matter was set for an arbitration to take place on September 15, 2021. However, the HOA timely filed the Renewed Motion for Summary Judgment on July 22, 2021. See NAR 4(E) (dispositive motions may be filed no later than 45 days prior to the arbitration). The Court finds and rules as follows:

FINDINGS OF FACT

1. River Glider Avenue Trust purchased the Property at the valid nonjudicial foreclosures sale for \$5,500.00 on May 11, 2012.
2. Before the nonjudicial foreclosure sale, the prior owner of the Property had satisfied the super-priority portion of the HOA's lien.
3. Thus, the nonjudicial foreclosure sale was valid and conveyed the Property to the Plaintiff *subject to* the existing deed of trust.
4. Plaintiff alleges that its manager, on either May 10, 2012, or May 11, 2012, called NAS to inquire regarding the status of the lien. Plaintiff admits it has no corroborating records of the alleged call.
5. NAS testified, that when a third-party calls NAS about a homeowner's account: "NAS informed such individuals or entities 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 postjudgment judicial remedy.” (Declaration of Susan Moses.)

6. NAS produced its telephone log, which confirmed that NAS did not receive any phone calls, from anyone regarding this Property, on May 10, 2012, or May 11, 2012.

7. If any findings of fact are more properly considered conclusions of law, they should be so construed.

CONCLUSIONS OF LAW

1. “Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. *Cuzze v. Univ. & Comm. College System of Nevada*, 172 P.3d 131, 134 (Nev. 2007). Where “the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) ‘pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.’” *Id.* (citations omitted).

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

1 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable jury
2 to return a verdict for the non-moving party. See *Anderson*, 477 U.S. at 248 (1986).
3 Further, a dispute will only preclude the entry of summary judgment if it could affect the
4 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to raise a
5 genuine issue of material fact is enough to require a judge or jury to resolve the parties’
6 differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary judgment, a court
7 views all facts and draws all inferences in a light most favorable to the non-moving party.
8 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005). If there are no genuine issues of fact,
9 the movant’s burden is not evidentiary because the facts are not disputed, but the court has
10 the obligation to resolve the legal dispute between the parties as a matter of law. *Gulf Ins.*
11 *Co. v. First Bank*, 2009 WL 1953444 *2 (E.D.Cal.2009) (citing *Asuncion v. Dist. Dir. of U.S.*
12 *Immigration & Naturalization Serv.*, 427 F.2d 523, 524 (9th Cir.1970)).

13 Where claims are unsubstantiated, the Nevada Supreme Court has stated: “trial
14 courts should not be reluctant in dispensing with such claims, as they are instructive of the
15 type of litigation that summary judgment is meant to obviate.” *Boesiger v. Desert*
16 *Appraisals, Ltd. Liab. Co.*, 444 P.3d 436, 440-41 (Nev. 2019).

17 2. Judicial Notice—as noted above, this court may take judicial notice of matters
18 of fact that are generally known or that are “[c]apable of accurate and ready determination
19 by resort to sources whose accuracy cannot reasonably be questioned’ when requested by
20 a party. NRS 47.130; NRS 47.150. Records of other courts are sources whose accuracy
21 cannot reasonably be questioned. *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568,
22 569 (1981). A court may take judicial notice of records from other cases if there is a close
23 relationship between the cases, and issues within the case justify taking judicial notice of
24 the prior case. *Id.*

25 The Court finds the District Court’s Order and the Nevada Supreme Court’s Order of
26 Affirmance, from the Prior Litigation, are closely related to this case in that the Prior
27 Litigation involves the same Property, the same nonjudicial foreclosure sale, and made
28 express findings regarding issues raised in this lawsuit, and therefore takes judicial notice

of the facts and law from the Prior Litigation.

MISREPRESENTATION

3. To prevail on a misrepresentation claim, Plaintiff must establish the following elements: (1) defendant supplied information while in the course of its business; (2) the information was false; (3) the information was supplied for the guidance of the plaintiff in its business transactions; (4) defendant must have failed to exercise reasonable care or competence in obtaining or communicating the information; (5) plaintiff must have justifiably relied upon the information by taking action or refraining from it; and (6) plaintiff sustained damage as a result of his reliance upon the accuracy of the information. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998).

4. Here, the alleged misrepresentation was by omission. Plaintiff alleged he called NAS prior to the nonjudicial foreclosure sale, but that NAS did not respond.

5. However, in addition to the absence of competent evidence which would establish an actual phone call, on the alleged *estimated* dates of the alleged phone call, May 10 or May 11, 2012, NRS 116 did not require any extra-statutory disclosures beyond the publicly recorded nonjudicial foreclosure notices. See *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (unpublished) (affirming summary judgment because there was no “affirmative false statement nor omitted a material fact it was bound to disclose.” See also *Saticoy Bay v. Genevieve Court Homeowners Ass’n*, No. 80135, 2020 Nev. Unpub. LEXIS 1000, at *1 (Oct. 16, 2020) (no duty to disclose); see also, *Saticoy Bay v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 Nev. Unpub. LEXIS 993, at *1 (Oct. 16, 2020) (no duty to disclose, and NRS 113 does not apply to create such a disclosure); see also, *Saticoy Bay Llc Series 10007 Liberty View v. S. Terrace Homeowners Ass’n*, 484 P.3d 276 (Nev. 2021) (same, issued April 16, 2021); see also, *Bay v. Tripoly*, 482 P.3d 699 (Nev. 2021) (same, issued March 26, 2021); see also, *Saticoy Bay Llc Series 3237 v. Aliante Master Ass’n*, 480 P.3d 836 (Nev. 2021) (same, issued February 16, 2021); see also, *Saticoy Bay v. Sunrise Ridge Master Homeowners Association*, 478 P.3d 870 (Nev. 2021) (same, issued January 15, 2021).

1 5. Therefore, because there was no duty to respond to a phone call in 2012,
2 whether or not the alleged phone call happened is immaterial and cannot be a basis for a
3 misrepresentation claim. See *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026,
4 1030 (2005) (only material fact disputes will preclude summary judgment).

5 **VIOLATION OF GOOD FAITH UNDER NRS 116.1113**

6 8. NRS 116.1113 states: “Every contract or duty governed by this chapter
7 imposes an obligation of good faith in its performance or enforcement.”

8 9. An HOA’s duties are proscribed by NRS 116.

9 10. It is undisputed that there was no defect in the HOA’s (or NAS’s) compliance
10 with NRS 116 regarding the nonjudicial foreclosure process. See *generally*, Prior Litigation.

11 11. Additionally, nothing in NRS 116.1113, in effect in May of 2012 imposed a
12 duty to disclose any preforeclosure payments. See Misrepresentation discussion, *supra*.
13 Compare, NRS 116.31162(1)(b)(3)(11) (2017) (requiring an HOA to disclose if tender of the
14 superpriority portion of the lien) with NRS 116.31162 (2005) (no disclosure requirement).

15 12. Neither the HOA nor NAS was required to disclose the existence of a pre-sale
16 payment. See NRS 116 (2005).

17 13. In the absence of a duty to disclose, there is no breach of a duty. See *Bay v.*
18 *Tripoly*, 482 P.3d 699 (Nev. 2021) (unpublished) (affirming dismissal of breach of duty of
19 good faith claim).

20 14. Therefore, the claim fails.

21 15. If any conclusions of law are more properly considered findings of fact, they
22 should be so construed.

23 **ORDER**

24 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** the claims for civil
25 conspiracy and violation of NRS 113 were **DISMISSED**, with prejudice, on December 14,
26 2020. With respect to the claims for misrepresentation and breach of duty of good faith,

27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the HOA’s Renewed
28 Motion for Summary Judgment is **GRANTED**, in favor of the HOA;

Renee Rittenhouse

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, September 17, 2021 1:07 PM
To: Renee Rittenhouse; 'Chris Benner'
Cc: Peter Dunkley
Subject: RE: harbor cover Proposed Order

No objections. You may use my electronic signature.

Best,

Brandon E. Wood, Esq.

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

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



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From: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Sent: Wednesday, September 15, 2021 2:03 PM
To: Brandon Wood <brandon@nas-inc.com>; 'Chris Benner' <chris@croteaulaw.com>
Cc: Peter Dunkley <PDunkley@lipsonneilson.com>
Subject: RE: harbor cover Proposed Order

Good Afternoon:

Please see the Proposed Order on Harbor Cove's Renewed MSJ. Please let our office know if you have corrections, comments, or would like to request revisions. If you are fine with the Order as attached, please confirm in an e-mail in order for us to send to the Judge for signature and filing.

Thank you,

LAW OFFICES



Renee M. Rittenhouse
Legal Assistant to Janeen V. Isaacson, Esq.
and Peter E. Dunkley, Esq.
Lipson Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: rrittenhouse@lipsonneilson.com
Website: www.lipsonneilson.com
OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

From: Peter Dunkley <PDunkley@lipsonneilson.com>
Sent: Thursday, September 9, 2021 12:57 PM
To: Brandon Wood <brandon@nas-inc.com>; 'Chris Benner' <chris@croteaulaw.com>
Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Subject: harbor cover Proposed Order

Hello,

The court wanted something in MS Word for red-lining. Please let me know if you have corrections, comments, or would like to request revisions.

Thanks!



Peter E. Dunkley, Esq.
1 E. Liberty Street, Suite 600
Reno, NV 89501
Telephone: (775) 420-1197
Fax: (702) 382-1512
E-Mail: pdunkley@lipsonneilson.com
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Offices in Nevada, Michigan, Arizona, and Colorado

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Renee Rittenhouse

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, September 17, 2021 12:53 PM
To: Renee Rittenhouse; Brandon Wood
Cc: Peter Dunkley
Subject: RE: harbor cover Proposed Order

You may add my e-signature.

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

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

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Thank you,



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Legal Assistant to Janeen V. Isaacson, Esq.
and Peter E. Dunkley, Esq.
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 River Glider Avenue Trust,
7 Plaintiff(s)

CASE NO: A-20-819781-C

8 vs.

DEPT. NO. Department 20

9 Harbor Cover Homeowners
10 Association, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

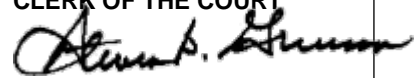
12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting Summary Judgment was served via the court's
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as
16 listed below:

17 Service Date: 9/21/2021

18 Susana Nutt	snutt@lipsonneilson.com
19 Renee Rittenhouse	rrittenhouse@lipsonneilson.com
20 Peter Dunkley	pdunkley@lipsonneilson.com
21 Brandon Wood	brandon@nas-inc.com
22 Roger Croteau	croteaulaw@croteaulaw.com
23 Susan Moses	susanm@nas-inc.com
24 Croteau Admin	receptionist@croteaulaw.com
25 Sydney Ochoa	sochoa@lipsonneilson.com
26 Charlie Luh	arbitration@luhlaw.com
27 Christopher Benner	chris@croteaulaw.com

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LIPSON NEILSON P.C.
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pdunkley@lipsonneilson.com

Attorneys for Defendants Harbor Cove Homeowners Association

DISTRICT COURT

CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: 20

NOTICE OF ENTRY OF ORDER

\\

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\\

PLEASE TAKE NOTICE that the **ORDER ON HARBOR COVE HOMEOWNERS ASSOCIATION'S RENEWED MOTION FOR SUMMARY JUDGMENT** filed with the court this 21st day of September, 2021, a true and correct copy of which is attached hereto.

Dated this 23rd day of September, 2021.

LIPSON NEILSON, P.C.

By: /s/ Peter E. Dunkley

KALEB D. ANDERSON, ESQ.

Nevada Bar No. 7582

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pdunkley@lipsonneilson.com

Attorneys for Defendants Harbor Cove HOA

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September, 2021, an electronic copy of the following **NOTICE OF ENTRY OF ORDER** was filed and e-served via the Court's electronic service system to all persons who have registered for e-service in this case:

Roger Croteau, Esq.
Nevada Bar No. 4958
Christopher L. Brenner, Esq.
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Attorneys for Plaintiff

Charlie H. Luh, Esq.
Nevada Bar No. 6726
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8987 W. Flamingo Road, Suite 100
Las Vegas, NV 89147

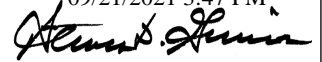
Arbitrator

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6625 S. Valley View Blvd. Suite 300
Las Vegas, NV 89118
brandon@nas-inc.com

*Attorney for Defendant Nevada Association
Services, Inc.*

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.


CLERK OF THE COURT

LIPSON NEILSON P.C.
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Nevada Bar No. 7582
PETER E. DUNKLEY, ESQ.
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Attorneys for Defendants Harbor Cove Homeowners Association

DISTRICT COURT
CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; and NEVADA
ASSOCIATION SERVICES, INC.,

Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: 20

[PROPOSED]

**ORDER ON HARBOR COVE
HOMEOWNERS ASSOCIATION'S
RENEWED, MOTION FOR SUMMARY
JUDGMENT**

**Hearing Date: September 8, 2021
Hearing Time: 8:30 A.M.**

Before the Court is Defendant Harbor Cove Homeowners Association's (the "HOA"), Renewed Motion for Summary Judgment, and Nevada Association Services, Inc.'s ("NAS") joinder. Plaintiff, River Glider Avenue Trust, filed a response. The HOA replied.

On December 14, 2020, the Court dismissed claims for civil conspiracy and violation of NRS 113. The remaining claims, misrepresentation and violation of duty of good faith under NRS 116.1113 were subsequently sent to arbitration. After discovery, the HOA re filed the Renewed Motion for Summary Judgment.

On September 8, 2021, the Renewed Motion for Summary judgment came up for hearing. The Court considered the pleadings, exhibits, including orders from case A-13-

683467-C and Appeal No. 76683 (the "Prior Litigation"), as well as argument from counsel. In light of the Prior Litigation, the Court takes judicial notice of facts and law from the Prior Litigation. See NRS 47.130 (judicial notice may be taken of facts); NRS 47.140 (judicial notice may be taken of the Nevada Revised Statutes); NRS 47.150(2) (the court "shall take judicial notice if requested by a party and supplied with the necessary information"). *Andolino v. State*, 99 Nev. 346, 351, 662 P.2d 631, 633 (1983) (mandatory judicial notice appropriate where necessary information related to prior decision and order made part of record). See also, *Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009) (providing the court may take judicial notice of facts in a different case when the moving party establishes a valid reason for doing so.) See also, *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) (explaining that "a court may take judicial notice of its own records in other cases"). This matter was set for an arbitration to take place on September 15, 2021. However, the HOA timely filed the Renewed Motion for Summary Judgment on July 22, 2021. See NAR 4(E) (dispositive motions may be filed no later than 45 days prior to the arbitration). The Court finds and rules as follows:

FINDINGS OF FACT

1. River Glider Avenue Trust purchased the Property at the valid nonjudicial foreclosures sale for \$5,500.00 on May 11, 2012.
2. Before the nonjudicial foreclosure sale, the prior owner of the Property had satisfied the super-priority portion of the HOA's lien.
3. Thus, the nonjudicial foreclosure sale was valid and conveyed the Property to the Plaintiff *subject to* the existing deed of trust.
4. Plaintiff alleges that its manager, on either May 10, 2012, or May 11, 2012, called NAS to inquire regarding the status of the lien. Plaintiff admits it has no corroborating records of the alleged call.
5. NAS testified, that when a third-party calls NAS about a homeowner's account: "NAS informed such individuals or entities 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 postjudgment judicial remedy.” (Declaration of Susan Moses.)

6. NAS produced its telephone log, which confirmed that NAS did not receive any phone calls, from anyone regarding this Property, on May 10, 2012, or May 11, 2012.

7. If any findings of fact are more properly considered conclusions of law, they should be so construed.

CONCLUSIONS OF LAW

1. “Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. *Cuzze v. Univ. & Comm. College System of Nevada*, 172 P.3d 131, 134 (Nev. 2007). Where “the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) ‘pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.’” *Id.* (citations omitted).

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

1 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable jury
2 to return a verdict for the non-moving party. See *Anderson*, 477 U.S. at 248 (1986).
3 Further, a dispute will only preclude the entry of summary judgment if it could affect the
4 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to raise a
5 genuine issue of material fact is enough to require a judge or jury to resolve the parties’
6 differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary judgment, a court
7 views all facts and draws all inferences in a light most favorable to the non-moving party.
8 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005). If there are no genuine issues of fact,
9 the movant’s burden is not evidentiary because the facts are not disputed, but the court has
10 the obligation to resolve the legal dispute between the parties as a matter of law. *Gulf Ins.*
11 *Co. v. First Bank*, 2009 WL 1953444 *2 (E.D.Cal.2009) (citing *Asuncion v. Dist. Dir. of U.S.*
12 *Immigration & Naturalization Serv.*, 427 F.2d 523, 524 (9th Cir.1970)).

13 Where claims are unsubstantiated, the Nevada Supreme Court has stated: “trial
14 courts should not be reluctant in dispensing with such claims, as they are instructive of the
15 type of litigation that summary judgment is meant to obviate.” *Boesiger v. Desert*
16 *Appraisals, Ltd. Liab. Co.*, 444 P.3d 436, 440-41 (Nev. 2019).

17 2. Judicial Notice—as noted above, this court may take judicial notice of matters
18 of fact that are generally known or that are “[c]apable of accurate and ready determination
19 by resort to sources whose accuracy cannot reasonably be questioned’ when requested by
20 a party. NRS 47.130; NRS 47.150. Records of other courts are sources whose accuracy
21 cannot reasonably be questioned. *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568,
22 569 (1981). A court may take judicial notice of records from other cases if there is a close
23 relationship between the cases, and issues within the case justify taking judicial notice of
24 the prior case. *Id.*

25 The Court finds the District Court’s Order and the Nevada Supreme Court’s Order of
26 Affirmance, from the Prior Litigation, are closely related to this case in that the Prior
27 Litigation involves the same Property, the same nonjudicial foreclosure sale, and made
28 express findings regarding issues raised in this lawsuit, and therefore takes judicial notice

of the facts and law from the Prior Litigation.

MISREPRESENTATION

3. To prevail on a misrepresentation claim, Plaintiff must establish the following elements: (1) defendant supplied information while in the course of its business; (2) the information was false; (3) the information was supplied for the guidance of the plaintiff in its business transactions; (4) defendant must have failed to exercise reasonable care or competence in obtaining or communicating the information; (5) plaintiff must have justifiably relied upon the information by taking action or refraining from it; and (6) plaintiff sustained damage as a result of his reliance upon the accuracy of the information. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998).

4. Here, the alleged misrepresentation was by omission. Plaintiff alleged he called NAS prior to the nonjudicial foreclosure sale, but that NAS did not respond.

5. However, in addition to the absence of competent evidence which would establish an actual phone call, on the alleged *estimated* dates of the alleged phone call, May 10 or May 11, 2012, NRS 116 did not require any extra-statutory disclosures beyond the publicly recorded nonjudicial foreclosure notices. See *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (unpublished) (affirming summary judgment because there was no “affirmative false statement nor omitted a material fact it was bound to disclose.” See also *Saticoy Bay v. Genevieve Court Homeowners Ass’n*, No. 80135, 2020 Nev. Unpub. LEXIS 1000, at *1 (Oct. 16, 2020) (no duty to disclose); see also, *Saticoy Bay v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 Nev. Unpub. LEXIS 993, at *1 (Oct. 16, 2020) (no duty to disclose, and NRS 113 does not apply to create such a disclosure); see also, *Saticoy Bay Llc Series 10007 Liberty View v. S. Terrace Homeowners Ass’n*, 484 P.3d 276 (Nev. 2021) (same, issued April 16, 2021); see also, *Bay v. Tripoly*, 482 P.3d 699 (Nev. 2021) (same, issued March 26, 2021); see also, *Saticoy Bay Llc Series 3237 v. Aliante Master Ass’n*, 480 P.3d 836 (Nev. 2021) (same, issued February 16, 2021); see also, *Saticoy Bay v. Sunrise Ridge Master Homeowners Association*, 478 P.3d 870 (Nev. 2021) (same, issued January 15, 2021).

1 5. Therefore, because there was no duty to respond to a phone call in 2012,
2 whether or not the alleged phone call happened is immaterial and cannot be a basis for a
3 misrepresentation claim. See *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026,
4 1030 (2005) (only material fact disputes will preclude summary judgment).

5 **VIOLATION OF GOOD FAITH UNDER NRS 116.1113**

6 8. NRS 116.1113 states: “Every contract or duty governed by this chapter
7 imposes an obligation of good faith in its performance or enforcement.”

8 9. An HOA’s duties are proscribed by NRS 116.

9 10. It is undisputed that there was no defect in the HOA’s (or NAS’s) compliance
10 with NRS 116 regarding the nonjudicial foreclosure process. See *generally*, Prior Litigation.

11 11. Additionally, nothing in NRS 116.1113, in effect in May of 2012 imposed a
12 duty to disclose any preforeclosure payments. See Misrepresentation discussion, *supra*.
13 Compare, NRS 116.31162(1)(b)(3)(11) (2017) (requiring an HOA to disclose if tender of the
14 superpriority portion of the lien) with NRS 116.31162 (2005) (no disclosure requirement).

15 12. Neither the HOA nor NAS was required to disclose the existence of a pre-sale
16 payment. See NRS 116 (2005).

17 13. In the absence of a duty to disclose, there is no breach of a duty. See *Bay v.*
18 *Tripoly*, 482 P.3d 699 (Nev. 2021) (unpublished) (affirming dismissal of breach of duty of
19 good faith claim).

20 14. Therefore, the claim fails.

21 15. If any conclusions of law are more properly considered findings of fact, they
22 should be so construed.

23 **ORDER**

24 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** the claims for civil
25 conspiracy and violation of NRS 113 were **DISMISSED**, with prejudice, on December 14,
26 2020. With respect to the claims for misrepresentation and breach of duty of good faith,

27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the HOA’s Renewed
28 Motion for Summary Judgment is **GRANTED**, in favor of the HOA;

Renee Rittenhouse

From: Brandon Wood <brandon@nas-inc.com>
Sent: Friday, September 17, 2021 1:07 PM
To: Renee Rittenhouse; 'Chris Benner'
Cc: Peter Dunkley
Subject: RE: harbor cover Proposed Order

No objections. You may use my electronic signature.

Best,

Brandon E. Wood, Esq.

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

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



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

From: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Sent: Wednesday, September 15, 2021 2:03 PM
To: Brandon Wood <brandon@nas-inc.com>; 'Chris Benner' <chris@croteaulaw.com>
Cc: Peter Dunkley <PDunkley@lipsonneilson.com>
Subject: RE: harbor cover Proposed Order

Good Afternoon:

Please see the Proposed Order on Harbor Cove's Renewed MSJ. Please let our office know if you have corrections, comments, or would like to request revisions. If you are fine with the Order as attached, please confirm in an e-mail in order for us to send to the Judge for signature and filing.

Thank you,

LAW OFFICES



Renee M. Rittenhouse
Legal Assistant to Janeen V. Isaacson, Esq.
and Peter E. Dunkley, Esq.
Lipson Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: rrittenhouse@lipsonneilson.com
Website: www.lipsonneilson.com
OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

From: Peter Dunkley <PDunkley@lipsonneilson.com>
Sent: Thursday, September 9, 2021 12:57 PM
To: Brandon Wood <brandon@nas-inc.com>; 'Chris Benner' <chris@croteaulaw.com>
Cc: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Subject: harbor cover Proposed Order

Hello,

The court wanted something in MS Word for red-lining. Please let me know if you have corrections, comments, or would like to request revisions.

Thanks!



Peter E. Dunkley, Esq.
1 E. Liberty Street, Suite 600
Reno, NV 89501
Telephone: (775) 420-1197
Fax: (702) 382-1512
E-Mail: pdunkley@lipsonneilson.com
Website: www.lipsonneilson.com
Offices in Nevada, Michigan, Arizona, and Colorado

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Renee Rittenhouse

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, September 17, 2021 12:53 PM
To: Renee Rittenhouse; Brandon Wood
Cc: Peter Dunkley
Subject: RE: harbor cover Proposed Order

You may add my e-signature.

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

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

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Thank you,



Renee M. Rittenhouse
Legal Assistant to Janeen V. Isaacson, Esq.
and Peter E. Dunkley, Esq.
Lipson Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144

(702) 382-1500
(702) 382-1512 (fax)
E-Mail: rrittenhouse@lipsonneilson.com
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Peter E. Dunkley, Esq.
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 River Glider Avenue Trust,
7 Plaintiff(s)

CASE NO: A-20-819781-C

8 vs.

DEPT. NO. Department 20

9 Harbor Cover Homeowners
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 Granting Summary Judgment was served via the court's
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as
16 listed below:

17 Service Date: 9/21/2021

18 Susana Nutt	snutt@lipsonneilson.com
19 Renee Rittenhouse	rrittenhouse@lipsonneilson.com
20 Peter Dunkley	pdunkley@lipsonneilson.com
21 Brandon Wood	brandon@nas-inc.com
22 Roger Croteau	croteaulaw@croteaulaw.com
23 Susan Moses	susanm@nas-inc.com
24 Croteau Admin	receptionist@croteaulaw.com
25 Sydney Ochoa	sochoa@lipsonneilson.com
26 Charlie Luh	arbitration@luhlaw.com
27 Christopher Benner	chris@croteaulaw.com

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Intentional Misconduct

COURT MINUTES

December 15, 2020

A-20-819781-C River Glider Avenue Trust, Plaintiff(s)
vs.
Harbor Cover Homeowners Association, Defendant(s)

December 15, 2020 08:30 AM Nevada Association Services, Inc.'s Joinder to Defendant harbor Cove Homeowners Associations Motion to Dismiss or in the Alternative Motion....Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment...

HEARD BY: Johnson, Eric

COURTROOM: RJC Courtroom 12A

COURT CLERK: Hurtado, Ro'Shell

RECORDER: Calvillo, Angie

REPORTER:

PARTIES PRESENT:

Peter E Dunkley

Attorney for Defendant

Roger P Croteau, ESQ

Attorney for Plaintiff

JOURNAL ENTRIES

Roger Croteau, Esq. and Peter Dunkley, Esq. present via Bluejeans video conference.

Nevada Association Services, Inc.'s Joinder to Defendant harbor Cove Homeowners Associations Motion to Dismiss or in the Alternative Motion....Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment...

Arguments by counsel. Following arguments, COURT STATED ITS FINDINGS, ORDERED, Nevada Association Services, Inc.'s Joinder to Defendant harbor Cove Homeowners Associations Motion to Dismiss or in the Alternative Motion DENIED; Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment DENIED.



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

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

DATE: October 22, 2021
CASE: A-20-819781-C

RE CASE: RIVER GLIDER AVENUE TRUST vs. HARBOR COVE HOMEOWNERS ASSOCIATION; NEVADA ASSOCIATION SERVICES, INC.

NOTICE OF APPEAL FILED: October 20, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

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

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; [PROPOSED] ORDER ON HARBOR COVER HOMEOWNERS ASSOCIATION'S RENEWED, MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

RIVER GLIDER AVENUE TRUST,

Plaintiff(s),

vs.

HARBOR COVE HOMEOWNERS
ASSOCIATION; NEVADA ASSOCIATION
SERVICES, INC.,

Defendant(s),

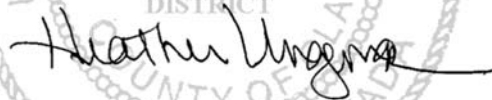
Case No: A-20-819781-C

Dept No: XX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 22 day of October 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk



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

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

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

October 22, 2021

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

RE: RIVER GLIDER AVENUE TRUST vs. HARBOR COVE HOMEOWNERS ASSOCIATION;
NEVADA ASSOCIATION SERVICES, INC.
D.C. CASE: A-20-819781-C

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed October 22, 2021. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

September 8, 2021

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

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

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ HEATHER UNGERMANN

Heather Ungermann, Deputy Clerk