

IN THE SUPREME COURT OF NEVADA

RIVER GLIDER AVENUE TRUST

Appellant,

v.

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

Respondents.

Supreme Court Case No. 83689

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APPELLANT'S APPENDIX

VOLUME 1

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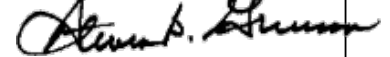
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CASE NO: A-20-819781-C
Department 20

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DISTRICT COURT

CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

vs.

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

Defendants.

Case No:
Dept No:

COMPLAINT

Plaintiff River Glider Avenue Trust (“**Plaintiff**”), by and through its attorneys, Roger P. Croteau & Associates, Ltd., hereby complains and alleges as follows:

PARTIES AND JURISDICTION

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

1. Plaintiff is the current owner of real property located at 8112 Lake Hills Drive Las Vegas, Nevada 89128 (APN: 138-16-213-034) (the “**Property**”).

1 9. 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 10. 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 11. 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 12. On or about April 19, 2005, Thomas D. Miller (the "**Former Owner**") purchased the
16 Property. Thereafter, the Former Owner obtained a loan for the Property from Cameron Financial
17 Group, Inc. ("**Lender**"),¹ that was evidenced by a promissory note and secured by a deed of trust
18 between the Former Owner and Lender, recorded against the Property on March 27, 2007, for the
19 loan amount of \$631,000.00 (the "**Deed of Trust**").
20

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

24 14. The Former Owner also executed a Planned Unit Development Rider along with the
25 Deed of Trust.
26
27

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

1 15. Upon information and belief, the Former Owner of the Property failed to pay to the
2 HOA all amounts due pursuant to the HOA's governing documents.

3 16. On July 26, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Delinquent
4 Assessment Lien (the "**NODAL**"). The NODAL stated that the amount due to the HOA was
5 \$1,032.01, plus continuing assessments, interest, late charges, costs, and attorney's fees (the "**HOA**
6 **Lien**").

7 17. On September 3, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of
8 Default and Election to Sell Under Homeowners Association Lien (the "**NOD**"). The NOD stated
9 that the HOA Lien amount was \$2,110.87.
10

11 18. Upon information and belief, in April 2011, the Former Owner offered a settlement
12 of the HOA Lien in the amount of \$1,232.88, which was accepted by the HOA. The Former Owner
13 made the payment by check dated May 27, 2011 (the "**Attempted Payment**"). Of the Former
14 Owner's Attempted Payment, the HOA credited \$500.00 to his assessment account on June 11, 2011
15 and \$400.00 to his assessment account on August 30, 2011, which cured the amount of the HOA
16 Lien entitled to priority over the Deed of Trust ("**Super-Priority Lien Amount**").
17

18 19. On March 30, 2012, MERS assigned the Deed of Trust to Aurora Bank FSB
19 ("**Aurora**") via Corporation Assignment of Deed of Trust, which was recorded against the Property
20 on April 19, 2012.
21

22 20. On April 16, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of
23 Foreclosure Sale against the Property ("**NOS**"). The NOS stated that the total amount due the HOA
24 was \$3,346.53 and set a sale date for the Property of May 11, 2012, at 10:00 a.m., to be held at
25 Nevada Legal News.
26
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28

1 21. On August 27, 2012, the Deed of Trust was assigned to Nationstar Mortgage, LLC
2 (“**Nationstar**”) via Assignment of Deed of Trust, which was recorded against the Property on
3 August 31, 2012.

4 22. Despite the Former Owner’s Attempted Payment, on May 11, 2012, HOA Trustee
5 then proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure
6 Deed, which stated that the HOA Trustee sold the HOA’s interest in the Property to Lake Hills Drive
7 Trust at the HOA Foreclosure Sale for the highest bid amount of \$5,500.00.

8 23. The HOA Foreclosure Deed states that HOA Trustee “has complied with all
9 requirements of law ...”

10 24. In none of the recorded documents, nor in any other notice recorded with the Clark
11 County Recorder’s Office, did HOA and/or HOA Trustee specify or disclose that any individual or
12 entity, including but not limited to the Former Owner, had attempted to pay any portion of the HOA
13 Lien in advance of the HOA Foreclosure Sale.

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

17 26. Upon information and belief, the debt owed to Lender by the Former Owner of the
18 Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market
19 value of the Property at the time of the HOA Foreclosure Sale.

20 27. Upon information and belief, Lender alleges that the Former Owner’s Attempted
21 Payment of the Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien
22 Amount, thereby changing the priority of the HOA Lien vis a vis the Deed of Trust.

1 28. Upon information and belief, Lender alleges that as a result of the Former Owner's
2 Attempted Payment of the Super-Priority Lien Amount, the purchaser of the Property at the HOA
3 Foreclosure Sale acquired title to the Property subject to the Deed of Trust.

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

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

12 31. HOA Trustee acted as an agent of HOA.

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

15 33. HOA and HOA Trustee conspired together to hide material information related to
16 the Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
17 acceptance of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis the
18 Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.

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

1 35. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide
2 the aforementioned information for their own economic gain and to the detriment of the bidders and
3 potential bidders at the HOA Foreclosure Sale.

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

8 37. Plaintiff would contact the HOA Trustee prior to the HOA Foreclosure Sale to
9 determine if the Property would in fact be sold on the date stated in the NOS, obtain the opening
10 bid, so Plaintiff could determine the amount of funds necessary for the auction and inquire if any
11 payments had been made; however, Plaintiff never inquired if the "Super-Priority Lien Amount"
12 had been paid.

13 38. At all times relevant to this matter, if Plaintiff learned of a "tender" or payment either
14 having been attempted or made, Plaintiff would not purchase the Property offered in that HOA
15 Foreclosure Sale.

16 39. Iyad Haddad was the trustee of the Lake Hills Drive Trust and Plaintiff at all relevant
17 times and the conveyance of title ownership of the Property from Lake Hills Drive Trust to Plaintiff
18 was done for estate planning purposes. As such, there has always been a unity of interest between
19 Lake Hills Drive Trust, Plaintiff, and the Property such that Plaintiff can raise the claims in this
20 Complaint.

21 40. Plaintiff reasonably relied upon the HOA and/or HOA Trustee's material omission
22 of "tender" of the Super-Priority Lien Amount and/or the Attempted Payment when Plaintiff
23 purchased the Property.

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

5
6 49. As a result of their desire that the bidders and potential bidders at the HOA
7 Foreclosure Sale believed that the HOA Lien included amounts entitled to priority over the Deed of
8 Trust, and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure
9 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to the
10 Attempted Payment of the Super-Priority Lien Amount by the Former Owner and did so for their
11 own economic gain.

12
13 50. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose
14 material information related to the Attempted Payment of the Super-Priority Lien Amount.

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

19
20 52. Given the facts of this case now known to Plaintiff, Lake Hills Drive Trust would
21 not have bid on the Property.

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

24 54. Upon information and belief, if the Property had not been sold at the HOA
25 Foreclosure Sale, HOA Trustee would not have received payment for the work that it performed on
26 behalf of HOA in association with the HOA Foreclosure Sale and related proceedings.
27
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1 55. Lake Hills Drive Trust attended the sale as a ready, willing, and able buyer without
2 knowledge of the Attempted Payment.

3 56. Lake Hills Drive Trust would not have purchased the Property if it had been informed
4 that any individual or entity had paid or attempted to pay the Super-Priority Lien Amount or any
5 amount in advance of the HOA Foreclosure Sale.
6

7 57. As a direct result of HOA and HOA Trustee's acceptance of the Attempted Payment
8 of the Super-Priority Lien Amount, and their subsequent intentional or grossly negligent failure to
9 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related thereto,
10 Lake Hills Drive Trust presented the prevailing bid at the HOA Foreclosure Sale and thereby
11 purchased the Property.
12

13 58. HOA and HOA Trustee each profited from their intentional and/or negligent
14 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing and
15 refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.

16 59. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to
17 advise bidders and potential bidders at the HOA Foreclosure Sale of information known solely to
18 the HOA and/or HOA Trustee that was not publicly available which ostensibly changed the priority
19 of Deed of Trust vis a vis the HOA Lien.
20

21 60. HOA and HOA Trustee solely possessed information related to the Attempted
22 Payment of the Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale,
23 and they intentionally withheld such information for their own economic gain.
24

25 61. Alternatively, HOA and HOA Trustee were grossly negligent when they withheld
26 information from the bidders and purchaser at the HOA Foreclosure Sale related to the Attempted
27 Payment of the Super-Priority Lien Amount.
28

1 62. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly
2 negligent failure to disclose the Attempted Payment of the Super-Priority Lien Amount.

3 63. HOA and HOA Trustee intended that the bidders and potential bidders at the HOA
4 Foreclosure Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority
5 Lien Amount at the time of the HOA Sale and that their failure to disclose such information
6 promoted the sale of the Property.

7 64. HOA and HOA Trustee further intended that their failure of refusal to inform bidders
8 and potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-Priority
9 Lien Amount would lead such bidders and potential bidders to believe that the Deed of Trust was
10 subordinate to the HOA Lien and not being sold subject to the Deed of Trust.

11 65. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the
12 Super-Priority Lien Amount.

13 66. The HOA and the HOA Trustee breached that duty to disclose to Lake Hills Drive
14 Trust the Attempted Payment by the Former Owner.

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

18 68. If the Property is subject to the Deed of Trust, the funds paid by Lake Hills Drive
19 Trust and Plaintiff to purchase, maintain, operate, and/or litigate various cases and generally manage
20 the Property would be lost along with the opportunity of purchasing other available property offered
21 for sale where a superpriority payment had not been attempted, thereby allowing Lake Hills Drive
22 Trust the opportunity to purchase a property free and clear of the deed of trust and all other liens.
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69. 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.

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

SECOND CLAIM FOR RELIEF

(Breach of the Duty of Good Faith)

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

72. NRS 116.1113 provides that every contract or duty governed by NRS Chapter 116, Nevada's version of the Uniform Common-Interest Ownership Uniform Act ("UCIOA"), 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. Pursuant to the drafter's comments of the UCIOA, Section 1-113 of the UCIOA, codified as NRS 116.1113, provides that:

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:

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 sic] 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 Transfer Act, and Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

75. Prior to the HOA Foreclosure Sale of the Property, the Former Owner paid 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, accepted the Attempted Payment.

1 77. HOA and HOA Trustee's acceptance of the Attempted Payment and subsequent
2 failure and refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served
3 to breach their duty of good faith, fair dealings, honesty in fact, and candor pursuant to NRS Chapter
4 116.

5
6 78. HOA and the HOA Trustee owed a duty of good faith, fair dealings, honesty in fact,
7 and candor to Lake Hills Drive Trust.

8 79. By virtue of their actions and inactions, HOA and HOA Trustee substantially
9 benefitted economically to the detriment of Lake Hills Drive Trust and Plaintiff.

10 80. As a direct and proximate result of the actions of Defendants, it has become necessary
11 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
12

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

15 **THIRD CLAIM FOR RELIEF**

16 (Conspiracy)

17 82. Plaintiff repeats and re-alleges each and every allegation contained above as if set
18 forth fully herein.

19 83. Defendants knew or should have known of the Attempted Payment of the Super-
20 Priority Lien Amount.

21 84. Upon information and belief, acting together, Defendants reached an implicit or
22 express agreement amongst themselves whereby they agreed to withhold from bidders and potential
23 bidders at the HOA Foreclosure Sale the information concerning the Attempted Payment of the
24 Super-Priority Lien Amount.
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1 85. Defendants knew or should have known that their actions and omissions would
2 economically harm the successful bidder and purchaser of the Property and benefit Defendants. To
3 further their conspiracy, upon information and belief, Defendants accepted the Attempted Payment
4 for the purpose of obtaining more remuneration than they would have otherwise obtained at a sale
5 of the subpriority portion of the HOA Lien.
6

7 86. As a direct and proximate result of the actions of Defendants, it has become necessary
8 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
9

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

13 **FOURTH CLAIM FOR RELIEF**

14 (Violation of NRS Chapter 113)

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

18 89. Pursuant to NRS Chapter 113, Defendants must disclose the Attempted Payment
19 and/or any payments made or attempted to be made by Lender, the Former Owner, or any agents of
20 any other party to the bidders and Plaintiff at the HOA Foreclosure Sale.
21

22 90. Defendants were required, but failed, to provide a Seller's Real Property Disclosure
23 Form ("SRPDF") to the "Purchaser," as defined in NRS Chapter 116, at the time of the HOA
24 Foreclosure Sale.
25

26 91. Defendants were a "seller" under NRS Chapter 113.
27

28 92. NRS Chapter 116 foreclosure sales are not exempt from the disclosure mandates of
NRS Chapter 113.

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

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

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

18 ...

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

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

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

1 95. Defendants' response to Section 9(c) - (e) of the SRPDF would have provided notice
2 to Lake Hills Drive Trust of any payments made by Lender, Former Owner, or others on the HOA
3 Lien.

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

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

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

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

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

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

21 98. If Defendants fail to provide the SRPDF to the Plaintiff/purchaser at the time of the
22 HOA Foreclosure Sale, the Guide explains that:

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

28 99. Pursuant to NRS 113.130, Defendants were required, but failed, to provide the
information set forth in the SRPDF to Lake Hills Drive Trust at the HOA Foreclosure Sale.

100. Defendants did not provide an SRPDF to Lake Hills Drive Trust prior to, or at, the HOA Foreclosure Sale.

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

102. 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.

103. 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
5. For such other and further relief that the Court deems just and proper.

Dated this 18th day of August, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD

/s/ Chet A. Glover

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EXHIBIT 1

EXHIBIT 1

SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (*see NRS 113.130 and 113.140*).

Date _____

Do you currently occupy or have you ever occupied this property? ☐ YES ☐ NO

Property address _____

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (*NRS 113.130(3)*)

Type of Seller: ☐ Bank (financial institution); ☐ Asset Management Company; ☐ Owner-occupier; ☐ Other: _____

Purpose of Statement: (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

Instructions to the Seller: (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (*see NRS 113.150*).

Systems / Appliances: Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A		YES	NO	N/A
Electrical System	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shower(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plumbing.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sink(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer System & line.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sauna / hot tub(s).....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Septic tank & leach field.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Built-in microwave.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Well & pump	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Range / oven / hood-fan.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yard sprinkler system(s).....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dishwasher	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fountain(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Garbage disposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Heating system.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trash compactor.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cooling system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Central vacuum.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Solar heating system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Alarm system.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fireplace & chimney.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Wood burning system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smoke detector	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Garage door opener	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Intercom	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water treatment system(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Data Communication line(s)...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>				Satellite dish(es)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water heater.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Toilet(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bathtub(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

Seller(s) Initials

Buyer(s) Initials

Property conditions, improvements and additional information: YES NO N/A

Are you aware of any of the following?:

1. Structure:

- (a) Previous or current moisture conditions and/or water damage? ☐ ☐
- (b) Any structural defect? ☐ ☐
- (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☐ ☐
- (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ☐ ☐
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)

2. Land / Foundation:

- (a) Any of the improvements being located on unstable or expansive soil? ☐ ☐
- (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ ☐
- (c) Any drainage, flooding, water seepage, or high water table? ☐ ☐
- (d) The property being located in a designated flood plain? ☐ ☐
- (e) Whether the property is located next to or near any known future development? ☐ ☐
- (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ ☐
- (g) Is the property adjacent to "open range" land? ☐ ☐
- (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)

3. Roof: Any problems with the roof? ☐ ☐

4. Pool/spa: Any problems with structure, wall, liner, or equipment. ☐ ☐ ☐

5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ☐ ☐

6. Environmental:

- (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ☐ ☐
- (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ☐ ☐

7. Fungi / Mold: Any previous or current fungus or mold? ☐ ☐

8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ☐ ☐

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 area? ☐ ☐
- (e) Any assessments associated with the property (excluding property taxes)? ☐ ☐
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ ☐

10. Any problems with water quality or water supply? ☐ ☐

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

12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☐ ☐

(If yes, additional Federal EPA notification and disclosure documents are required)

13. Water source: Municipal ☐ Community Well ☐ Domestic Well ☐ Other ☐

If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Cancelled ☐

Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ☐ ☐

15. Solar panels: Are any installed on the property? ☐ ☐

If yes, are the solar panels: Owned ☐ Leased ☐ or Financed ☐

16. Wastewater disposal: Municipal Sewer ☐ Septic System ☐ Other ☐

17. This property is subject to a Private Transfer Fee Obligation? ☐ ☐

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

Seller(s) Initials

Buyer(s) Initials

1

Buyer(s) Initials

Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE

NRS 113.100 Definitions. As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
 2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
 3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
 4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
 5. "Seller" means a person who sells or intends to sell any residential property.
- (Added to NRS by 1995, 842; A 1999, 1446)

NRS 113.110 Conditions required for "conveyance of property" and to complete service of document. For the purposes of NRS 113.100 to 113.150, inclusive:

1. A "conveyance of property" occurs:
 - (a) Upon the closure of any escrow opened for the conveyance; or
 - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
 2. Service of a document is complete:
 - (a) Upon personal delivery of the document to the person being served; or
 - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.
- (Added to NRS by 1995, 844)

NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
 2. Provides notice:
 - (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
 - (b) That the disclosures set forth in the form are made by the seller and not by his agent.
 - (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.
- (Added to NRS by 1995, 842)

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.
- (Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598; 2011, 2832)

Seller(s) Initials

Buyer(s) Initials

NRS 113.135 Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.600 to 40.695, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 1446)

NRS 113.140 Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2896)

NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

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

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.

6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).**

Seller(s): _____ Date: _____

Seller(s): _____ Date: _____

BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100-150, inclusive, attached hereto as pages four (4) and five (5).

Buyer(s): _____ Date: _____

Buyer(s): _____ Date: _____

EXHIBIT 2

EXHIBIT 2

DUTIES OWED BY A
NEVADA LICENSEE

IMPACT FEES

SOIL REPORT

COMMON-INTEREST
COMMUNITIES

LIEN FOR DEFERRED
TAXES

OPEN RANGE

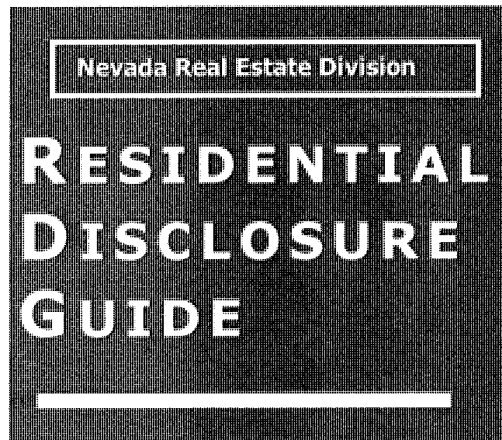
SELLER'S REAL PROPERTY
DISCLOSURE

USED MOBILE HOMES

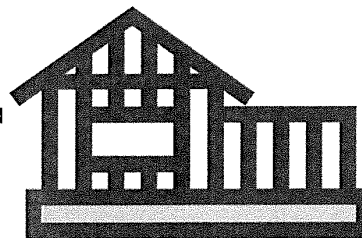
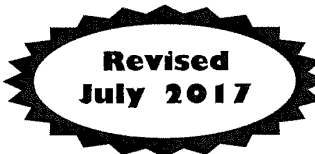
RESIDENTIAL POOL SAFETY
AND DROWNING PREVENTION

ENVIRONMENTAL HAZARDS

SEWER AND WATER
RATES



*A few things you need to know
before buying or selling a home
in Nevada.*



State of Nevada
Department of Business & Industry
Real Estate Division

Introduction

The Department of Business and Industry—Nevada Real Estate Division has developed this booklet to increase consumer awareness and understanding of disclosures that may be required by a buyer or seller during the sale or purchase of a residential property in the State of Nevada.

In almost every real estate transaction, some form of written disclosure is required. For example, real estate licensees must disclose if they are related to a party in the transaction or affiliated with the lender involved in approving the loan for that particular transaction. Sellers, for instance, are responsible for disclosing material facts, data and other information relating to the property they are attempting to sell. And buyers, in some cases, must disclose if they are choosing to waive their 10-day opportunity to conduct a risk assessment of lead hazards.

These are only a few examples of what must be disclosed during a real estate transaction. While it is not possible to outline which disclosures are needed in every situation, as each real estate transaction is unique, this booklet contains discussions on the most commonly required state, federal and local disclosures.

References to real estate licensees and the sale of residential properties in this booklet apply only to the state of Nevada. This guide, however, does not specifically address vacant land or commercial properties.

We hope that you will find this booklet helpful and that it becomes a valuable resource during your real estate transaction. For more information, please visit our website at <http://red.nv.gov>.

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Common-Interest Communities and Condominium Hotels

⇒ Purpose of Disclosure

The purpose of the information statement required when purchasing a home or unit in a common-interest community or a condominium hotel is to make the buyer aware of all rights, obligations and other aspects related to owning a unit within a common-interest community (also known as a homeowner's association) or a condominium hotel. The statement makes buyers aware that use of their units can be restricted by the Declaration or CC&R's. It also alerts buyers that foreclosure of the unit is possible for failure to pay assessments.

⇒ Who must provide the disclosure?

The seller must, at seller's expense, provide an information statement with the sale of any unit within a common-interest community or condominium hotel. The statement is entitled "*BEFORE YOU PURCHASE PROPERTY IN A [COMMON-INTEREST COMMUNITY] [CONDOMINIUM HOTEL] DID YOU KNOW...*"

⇒ When is it due?

In a transaction requiring a public offering statement (further detailed below), the information statement is part of the public offering statement and is due no later than the date an offer to purchase becomes binding on the buyer. If the unit has not been inspected by the buyer, the buyer will have 5 calendar days to cancel the contract from the date of execution.

In a resale transaction, the information statement is part of the resale package. A buyer has 5 calendar days to cancel the contract after receipt of the resale package. It is good practice to provide the information statement no later than 5 days before the contract becomes binding on the buyer in any type of transaction.

Common-Interest Communities and Condominium Hotels

⇒ Additional Information

Public Offering Statement

If the property is a new unit in a common-interest community or a condominium hotel, or if the community is subject to any developmental rights, or contains converted buildings or contains units which may be in a time share, or is registered with the Securities and Exchange Commission, the buyer must also be provided with a **Public Offering Statement** disclosing applicable information, including:

- development rights of contractors
- construction schedule
- description of proposed improvements
- mechanical & electrical installations
- initial or special fees
- number & identity of units in timeshare

Unless the buyer has personally inspected the unit, the buyer may cancel the contract to purchase, by written notice, until midnight of the fifth calendar day following the date of execution of the contract. This provision must be stated in the contract.

Resale Package

In transactions involving the resale of a unit previously sold by the developer, a resale package must be provided to the buyer at the expense of the seller. In addition to the information statement, the resale package includes the following: the declaration, bylaws, rules and regulations, monthly assessments, unpaid assessments of any kind, current operating budget, financial statement, reserve summary, unsatisfied judgments, and status of any pending legal actions.

(Continued on next page...)

Common-Interest Communities and Condominium Hotels

(Continued from previous page...)

Transfer Fees

Do not pertain to Condominium Hotels

The resale package for a home or unit in a common-interest community must also include a statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.

Unpaid Obligations

Do not pertain to Condominium Hotels

The resale package for a home or unit in a common-interest community must also include a statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligations that are due from the selling unit's owner, including management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fee. Please be advised that while the resale package includes this information, changes to the law in 2013 no longer allow a seller or buyer to rely on this statement as accurate. The seller must obtain a "statement of demand" which is separate from the resale package.

Delivery of Resale Package

An association or hotel unit owner has 10 days to provide the resale package after a request. If the documents are not provided within 10 days the buyer is not liable for any delinquent assessment. The resale package should be delivered as soon as practicable. Unless the buyer has accepted conveyance of the unit, the buyer may cancel the contract to purchase, by written notice, until midnight of the fifth calendar day following receipt of the resale package. This provision must be stated in the contract.

Common-Interest Communities and Condominium Hotels

Statement of Demand

Does not pertain to Condominium Hotels

The statement of fees and assessments in the resale package may not be relied upon. It is necessary for any seller to purchase a statement of demand from the association and provide it to the buyer. The statement of demand may be requested by the unit owner, his or her representative or the holder of a security interest on the unit. A statement of demand from the association sets forth the current outstanding assessments, fees and unpaid obligations, including foreclosure fees and attorney's fees due from the seller. The statement of demand remains effective for the period specified in the demand which must not be less than 15 business days from the date of delivery by the association to the seller. The association may provide a corrected statement of demand prior to the sale. Payment of the amount set forth in the statement of demand constitutes full payment of the amount due from the seller.

[NRS 116 governs Common-Interest Communities;
NRS 116B governs Condominium Hotels]

.....
For more information:

Form: Before You Purchase Property in a Common-Interest Community Did You Know... or Before You Purchase Property in a Condominium Hotel Did You Know...

Website: <http://red.nv.gov/uploadedFiles/rednv.gov/Content/Forms/584.pdf>
or <http://red.nv.gov/uploadedFiles/rednv.gov/Content/Forms/584a.pdf>

NRS: 116.4101-116.412; NAC: 116.151, 116.465, 116.470
NRS: 116B.725-116B.795; NAC: 116B.500-116B.530

Consent to Act

⇒ Purpose of Disclosure

The purpose of the Consent to Act form is for the licensee to obtain the written consent to act for more than one party in a transaction.

⇒ Who must provide the disclosure?

The licensee must provide this form to all parties in the transaction if he seeks to act for more than one party.

⇒ When is it due?

If a licensee makes such a disclosure, the consent must be obtained from all parties before the licensee may continue to act in his capacity as an agent.

⇒ Additional Information

The written consent must include:

1. A description of the real estate transaction;
2. A statement that the licensee is acting for two or more parties to the transaction and that, in acting for these parties, the licensee has a conflict of interest;
3. A statement that the licensee will not disclose any confidential information for 1 year after the revocation or termination of the brokerage agreement unless he is required to do so per court order or he is given written permission by that party;
4. A statement that a party is not required to consent to the licensee acting on his behalf;
5. A statement that the party is giving his consent without coercion and understands the terms of the consent given.

For more information:

Form: [Consent to Act](#)

Website: <http://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/524.pdf>

NRS: [645.252-254](#)

Construction Defects

⇒ Purpose of Disclosure

The purpose of disclosures relating to construction defects is to make the buyer aware of any construction defects in the property.

⇒ Who must provide the disclosure?

If there is a construction defect, the contractor must disclose the information in understandable language that is underlined and in bold-faced type with capital letters. If the property is or has been the subject of a construction defect claim or lawsuit, the seller must provide the following information to the buyer:

- copies of all notices given to contractor
- expert opinions obtained by claimant
- terms of settlement or order of judgment
- detailed report of all repairs

⇒ When is it due?

Construction defects must be disclosed to the buyer before purchase of the residence. If the property is or has been the subject of a defect claim or lawsuit, the information must be disclosed 30 days before close of escrow, or if escrow is less than 30 days, then immediately upon signing the sales agreement. If a claim is made while in escrow, the disclosure must be made within 24 hours of notice of complaint.

⇒ Additional Information

If the property is located within a common-interest community and is the subject of a defect claim or lawsuit, this information must be disclosed in the buyer's **resale package** (see Common-Interest Communities).

For more information:

NRS: 40.640, 40.688

Duties Owed By a Nevada Real Estate Licensee

⇒ Purpose of Disclosure

The purpose of the Duties Owed form is to make the buyer or seller aware of obligations owed by a real estate licensee to all parties involved in the transaction.

⇒ Who must provide the disclosure?

A licensee who acts as an agent in a real estate transaction must disclose to each party for whom the licensee is acting as an agent and any unrepresented party all duties owed to the parties and the licensee's relationship as an agent to each party in the transaction.

⇒ When is it due?

The disclosure form must be presented to the client before any documents are signed by the client.

⇒ Additional Information

A Nevada licensee who has entered into a brokerage agreement to represent a client in a real estate transaction shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;

Duties Owed By a Nevada Real Estate Licensee

5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

⇒ Waiver of Duty to Present All Offers Authorization to Negotiate Directly with Seller

A client may choose to waive the broker's duty to present all offers by signing a waiver on a form, the "Waiver Form," prescribed by the Division. Concurrent with the option of a client to waive the duty of his/her broker to present all offers is the form "Authorization to Negotiate Directly with Seller," which gives permission in writing to authorize a licensee to negotiate a sale or lease directly with a seller. Both forms must be utilized and signed by a client who waives the duty to present all offers. Otherwise, a licensee for a buyer does not have the permission of the seller's broker to present offers or negotiate with the sellers directly.

For more information:

Form: [Duties Owed By a Nevada Real Estate Licensee](#)

Website: <http://red.nv.gov/uploadedFiles/rednv.gov/Content/Forms/525.pdf>

NRS: [645.193](#); [645.252-645.254](#)

Impact Fees

⇒ Purpose of Disclosure

The seller of any property must give notice of any impact fees that may be imposed upon the buyer.

An impact fee is a charge imposed by a local government on new development (i.e., the construction, reconstruction, redevelopment, conversion, alteration, relocation or enlargement of any structure which increases the number of service units) to finance some of the costs attributable to the new development.

⇒ Who must provide the disclosure?

A seller who has knowledge of the impact fee must give written notice to the buyer, including the amount of the impact fee and the name of the local government imposing the fee.

⇒ When is it due?

The notice must be provided to the buyer before the property is conveyed.

⇒ Additional Information

If the seller fails to give this notice, the seller is liable to the buyer for the amount of the impact fee.

For more information:

NRS: 278B.320

12 State

Lien for Deferred Taxes

⇒ Purpose of Disclosure

If there are deferred taxes that have not been paid at the time the property is sold or transferred, the buyer must be notified in writing that there is a lien for deferred taxes on the property.

⇒ Who must provide the disclosure?

The seller must notify the buyer of the lien.

⇒ When is it due?

The lien must be disclosed at the time the property is sold or transferred.

⇒ Additional Information

The owner of the property on the date the deferred taxes become due is liable for the deferred taxes.

For more information:

NRS: [361A.290](#)

Manufactured Housing— Used Manufactured/Mobile Homes

⇒ Purpose of Disclosure

The purpose of the Used Manufactured/Mobile Home disclosure is to make the buyer aware that a used manufactured or mobile home that has not been converted to real property is personal property and subject to personal property taxes.

⇒ Who must provide the disclosure?

The real estate licensee shall provide the form to the purchaser as soon as practicable, but before title is transferred.

⇒ Additional Information

This disclosure also informs the purchaser that title will not pass unless the county assessor's endorsement is placed on the face of the title, verifying that taxes have been paid in full.

The disclosure also instructs the consumer to submit certain documents to Nevada's Manufactured Housing Division and the county assessor within 45 days after the sale is complete and before a certificate of ownership will be issued.

For more information:

Form: [Used Manufactured/Mobile Home Disclosure](#)

Website: [Manufactured Housing Division](#)

NRS: [645.258](#), [489.521](#), [489.531](#), [489.541](#)

Manufactured Housing— Manufactured Home Parks

⇒ Purpose of Disclosure

The purpose of the disclosure relating to placing or buying a manufactured or mobile home in a manufactured home park is to make the buyer aware that he may be subject to approval by the landlord of the manufactured home park if the manufactured or mobile home will remain in the park.

⇒ Who must provide the disclosure?

If the landlord requires approval of a prospective buyer and tenant, the landlord must post a sign which is clearly readable at the entrance of the park which advises consumers that before a manufactured home in the park is sold, the buyer and tenant must be approved by the landlord.

⇒ Additional Information

If the property will remain in the manufactured home park, make sure you have a lease agreement with the park manager and that you know the park's rules and regulations.

Remember: the seller or a manufactured home dealer cannot promise that you'll be accepted as a tenant in a particular manufactured home park. You must apply for the lease yourself and should do so before finalizing the purchase of your home. The landlord must approve or deny a completed application from a prospective buyer and tenant within 10 days after the date the application is submitted.

For more information:

Website: [Manufactured Housing Division—Placing or Buying Your Home in a
Rental Community](#)

NRS: [118B.170](#)

State 15

Open Range Disclosure

⇒ Purpose of Disclosure

The purpose of the Open Range Disclosure is to inform the prospective buyer of a home or an improved or unimproved lot adjacent to open range that livestock are permitted to graze or roam on the property. Open range means all unenclosed land outside of cities and towns upon which cattle, sheep or other domestic animals by custom, license, lease or permit are grazed or permitted to roam. It also serves to inform the prospective buyer that the parcel may be subject to county or State claims of right-of-way, (commonly referred to as R.S. 2477 rights-of-way) including rights-of-way that may be unrecorded, undocumented or unsurveyed; and used by miners, ranchers, hunters or others, for access or recreational use, in a manner which interferes with the use and enjoyment of the parcel.

⇒ Who must provide the disclosure?

A seller must disclose, in writing, to a potential buyer of property adjacent to open range, that livestock grazing on the open range are permitted to enter the property; and that the parcel may be subject to county or State claims of right-of-way.

⇒ When is it due?

The disclosure must be provided to the potential buyer, with the requirement that the buyer sign the disclosure form acknowledging the date of receipt of the original disclosure document, before the sales agreement is signed.

Open Range Disclosure

⇒ Additional Information

The disclosure acknowledges fencing the property to keep livestock out and recognizes the property owner's entitlement to damages if livestock enter a fenced property but warns against harming roaming livestock even on a fenced property.

The law requires that the seller retain a copy of the disclosure document that has been signed by the buyer acknowledging the date of receipt of the document, provide a copy to the buyer, and record the original disclosure document containing the buyer's signature and the seller's notarized signature in the office of the county recorder in the county where the property is located.

For more information:

Form: [Open Range Disclosure](#)

Website: <http://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/551.pdf>

NRS: [113.065](#); [568.355](#)

Private Transfer Fee Obligation

⇒ Purpose of Disclosure

The purpose of the disclosure is to make the buyer aware that the property is subject to a Private Transfer Fee Obligation (PTFO) which will require the buyer, upon conveyance of the property by the seller, to pay either a one-time fixed amount or a one-time percentage of the purchase price to a third party payee.

⇒ Who Must Provide the Disclosure?

The seller of a property that is subject to a PTFO must provide the disclosure as a written statement that discloses the existence of and describes the PTFO, and includes language substantially similar to the legislatively-prescribed notice informing the buyer that the PTFO may lower the value of the property and that the laws of this State prohibit the enforcement of certain PTFOs created on or after May 20, 2011.

⇒ When is it due?

The disclosure must be provided to the potential buyer before the conveyance of the property.

⇒ Additional Information

The notice regarding the existence of a PTFO in the seller's disclosure must be in substantially the following form:

A private transfer fee obligation has been created with respect to this property. The private transfer fee obligation may lower the value of this property. The laws of this State prohibit the enforcement of certain private transfer fee obligations that are created on or after May 20, 2011 and impose certain notice requirements with respect to private transfer fee obligations that were created before May 20, 2011.

For more information:

NRS: [111.825-111.880](http://www.leg.state.nv.us/nrs/nrs111.html)

Seller's Real Property Disclosure

⇒ Purpose of Disclosure

The purpose of the Seller's Real Property Disclosure form is to make the buyer aware of the overall condition of the property before it is transferred. This disclosure is not a guarantee nor does it take the place of an inspection. In some cases a Seller has never lived on the property and may have no knowledge of the condition of the property. The Buyer is advised to obtain an independent inspection performed by a properly licensed home inspector. This form is not required for new home sales.

⇒ Who must provide the disclosure?

The seller must complete the "Seller's Real Property Disclosure" form, detailing the condition of the property, known defects, and any other aspects of the property which may affect its use or value. A real estate licensee, unless he is the seller of the property, may not complete this form.

The form must be fully and properly completed. If the seller has no knowledge, "no" is an appropriate answer to the "Are you aware ..." questions. Each question must be answered with a mark in the corresponding "yes", "no" or in some cases "n/a" box. Explanations of any "yes" answers, and a properly executed signature by the seller, are also required. The buyer may only sign the form after full and proper completion by the seller.

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).

(Continued on next page...)

Seller's Real Property Disclosure

(Continued from previous page...)

⇒ When is it due?

The disclosure must be delivered to the buyer at least 10 days prior to conveyance of the property.

⇒ Additional Information

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; and
- the contact information of any asset management company who provided asset management services, if any defects are repaired or replaced or attempted to be repaired or replaced. The asset management company shall provide a service report to the purchaser upon request.

Seller's Real Property Disclosure

If a Seller requests a Buyer to waive his rights or legal remedies under NRS 113.150 or otherwise, the Buyer should contact an attorney for advice regarding the legal consequences. A real estate licensee cannot explain the legal consequences of waiving a Buyer's legal rights or remedies.

EFFECTIVE JULY, 2017 the form includes the following 2 additional disclosures:

- whether solar panels are installed on the subject property. If yes, then disclose whether the solar panels are leased, owned or financed.
- whether the property is a participant in any conservation easement such as the Southern Nevada Water Authority's Water Smart Landscape Program. Seller shall inform the buyer about conservation easements or the potential for other types of conservation easements as required by the statutory language below:

Conservation Easements: The subject property ____ is OR ____ is not subject to a Restrictive Covenant and Conservation Easement established by Nevada Revised Statute 111.390-440 such as the Southern Nevada Water Authority's Water Smart Landscape Program.

For more information:

Form: [Seller's Real Property Disclosure](#)

Website: <http://red.nv.gov/uploadedFiles/rednv.gov/Content/Forms/547.pdf>

NRS: [113.130](#); [113.140](#); [113.150](#)

NRS: [111.390-440](#)

Water & Sewer Rates

⇒ Purpose of Disclosure

The purpose of the disclosure relating to water and sewer rates is to inform the buyer of a previously unsold home or improved lot of public utility rates when service is for more than 25 but fewer than 2,000 customers.

⇒ Who must provide the disclosure?

The seller must post a notice, which shows the current or projected rates, in a conspicuous place on the property.

⇒ When is it due?

The notice must be posted and a copy provided to the buyer before the home is sold.

⇒ Additional Information

The notice must contain the name, address and telephone number of the public utility and the Division of Consumer Complaint Resolution of the Public Utilities Commission of Nevada.

For more information:

NRS: [113.060](#)

Lead-Based Paint

⇒ Purpose of Disclosure

The purpose of the lead-based paint disclosure is to make the buyer aware that the residential property (if built prior to 1978) may present exposure to lead.

⇒ Who must provide the disclosure?

Federal law requires that the seller disclose any known presence of lead-based paint hazards and provide the buyer with the EPA disclosure booklet, "Protect Your Family From Lead in Your Home," along with any other available records and/or reports.

⇒ When is it due?

The disclosure is on a federally prescribed form and must be made as a condition of the sale before conveyance of the property.

⇒ Additional Information

On the disclosure form, the buyer must acknowledge receipt of the EPA disclosure booklet and copies of lead reports, if available. Additionally, the buyer will receive a 10-day opportunity to conduct a risk assessment or may choose to waive this opportunity.

For more information:

Form: [Disclosure of Information on Lead-Based Paint](#)

Website: [Environmental Protection Agency \(Lead\)](#)

Phone: National Lead Information Center 1-800-424-LEAD

Pool Safety and Drowning Prevention Disclosure

⇒ Purpose of Disclosure

The purpose of the Southern Nevada Health District's pool safety and drowning prevention disclosure is to make the buyer aware of the risk of death by drowning in private and public pools particularly for children 4 years or younger.

⇒ Who must provide the disclosure?

The information is provided by the Nevada Real Estate Division (NRED) in agreement with the Southern Nevada Health District (SNHD) to promote SNHD's efforts to inform the public on drowning prevention.

⇒ When is it due?

The disclosure will be provided to the buyer before the sales agreement is signed by way of the Residential Disclosure Guide in which it is contained. The buyer is advised to visit SNHD's website:

<http://www.southernnevadahealthdistrict.org/health-topics/drowning-prevention.php>.

⇒ Additional Information

Drowning is the leading cause of unintentional injury death in Clark County for children four years of age and under. The majority of drowning deaths occur in the family pool. Preventable mistakes include leaving a child unattended near a body of water in which a child's nose and mouth can be submerged.

More information on drowning facts, preventable mistakes, how to be prepared to prevent a drowning, pool security, drowning statistics, adult supervision and more can be obtained at SNHD's website at <http://www.southernnevadahealthdistrict.org/health-topics/drowning-prevention.php> and <http://www.getthehealthyclarkcounty.org/be-safe/index.php>.

Miscellaneous Disclosures

Depending upon the transaction, the following disclosures may also be required from a buyer, seller or licensee:

⇒ AIRPORT NOISE

Buyers should investigate the impact of airport flight paths and the noise levels at different times of the day over that property.

⇒ BUILDING & ZONING CODES

The purpose of the building and zoning disclosure is to inform the buyer of transportation beltways and/or planned or anticipated land use within proximity of the subject property of which the seller has knowledge.

For more information on building and zoning codes, contact your local jurisdiction.

⇒ ENVIRONMENTAL HAZARDS

Although the seller is required to disclose the presence of environmental hazards, a statement that the seller is not aware of a defect or hazard does not mean that it does not exist. **It is the buyer's responsibility to be informed and take additional steps to further investigate.** Some potential hazards that may be found in Nevada include:

- **Radon** (www.epa.gov/radon)
- **Floods** (<http://www.floodsmart.gov>)
- **Methamphetamine Labs** (NRS 40.770 & 489.776)
- **Wood-Burning Devices** (<http://www.epa.gov/iaq/pubs/combust.html>)

(Continued on next page...)

Miscellaneous Disclosures

(Continued from previous page...)

- **Underground Storage Tanks** (<http://epa.gov/oust/index.htm>)
- **Septic Systems** (<http://water.epa.gov/infrastructure/septic/>)
- **Wells** (<http://water.epa.gov/drink/info/well/index.cfm>)
- **Land and Cleanup** (<http://www2.epa.gov/learn-issues/learn-about-land-and-cleanup>)
- **Groundwater** (<http://water.epa.gov/drink/resources/topics.cfm>)
- **Public Pools & Spas** (<http://www.poolsafely.gov/>)
- **Molds and Moisture** (<http://www.epa.gov/mold/>)

For more information on environmental hazards, visit:
www.epa.gov.

⇒ GAMING

Initial Purchaser in New Construction Only

If there is a gaming district near the property, the seller must disclose information which includes a copy of the most recent gaming enterprise district map, the location of the nearest gaming enterprise district, and notice that the map is subject to change. This disclosure is required for Nevada counties with population over 400,000.

The information must be provided at least 24 hours before the seller signs the sales agreement. The buyer may waive the 24-hour period.

The seller must retain a copy of the disclosure.

For more information on gaming, see: NRS 113.080

Miscellaneous Disclosures

⇒ HOME INSPECTIONS

When obtaining an FHA-insured loan, this disclosure informs the buyer about the limits of the Federal Housing Administration appraisal inspection and suggests the buyer obtain a home inspection to evaluate the physical condition of the property prior to purchase. The form is entitled, "For Your Protection: Get a Home Inspection."

*For more information on FHA home inspections, visit:
www.hud.gov.*

⇒ MILITARY ACTIVITIES

The purpose of the Military Activities Disclosure is to make the purchaser of residential property aware of planned or anticipated military activity within the proximity of the property. Counties in which the military files Military Activities Plans include Clark County, Washoe County, Churchill County and Mineral County.

For more information on military activities plans in these counties, contact the local municipal jurisdiction or the Public Information Officer of the Military Installation in your county.

⇒ LICENSEE DISCLOSURES

In addition to the "Consent to Act" and the "Duties Owed by a Nevada Real Estate Licensee" forms (see pages 8 & 10), a real estate licensee is required to disclose other information such as his relationship to one or more parties in the transaction and/or having a personal interest in the property.

For more information regarding duties and disclosures owed by a licensee, see: [NRS 645.252-645.254](#), [NAC 645.637](#) and [NAC 645.640](#).

(Continued on next page...)

Miscellaneous Disclosures

(Continued from previous page...)

⇒ ROAD MAINTENANCE DISTRICT

The sale of residential property within a road maintenance district is prohibited unless the seller provides notice to the purchaser, including the amount of assessments for the last two years. If the district has been in existence for less than 2 years before notice is provided to the purchaser, then the amount of assessments shall be given for the period since the district was created.

For more information, see: NRS 320.130.

⇒ SOIL REPORT (New Construction Only)

If the property has not been occupied by the buyer more than 120 days before completion, the seller must give notice of any soil report prepared for the property or for the subdivision in which the property is located.

The seller must provide such notice upon signing the sales agreement.

Upon receiving the notice, the buyer must submit a written request within 5 days for a copy of the actual report. The seller must provide a free report to the buyer within 5 days of receiving such request.

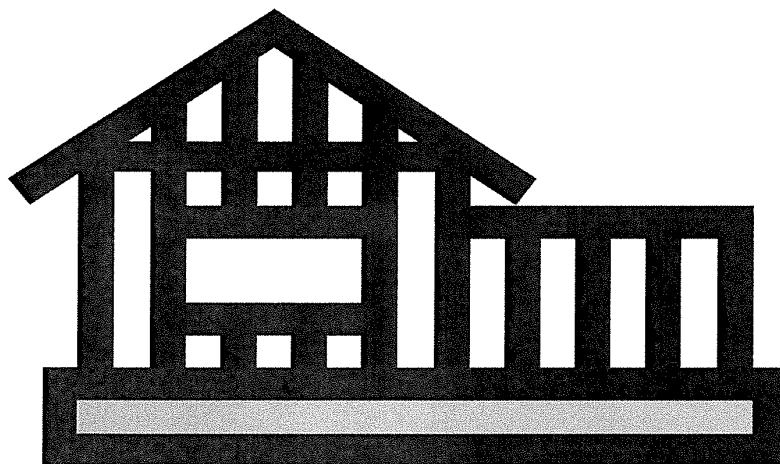
Upon receiving the soil report, the buyer has 20 days to rescind the sales agreement. This rescission right may be waived, in writing, by the buyer.

For more information, see: NRS 113.135.

Contact Information

Nevada Real Estate Division (LV) 3300 W Sahara Avenue, Suite 350 Las Vegas, NV 89102 Phone: (702) 486-4033 Fax: (702) 486-4275 Email: realest@red.nv.gov Website: http://red.nv.gov	Nevada Real Estate Division (CC) 1818 E. College Parkway, Suite 110 Carson City, NV 89706-7986 Phone: (775) 684-1900 Fax: (775) 687-4868 Email: realest@red.nv.gov Website: http://red.nv.gov
Manufactured Housing Division (LV) 3300 W Sahara Avenue, Suite 320 Las Vegas, NV 89102 Phone: (702) 486-4135 Fax: (702) 486-4309 Email: nmhd@mhd.state.nv.us Website: http://mhd.nv.gov	Manufactured Housing Division (CC) 1830 E. College Pkwy., #120 Carson City, Nevada 89706 Phone: (775) 684-2940 Fax: (775) 684-2949 Email: nmhd@mhd.state.nv.us Website: http://mhd.nv.gov
Ombudsman Office (Common-Interest Communities) 3300 W Sahara Avenue, Suite 325 Las Vegas, NV 89102 Phone: (702) 486-4480 Toll Free: (877) 829-9907 Fax: (702) 486-4520 Email: CICOmbudsman@red.nv.gov Website: http://red.nv.gov/cic/	U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, DC 20460 Phone: (202) 272-0167 Website: www.epa.gov
National Lead Information Center 422 South Clinton Avenue Rochester, NY 14620 Phone: (800) 424-LEAD Fax: (585) 232-3111 Website: http://www2.epa.gov/lead/forms/lead-hotline-national-lead-information-center	Department of Health and Human Services – Center for Disease Control & Prevention 1600 Clifton Road Atlanta, GA 30333 Phone: 800-CDC-INFO (800-232-4636) Website: www.cdc.gov
U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 Phone: (301) 504-7923 Fax: (301) 504-0124 Website: www.cpsc.gov	

Nevada Real Estate Division



July 2017

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AA054

Nevada Real Estate Division



**State of Nevada
Department of
Business & Industry
Real Estate Division**

RESIDENTIAL DISCLOSURE GUIDE

I/We acknowledge that I/we have received a copy of the
Residential Disclosure Guide.

DATE _____

Client—Print Name

Client—Signature

Client—Print Name

Client—Signature

Make copy of page for additional signatures.

Retain original or copy in each transaction file.

Steven D. Grierson

AFFT

Roger P. Croteau & Associates, Ltd.
Roger P. Croteau, Esq.
2810 W. Charleston Blvd., #75
Las Vegas, NV 89102
State Bar No.: 4958
Attorney(s) for: Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

River Glider Avenue Trust

Plaintiff(s),

vs.

Harbor Cove Homeowners Association, et al.

Defendant(s).

Case No.: A-20-819781-C

Dept. No.: 20

Date:
Time:

AFFIDAVIT OF SERVICE

I, **Brigham Moody**, 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; Exhibit 1 - 2 on the 16th day of October, 2020 and served the same on the 19th day of October, 2020 at 4:16pm by serving the Defendant, Nevada Association Services, Inc., by personally delivering and leaving a copy at New Address of Resident Agent, Chris Yergensen, Esq., 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.



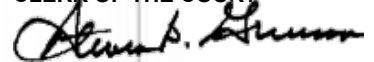
State of Nevada, County of Clark
SIGNED AND SWORN to before me on this
20th day of October, 2020

By: Brigham Moody

Laura Mitz
Notary Public:

Brigham Moody
Affiant: Brigham Moody
#: R-2019-10677

J & L Process Service, License #1926
Work Order No: 20-11909



AFFT

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DISTRICT COURT

CLARK COUNTY, NEVADA

River Glider Avenue Trust

Plaintiff(s),

vs.

Harbor Cove Homeowners Association, et al.

Defendant(s).

Case No.: A-20-819781-C

Dept. No.: 20

Date:
Time:

AFFIDAVIT OF SERVICE

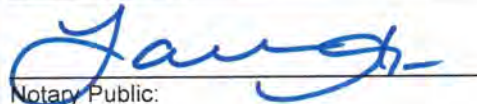
I, **Diana Brown**, being duly sworn deposes and says: That at all time herein Affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #1926, and not a party to or interested in the proceeding in which this Affidavit is made. The Affiant received 1 copy of the: **Summons; Complaint; Exhibit 1 - 2** on the 16th day of October, 2020 and served the same on the 19th day of October, 2020 at 3:24pm by serving the Defendant, **Harbor Cove Homeowners Association**, by personally delivering and leaving a copy at **Resident Agent, Level Property Management, 8966 Spanish Ridge Ave., Ste 100, Las Vegas, NV 89148** with **Felicia B. (Refused last name: Caucasian female; brown eyes; black hair; 5'7"; 195lbs; 45-50 years old), Director of Operations**, 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
20th day of October, 2020

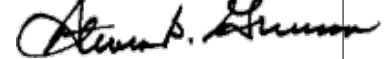
By: Diana Brown

Notary Public:



Affiant: Diana Brown
#: R-033810

J & L Process Service, License #1926
Work Order No: 20-11908



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**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

Hearing Requested

**HARBOR COVE HOMEOWNERS
ASSOCIATION'S MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR
SUMMARY JUDGMENT**

COMES NOW, Defendant Harbor Cove Homeowners Association (the "HOA"),
by and through its counsel of record, LIPSON NEILSON, P.C., and hereby submit this
Motion to Dismiss.

This Motion is made and based on the following Memorandum of Points and
Authorities, the pleadings and papers on file, and any oral arguments the Court may
consider in this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BACKGROUND

This is the epilogue to one of the books in the series of HOA foreclosure litigation. The property is located at 8112 Lake Hills Drive, Las Vegas, Nevada 89128 (APN: 138-16-213-034) (the "Property"). The Plaintiff is suing the HOA (and the collection agent) because Plaintiff's acquisition of the Property after a nonjudicial foreclosure sale, for \$5,500.00,¹ resulting in ownership via nonwarranty deed, did not result in the title to the Property being free and clear of an existing deed of trust.

The effect of the nonjudicial foreclosure sale has already been litigated in case A-13-683467 (the "Prior Litigation").² The nonjudicial foreclosure sale was valid and conveyed the Property to the Plaintiff *subject to* the existing deed of trust. A copy of the Order Granting Summary Judgment in favor of the lender, is attached hereto, as **Exhibit A.**

According to the District Court's Order, the following is established:

1. Before the nonjudicial foreclosure sale, the prior owner of the Property had satisfied the super-priority portion of the HOA's lien. Exhibit A, p. 3 ¶ 10, p. 5 ¶ 5.

2. The valid nonjudicial foreclosure sale occurred on May 11, 2012 ("HOA Sale"). See Exhibit A, p. 4 ¶ 14. (See *also*, Complaint, ¶ 2 (same).)

3. River Glider Avenue Trust purchased the Property for \$5,500.00. Exhibit A, p. 4, at ¶ 15; Complaint ¶ 22.

4. "River Glider Avenue Trust purchased the Property subject to [a] deed of trust." (*Id.*, at p. 5 ¶ 6.)

The District Court's Order was appealed but ultimately affirmed. A copy of the Order of Affirmance is attached as **Exhibit B.** The Plaintiff petitioned for rehearing,

¹ According to Zillow.com, the current value of the property is \$587,540.00 (accessed November 5, 2020).

² The Court may take judicial notice of facts: "Generally known within the territorial jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." NRS 47.130.

1 which was denied on July 1, 2020. A copy of the Order Denying Rehearing is attached
2 as **Exhibit C**.

3 Plaintiff is attempting to re-litigate the outcome of the *nonjudicial* foreclosure sale,
4 turned into a *judicial* action (the Prior Litigation) which went all the way through appeal.
5 This second bite at the apple is based on theories through which Plaintiff
6 recharacterizes the same issues from the Prior Litigation, apparently to avoid the
7 outcome of the Prior Litigation. Plaintiff has already appealed and lost. The Complaint
8 should be dismissed because the issues have already been litigated. To the extent the
9 Complaint attempts to state new claims, each of which fail as a matter of law and should
10 be dismissed with prejudice, or because there are no genuine facts at issue, summary
11 judgment granted in favor of the HOA.

12 **II. LEGAL STANDARDS**

13 **A. Motion to Dismiss**

14 A motion to dismiss is warranted when a complaint fails “to state a claim upon
15 which relief can be granted.” NRCP 12(b)(5). “When considering a motion to dismiss
16 made under NRCP 12(b)(5), a district court must construe the complaint liberally and
17 draw every fair reference in favor of the plaintiff.” *Cohen v. Mirage Resorts, Inc.*, 119
18 Nev. 1, 22, 62 P.3d 720, 734 (2003). The complaint should be dismissed if it “appears
19 beyond a doubt that it could prove no set of facts, which if true, would entitle [the
20 plaintiff] to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d
21 670, 672 (2008). However, merely vague, conclusory and general allegations will not
22 overcome a Rule 12(b) motion. *See Romero v. State*, No. 52420, 2009 Nev. Unpub.
23 LEXIS 1, at *2 (July 29, 2009) (affirming dismissal of “naked” and “conclusory” claims.);
24 *see also Foster Poultry Farms, Inc. v. Suntrust Bank*, 355 F. Supp. 2d 1145, 1148 (D.
25 Nev. 2004) (stating that when deciding a Rule 12(b) motion, the court is not required “to
26 accept as true allegations that are merely conclusory, unwarranted deductions of fact,
27 or unreasonable inferences.”).

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1 The Court is “not bound to accept as true a legal conclusion couched as a factual
2 allegation.” *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944 (1986).

3 And even in a “notice pleading” jurisdiction, Plaintiff must still set forth sufficient
4 facts to establish every element of each claim for relief. See *Johnson v. Travelers Ins.*
5 *Co.*, 89 Nev. 467, 472, 515 P.2d 68, 71 (1973) (“Although we are mindful that a motion
6 to dismiss admits all material and issuable facts *properly pleaded*, the complaint must,
7 in any event, allege facts sufficient to establish all necessary elements of the claim for
8 relief...”) (emphasis added).

9 The Court may consider “documents attached to the complaint, documents
10 incorporated by reference in the complaint, or matters of judicial notice [] without
11 converting the motion to dismiss into a motion for summary judgment.” *U.S. v. Ritchie*,
12 342 F.3d 903, 908 (9th Cir. 2003).

13 **B. Summary Judgment**

14 “Summary judgment is appropriate under NRCP 56 when the pleadings,
15 depositions, answers to interrogatories, admissions, and affidavits, if any, that are
16 properly before the court demonstrate that no genuine issue of material fact exists, and
17 the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121
18 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The party moving for summary judgment
19 bears the initial burden of production to show the absence of a genuine issue of material
20 fact. *Cuzze v. Univ. & Comm. College System of Nevada*, 172 P.3d 131, 134 (Nev.
21 2007). Where “the nonmoving party will bear the burden of persuasion at trial, the party
22 moving for summary judgment may satisfy the burden of production by either (1)
23 submitting evidence that negates an essential element of the nonmoving party’s claim,
24 or (2) ‘pointing out . . . that there is an absence of evidence to support the nonmoving
25 party’s case.’” *Id.* (citations omitted).

26 To survive a motion for summary judgment, the non-moving party “may not rest
27 upon the mere allegations or denials of [its] pleadings,” *Anderson v. Liberty Lobby, Inc.*,
28 477 U.S. 242, 248 (1986), nor may it “simply show there is some metaphysical doubt as

1 to the material facts.” *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. Rather, it is the non-
2 moving party’s burden to “come forward with specific facts showing that there is a
3 **genuine** issue for trial.” *Id.* at 587 (emphasis added); *See also Wood v. Safeway, Inc.*,
4 121 Nev. 724 (2005), *citing Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57
5 P.3d 82 (2002).

6 An issue is only genuine if there is a sufficient evidentiary basis for a reasonable
7 jury to return a verdict for the non-moving party. *See Anderson*, 477 U.S. at 248 (1986).
8 Further, a dispute will only preclude the entry of summary judgment if it could affect the
9 outcome of the suit under governing law. *Id.* “The amount of evidence necessary to
10 raise a genuine issue of material fact is enough to require a judge or jury to resolve the
11 parties’ differing versions of the truth at trial.” *Id.* at 249. In evaluating a summary
12 judgment, a court views all facts and draws all inferences in a light most favorable to the
13 non-moving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005). If there are no
14 genuine issues of fact, the movant’s burden is not evidentiary because the facts are not
15 disputed, but the court has the obligation to resolve the legal dispute between the
16 parties as a matter of law. *Gulf Ins. Co. v. First Bank*, 2009 WL 1953444 *2
17 (E.D.Cal.2009) (*citing Asuncion v. Dist. Dir. of U.S. Immigration & Naturalization Serv.*,
18 427 F.2d 523, 524 (9th Cir.1970)).

19 **III. REQUEST FOR JUDICIAL NOTICE**

20 This court may take judicial notice of matters of fact that are generally known or
21 that are “[c]apable of accurate and ready determination by resort to sources whose
22 accuracy cannot reasonably be questioned’ when requested by a party. NRS 47.130;
23 NRS 47.150. Records of other courts are sources whose accuracy cannot reasonably
24 be questioned. *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981). A
25 court may take judicial notice of records from other cases if there is a close relationship
26 between the cases, and issues within the case justify taking judicial notice of the prior
27 case. *Id.* Here, the HOA requests that the Court take judicial notice of the District
28 Court’s Order in the Prior Litigation (Exhibit A) as that case is closely related to this case

1 in that the prior case involves the same foreclosure sale and made express findings
2 regarding issues raised in this lawsuit.

3 **IV. LEGAL ARGUMENT**

4 The complaint should be dismissed or summary judgment granted in favor of the
5 HOA because the Prior Litigation, established the character of the Property's title
6 through a valid nonjudicial foreclosure sale. Plaintiff is attempting to navigate the no
7 man's land between the Prior Litigation's result that Plaintiff obtained title to the
8 Property, and attempting to insert conditions, such as fraud, that would essentially result
9 in an invalid sale divesting Plaintiff of title to the Property. There was no defect in the
10 foreclosure; there was no fraud or procedural error which would invalidate the sale. The
11 time and place to litigate the alleged issues in this complaint was in the Prior Litigation.

12 Plaintiff's claims are: (1) misrepresentation, (2) breach of duty of good faith, (3)
13 conspiracy, and (4) violation of NRS 113. Each of the claims fail and should be
14 dismissed with prejudice, or because there is no genuine issue of material fact, the
15 Court may grant summary judgment in favor of the HOA.

16 **A. MISREPRESENTATION CLAIM FAILS BECAUSE THE HOA HAD NO**
17 **OBLIGATION TO DISCLOSE PAYMENTS**

18 Plaintiff's misrepresentation claim fails because an HOA had no duty to disclose
19 the former owner's payment. The elements for a claim of negligent misrepresentation
20 are: (1) defendant supplied information while in the course of its business; (2) the
21 information was false; (3) the information must have been supplied for the guidance of the
22 plaintiff in its business transactions; (4) defendant must have failed to exercise
23 reasonable care or competence in obtaining or communicating the information; (5)
24 plaintiff must have justifiably relied upon the information by taking action or refraining
25 from it; and (6) plaintiff sustained damage as a result of his reliance upon the accuracy
26 of the information. N.J. 9.05; *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d
27 1382, 1387 (1998).

28 ///

1 Similarly, the elements for a claim of intentional misrepresentation are: (1)
2 defendant makes a false representation or misrepresentation as to a past or existing
3 fact; (2) defendant made the statement with knowledge or belief that the representation
4 is false or that defendant lacks sufficient basis of information to make the
5 representation; (3) defendant intended to induce plaintiff to act in reliance on the
6 representation; (4) plaintiff justifiably relied upon the representation; (5) causation and
7 damages to plaintiff as a result of relying on misrepresentation; and (6) must be proved
8 by clear and convincing evidence and be pled with specificity. NRCP 9; NJI 9.01;
9 *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d
10 30, 51 (2005).

11 Plaintiff's claim fails because an HOA is required to comply with NRS 116 and
12 NRS 116 did not require any such disclosure of a tender or payment made prior to the
13 nonjudicial foreclosure date. An HOA's nonjudicial foreclosure process is a creature of
14 statute. *SFR Invs. Pool 1 v. U.S. Bank, N.A.*, 130 Nev. 742, 744, 334 P.3d 408, 410
15 (2014). Pursuant to the statute, some HOAs have superpriority liens, while other HOAs
16 do not. See *MCM Capital Partners, LLC v. Saticoy Bay LLC Series 6684 Coronado*
17 *Crest*, No. 215CV1154JCMGWF, 2018 WL 4113332, at *3 (D. Nev. Aug. 29, 2018)
18 (finding limited-purpose associations may be exempt from many portions of NRS 116,
19 including the superpriority portion, thus leaving them without a split lien and only a
20 subpriority lien), see also *Bank of Am., N.A. v. Aspen Meadows - Fernley Flood Control*
21 *Facility Maint. Ass'n*, No. 316CV00413MMDWGC, 2019 WL 2437453, at *3 (D. Nev.
22 June 10, 2019) (finding the HOA "never had a superpriority lien on the Property").
23 Nevertheless, regardless of the type of HOA or foreclosure, NRS 116 did not require
24 any HOA to make a declaration at the sale, or in their foreclosure notices, regarding the
25 character of the nonjudicial sale, i.e., whether the sale was a super-priority or sub-
26 priority lien sale.

27 ///

28 ///

1 i. **The HOA had no obligation to disclose it was foreclosing on a**
2 **superpriority lien**

3 An HOA does not have to disclose whether or not there is a superpriority lien, but
4 rather must state the total delinquency being foreclosed upon. See NRS
5 116.31162(1)(c) (2013) (stating that the total amount of the HOA lien “includ[es] costs,
6 fees and expenses incident to its enforcement”). As the Nevada Supreme Court stated,
7 because the foreclosure notices go to all lien holders, whether junior or senior, “it was
8 appropriate to state the total amount of the lien.” *SFR Invs. Pool 1, LLC v. U.S. Bank,*
9 *N.A.*, 130 Nev. 742, 757, 334 P.3d 408, 418 (2014). There is no allegation that the
10 notices were incorrect. Accordingly, there is no basis for any misrepresentation claim.

11 ii. **The HOA has no obligation to disclose a prior payment of the**
12 **superpriority lien**

13 Plaintiff’s misrepresentation claim³ is based on an alleged failure to disclose the
14 former owner’s partial payment prior to the nonjudicial foreclosure sale. (Compl. ¶ 43.)
15 However, there is no such duty or obligation, and thus no misrepresentation. In *Noonan*
16 *v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (unpublished), the
17 Foreclosure Purchaser argued that the foreclosure agent had a duty to disclose a
18 preforeclosure tender. The Nevada Supreme Court found no such duty exists, stating:

19 Summary judgment was appropriate on the negligent
20 misrepresentation claim because Hampton neither made an
21 affirmative false statement nor omitted a material fact it was bound
22 to disclose. See *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129
23 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the elements
24 for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev.
25 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or
26 omission of a material fact which a party is bound in good faith to
27 disclose is equivalent to a false representation.” (internal quotation
28 marks omitted)). **Compare NRS 116.31162(1)(b)(3)(II) (2017)**
(requiring an HOA to disclose if tender of the superpriority
portion of the lien has been made), with NRS 116.31162 (2013)
(not requiring any such disclosure).

³ Also characterized as negligent claims. (Compl. ¶ 50.) However, because there is no duty to disclose the payment, whether sounding in negligence or misrepresentation, the claim fails.

1 *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (emphasis added).
2 Therefore, according to the *Noonan* case, there was no duty to disclose a
3 preforeclosure payment until NRS 116 was amended in 2017 to require such a
4 disclosure. The Nevada Supreme Court continues to rule accordingly, albeit in
5 unpublished cases: (1) *Saticoy Bay v. Genevieve Court Homeowners Ass'n*, No. 80135,
6 2020 Nev. Unpub. LEXIS 1000, at *1 (Oct. 16, 2020) (no duty to disclose); *Saticoy Bay*
7 *v. Silverstone Ranch Cmty. Ass'n*, No. 80039, 2020 Nev. Unpub. LEXIS 993, at *1 (Oct.
8 16, 2020) (no duty to disclose, and NRS 113 does not apply to create such a
9 disclosure).

10 At the time of this nonjudicial foreclosure sale, there was no duty to disclose a
11 payment. As stated in *SFR* and its progeny, the Nevada Supreme Court still finds the
12 HOA's duties are to comply with NRS 116. After the HOA's foreclosure sale on May 11,
13 2012, the Legislature substantially revised NRS 116. See 2015 Nev. Stat., Ch. 266.
14 However, the version that applies in this case is the version that was in effect at the time
15 of the events giving rise to this action. See generally *Sandpointe Apts. v. Eighth Jud.*
16 *Dist. Ct.*, 313 P.3d 849, 853 (Nev. 2013) ("Substantive statutes are presumed to only
17 operate prospectively, unless it is clear that the drafters intended the statute to be
18 applied retroactively."); see also *Landgraf v. USI Film Products*, 114 S. Ct. 1483, 1487,
19 511 U.S. 244, 245 (U.S. Tex. 1994) ("The presumption against statutory retroactivity is
20 founded upon elementary considerations of fairness dictating that individuals should
21 have an opportunity to know what the law is and to conform their conduct accordingly.").
22 Unlike the current version of NRS 116, the version of NRS 116 at the time of the sale in
23 2012 contained no disclosure requirements.

24 Because there was no disclosure duty in NRS 116 on the date of this nonjudicial
25 foreclosure, May 11, 2012, the claim fails, whether or not it is based on an intentional or
26 a negligent misrepresentation. The Court should dismiss this claim with prejudice, or
27 grant summary judgment in favor of the HOA.

28 ///

1 iii. **The foreclosure deed cannot create liability against the HOA**

2 The Court may also dismiss the Complaint with prejudice, grant summary
3 judgment in favor of the HOA because the HOA cannot be held liable for the character
4 of title to the Property because the only deed permitted by NRS 116 is a deed **without**
5 **warranty**. NRS 116.31164(3) states: "After the sale, the person conducting the sale
6 shall: (a) **Make, execute and, after payment is made, deliver to the purchaser**, or
7 his or her successor or assign, **a deed without warranty** which conveys to the grantee
8 all title of the unit's owner to the unit" (emphasis added). The non-warranty deed vests
9 title "without equity or right of redemption." NRS 116.31166(3).

10 A non-warranty deed is the same as a quitclaim deed, which: "is sufficient to
11 convey whatever interest the grantor had in the property at the time the conveyance
12 was made," *Brophy Min. Co. v. Brophy & Dale Gold & Silver Min. Co.*, 15 Nev. 101, 107
13 (1880). A quitclaim deed "neither warrants nor professes that the title is valid." Black's
14 Law Dictionary (10th ed. 2014). For more than 100 years, a non-warranty deed has
15 protected a grantor from liability from deed warranties because the deed conveys only
16 that which the grantor holds and promises nothing more. *See Oliver v. Piatt*, 44 U.S.
17 333, 11 L. Ed. 622 (1845) ("A purchaser by a deed of quitclaim without any covenant of
18 warranty, is not entitled to protection in a court of equity as a purchaser for a valuable
19 consideration, without notice; and he takes only what the vendor could lawfully
20 convey.") *See also, e.g., Platner v. Vincent*, 194 Cal. 436, 444, 229 P. 24, 27 (1924)
21 ('Appellant [w]ould have [been] protected [] from liability as a cograntor by executing a
22 quitclaim deed [because s]uch deeds do not carry covenants of warranty.") *See also,*
23 *Greek Catholic Congregation of Borough of Olyphant v. Plummer*, 347 Pa. 351, 353–54,
24 32 A.2d 299, 300 (1943) ("One quit-claiming his interest in a property is creating no
25 liability against himself and the real owner of that property: *See Power v. Foley,*
26 *Newfoundland Reports*, 1897-1903, p. 540; *England v. Cowley*, L. R. 8 Ex. 126; and
27 *Owen v. Legh*, 3 B. & Ald. 470."). *See also, Lowe v. Ragland*, 156 Tex. 504, 516, 297
28 S.W.2d 668, 675–76 (1957) ("All of the title which the grantor owned or had the power

1 to convey passes under the conveyance, but there is no liability on the warranty for any
2 impairment of title resulting from the prior conveyance.”)

3 Under NRS 116, the HOA cannot provide a nonjudicial foreclosure deed with any
4 deed warranties because NRS 116 expressly requires that the type of deed conferred is
5 a “deed without warranty.” The Nevada Supreme Court has concluded that the HOA
6 has “little autonomy in taking extra-statutory efforts” under the “elaborate” requirements
7 of NRS 116. *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*,
8 405 P.3d 641, 645 (Nev. 2017), reh'g denied (Dec. 13, 2017), reconsideration *en banc*
9 denied (Feb. 23, 2018). In the Prior Litigation, there was no defect in the underlying
10 non-judicial foreclosure sale. As the Nevada Supreme Court has said:

11 The language in the Notice of Sale clearly and accurately explained
12 that the winning bidder would receive a deed without warranty, see
13 NRS 116.31164(3)(a) (2005) (requiring the person conducting the
14 foreclosure sale to deliver to the purchaser a deed without warranty),
and it [a deed without warranty] cannot reasonably be construed as
suggesting that a first deed of trust would survive the foreclosure sale.

15 *First Mortg. Corp. v. Saticoy Bay LLC Series 1828 La Calera*, 432 P.3d 189 (Nev. 2018)
16 (table) (emphasis added). In other words, the HOA grants without any warranty,
17 whatever interest it holds, nothing more and nothing less. The deed does not include a
18 representation that the HOA will defend the grantee’s (Plaintiff’s) title and does not
19 include a right to sue the grantor (the HOA or trustee) under a theory that the deed
20 included warranties or representations which cannot exist as a matter of law. The claim
21 fails.

22 Similarly, in *A Oro, LLC v. Ditech Financial LLC*, 2019 WL 913129, 434 P.3d 929
23 (Nev. 2019) (unpublished disposition), the Nevada Supreme Court concluded that the
24 district court correctly granted summary judgment to the HOA on the appellant
25 foreclosure purchaser’s fraudulent nondisclosure claim. In *A Oro*, the foreclosure
26 purchaser challenged the district court’s entry of summary judgment in favor of the
27 lender on the tender issues. *Id.* The foreclosure purchaser had also asserted claims
28 against the association based upon fraudulent non-disclosure of the lender’s tender.

1 However, the district court awarded summary judgment in favor of the association on
2 the foreclosure purchaser's claim. *Id.* In upholding the district court decision, the
3 Supreme Court determined (among other reasons) that there was no evidence that the
4 association intended to induce appellant into placing the winning bid at the foreclosure
5 sale, as the association was unaware of appellant's assumptions regarding the legal
6 effect of the sale. *See id.*, citing *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426
7 (2007) (setting forth the elements of a fraudulent nondisclosure claim). As an additional
8 reason why the claim had no merit, the Nevada Supreme Court noted, "that appellant
9 has provided no legal support for the unorthodox proposition that the winning bidder
10 at a foreclosure sale can bring a fraud claim against the auctioneer [or the HOA] when
11 the auctioneer's foreclosure notices have disclaimed any warranties as to the title
12 being conveyed." *Id.* at n.2 (emphasis added).

13 Here too, the Court should reject Plaintiff's unorthodox and unsubstantiated
14 proposition that it is entitled to bring misrepresentation claims against the HOA where
15 the Foreclosure Deed expressly disclaimed any warranties as to the quality of title being
16 conveyed.

17 **B. BREACH OF DUTY OF GOOD FAITH FAILS AS A MATTER OF LAW**

18 Plaintiff alleges that the HOA breached its duty of good faith under NRS
19 116.1113 by failing to disclose the prior owner's payment. Compl. ¶ 77. This allegation
20 is without merit. While NRS 116.1113 imposes a duty of good faith ***in the performance***
21 ***of every contract or duty governed by the statute***, the only "duties" owed are
22 outlined in sections 116.3116 through 116.31168. Here, the HOA fully complied with
23 these duties by complying with all notice and recording requirements set forth in NRS
24 116 as it existed at the time of the sale. As established by the Prior Litigation, the
25 nonjudicial foreclosure sale was valid, meaning there was no defect in the underlying
26 sale. *See generally*, Exhibit A.

27 Additionally, nothing in NRS 116.1113, in effect at the time of the nonjudicial
28 foreclosure sale imposed a duty to disclose a payment. *See* Section A, *supra*.

1 Compare, NRS 116.31162(1)(b)(3)(11) (2017) (requiring an HOA to disclose if tender of
2 the superpriority portion of the lien) with NRS 116.31162 (2005) (no disclosure
3 requirement).⁴

4 The HOA was not required to disclose the existence of a pre-sale payment.
5 Further, it was specifically prohibited from giving any purchaser at the auction a so-
6 called warranty deed—the only type of deed it could give to any purchaser was one
7 made “without warranty” pursuant to NRS 116.31164(3)(a). Accordingly, Plaintiff’s claim
8 for breach of good faith based on a nonexistent duty which did not exist in NRS 116 fails
9 as a matter of law. The Court should dismiss the claim, with prejudice, or grant
10 summary judgment in favor of the HOA.

11 **C. PLAINTIFF’S CONSPIRACY CLAIM FAILS AS A MATTER OF LAW**

12 A nonjudicial foreclosure, and the procedures therein, are expressly authorized
13 by statute, and are not unlawful. Accordingly, Plaintiff’s conspiracy claim fails as a
14 matter of law because there was no unlawful objective by the HOA in its attempt to
15 collect past due assessments from the prior homeowner, through a publicly noticed and
16 conducted auction.

17 To establish a claim for civil conspiracy, a plaintiff must show (1) defendants, by
18 acting in concert, intended to accomplish an unlawful objective for the purpose of
19 harming plaintiff; and (2) plaintiff sustained damages resulting from defendants’ act or
20 acts. *See Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 971
21 P.2d 1251 (1999); *see also Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98
22 (1998). Plaintiff cannot meet this evidentiary burden. Even in the context of a
23 nonjudicial foreclosure, a conspiracy claim requires unlawful conduct.⁵

24 _____
25 ⁴ See the following decisions, cited only for their persuasive authority: *Cypress v. Foothills at Macdonald*
26 *Ranch Master Ass’n*, No. 78849, 2020 Nev. Unpub. LEXIS 999, at *2 (Oct. 16, 2020) (no duty to disclose
27 tender of payment); *Tangiers Drive Tr. v. Foothills at Macdonald Ranch Master Ass’n*, No. 78564, 2020
28 Nev. Unpub. LEXIS 996, at *3 (Oct. 16, 2020) (same); *Ln Mgmt. Llc Series 4980 Droubay v. Squire Silver*
Springs Cmty. Ass’n, No. 79035, 2020 Nev. Unpub. LEXIS 1009, at *2 (Oct. 16, 2020) (same).

⁵ *See for additional persuasive authority: Mann St. v. Elsinore Homeowners Ass’n*, 466 P.3d 540 (Nev.
2020) (where breach of contract and breach of duty of good faith fail, “civil conspiracy claim necessarily
fails. *See Consol. Generator-Neu., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251,

1 Plaintiff's conclusory allegations are insufficient to show that the HOA intended to
2 accomplish an unlawful objective for the purpose of harming plaintiff. *See Romero v.*
3 *State*, No. 52420, 2009 Nev. Unpub. LEXIS 1, at *2 (July 29, 2009) (affirming dismissal
4 of "naked" and "conclusory" claims). The nonjudicial foreclosure sale was a public
5 auction where anyone present could have bid (including the HOA). Additionally, the
6 winning bidder would obtain a *nonwarranty* deed, which makes no promises (or
7 representations or effects anything unlawful) regarding the quality of title of the Property
8 passed through the sale. Additionally, during the Prior Litigation, there was no finding
9 which could show the HOA intended to harm Plaintiff by merely complying with the
10 requirements of NRS 116 to perform a valid nonjudicial foreclosure sale. *See* Exhibit A,
11 (District Court Order holding the nonjudicial foreclosure sale validly conveyed title of the
12 Property to the Plaintiff). *See also* Exhibit B, Nevada Supreme Court order of affirmance
13 of the District Court Order. The HOA's nonjudicial foreclosure sale complied with NRS
14 116 and did what NRS 116 permitted, it conveyed property to the highest bidder through
15 the nonwarranty foreclosure deed. A valid nonjudicial foreclosure sale is not an
16 unlawful act which satisfies the required elements of a conspiracy claim.

17 Finally, there can be no conspiracy under the preclusive weight of the intra-
18 corporate conspiracy doctrine, which stands for the proposition that "agents and
19 employees of a corporation cannot conspire with their corporate principal or employer
20 where they act in their official capacities on behalf of the corporation and not as
21 individuals for their individual advantage." *See Collins v. Union Federal Sav. & Loan*
22 *Ass'n*, 662 P.2d 610, 622, 99 Nev. 284, 303 (Nev., 1983). Therefore, to sustain a claim
23 for conspiracy against agents and their corporation, a plaintiff must show that one or
24 more of the agents acted outside of the scope of their employment "to render them a

25
26
27 1256 (1998) (providing that a civil conspiracy requires, among other things, a concerted action, intend[ed]
28 to accomplish an unlawful objective for the purpose of harming another") (internal quotes omitted); *see also, Bay v. Travata & Montage at Summerlin Ctr. Homeowners' Ass'n*, No. 80162, 2020 Nev. Unpub. LEXIS 994, at *2-3 (Oct. 16, 2020) (affirming dismissal of conspiracy, in absence of unlawful conduct).

1 separate person for the purposes of conspiracy.” See *Faulkner v. Arkansas Children's*
2 *Hosp.*, 69 S.W.3d 393, 407, 347 Ark. 941, 962 (Ark.,2002).

3 Plaintiff has not plead facts sufficient to meet this standard. The Complaint lacks
4 any specific allegations that the HOA acted outside of its scope as stated in NRS 116.
5 Even if the Complaint was properly plead with specificity, it would be disingenuous and
6 inconsistent with the District Court’s Order from the Prior Litigation. The logical outcome
7 of pleading a nonjudicial foreclosure defect (conspiracy) would necessarily result in
8 finding the nonjudicial foreclosure sale void or setting it aside, with Plaintiff losing the
9 Property—probably not what the Plaintiff wants to happen. The Prior Litigation and the
10 Nevada Supreme Court has already ruled a valid foreclosure took place. Based upon
11 the foregoing reasons, the conspiracy claim must be dismissed with prejudice, or
12 alternatively, summary judgment should be entered in the HOA’s favor.

13 **D. NRS 113 DOES APPLY AND DOES NOT CREATE A DUTY FOR AN HOA TO**
14 **DISCLOSE A PREFORECLOSURE PAYMENT**

15 The Court should dismiss the violation of NRS 113 claim because NRS 113 does
16 not apply to a nonjudicial foreclosure under NRS 116, nor does NRS 113 require
17 disclosure of preforeclosure payments. See *Saticoy Bay v. Silverstone Ranch Cmty.*
18 *Ass’n*, No. 80039, 2020 Nev. Unpub. LEXIS 993, at *2 (Oct. 16, 2020) (NRS 113
19 requires disclosure of “defects” not “superpriority tenders”). In As noted *ad nauseam*
20 above, an HOA’s duty in a nonjudicial foreclosure sale is to comply with NRS 116. NRS
21 116 does not incorporate or reference NRS 113, nor does NRS 113 incorporate or
22 reference NRS 116. Injecting the requirements of NRS 113 makes no sense in a
23 nonjudicial foreclosure sale context.

24 Other district courts agree, and though not mandatory authority, decisions in this
25 district have concluded:

26 ///

27 ///

28 ///

1 [NRS] § 113 [is] inapplicable here as NRS § 116 provides different
2 procedures and rights in HOA foreclosure sales. Specifically, for
3 example, NRS § 116 does not require an SRPD, or recording of a
4 subordination of a lien. See, *SFR Invs. Pool 1. LLC*, 427 P.3d 113. For
this same reason, the NRED handbook is inapplicable because it
specifically discusses the SPRD under NRS § 113, not NRS § 116.

5 Moreover, pursuant to NRS § 113.1100 (s), a seller is a person who
6 sells or intends to sell any residential property. Pursuant to NRS § 116,
7 the HOA was a foreclosing association and not a seller as defined
8 under NRS § 113.130. NRS § 116 precludes the requirement of NRS §
9 113 for a SRPD as the foreclosure auction process does not follow the
sale process referenced in NRS § 113 and the Investors claim for
violation of NRS § 113 must be dismissed.

10 *Saticoy Bay LLC Series 9076 Quarystone v. Md. Pebble at Silverado Homeowners*
11 *Ass'n*, 2019 Nev. Dist. LEXIS 1009, *4 (Eighth Judicial District, Sept. 23, 2019). See
12 also *Hitchen v. S. Valley Ranch Cmty. Ass'n*, 2020 Nev. Dist. LEXIS 277, *15 (same).

13 Additionally, even if NRS 113 applies, (which it does not) the claim is time-barred
14 because NRS 113 sets forth a one or two year statute of limitation. See NRS
15 113.150(4): "[a]n action to enforce the provisions of this subsection must be
16 commenced not later than 1 year after the purchaser discovers or reasonably should
17 have discovered the defect or 2 years after the conveyance of the property to the
18 purchaser, whichever occurs later."

19 In this case, based on the date of the conveyance, the nonjudicial foreclosure
20 occurred on May 11, 2012 (Compl. ¶ 2). Thus, Plaintiff had two years, or until May 11,
21 2014 to bring a claim. The Complaint was filed on August 20, 2020, more than eight
22 years past the conveyance and more than six years past the expiration of the statute of
23 limitation.

24 Alternatively, based on the discovery of the alleged defect (which is not a defect),
25 Plaintiff alleges the disclosure of the alleged defect (a payment) occurred on August 24,
26 2017 (Compl. ¶ 41). Accordingly, the statute of limitation expired one year after the
27 disclosure, on August 24, 2018. The complaint was filed on August 20, 2020, nearly
28 two years too late.

1 The claim fails substantively or procedurally. Thus, the Court may dismiss the
2 complaint with prejudice, or grant summary judgment in favor of the HOA.

3 **V. CONCLUSION**

4 Based on the foregoing, the Court should dismiss the complaint, with prejudice,
5 or alternatively, the Court may grant summary judgment in favor of the HOA because
6 none of the allegations state claims upon which relief can be granted. The Plaintiff has
7 already established the character of the title it obtained through the District Court's
8 Order in the Prior Litigation. The claims fail and there is no genuine factual issue.

9 Dated this 10th day of November, 2020.

10 LIPSON NEILSON P.C.

11 */s/ Peter E. Dunkley*

12 By: _____

13 KALEB D. ANDERSON, ESQ.

Nevada Bar No. 7582

14 PETER E. DUNKLEY, ESQ.

Nevada Bar No. 11110

15 9900 Covington Cross Drive, Suite 120

16 Las Vegas, Nevada 89144

17 *Attorneys for Defendant,*

18 *Harbor Cove Homeowners Association*

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2020, an electronic copy of the following **HARBOR COVE HOMEOWNERS ASSOCIATION'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT** was filed and e-served via the Court's electronic service system to all persons who have registered for e-service in this case:

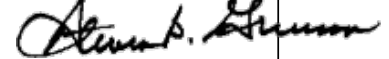
Roger P. Croteau, Esq. Chet Glover, Esq. ROGER P. CROTEAU & ASSOCIATES, LTD. 2810 W. Charleston Blvd., Suite 75 Las Vegas, Nevada 89148 Attorney for Plaintiff	
--	--

/s/ Brenda Correa

An Employee of LIPSON NEILSON P.C.

EXHIBIT A

EXHIBIT A



NEOJ
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*Attorneys for defendant/counterclaimant
Nationstar Mortgage LLC*

DISTRICT COURT
CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,
Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC;
MERIDIAN FORECLOSURE SERVICE
F/K/A MTDS, INC., A CALIFORNIA
CORPORATION DBA MERIDIAN TRUST
DEED SERVICE; AND THOMAS D.
MILLER,

Defendants.

Case No.: A-13-683467-C
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT/
COUNTERCLAIMANT NATIONSTAR
MORTGAGE LLC'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFF/COUNTER-
DEFENDANT RIVER GLIDER AVENUE
TRUST'S MOTION FOR SUMMARY
JUDGMENT**

NATIONSTAR MORTGAGE, LLC,
Counterclaimant,

vs.

RIVER GLIDER AVENUE TRUST; LAKE
HILLS DRIVE TRUST; HARBOR COVE
HOMEOWNERS ASSOCIATION; NEVADA
ASSOCIATION SERVICES, INC.; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER GRANTING DEFENDANT/**
3 **COUNTERCLAIMANT NATIONSTAR MORTGAGE LLC'S MOTION FOR**
4 **SUMMARY JUDGMENT AND DENYING PLAINTIFF/COUNTER-DEFENDANT**
5 **RIVER GLIDER AVENUE TRUST'S MOTION FOR SUMMARY JUDGMENT** has been
6 entered by this Court on the 11th day of July, 2018, in the above-captioned matter. A copy of
7 said Order is attached hereto as **Exhibit A.**

8 Dated this 12th day of July, 2018

9 **AKERMAN LLP**

10 /s/ Donna M. Wittig

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Nevada Bar No. 8386

DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

14 *Attorneys for defendant/counterclaimant,*
15 *Nationstar Mortgage, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 12th day of July, 2018, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT/COUNTERCLAIMANT NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF/COUNTER-DEFENDANT RIVER GLIDER AVENUE TRUST'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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/s/ Carla Llarena

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

Steven D. Grierson

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*Attorneys for defendant/counterclaimant
Nationstar Mortgage LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,
Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC;
MERIDIAN FORECLOSURE SERVICE
F/K/A MTDS, INC., A CALIFORNIA
CORPORATION DBA MERIDIAN TRUST
DEED SERVICE; AND THOMAS D.
MILLER,

Defendants.

Case No.: A-13-683467-C
Dept. No.: XVI

**ORDER GRANTING
DEFENDANT/COUNTERCLAIMANT
NATIONSTAR MORTGAGE LLC'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF/COUNTER-
DEFENDANT RIVER GLIDER AVENUE
TRUST'S MOTION FOR SUMMARY
JUDGMENT**

NATIONSTAR MORTGAGE, LLC,
Counterclaimant,

vs.

RIVER GLIDER AVENUE TRUST; LAKE
HILLS DRIVE TRUST; HARBOR COVE
HOMEOWNERS ASSOCIATION; NEVADA
ASSOCIATION SERVICES, INC.; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

JUN 22 2018

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

<input checked="checked" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Judgment of Arbitration
<input type="checkbox"/> Voluntary Dismissal
<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Stipulated Dismissal
<input type="checkbox"/> Motion to Dismiss by Deft(s)

1 Defendant/counterclaimant, Nationstar Mortgage LLC (**Nationstar**)'s motion for
2 summary judgment (**Nationstar's motion**) regarding tender and statutorily defective
3 foreclosure sale, plaintiff/counter-defendant River Glider Avenue Trust (**plaintiff**)'s motions
4 for summary judgment (**plaintiff's motion**) and defendant/counter-defendant Harbor Cove
5 Homeowners Association (**Harbor Cove**)'s limited joinder to plaintiff's motion for summary
6 judgment came before the Court on December 7, 2017 at 9:00 a.m. Rock Jung, Esq. appeared
7 on behalf of Nationstar and Adam R. Trippiedi appeared on behalf of plaintiff. The Court
8 ordered the parties to submit supplemental briefing and continued the hearing to February 8,
9 2018. Specifically, plaintiff's supplemental brief was due January 15, 2018 and Nationstar's
10 reply brief was due January 29, 2018.

11 The motions and supplemental briefing came on for hearing before the Court on
12 February 8, 2018 at 9:00 a.m. Donna M. Wittig appeared on behalf of Nationstar; Michael F.
13 Bohn appeared on behalf of plaintiff; and Karen Kao appeared on behalf of Harbor Cove. The
14 Court continued the hearing to April 12, 2018 pending the Supreme Court's determination
15 whether they will grant the motion for reconsideration in *Saticoy Bay LLC Series 2141 Golden*
16 *Hill v. JP Morgan Chase Bank*, No. 71246, 408P.3d 558 (Nev. Dec. 22, 2017) (unpublished)
17 and if no decision rendered prior to the continued hearing, the Court would provide a decision
18 at the April 12, 2018 hearing.

19 The motions again came on for hearing on April 12, 2018. Natalie L. Winslow, Esq.
20 appeared on behalf of Nationstar; Michael F. Bohn, Esq. appeared on behalf of plaintiff and
21 Julie Funai, Esq. appeared on behalf of Harbor Cove. The Court, having reviewed Nationstar
22 and plaintiff's motions, joinder, the oppositions, replies, supplemental briefing, the exhibits, all
23 papers and pleadings, and oral argument of counsel, and for good cause appearing, makes the
24 following findings of fact and conclusions of law.

25 ...

26 ...

27 ...

28

1 **FINDINGS OF FACT**

2 1. On or about April 19, 2005, Miller purchased the Property.

3 2. The Deed of Trust executed by Miller identified Cameron Financial Group, Inc.
4 DBA 1st Choice Mortgage as the Lender, Fidelity National Title as the Trustee and secured a
5 loan in the amount of \$631,000.00 (hereinafter the "Miller Loan").

6 3. On April 19, 2012, a Corporate Assignment of Deed of Trust was recorded
7 which assigned all beneficial interest under the Deed of Trust to Aurora Bank FSB.

8 4. On August 31, 2012, an Assignment of Deed of Trust was recorded by which
9 Aurora Bank FSB assigned all its beneficial interest under the Deed of Trust to Nationstar.

10 5. Mr. Miller defaulted on his obligation to pay HOA assessments beginning in
11 December 2008.

12 6. On July 26, 2010, a Notice of Delinquent Assessment Lien was recorded against
13 the Property by NAS, with a lien amount of \$1,032.01.

14 7. In 2009 and 2010, the HOA assessments were \$70.00 per month.

15 8. On September 3, 2010, a Notice of Default and Election to Sell under
16 Homeowners Association Lien was recorded against the Property by HOA Trustee on behalf of
17 HOA, with a lien amount of \$2,110.87.

18 9. On March 31, 2011, a Notice of Foreclosure Sale was recorded against the
19 Property by HOA the Trustee, with a lien amount of \$3,451.55.

20 10. In April 2011, Mr. Miller offered a settlement of his HOA assessments of
21 \$1,232.88, which was \$69.43 less than what Mr. Miller owed. Harbor Cove accepted Mr.
22 Miller's settlement offer, waiving the balance of \$69.43. Mr. Miller made the required
23 payment by check dated May 27, 2011. Of Mr. Miller's payment, Harbor Cove credited
24 \$500.00 to his assessment account on June 11, 2011, and credited two \$200.00 payments (total
25 \$400.00) to his assessment account on August 30, 2011.

26 11. Mr. Miller continued to accrue assessments, and he never satisfied NAS's fees
27 and costs in full.

28 12. Harbor Cove, through NAS, proceeded to foreclose.

13. On April 16, 2012, a second Notice of Foreclosure Sale was recorded against the Property by HOA Trustee, with a lien amount of \$3,346.53.

14. A non-judicial foreclosure sale occurred on May 11, 2012 (hereinafter the "HOA Sale").

15. River Glider Avenue Trust purchased the Property for \$5,500.00.

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

CONCLUSIONS OF LAW

1. Summary judgment is proper when there is no issue of material fact and the moving party is entitled to judgment as a matter of law. Nev. R. Civ. P. 56(c); *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030 (Nev. 2005). After the movant has carried its burden to identify issues where there is no genuine issue of material fact, the non-moving party must "set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood*, 121 Nev. at 732. Summary judgment is particularly appropriate where issues of law are controlling and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P.2d 274, 277 (1979).

2. The super-priority portion of the HOA's lien is equal to the amount of assessments that "would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien" *See* NRS 116.3116(2). A party has instituted "an action to enforce the lien" for purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment. *Saticoy Bay LLC Series 2021 Gray Eagle Way* 338 P.3d at 231. Here, the HOA provided its notice of delinquent assessment on July 26, 2010.

3. The superpriority, as calculated from the nine months preceding the recording of the notice of delinquent assessment lien, was \$630.00 (\$70.00 x 9 months).

4. The HOA's super-priority lien was extinguished by the homeowner's satisfaction of the super-priority. *Saticoy Bay LLC Series 2141 Golden Hill v. JP Morgan Chase Bank*, No. 71246, 408P.3d 558 (Nev. Dec. 22, 2017) (unpublished). Payments made by

1 the homeowner are held to have been applied first to the super-priority portion of the HOA's
2 lien as a matter of law.

3 5. The homeowner's satisfaction of the super-priority portion of the HOA's lien
4 preserved Nationstar's deed of trust.

5 6. River Glider Avenue Trust purchased the property subject to Nationstar's deed
6 of trust.

7 7. Because the homeowner's super-priority satisfaction is dispositive of the case,
8 the court does not address the remaining issues.

9 8. If any of these conclusions of law are more properly considered findings of fact,
10 they should be so construed.

11 **ORDER**

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Nationstar's
13 Motion for Summary Judgment is **GRANTED**, and plaintiff River Glider Avenue Trust's
14 Motion for Summary Judgment is **DENIED**;

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Harbor Cove's
16 limited joinder in plaintiff River Glider Avenue Trust's Motion for Summary Judgment is
17 **DENIED**;

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the super-
19 priority portion of the HOA's lien, recorded on or about July 26, 2010, was discharged and
20 extinguished prior to the HOA foreclosure sale;

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that River Glider
22 Avenue Trust purchased an interest in the Property, commonly known as 8112 Lake Hill
23 Drive, Las Vegas, Nevada 89128, APN Number 138-16-213-034, subject to the deed of trust
24 recorded on February 14, 2006 as Document Number 20070327-0004833;

25 ...

26 ...

27 ...

28 ...

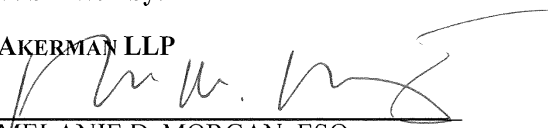
IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all remaining claims not specifically mentioned, including all remaining claims in the complaint and counterclaims, are dismissed with prejudice.

Dated: 7/3/18, 2018


DISTRICT COURT JUDGE BT

Submitted by:

AKERMAN LLP


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*Attorneys for defendant/counterclaimant,
Nationstar Mortgage, LLC*

Approved as to form and content by:


Dated: April __, 2018

Dated: May 30, 2018

LIPSON, NEILSON, COLE, SELTZER & GARIN,
P.C.

LAW OFFICES OF MICHAEL F. BOHN,
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*Attorneys for defendant/counter-defendant
Harbor Cove Homeowners Association*

*Attorneys for plaintiff/counter-defendant
River Glider Avenue Trust*

EXHIBIT B

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVER GLIDER AVENUE TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 76683

FILED

MAY 15 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an action to quiet title. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge. Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we affirm.¹

After the HOA foreclosure agent issued a notice of delinquent assessments, the homeowner entered into settlement agreements with both the HOA and the HOA's foreclosure agent. The homeowner paid the HOA the agreed-upon amount in order to settle the money owed to it for delinquent assessments and any late fees, and entered into a payment plan with the foreclosure agent to settle the amounts owed for the foreclosure agent's fees and costs. The district court concluded that the homeowner's payment to the HOA cured the superpriority default, such that the purchaser at the later foreclosure sale took title to the property subject to respondent's first deed of trust.

We recently held in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8, 459 P.3d 227, 232 (2020), that payments made

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

by a homeowner could cure the default on the superpriority portion of an HOA lien such that the HOA's foreclosure sale would not extinguish the first deed of trust on the subject property. Whether a homeowner's payments actually cure a superpriority default, however, depends upon the actions and intent of the homeowner and the HOA and, if those cannot be determined, upon the district court's assessment of justice and equity. See *id.* at 231 (explaining that "[i]f neither the debtor nor the creditor makes a specific application of the payment, then it falls to the [district] court to determine how to apply the payment").

In this case, the district court correctly determined that the homeowner's payments could cure the default on the superpriority portion of the HOA's lien. The district court also correctly determined, based on the evidence before it, that the HOA and the homeowner intended for the homeowner's payment to cure the delinquent assessments incurred before the notice of delinquent assessments. Indeed, the emails between the homeowner, foreclosure agent, and HOA, and the foreclosure agent's testimony, leaves no doubt that the HOA and the homeowner intended for the homeowner's payment to cure the amounts in the notice of delinquent assessment,² which would include the nine months of assessments comprising the superpriority default amount. See NRS 116.3116(2) (2012) (describing the superpriority component of an HOA's lien as "the

²Because the HOA and the homeowner's settlement was premised on the agreement that the homeowner's payment would cure the delinquent assessments comprising the amount in the notice of delinquent assessments, we are not concerned with how the HOA or foreclosure agent actually applied the homeowner's payment to the amounts owed. See 9352 *Cranesbill*, 459 P.3d at 231 (recognizing that a debtor may direct how his payment is applied to various debts).

assessments for common expenses . . . which would have become due . . . during the 9 months immediately preceding institution of an action to enforce the lien”); *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A. (Gray Eagle)*, 133 Nev. 21, 25-26, 388 P.3d 226, 231 (2017) (recognizing that, under the pre-2015 version of NRS 116.3116, serving a notice of delinquent assessments constitutes institution of an action to enforce the lien). And, because the homeowner’s payment cured the superpriority default, the district court correctly determined that any purchaser at a later foreclosure sale would purchase the property subject to the first deed of trust on the property. *See 9352 Cranesbill*, 459 P.3d at 229.

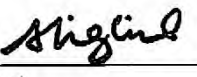
Although appellant correctly points out that there were new unpaid monthly assessments at the time of the sale, these unpaid monthly assessments could not have comprised a new superpriority lien absent a new notice of delinquent assessment. *See* NRS 116.3116(2) (2012) (limiting the monthly assessments subject to superpriority status as those incurred “during the 9 months immediately preceding institution of an action to enforce the lien”); *Gray Eagle*, 133 Nev. at 25-26, 388 P.3d at 231 (holding that serving the notice of delinquent assessments institutes proceedings to enforce the HOA’s lien); *cf. Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 133 Nev. 462, 466-67, 401 P.3d 728, 731-32 (2017) (observing that an HOA must restart the foreclosure process in order to enforce a second superpriority lien). And foreclosure fees and costs are never part of an HOA’s superpriority lien. *See* NRS 116.3116(2) (2009); *Horizons at Seven Hills Homeowners Ass’n v. Ikon Holdings, LLC*, 132 Nev. 362, 373, 373 P.3d 66, 73 (2016) (holding that a superpriority lien “does not include an additional amount for the collection fees and foreclosure costs” incurred preceding a foreclosure sale). We also need not address appellant’s

purported bona-fide-purchaser status when, as here, the superpriority default is cured before the foreclosure sale.³ See *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (providing that a party's status as a bona fide purchaser is irrelevant when the superpriority default is cured before the foreclosure sale).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Stiglich


_____, J.
Silver

cc: Hon. Timothy C. Williams, District Judge
Janet Trost, Settlement Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk

³We also decline to address appellant's arguments that equitable considerations did not warrant ruling in respondent's favor when the district court's decision was not based in equity.

EXHIBIT C

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVER GLIDER AVENUE TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 76683

FILED

JUL 01 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

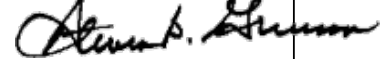
It is so ORDERED.

[Signature], J.
Gibbons

[Signature], J.
Stiglich

[Signature], J.
Silver

cc: Hon. Timothy C. Williams, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk



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 RIVER GLIDER AVENUE TRUST,

15 Plaintiff,

16 vs.

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

20 Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: XX

**NEVADA ASSOCIATION SERVICES,
INC.'S JOINDER TO DEFENDANT
HARBOR COVE HOMEOWNERS
ASSOCIATION'S MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR
SUMMARY JUDGMENT**

21 COMES NOW, NEVADA ASSOCIATION SERVICES, INC. (hereinafter "NAS"), and
22 hereby submits its Joinder to MOTION TO DISMISS RIVER GLIDER AVENUE TRUST'S
23 Complaint. NAS incorporates the arguments, points and authorities, and Exhibits set forth by
24 HARBOR COVE HOMEOWNERS ASSOCIATION as though fully set forth herein.

25 **CONCLUSION**

26 For all the reasons set forth in its Motion, HARBOR COVE HOMEOWNERS
27 ASSOCIATION'S Motion to Dismiss RIVER GLIDER AVENUE TRUST'S Complaint should be

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GRANTED as to HARBOR COVE HOMEOWNERS ASSOCIATION and NAS.

Dated this 10th day of November, 2020.

By: /s/Brandon E. Wood
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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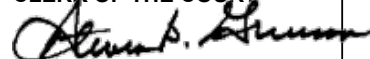
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of November, 2020, 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 Defendant Harbor Cove Homeowners Association’s Motion to Dismiss or in the Alternative 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	Croteau Admin receptionist@croteaulaw.com
Peter Dunkley, Esq. Lipson Neilson pdunkley@lipsonneilson.com	

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



1 **OPPS**

2 ROGER P. CROTEAU, ESQ.

Nevada Bar No. 4958

3 RAYMOND JEREZA, ESQ.

Nevada Bar No. 11823

4 ROGER P. CROTEAU & ASSOCIATES, LTD

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Las Vegas, Nevada 89102

6 (702) 254-7775

(702) 228-7719 (facsimile)

7 croteaulaw@croteaulaw.com

8 ray@croteaulaw.com

Attorneys for Plaintiff

9
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 RIVER GLIDER AVENUE TRUST,

13 Plaintiff,

14 vs.

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

18 Defendants.

Case No: A-20-819781-C

Dept No: 20

**PLAINTIFF'S OPPOSITION TO
HARBOR COVE HOMEOWNERS
ASSOCIATION'S MOTION TO
DISMISS OR IN THE ALTERNATIVE
SUMMARY JUDGMENT AND
NEVADA ASSOCIATION SERVICES,
INC.'S JOINDER THERETO**

19
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21
22
23 COMES NOW, Plaintiff, RIVER GLIDER AVENUE TRUST, by and through its
24 attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Opposition to
25 Harbor Cove Homeowners Association Motion to Dismiss (the "*HOA's Motion*") and Nevada
26 Association Services, Inc.'s Joinder (the "*HOA Trustee's Motion*"). This Opposition is made and
27 based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file
28

1 herein, and any oral argument that this Honorable Court may entertain at the time of hearing of
2 this matter.

3 DATED this 24th day of November, 2020.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5
6 /s/ Raymond Jereza

7 Roger P. Croteau, Esq.
8 Nevada Bar No. 4958
9 Raymond Jereza, Esq.
10 Nevada Bar No. 11823
11 2810 W. Charleston Blvd., Ste. 75
12 Las Vegas, Nevada 89102
13 Attorneys for Plaintiff

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 I. INTRODUCTION

16 Nevada law, NRS 116 *et seq.*, governs the collection of assessments, charges, fines and
17 other sums that may be due in a common ownership interest community or homeowners'
18 association concerning real property that comprise the members of the homeowners' association.
19 In such a scheme, the developer generally establishes the Covenants, Conditions and Restrictions
20 ("CC&Rs"), along with the general governing documents that are recorded when the common-
21 interest community is formed and run with the real property so long as the homeowner's
22 association is in existence. The filing and recording of the CC&Rs establishes the priority date of
23 collection subject to NRS 116.3116. As such, homeowners' associations have the right to charge
24 real property owners within the common-interest community for assessments to cover the
25 homeowner's associations' expenses as outlined in the CC&Rs for maintaining, governing and/or
26 improving the community among other things. When the sums due pursuant to the CC&Rs are not
27 paid, such as assessments and other expenses, the homeowner's association under NRS 116 *et seq.*
28 may impose a lien against the real property which it governs, and thereafter foreclose upon that
real property subject to the CC&Rs in a non-judicial foreclosure sale.

1 Though non-judicial foreclosure sales in the State of Nevada are generally governed by
2 NRS 107 *et seq.*; however, the legislature in 1991 enacted NRS 116, as amended, to specifically
3 address the special needs of homeowners' associations to enforce their liens against real property
4 owners in the common-interest community to ensure the survival of the homeowner's association.
5 Pursuant to NRS 116, certain unique modifications to the general statutory scheme of NRS 107
6 were enacted by the legislature. It is the unique features of NRS 116 *et seq.* that prompted
7 Plaintiff's Complaint; specifically, the bifurcation of the Deed of Trust priority into two pieces
8 creating two very different legal and economic implications: (1) super-priority portion and (2) sub-
9 priority portion of the Deed of Trust secured by the Property.

10 In the pre-2015 version of NRS 116.3116 effective at the relevant time in this case, it
11 provides, in pertinent part:

12 NRS 116.3116 Liens against units for assessments.

13 1. The association has a lien on a unit for any construction penalty that is imposed
14 against the unit's owner pursuant to NRS 116.310305, any assessment levied
15 against that unit or any fines imposed against the unit's owner from the time the
16 construction penalty, assessment or fine becomes due. Unless the declaration
17 otherwise provides, any penalties, fees, charges, late charges, fines and interest
18 charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS
19 116.3102 are enforceable as assessments under this section. If an assessment is
20 payable in installments, the full amount of the assessment is a lien from the time
21 the first installment thereof becomes due.

22 2. A lien under this section is prior to all other liens and encumbrances on a unit
23 except:

24 (a) Liens and encumbrances recorded before the recordation of the declaration
25 and, in a cooperative, liens and encumbrances which the association creates,
26 assumes or takes subject to;

27 (b) A first security interest on the unit recorded before the date on which the
28 assessment sought to be enforced became delinquent or, in a cooperative, the first
security interest encumbering only the unit's owner's interest and perfected before
the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges
against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) 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

1 the periodic budget adopted by the association pursuant to NRS 116.3115 which
2 would have become due in the absence of acceleration during the 9 months
3 immediately preceding institution of an action to enforce the lien, unless federal
4 regulations adopted by the Federal Home Loan Mortgage Corporation or the
5 Federal National Mortgage Association require a shorter period of priority for the
6 lien. If federal regulations adopted by the Federal Home Loan Mortgage
7 Corporation or the Federal National Mortgage Association require a shorter
8 period of priority for the lien, the period during which the lien is prior to all
9 security interests described in paragraph (b) must be determined in accordance
10 with those federal regulations, except that notwithstanding the provisions of the
11 federal regulations, the period of priority for the lien must not be less than the 6
12 months immediately preceding institution of an action to enforce the lien. This
13 subsection does not affect the priority of mechanics' or materialmen's liens, or the
14 priority of liens for other assessments made by the association.

15
16 In *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014) the Nevada Supreme
17 Court stated:

18 As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces, a
19 superpriority piece and a subpriority piece. The superpriority piece, consisting of the last
20 nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is
21 "prior to" a first deed of trust. The subpriority piece, consisting of all other HOA fees or
22 assessments, is subordinate to a first deed of trust. See *SFR Investments Pool 1 v. U.S.
23 Bank*, 334 P.3d at 411 ("*SFR Investments*").

24 NRS 116.3116(2)(b) makes a homeowner's association's lien for assessments junior to a
25 Deed of Trust beneficiary's secured interest in the real property; with one limited exception,
26 provided for in NRS 116.3116(2)(c), a homeowner's association's lien is senior in priority to a
27 Deed of Trust beneficiary's secured interest "to the extent of any charges incurred by the
28 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). In
Nevada, when a homeowners association properly forecloses upon a lien containing a
superpriority lien component, such foreclosure extinguishes a Deed of Trust. If the homeowner's
association does not properly foreclose on a super-priority homeowner's association lien or the

1 super-priority portion is paid before the foreclosure sale, the homeowner's association foreclosure
2 sale does not extinguish the Deed of Trust.

3 The facts as alleged in this Complaint create an issue of first impression in the State of
4 Nevada. As the court is aware, the statutory foreclosure scheme of NRS 116.3116 and related
5 sections creates unique bifurcated priority liens related to the Deed of Trust. Under NRS 107, non-
6 judicial foreclosure sales where the bidders at NRS 107 sales have available public information
7 regarding the priority of the deed of trust being foreclosed, the priority of the Deed of Trust at the
8 homeowner's association foreclosure sale cannot be determined by a bidder at the homeowner's
9 association foreclosure sale from a review of public information, record searches, title reports or
10 other means commonly and regularly relied upon by bidders in NRS 107 sales.

11 Generally, foreclosure trustees in NRS 107 sales have limited duty to the bidders of the
12 property being foreclosed upon. The body of common law has developed from the precept that
13 information exists in the public domain to conduct reasonable due diligence under the
14 circumstances to properly inform a potential bidder, however, that information is not available
15 under any circumstances to the bidder in a NRS 116 sale.

16 This case focuses on the duties and obligations owed by a homeowner's association by and
17 through its agent, the foreclosure trustee to inform the bidders at the foreclosure sale as to the
18 bifurcated status of the Deed of Trust secured by the property. The question is with or without
19 inquiry from an NRS 116 bidder and certainly to the actual purchaser of the homeowner's
20 foreclosure sale, does that homeowner's association and/or its foreclosure trustee have an
21 obligation of good faith and candor to the NRS 116 foreclosure bidders to disclose any attempted
22 and/or actual tender of the super-priority lien amounts, thereby rendering the sale subject to the
23 Deed of Trust or not?

24 II. STATEMENT OF FACTS

- 25 1. On or about April 19, 2005, Thomas D. Miller (the "Former Owner") purchased the Property.
26 Thereafter, the Former Owner obtained a loan for the Property from Cameron Financial
27 Group, Inc. ("Lender"), that was evidenced by a promissory note and secured by a deed of
28

- 1 trust between the Former Owner and Lender, recorded against the Property on March 27,
2 2007, for the loan amount of \$631,000.00 See Complaint ¶12.
- 3 2. The Former Owner executed a Planned Unit Development Riders along with the Deed of
4 Trust. See Complaint ¶14.
- 5 3. The Former Owner of the Property failed to pay to the HOA all amounts due pursuant to the
6 HOA's governing documents. See Complaint ¶15.
- 7 4. Accordingly, on July 26, 2010, Nevada Association Services, Inc. ("HOA Trustee"), on behalf
8 of Harbor Cove Homeowners Association ("HOA"), recorded a Notice of Delinquent
9 Assessment Lien (the "NODAL"). The NODAL stated that the amount due to the HOA was
10 \$1,032.01, plus continuing assessments, interest, late charges, costs, and attorney's fees (the
11 "HOA Lien"). See Complaint ¶16.
- 12 5. On September 3, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Default and
13 Election to Sell Under Homeowners Association Lien (the "NOD"). The NOD stated that the
14 HOA Lien amount was \$2,110.87. See Complaint ¶17.
- 15 6. Upon information and belief, in April 2011, the Former Owner offered a settlement of the
16 HOA Lien in the amount of \$1,232.88, which was accepted by the HOA. The Former Owner
17 made the payment by check dated May 27, 2011 (the "Attempted Payment"). Of the Former
18 Owner's Attempted Payment, the HOA credited \$500.00 to his assessment account on June
19 11, 2011 and \$400.00 to his assessment account on August 30, 2011, which cured the amount
20 of the HOA Lien entitled to priority over the Deed of Trust ("Super-Priority Lien Amount").
- 21 7. On March 30, 2012, MERS assigned the Deed of Trust to Aurora Bank FSB ("Aurora") via
22 Corporation Assignment of Deed of Trust, which was recorded against the Property on April
23 19, 2012. See Complaint ¶19.
- 24 8. On April 16, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure
25 Sale against the Property ("NOS"). The NOS stated that the total amount due the HOA was
26 \$3,346.53 and set a sale date for the Property of May 11, 2012, at 10:00 a.m., to be held at
27 Nevada Legal News. See Complaint ¶20.
- 28

- 1 9. On August 27, 2012, the Deed of Trust was assigned to Nationstar Mortgage, LLC
2 (“Nationstar”) via Assignment of Deed of Trust, which was recorded against the Property on
3 August 31, 2012. See Complaint ¶21.
- 4 10. Despite the Former Owner’s Attempted Payment, on May 11, 2012, HOA Trustee then
5 proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure
6 Deed, which stated that the HOA Trustee sold the HOA’s interest in the Property to Lake Hills
7 Drive Trust at the HOA Foreclosure Sale for the highest bid amount of \$5,500.00. See
8 Complaint ¶22.
- 9 11. The HOA Foreclosure Deed states that HOA Trustee “has complied with all requirements of
10 law ...” ¶23.
- 11 12. In none of the recorded documents, nor in any other notice recorded with the Clark County
12 Recorder’s Office, did HOA and/or HOA Trustee specify or disclose that any individual or
13 entity, including but not limited to the Former Owner, had attempted to pay any portion of the
14 HOA Lien in advance of the HOA Foreclosure Sale. See Complaint ¶24.
- 15 13. 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. See Complaint ¶25.
- 18 14. The debt owed to Lender by the Former Owner of the Property pursuant to the loan secured by
19 the Deed of Trust significantly exceeded the fair market value of the Property at the time of the
20 HOA Foreclosure Sale. See Complaint ¶26.
- 21 15. Lender alleges that its Attempted Payment of the Super Priority Lien Amount served to satisfy
22 and discharge the Super Priority Lien Amount, thereby changing the priority of the HOA Lien
23 vis a vis the Deed of Trust. See Complaint ¶32.
- 24 16. Lender alleges that the Former Owner’s Attempted Payment of the Super-Priority Lien
25 Amount served to satisfy and discharge the Super-Priority Lien Amount, thereby changing the
26 priority of the HOA Lien vis a vis the Deed of Trust. See Complaint ¶27.
- 27
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- 1 17. Lender alleges that as a result of the Former Owner's Attempted Payment of the Super-Priority
2 Lien Amount, the purchaser of the Property at the HOA Foreclosure Sale acquired title to the
3 Property subject to the Deed of Trust. See Complaint ¶28.
- 4 18. If the bidders and potential bidders at the HOA Foreclosure Sale were aware that an individual
5 or entity had attempted to pay the Super-Priority Lien Amount and/or by means of the
6 Attempted Payment prior to the HOA Foreclosure Sale and that the Property was therefore
7 ostensibly being sold subject to the Deed of Trust, the bidders and potential bidders would not
8 have bid on the Property. See Complaint ¶29.
- 9 19. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee would
10 not have received payment, interest, fees, collection costs and assessments related to the
11 Property and these sums would have remained unpaid. See Complaint ¶30.
- 12 20. HOA Trustee acted as an agent of HOA. See Complaint ¶31.
- 13 21. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the doctrine of
14 respondeat superior. See Complaint ¶32.
- 15 22. HOA and HOA Trustee conspired together to hide material information related to the
16 Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
17 acceptance of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis
18 the Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale. See
19 Complaint ¶33.
- 20 23. The information related to any Attempted Payment or payments made by the Former Owner,
21 Lender, or others to the Super-Priority Lien Amount, was not recorded and would only be
22 known by the Former Owner, Lender, the HOA, and HOA Trustee. See Complaint ¶34.
- 23 24. HOA and HOA Trustee conspired to withhold and hide the aforementioned information for
24 their own economic gain and to the detriment of the bidders and potential bidders at the HOA
25 Foreclosure Sale. See Complaint ¶35.
- 26 25. As part of Plaintiff's practice and procedure in both NRS Chapter 107 and NRS Chapter 116
27 foreclosure sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm whether
28

1 the sale was going forward on the scheduled date; and in the context of an NRS Chapter 116
2 foreclosure sale, Plaintiff would ask if anyone had paid anything on the account. See
3 Complaint ¶36.

4 26. Plaintiff 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 NOS, obtain the opening bid, so
6 Plaintiff could determine the amount of funds necessary for the auction and inquire if any
7 payments had been made; however, Plaintiff never inquired if the “Super-Priority Lien
8 Amount” had been paid. See Complaint ¶37.

9 27. At all times relevant to this matter, if Plaintiff learned of a “tender” or payment either having
10 been attempted or made, Plaintiff would not purchase the Property offered in that HOA
11 Foreclosure Sale. See Complaint ¶38.

12 28. Iyad Haddad was the trustee of the Lake Hills Drive Trust and Plaintiff at all relevant times
13 and the conveyance of title ownership of the Property from Lake Hills Drive Trust to Plaintiff
14 was done for estate planning purposes. As such, there has always been a unity of interest
15 between Lake Hills Drive Trust, Plaintiff, and the Property such that Plaintiff can raise the
16 claims in this Complaint. See Complaint ¶39.

17 29. Plaintiff reasonably relied upon the HOA and/or HOA Trustee’s material omission of “tender”
18 of the Super-Priority Lien Amount and/or the Attempted Payment when Plaintiff purchased
19 the Property. See Complaint ¶40.

20 30. Lender first disclosed the Attempted Payment by the Former Owner in Lender’s First
21 Supplemental Disclosure of Witnesses and Documents served on Plaintiff on August 24, 2017,
22 (“Discovery”) in Clark County Case No. A-13-683467-C (the “Case”). See Complaint ¶41.

23 III. PROCEDURAL BACKGROUND

24 In the Case, Plaintiff did not sue the HOA, nor the HOA Trustee. In the Case, Plaintiff
25 sued Nationstar for quiet title and declaratory relief. Plaintiff did not elect to sue the HOA and/or
26 the HOA Trustee in the Case. None of the allegations set forth in this Complaint would require a
27 compulsory claim by Plaintiff in the Case. Plaintiff filed this Complaint on August 18, 2020 to
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1 preserve its three (3) year statute of limitations pursuant to NRS 11.190 (a)-(d).

2 IV. LEGAL ARGUMENT

3 A. Statement of the Law

4 A complaint should not be dismissed for insufficiency, for failure to state a cause of action,
5 unless it appears to a certainty that the Plaintiff is entitled to no relief under any set of facts which
6 could be proven in support of the claim. *Zalk-Josephs Co. V. Wells Cargo, Inc.*, 81 Nev. 163, 400
7 P.2d 621 (1965). On a motion to dismiss for failure to state a claim for relief, the trial court, and the
8 Supreme Court must draw every fair intendment in favor of the plaintiff. *Merluzzi v. Larson*, 96 Nev.
9 409, 610 P.2d 739 (1980), overruled on the other grounds, 106 Nev. 568, 796 P.2d 592 (1990).
10 When tested by a subdivision (b)(5) motion to dismiss for failure to state a claim upon which relief
11 can be granted the allegations of the complaint must be accepted as true. *Hynds Plumbing & Heating*
12 *Co. V. Clark County School District*, 94 Nev. 776, 587 P.2d 131 (1978). A trial court may dismiss
13 a complaint **only if it appears to a certainty that a plaintiff can prove no set of facts which**
14 **would entitle him to relief**; all allegations pled must be accepted as true. *Bergmann v. Boyce*, 109
15 Nev. 670, 856 P.2d 560 (1993) (Emphasis added). In the event that a motion asserting NRCP
16 12(b)(5) presents matters outside the pleading which are not excluded by the court, the motion shall
17 be treated as one for summary judgment and disposed of as provided in NRCP 56. See NRCP 12(b).

18 Pursuant to N.R.C.P. 56, two substantive requirements must be met before a Court may grant
19 a motion for summary judgment: (1) there must be no genuine issue as to any material fact; and, (2)
20 the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight Equipment*
21 *Corp.*, 108 Nev. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under NRCP 56 when
22 the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are
23 properly before the court demonstrate that no genuine issue of material fact exists, and the moving
24 party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. Adv. Op. 73, 121 P.3d
25 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at 713, 57 P.3d at 87
26 (2003). In deciding whether these requirements have been met, the Court must first determine, in
27 the light most favorable to the non-moving party “whether issues of material fact exist, thus
28

1 precluding judgment by summary proceeding.” *National Union Fire Ins. Co. of Pittsburgh v. Pratt*
2 & *Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

3 The Nevada Supreme Court has indicated that Summary Judgment is a drastic remedy and
4 that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84 Nev.
5 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d 168 (1995).
6 “Actions for declaratory relief are governed by the same liberal pleading standards that are applied
7 in other civil actions.” See *Brelia v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258,
8 1260-61 (1993). “The formal sufficiency of a claim is governed by NRCP 8(a), which requires only
9 that the claim, shall contain (1) a short and plain statement of the claim showing that the pleader is
10 entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.”
11 See *id.* (quoting NRCP 8(a)).

12 Based upon the facts asserted in Plaintiff’s Complaint, which must be taken as true, the
13 Court should deny the HOA’s Motion and the HOA Trustee’s Joinder. Further, should the Court
14 conclude that the HOA’s Motion should be evaluated as a Motion for Summary Judgment or Partial
15 Summary Judgment, the Court should also deny the HOA’s Motion as genuine issues of material
16 fact remain and Defendants are not entitled to judgment as a matter of law.

17 **B. Plaintiff’s claim for misrepresentation does not fail as a matter of law**

18 The HOA intentionally/negligently made the determination not to disclose the Attempted
19 Payment despite its actual knowledge to the contrary known only to the HOA, HOA Trustee and
20 the Former Owner. The Court in *Foster v. Dingwall*, 126 Nev.56, 69 227 P.3d 1042,1052, 2010
21 LEXIS 5, 26, 126 Nev. Adv. Rep. 6 (2010) provided that the omission of a material fact such as the
22 BANA Attempted Payment of the HOA Lien may be deemed to be a false representation which the
23 Defendants are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to potential
24 bidders under the obligation and duty of good faith and candor to disclose upon reasonable inquiry
25 from potential bidders at the HOA Foreclosure Sale and/or the party conducting the sale with actual
26 knowledge of certain material facts such intentional omission in not disclosing the Attempted
27 Payment is equivalent to a false representation under the facts of this case.

1 Plaintiff has identified that the HOA, by and through its agent, the HOA Trustee,
2 intentionally did not disclose the Attempted Payment at the HOA Foreclosure Sale. Unlike NRS
3 107 *et seq.* sales, NRS 116 *et seq.* sales provide for a super and sub-priority lien portion of the Deed
4 of Trust. Absent of the recording of any notice of payment of the Super Priority Lien Amount, as is
5 mandated with the NRS 116 amendments in 2015, the only way Plaintiff and/or potential bidders at
6 the HOA Foreclosure Sale would know if any party tendered the Super Priority Lien Amount and/or
7 Attempted Payment is if the HOA and/or the HOA Trustee informs the bidders of the Attempted
8 Payment. It is clear from the facts of this case that the HOA Trustee was aware of the Attempted
9 Payment.

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 Complaint, Plaintiff sets forth the duty, breach of that
12 duty, improper purpose, failure to make a statement regarding the Attempted Payment, the material
13 omission of the Attempted Payment, the breach of the obligation of good faith and candor, the failure
14 to provide notice pursuant to NRS 113 *et seq.* and the damages suffered by Plaintiff.

15 In this case, the HOA, as principal for the HOA Trustee, are not guilty of a false
16 representation, but they are guilty of intentionally not disclosing a material fact regarding the
17 payment of the Attempted Payment concerning the Deed of Trust that they are required to do and
18 thereby making a material omission of a fact subject to this claim. Mr. Haddad relied upon the non-
19 disclosure of the Attempted Payment to indicate that no tender had been attempted or accomplished.

20 The HOA and/or the HOA Trustee's actions leading up to and at the HOA Foreclosure Sale
21 intentionally obstructed Plaintiff's opportunity to conduct its own due diligence regarding the
22 Property and specifically the priority of the lien being foreclosed upon, and ultimately affected
23 Plaintiff's decision whether to actually submit a bid on the Property or not.

24 It is not Plaintiff's duty to prove that the HOA Trustee believed it had a duty to disclose the
25 existence of a tender or believed that the rejection of the tender/Attempted Payment had any impact
26 on its statutory right to foreclose on its super-priority lien. It is Plaintiff's claim that the HOA and
27 the HOA Trustee had a duty to the bidding public to disclose information known to it upon
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1 reasonable inquiry, so Plaintiff and the other bidders could decide whether to purchase the Property
2 at the HOA Foreclosure Sale. The HOA and HOA Trustee intentionally, whether on a mistaken
3 belief or not of the effectiveness of the tender, failed to disclose the Attempted Payment, so they
4 would not chill the sale of the Property for their own economic gain.

5 Furthermore, it was Plaintiff's practice and procedure that when it would attend NRS 116
6 sales, by and through its Trustee, at all times relevant to this case, the Trustee would attempt to
7 ascertain whether anyone had attempted to or did tender any payment regarding the homeowner
8 association's lien.

9 Plaintiff presented the facts and argument that it sought to ascertain whether a tender had
10 occurred, or been attempted, as this information would play a prominent role in determining whether
11 Plaintiff, through Mr. Haddad, would purchase an interest in any given property. The basis for this
12 factual scenario where Plaintiff inquired as to the status of a "tender" is set forth in the complaint
13 by the reference to Plaintiff's receipt of information from the HOA and HOA Trustee "either **orally**
14 or in writing," (emphasis added) showing that Plaintiff had not solely "relied upon the (written)
15 recitals in the foreclosure deed." Mr. Haddad's affirmative efforts indicate that some steps were
16 taken to obtain information regarding the sale via verbal communication. Thus, it is likely that Mr.
17 Haddad inquired of any "tender" at the time of the HOA Sale. This factual scenario, wherein Mr.
18 Haddad verbally inquired as to the status of a "tender" in the matter, and a resulting response (or
19 lack thereof) from the HOA or HOA Trustee that did not disclose the "tender" by the holder of the
20 First Deed of Trust, would result in a violation of NRS 113 and "supply[ing] false information"
21 pursuant to *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 294, 400, 302 P.3d 1148, 1153
22 (2013), or making "a false representation" pursuant to *Nelson v. Heer*, 123 Nev. 217, 225 (2007).

23 **C. Defendants failed to conduct their obligations in good faith under NRS 116.1113**

24 The Court should deny the HOA's Motion, because Plaintiff's Complaint adequately states
25 claims for relief consistent with their obligation of good faith, honesty-in-fact, reasonable standards
26 of fair dealing and candor pursuant to NRS 116.1113 and NRS 113.130. The HOA argues that
27 Plaintiff fails to cite to any provision within NRS Chapter 116 that contains an obligation or duty of
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1 good faith to the Purchaser, thus alleging that NRS §116.1113 is not implicated. However, Plaintiff
2 respectfully disagrees. NRS 116.1113 is not only implicated but clearly governs the parties'
3 performance. Even if claims under NRS 113.130 are deemed to not be timely filed, the mandates of
4 NRS 113.130 constitute a breach of the HOA Foreclosure Deed wherein the HOA Trustee on behalf
5 of itself and its principal, the HOA, represents and warranties that the HOA Trustee "has complied
6 with all requirements of law including, but not limited to..."

7 NRS 116.1113 provides, "[e]very contract or duty governed by this chapter imposes an
8 obligation of good faith in its performance or enforcement." NRS 116.1113 provides that in "every
9 contract or duty governed by [NRS 116] the actions of the HOA and the HOA Trustee leading up
10 to and including the HOA Foreclosure Sale provide that a duty of good faith as further clarified by
11 the comment to Section 1-113 infra regarding the HOA's performance in its enforcement of the
12 provisions included in NRS Chapter 116 that constitute the foreclosure sale and selling the Property
13 to a purchaser that will eventually be a member of the HOA. Plaintiff alleges that the HOA and the
14 HOA Trustee's actions were not conducted in good faith. See Complaint. Plaintiff further alleges
15 that the HOA and the HOA Trustee intentionally and/or negligently misrepresented the conditions
16 present at the time it conducted the HOA Foreclosure Sale. See Complaint. Plaintiff further alleges
17 that the HOA and the HOA Trustee failed to disclose mandated information specifically known to
18 the HOA and the HOA Trustee regarding assessments and tender/Attempted Payment as mandated
19 by NRS 116.1113 and NRS 113.130.

20 The duties of good faith and fair dealing go hand and hand with the duty of candor. For
21 example, the Restatement (Second) of Contracts, § 205, expressly provides that "every contract
22 imposes upon each party a duty of good faith and fair dealing in its performance and in its
23 enforcement." Restat. 2d of Contracts, § 205 (2nd 1981). Comment (d) to Section 205 further
24 suggests: "fair dealing may require more than honesty." Accordingly, the duty of candor is an
25 integral component of the duty of fair dealing. Though a contract interpretation, it has application
26 in the HOA Foreclosure Sale.

1 Nevada's HOA lien statute, NRS Chapter 116.3116, is modeled after the Uniform Common
2 Interest Ownership Act of 1982 (hereinafter "UCIOA"), § 3-116, 7 U.L.A., part II 121-24 (2009)
3 (amended 1994, 2008), which Nevada adopted in 1991, see NRS 116.001. The purpose of the
4 UCIOA is "to make uniform the law with respect to the subject of this chapter among states enacting
5 it." NRS 116.1109(2). See *Carrington Mortg. Holdings, LLC v. R Ventures VIII, LLC*, 419 P.3d 703,
6 2018 Nev. LEXIS 47, 134 Nev. Adv. Rep. 46, 2018 WL 3015114 (Nev. 2018).

7 In *Carrington Mortg. Holdings, LLC*, 419 P.3d at 705, the Nevada Supreme Court made
8 clear that it would turn to case law from other jurisdictions to support its conclusions interpreting
9 the UCIOA. The Nevada courts should follow the lead set by Minnesota in holding that the UCIOA
10 imposed the duty of fair dealing which encompasses the duty of candor. For example, the Minnesota
11 Appeals Court stated that, under the Minnesota Common Interest Ownership Act, which is likewise
12 modeled after the UCIOA just as Nevada's NRS 116 *et seq.* good faith "means observance of two
13 standards: 'honesty in fact', and observance of reasonable standards of fair dealing." *Horodenski v.*
14 *Lyndale Green Townhome Ass'n, Inc.*, 804 N.W.2d 366, 373 (Minn. App. 2011) (quoting UCIOA,
15 1982, § 1-113 & cmt.). See *Dean v. CMPJ Enters., LLC*, 2018 Minn. App. Unpub. LEXIS 642,
16 2018 WL 3614146 (Minn. App. 2018).

17 Turning the UCIOA with comments from the drafters of the UCIOA; the UCIOA provides
18 comment to the provision that is exactly NRS 116.1113, that is at issue here:

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

21 **Comment**

22 This section sets forth a basic principle running throughout this Act: in transactions
23 involving common interest communities, good faith is required in the performance
24 and enforcement of all agreements and duties. Good faith, as used in this Act,
25 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.

26 Section 1-113 of the UCIOA became NRS 116.1113 verbatim. It is clear that the authors of
27 the UCIOA intended the definition of "good faith" to include two (2) standards: (1) honest-in-fact,
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1 and (2) observance of reasonable standards of fair dealing. As other jurisdictions have addressed
2 these two standards create an obligation of candor has been adopted by other jurisdictions that have
3 adopted the UCOIA.

4 The Nevada courts should further follow the lead of Delaware in recognizing that the duty
5 of fair dealing obviously includes the duty of candor. The Delaware courts have concluded that part
6 of "fair dealing" is the obvious duty of candor.

7 Part of fair dealing is the obvious duty of candor. Moreover, one possessing
8 superior knowledge may not mislead any stockholder by use of corporate
9 information to which the latter is not privy. *Lank v. Steiner*, Del. Supr., 43 Del. Ch.
10 262, 224 A.2d 242, 244 (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.

11 See *Weinberger v. Uop*, 457 A.2d 701, (Del. 1983); see also, *Brophy v. Cities Service Co.*, Del. Ch.,
12 31 Del. Ch. 241, 70 A.2d 5, 7 (Del. 1949).

13 Part of fair dealing is the obvious duty of candor. *Lynch v. Vickers Energy Corp.*, Del. Supr.,
14 383 A.2d 278, 281 (Del. 1977) (*Lynch I*). See also, *Weinberger v. Uop*, 457 A.2d 701, 710, 1983
15 Del. LEXIS 371, *26 (Del. 1983). The duty of candor is one of the elementary principles of fair
16 dealing. See *Mills Acquisition Co. v. MacMillan, Inc.*, 559 A.2d 1261, 1989 Del. LEXIS 149, Fed.
17 Sec. L. Rep. (CCH) P94,401 (Del. 1989). See also, *Holten v. Std. Parking Corp.*, 98 F. Supp. 3d
18 444, 2015 U.S. Dist. LEXIS 39152 (Conn. 2015). Compare *Osowski v. Howard*, 2011 WI App 155,
19 ¶ 17, 337 Wis. 2d 736, 807 N.W.2d 33 (WI App. Ct. 2011) where the Wisconsin Appeals Court
20 noted that the duty of fair dealing is a guarantee by each party that he or she "will not intentionally
21 and purposely do anything to prevent the other party from carrying out his or her part of the
22 agreement, or do anything which will have the effect of destroying or injuring the right of the other
23 party to receive the fruits of the contract." See *Osowski v. Howard*, 2011 WI App 155, ¶ 17, 337
24 Wis. 2d 736, 807 N.W.2d 33. See also, *Tang v. C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶41,
25 301 Wis. 2d 752, 734 N.W.2d 169 (quoting *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI
26 71, ¶35, 291 Wis. 2d 393, 717 N.W.2d 58).

1 Moreover, the official comments by the drafters of the UCIOA provide important guidance
2 in construing NRS §116.1113. See *Chase Plaza Condo. Ass'n v. JP Morgan Chase Bank, N.A.*, 98
3 A.3d 166, 175, 2014 D.C. App. LEXIS 317, *20-21 (D.C. 2014). See generally, e.g., *Alvord Inv.,*
4 *LLC v. Zoning Bd. of Appeals*, 282 Conn. 393, 920 A.2d 1000, 2007 Conn. LEXIS 193;
5 *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC*, 273 Conn. 724,
6 739-40, 873 A.2d 898 (2005); *W & D Acquisition, LLC v. First Union National Bank*, 262 Conn.
7 704, 712-13, 817 A.2d 91 (2003); *Platt v. Aspenwood Condo. Ass'n, Inc.*, 214 P.3d 1060, 1063-64
8 (Colo. App. 2009) (relying on drafters' comments to UCOIA for guidance in interpreting state
9 statute modeled on UCOIA; "We accept the intent of the drafters of a uniform act as the
10 [legislature's] intent when it adopts that uniform act.") (internal quotation marks omitted); *Hunt*
11 *Club Condos., Inc. v. Mac-Gray Servs., Inc.*, 2006 WI App 167, 295 Wis. 2d 780, 721 N.W.2d
12 117, 123-25 (Wis. Ct. App. 2006)(official and published comments are "valid indicator" of
13 legislature's intent in enacting corresponding statute); *Univ. Commons Riverside Home Owners*
14 *Ass'n v. Univ. Commons Morgantown, LLC*, 230 W. Va. 589, 741 S.E.2d 613, 2013 W. Va.
15 LEXIS 264 *16; *Will v. Mill Condo. Owners' Ass'n*, 2004 VT 22, 176 Vt. 380, 848 A.2d 336, 2004
16 Vt. LEXIS 26 (turned to commentary to interpret state statute modeled on UCOIA). In the present
17 matter, UCIOA § 1-113 cmt (1982) explicitly imposes a duty of good faith, which includes the
18 duty of candor, and this Court should rely upon the comment consistent with the above cited case
19 law.

20 Simply put, the HOA and/or the HOA Trustee could have made a simple announcement
21 that unequivocally stated that the Property was being sold subject to the Deed of Trust to all
22 potential bidders present and/or interested in bidding on the Property at the time of the HOA
23 Foreclosure Sale or even disclose the Attempted Payment. Conversely, the HOA Trustee could
24 have disclosed that the Super-Priority piece had been satisfied prior to the HOA Foreclosure Sale
25 by the Attempted Payment or at least provide information to the potential bidders of the HOA
26 Trustee's rejection of the Attempted Payment, but it did not. Neither the HOA nor the HOA
27 Trustee did so. The HOA or the HOA Trustee could have provided notice to all potential bidders,
28

1 and/or the public at large, in their actions leading up to the HOA Foreclosure Sale, such as
2 including a phrase concerning the absence of any super-priority portion of the HOA Lien being
3 foreclosed upon within any and/or all of the notices recorded against the Property and/or
4 advertising the sale, or it would have announced that fact at the sale. Similarly, neither the HOA
5 nor the HOA Trustee did so, as that would have had the effect of chilling the sale.

6 At the time of the HOA Foreclosure Sale, only three parties knew of the Former Owner's
7 Attempted Payment; specifically, the HOA, the HOA Trustee and the Former Owner. Arguably,
8 the HOA and the HOA Trustee knew that the Attempted Payment may be deemed to have satisfied
9 the HOA Lien, which was determined to extinguish any Super Priority Lien Amount piece of the
10 HOA Lien. The HOA and the HOA Trustee knew that fact and intentionally failed to disclose that
11 material fact to the bidders at the HOA Foreclosure Sale. Frankly, the HOA and HOA Trustee
12 knew or should have known that such an omission would drastically affect the outcome of the
13 HOA Foreclosure Sale. An intentional failure to disclose the Former Owner's Attempted Payment
14 had the effect of causing the Property to sell at the HOA Foreclosure Sale. Therefore, Plaintiff has
15 alleged that the HOA and the HOA Trustee intentionally withhold information regarding the
16 Former Owner's Attempted Payment of the HOA Lien that effectively defraud the public and/or
17 potential bidders concerning the HOA Foreclosure Sale.

18 The purpose underlying NRS 116 is to remove a nonperforming homeowner (meaning a
19 homeowner not paying his/her HOA dues) from a property and to replace him/her with a
20 performing homeowner, thereby relieving the homeowners association and its members of the
21 burden of paying the obligations of the nonperforming individual. To accept the HOA's contention
22 that it did not intentionally or negligently misrepresent the HOA Foreclosure Sale by omitting the
23 Attempted Payment by the Former Owner of the HOA Lien, with at a minimum an announcement,
24 and that it was under no contract or duty to operate under good faith and with candor to disclose
25 such a material fact when asked by potential bidders as mandated by NRS 116 *et seq* and/or NRS
26 113 *et seq.*, would serve to emasculate NRS 116's mandate of good faith and render it completely
27 meaningless and ineffective.
28

1 Why would any person or entity purchase a property at an HOA foreclosure sale knowing
2 that he or she would thereafter be stripped of ownership of the property upon foreclosure by a
3 secured lender? Such a foreclosure could conceivably take place days or weeks after the HOA
4 foreclosure sale. In the vast majority of cases, the answer to this question is quite simply that he or
5 she would not. Thus, lacking any market for the sale of real property securing HOA liens, the
6 homeowners associations and their members would be forced to continue to support those
7 homeowners who choose not to pay their HOA dues. Indeed, the homeowners association would
8 not have any reason to even credit bid the HOA lien at the time of sale. If the homeowners
9 association were to carry out a sale and acquire the subject property for a credit bid, there would
10 still be no party paying the HOA dues. Furthermore, the homeowners association would thereafter
11 be required to pay for taxes, insurance and other maintenance related to the property. The payment
12 of these expenses would constitute a further burden for the homeowners association and its
13 members that they can ill afford.

14 The plain language of NRS 116.1113 does not limit the good faith obligation to those in
15 contractual privity. The HOA and/or HOA Trustee are not given authority to conceal material
16 facts from potential bidders in their efforts to sell the real property to reap the sale proceeds to
17 fund their foreclosure expenses.

18 The obligations of good faith under NRS 116.1113 apply to a "Purchaser" at the
19 foreclosure sale. NRS 116.31166(3) provides that title vests in the Purchaser:

20 NRS 116.31166 Foreclosure of liens: Effect of recitals in deed; purchaser not
21 responsible for proper application of purchase money; title vested in purchaser
without equity or right of redemption.

22 1. The recitals in a deed made pursuant to NRS 116.31164 of:

23 (a) Default, the mailing of the notice of delinquent assessment, and the recording
24 of the notice of default and election to sell;

25 (b) The elapsing of the 90 days; and

26 (c) The giving of notice of sale, are conclusive proof of the matters recited.

27 2. Such a deed containing those recitals is conclusive against the unit's former
28 owner, his or her heirs and assigns, and all other persons. The receipt for the

1 purchase money contained in such a deed is sufficient to discharge the **purchaser**
2 from obligation to see to the proper application of the purchase money.

3 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests
4 in the purchaser the title of the unit's owner without equity or right of redemption.

(Emphasis added).

5 Purchaser is defined under NRS 116.3166 as follows:

6 NRS 116.079 "Purchaser" defined. "Purchaser" means a person, other than a
7 declarant or a dealer, who by means of a voluntary transfer acquires a legal or
8 equitable interest in a unit other than a leasehold interest (including options to
9 renew) of less than 20 years, or as security for an obligation.

10 The relationship of the HOA Trustee as an agent for the HOA created a new contract at the
11 HOA Foreclosure Sale for the sale of a "unit" to a "Purchaser" that as a result of its purchase shall
12 become a member of the HOA.

13 In the foreclosure section of NRS 116.3116 to NRS 116.3117, the term Purchaser refers to
14 buyers at an HOA Foreclosure Sale in addition to direct sales and as such the obligation of good
15 faith operates to encompass a successful bidder. NRS 116.1108 provides for the application of
16 general principles of law to the HOA Foreclosure Sale and the Purchaser as stated below:

17 NRS 116.1108 Supplemental general principles of law applicable. The principles
18 of law and equity, including the law of corporations, the law of unincorporated
19 associations, the law of real property, and the law relative to capacity to contract,
20 principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress,
21 coercion, mistake, receivership, substantial performance, or other validating or
22 invalidating cause supplement the provisions of this chapter, except to the extent
23 inconsistent with this chapter.

24 NRS 116.1108 actually cites the enumerated claims and issues raised in the Complaint as
25 "supplemental general principles of law applicable" to NRS 116 *et seq.* The concepts of "law and
26 equity," "law of real property," "principal and agent," "fraud, misrepresentation," "mistake" are all
27 at the basis of the claims asserted in the Complaint. Additionally, Plaintiff incorporates the
28 arguments regarding NRS 113 *et seq.* disclosures as further violations by the HOA and HOA
Trustee of their good faith and candor obligations.

a. Plaintiff Bay Relied Upon the Recital - the HOA Foreclosure Deed

The HOA Foreclosure Sale was performed pursuant to NRS 116.3116, Plaintiff reasonably
relied upon the recitals included in the HOA Foreclosure Deed that stated that the foreclosure was

1 in compliance with NRS 116, *et seq.* See *Nationstar Mortg., LLC v. SFR Investments Pool 1, LLC*,
2 *No. 70653*, 2017 Nev. App. Unpub. LEXIS 229, 2017 WL 1423938, at *2 (Nev. App. Apr. 17,
3 2017) ("And because the recitals were conclusive evidence, the district court did not err in finding
4 that no genuine issues of material fact remained regarding whether the foreclosure sale was proper
5 and granting summary judgment in favor of SFR."). Therefore, pursuant to *SFR Investments*, NRS
6 116.3116, and the recorded HOA Foreclosure Deed in favor of SFR, the foreclosure sale was proper
7 and extinguished the Deed of Trust. *Bank of Am., N.A. v. Sonrisa Homeowners Ass'n.*, 2018 U.S.
8 Dist. LEXIS 118720 (July 17, 2018). *Id.*

9 Here, Plaintiff had no reason to question the recitals contained in the HOA Foreclosure Deed
10 and recorded documents. The foreclosure of the HOA Lien is presumably valid based upon the
11 recitations in the HOA Foreclosure Deed. In *Nationstar Mortgage*, the Nevada Supreme Court
12 explained the foreclosure procedure:

13 A trustee's deed reciting compliance with the notice provision of NRS 116.31162
14 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's former
15 owner, his or her heirs and assigns, and all other persons." NRS 116.31166(2). And,
16 '[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."

17 *Id.* at 411-412. (Emphasis added.) As such, there would have been no reason to question the
18 legitimacy of the foreclosure sale based exclusively upon the recorded documents. At foreclosure
19 sales conducted pursuant to NRS 116, bidders, potential bidders and buyers do not have access to
20 any more information than is recorded. Plaintiff's reliance on the recitations on the HOA
21 Foreclosure Deed was reasonable and foreseeable. Specifically, the HOA Foreclosure Deed
22 asserted that the HOA Trustee complied with "all requirements of law."

23 However, Defendants' lack of good faith and candor in conducting the HOA Foreclosure
24 Sale was not immediately evident. It was concealed. It was only upon receipt of the Case on the
25 Discovery, as asserted in the Complaint, that Plaintiff discovered the facts giving rise to its
26 Complaint. Accordingly, application of the discovery rule tolls the statute of limitations and
27 Plaintiff's claims are filed timely and are not time barred.

1 The Plaintiff relied upon the recitals contained within the HOA Foreclosure Deed that were
2 included in the HOA Foreclosure Deed by the HOA and the HOA Trustee. Under Nevada law, the
3 HOA foreclosure sale and the resulting foreclosure deed are both presumed valid. NRS 47.250(16)-
4 (18) (stating that disputable presumptions exist “that the law has been obeyed” “that a trustee or
5 other person, whose duty it was to convey real property to a particular person, has actually conveyed
6 to that person, when such presumption is necessary to perfect the title of such person or a successor
7 in interest”; “that private transactions have been fair and regular”; and “that the ordinary course of
8 business has been followed.”). Accordingly, the Plaintiff possessed a good faith belief that the HOA
9 and/or the HOA Trustee’s actions taken in the ordinary course of business had been followed, and
10 that the HOA Foreclosure Sale was fair and regular. Plaintiff has timely commenced this action
11 against the HOA and HOA Trustee pursuant to NRS §11.190(3)(d) and NRS 11.190(3)(a).

12 Here, Plaintiff is the Purchaser from the HOA Foreclosure Sale. The HOA and/or the HOA
13 Trustee’s actions leading up to and at the HOA Foreclosure Sale intentionally obstructed Plaintiff’s
14 opportunity to conduct its own due diligence regarding the Property, and ultimately affected
15 Plaintiff’s decision whether to actually submit a bid on the Property or not. Had Plaintiff known
16 that it was purchasing the Property subject to the Deed of Trust, Plaintiff never would have
17 submitted a bid in the first place, thus avoiding this entire controversy.

18 The 2015 Legislature did revise NRS 116 to codify what the case law has interpreted. For
19 example, the jurisdictions utilizing the UCOIA have determined that candor is an additional
20 requirement implicitly contained in the good faith mandate of NRS 116.1113. Prior to the
21 amendments to NRS 116 in 2015, the HOA and the HOA Trustee were required to be truthful in
22 their contracts and duties and to follow the law as set forth in NRS 116 *et seq.* and NRS 113 *et seq.*
23 The 2015 amendments just made a bright line for the parties to rely upon by mandating that
24 HOA/HOA Trustee record a substitution of the Super Priority Lien Amount.

D. The HOA has a duty to disclose the attempted payment to the purchaser at an HOA foreclosure sale.

The Defendants have a duty to disclose the Attempted Payment to a Purchaser at an HOA Foreclosure Sale pursuant to NRS 116.1113 and NRS 113.130. At the time and place of the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA Trustee, enters into a sale contract by the function of the auction conducted by the HOA. 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 Former Owner are material to the HOA Lien being foreclosed upon and must be disclosed to the HOA Foreclosure Sale bidders under both NRS 116.1113 and NRS 113.130. To infer otherwise, would destroy the statutory scheme of NRS 116 sales.

The disclosure of the Attempted Payment is a material fact that the HOA and HOA Trust were obligated to disclose to the Plaintiff. As the Supreme Court of Nevada provided in its recent unpublished decision in *Noonan v. Bayview Loan Servicing, LLC*, 2019 Nev. Unpub. LEXIS 428 p. 2-3, 438 P.3d 335, 2019 WL 1552690 (April 8, 2019, Nevada) as follows:

Finally, the Noonans challenge the district court's summary judgment in favor of Hampton & Hampton Collections, LLC, on their negligent misrepresentation and deceptive trade practices claims. Summary judgment was inappropriate on the negligent misrepresentation claim because Hampton neither made an affirmative false statement nor omitted a material fact it was bound to disclose. See *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev 394, 400, 302 P.2d 1148, 1153 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d. 420, 426 (2007) ("[The suppression or omission of material fact which a party is bound in good faith to disclose is equivalent to a false representation." (internal quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II) (2017) (requiring an HOA to disclose if tender of the superpriority portion of the lien has been made), with NRS 116.31162 (2013)¹ (not requiring any such disclosure). The Noonans' deceptive trade practices claim fails under NRS 598.092(8) for the same reason.

In this case, Plaintiff has alleged that it attempted to ascertain whether any tender payment of any type was made to the HOA and/or HOA Trustee before the HOA Foreclosure Sale, without any success. The *Noonan* court stated that "...Hampton neither made an affirmative false statement nor omitted a material fact it was bound to disclose." *Id.* This decision is based upon a factual

¹This was the version of the statute in place at the time of the foreclosure sale.

1 determination of a material fact question; however, the present case facts as presented preclude
2 dismissal at this point without discovery. The *Noonan* court does not consider the arguments
3 reviewed and presented herein on NRS 116.1113 and NRS 113.130 and its relevant analysis.

4 In *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113; 2018 Nev. LEXIS 73;
5 134 Nev. Adv. Rep. 72 (2018), the Nevada Supreme Court determined that a tendering bank has no
6 obligation to disclose but that is not the case with the HOA and the HOA Trustee. In *Bank of*
7 *America, N.A.*, the Court addressed the issue of whether the bank, the party making the tender, had
8 a duty to record a partial reconveyance or other recorded document to be placed in the chain of title
9 to the property of its secured lien to acknowledge the tender by the bank. *Id.* The Court opined as
10 follows:

11 NRS 111.315 states that "[e]very conveyance of real property, and every
12 instrument of writing setting forth an agreement to convey any real property, or
13 whereby any real property may be affected, proved acknowledged and certified in
14 the manner prescribed in this chapter . . . shall be recorded" NRS 111.010
15 defines conveyance as "every instrument in writing, except a last will and testament
16 . . . by which any estate or interest in lands is created, alienated, assigned or
17 surrendered." Thus, when an interest in land is created, alienated, assigned, or
18 surrendered, the instrument documenting the transaction must be recorded.

19 By its plain text, NRS 111.315 does not apply to Bank of America's tender.
20 Tendering the superpriority portion of an HOA lien does not create, alienate, assign,
21 or surrender an interest in land. Rather, it preserves a pre-existing interest, which
22 does not require recording. See Baxter Dunaway, *Interests and Conveyances*
23 *Outside Acts—Recordable Interests*, 4 L. of Distressed Real Est. § 40:8 (2018)
24 ("[D]ocuments which do not create or transfer interests in land are often held to be
25 nonrecordable; the records, after all, are not a public bulletin board."). SFR's
26 argument that the tender was an instrument affecting real property is unpersuasive.

27 NRS 111.315 pertains to written instruments "setting forth an agreement . . .
28 whereby any real property may be affected . . . in the manner prescribed in this
chapter" Emphasis added.) NRS Chapter 111 governs the creation, alienation,
assignment, or surrendering of property interests, and their subsequent recording.
Bank of America's tender did not bring about any of these actions, and therefore
did not affect the property as prescribed in NRS Chapter 111. Accordingly, NRS
111.315 did not require Bank of America to record its tender.

NRS 106.220 provides that "[a]ny instrument by which any mortgage or deed of
trust of, lien upon or interest in real property is subordinated or waived as to
priority, must . . . be recorded" The statute further states that "[t]he instrument
is not enforceable under this chapter or chapter 107 of NRS unless and until it is
recorded." HN10 NRS Chapter 106 does not define instrument as used in NRS
106.220, but Black's Law Dictionary defines the term as "[a] written [*120] legal

document that defines rights, duties, entitlements, or liabilities, such as a statute, contract, will, promissory note, or share certificate." Instrument, Black's Law Dictionary (10th ed. 2014). Thus, NRS 106.220 applies when a written legal document subordinates or waives the priority of a mortgage, deed of trust, lien, or interest in real property.

The changes in the lien priority caused by Bank of America's tender do not invoke NRS 106.220's recording requirements. Generally, the creation and release of a lien cause priority changes in a property's interests as a result of a written legal document. But Bank of America's tender cured the default and prevented foreclosure as to the superpriority portion of the HOA's lien by operation of law. See. NRS 116.3116; 53 C.J.S. Liens § 14 (2017) ("A statutory lien is created and defined by the legislature. The character, operation and [**12] extent of a statutory lien are ascertained solely from the terms of the statute."). NRS Chapter 116's statutory scheme allows banks to tender the payment needed to satisfy the superpriority portion of the HOA lien and maintain its senior interest as the first deed of trust holder. NRS 116.3116(1)-(3); see also Unif. Common Interest Ownership Act (UCIOA) § 3-116 cmt. (amended 2008), 7 pt. 2 U.L.A. 124 (2009) ("As a practical matter, secured lenders will most likely pay the [9] months' assessments demanded by the association rather than having the association foreclose on the unit."). Thus, under the split-lien scheme, tender of the superpriority portion of an HOA lien satisfies that portion of the lien by operation of law. Because the lien is not discharged by using an instrument, NRS Chapter 106 does not apply. *Bank of America, N.A.*, 427 P.3d 119-120.

The concept dealt with by the Court in *Bank of America, N.A.* was that the bank need do nothing other than pay the Super Priority Lien Amount of the HOA Lien to preserve its interest as nothing changes at that point for the bank. In other words, the HOA Lien is not an event that occurs to divest the bank of its security interest in the Property if it pays the superpriority portion of the HOA Lien prior to the HOA Foreclosure Sale. The party that needs to acknowledge the Attempted Payment is the HOA and HOA Trustee as they are offering the Property for sale to the bidders at the HOA Foreclosure Sale.

E. An HOA foreclosure deed does make certain representations regardless of the "without warranty" limitation.

Defendant argues that the Property was sold at the HOA Foreclosure Sale "without warranty," pursuant to NRS 116.3116(3)(a)..." See HOA's Motion, page 10, lines 2-9. The HOA and HOA Trustee have an obligation of good faith, candor and complying with all applicable law

1 at the time of the HOA Foreclosure Sale which they collectively did not. The HOA and HOA
2 Trustee cannot intentionally withhold information known only to the Former Owner, the HOA and
3 HOA Trustee that materially, adversely affects, the Purchasers as defined under NRS 116 and NRS
4 113, Plaintiff, as to the value and nature of the bifurcated lien status of the Deed of Trust and the
5 assessments. Of matters not specifically known to the HOA and HOA Trustee at the time of the
6 HOA Foreclosure Sale that cannot be adduced by a public records review as occurs in NRS 107
7 foreclosure sales, Plaintiff would concede that Defendants would not be liable. However, in the
8 instant case, the HOA and HOA Trustee are the actual parties with the information regarding the
9 Attempted Payment and had an obligation to inform the Plaintiff. This fact alone constitutes
10 sufficient proof of the HOA, by and through its agent, the HOA Trustee, to disclose the Attempted
11 Payment to the Plaintiff and failing to comply with all requirements of law.

12 The Defendants have a duty to disclose the Attempted Payment to a Purchaser, as defined
13 in NRS 116.079, at an HOA Foreclosure Sale pursuant to NRS 116.1113 and NRS 113.130. At the
14 time and place of the HOA Foreclosure Sale, the HOA, by and through its agent, the HOA Trustee,
15 enters into a sale governed by a statute, NRS 116, by the function of the auction conducted by the
16 HOA Trustee. Inherently, the material aspects of the factors affecting the lien priority of the secured
17 debt that are only known solely to the HOA, HOA Trustee and Former Owner are material to the
18 HOA Lien being foreclosed upon and must be disclosed to the HOA Foreclosure Sale bidders. To
19 infer otherwise, would destroy the statutory scheme of NRS 116 sales.

20 A common argument among all parties to the HOA litigation has been the low prices
21 adduced at the HOA Foreclosure Sales for the real property sold. Typically, the low sales prices
22 have been driven by the mountain of litigation that has occurred over the last years seeking to define
23 the rights and obligations of the various parties. To hold that the HOA does not have a duty to
24 disclose information know only to the HOA and the HOA Trustee that materially affects the value
25 of what a willing buyer would be willing to pay for the real property offered at auction that relates
26 directly to the status and priority of the Deed of Trust. Essentially, the Defendants are alleging that
27 the HOA will sell to the highest cash bidder the real property without any way for the bidder to
28

1 know if it will acquire the real property free and clear of the Deed of Trust or subject thereto. This
2 would effectively forever destroy the HOA foreclosure sale process under NRS 116.3116.

3 As additional proof of the intentional/negligent misrepresentation and its misrepresentation
4 in the HOA Foreclosure Deed that provides that the HOA and the HOA Trustee complied with all
5 requirements of law, the HOA and HOA Trustee are obligated to follow the disclosures mandated
6 by NRS 113 *et seq.* The HOA asserts that NRS 116 governs the foreclosure and collection efforts
7 of common-interest ownership communities and it does. NRS 113 is not in any manner generally
8 applicable to NRS 107 foreclosure sales but does have certain provisions that do apply in NRS 107
9 foreclosure sales. NRS 113 is not exempted from NRS 116 foreclosure sales, to the extent that the
10 HOA and the HOA Trustee, as agent for the HOA, have specific knowledge of the facts required
11 for disclosure. If the legislature intended to exempt NRS 116 sales from the mandates of NRS 113,
12 it could have easily done so, but it did not! Pursuant to NRS 113, *et seq.*, the HOA and the HOA
13 Trustee must disclose the Attempted Payment and/or any payments made or attempted to be made
14 by Lender, the Former Owners, or any agents of any other party to the bidders and Plaintiff at the
15 HOA Foreclosure Sale. NRS 113.130 provides as follows:

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

18 1. Except as otherwise provided in subsection 2:

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

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

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

22 (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
23 on the completed disclosure form or discovers that a defect identified on
the completed disclosure form has become worse than was indicated on
24 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
25 property to the purchaser. If the seller does not agree to repair or replace
the defect, the purchaser may:

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

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

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

- 1 (a) By foreclosure pursuant to chapter 107 of NRS.
2 (b) Between any co-owners of the property, spouses or persons related
3 within the third degree of consanguinity.
4 (c) Which is the first sale of a residence that was constructed by a licensed
5 contractor.
6 (d) By a person who takes temporary possession or control of or title to the
7 property solely to facilitate the sale of the property on behalf of a person
8 who relocates to another county, state or country before title to the
9 property is transferred to a purchaser.

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

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

- 19 (a) Written notice to the purchaser of any defects in the property of which
20 the trustee or beneficiary, respectively, is aware; and
21 (b) If any defects are repaired or replaced or attempted to be repaired or
22 replaced, the contact information of any asset management company who
23 provided asset management services for the property. The asset
24 management company shall provide a service report to the purchaser upon
25 request.

26 5. As used in this section:

- 27 (a) "Seller" includes, without limitation, a client as defined in NRS
28 645H.060.
 (b) "Service report" has the meaning ascribed to it in NRS 645H.150.

Emphasis added.

As used in NRS 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).

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 116, *et seq.*, at the time of the HOA Foreclosure Sale; however, if it is deemed to be exempted, it still must provide information known to it. NRS 116 *et seq.* foreclosure sales are not exempt from the mandates of NRS 113 *et seq.*

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:

- 1 9. Common Interest Communities: Any “common areas” (facilities like pools,
2 tennis courts, walkways or other areas co-owned with others) or a homeowner
3 association which has any authority over the property?
4 (a) Common Interest Community Declaration and Bylaws available?
5 (b) Any periodic or recurring association fees?
6 (c) Any unpaid assessments, fines or liens, and any warnings or notices that may
7 give rise to an assessment, fine or lien?
8 (d) Any litigation, arbitration, or mediation related to property or common areas?
9 (e) Any assessments associated with the property (excluding property taxes)?
10 (f) Any construction, modification, alterations, or repairs made without required
11 approval from the appropriate Common Interest Community board or committee?
12 ...
13 11. Any other conditions or aspects of the [P]roperty which materially affect its
14 value or use in an adverse manner? (Emphasis added)

15 See SRPDF, Form 547.

16 Section 11 of the SRPDF relates directly to information known to the HOA and the HOA
17 Trustee that materially affects the value of the Property and defined as a “defect” in NRS
18 113.100(1), that provides as follows: NRS 113.100(1). In this case, if the Super Priority Lien
19 Amount is paid, or if the Attempted Payment is rejected, it would have a materially adverse affect
20 on the overall value of the Property, and therefore, must be disclosed in the SRPDF by the HOA
21 and the HOA Trustee when the SRPDF is completed and disclosed to the purchaser/Plaintiff.

22 Section 9(c) - (e) of the SRPDF would provide notice of any payments made by Former
23 Owner or others on the HOA Lien.

24 Section 11 of the SRPDF generally deals with the disclosure of the condition of the title to
25 the Property that would only be known by the HOA and the HOA Trustee.

26 Pursuant to Nevada Real Estate Division’s (“NRED”), Residential Disclosure Guide (the
27 “Guide”), the Guide provides at page 20 that the HOA and HOA Trustee shall provide the
28 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
notifies 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.

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

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

4 If the HOA and/or HOA Trustee fails to provide the SRPDF to the Plaintiff/purchaser at
5 the time of the HOA Foreclosure Sale, the Guide explains that:

6 A Buyer may rescind the contract without penalty if he does not receive a fully
7 and properly completed Seller's Real Property Disclosure form. If a Buyer closes
8 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).

9 Pursuant to NRS 113.130(4), the HOA and HOA Trustee are required to provide the
10 information set forth in the SRPDF to Plaintiff at the HOA Foreclosure Sale and no later than the
11 drop of the gavel.

12 The HOA and the HOA Trustee did not provide an SRPDF to the Plaintiff at the HOA
13 Foreclosure Sale nor did it provide any information orally. The foregoing demonstrates that the
14 HOA and the HOA Trustee's duty and obligation to disclose the Attempted Payment to the
15 Purchaser, Plaintiff at the HOA Foreclosure Sale. Failure to make the foregoing disclosures is a
16 breach of duty of good faith and candor and a duty owed by the HOA Trustee under NRS 116, *et*
17 *seq.* The HOA and HOA Trustee's duty is codified pursuant to NRS 113 *et seq.* and was breached
18 in this case.

19 As a result of the HOA and HOA Trustee's failure and breach of their duty of good faith
20 and candor pursuant to NRS 116 in not disclosing the Attempted Payment and to provide Plaintiff
21 with the mandated SRPDF and disclosures required therein that were known to the HOA and
22 HOA Trustee, Plaintiff has been economically damaged.

23 Furthermore, while the unpublished orders set forth that the Property would still have the
24 same "value" regardless of whether it is encumbered by the First Deed of Trust, Plaintiff believes
25 this misapprehends the facts, as set forth by the complaint and the record in this matter. Plaintiff
26 alleges that as "used in NRS 113, the term 'Defect' means a condition that materially affects the
27 value or use of the residential property in an adverse manner." NRS 113.100. While Plaintiff
28

1 contends that the “value” of the Property is impacted by it remaining encumbered by the First
2 Deed of Trust, Plaintiff did not abandon the remainder of the NRS 113 claim, namely, that the
3 “use” of the residential property could be impacted, which in turn could affect the “value.”
4 Thus, while the unpublished orders note that the “value” of the Property technically remains the
5 same whether encumbered or not, to the extent that it differs from a construction defect or other
6 physical impairment that could decrease the value by a fixed amount for repairs of same, it fails to
7 account for the entirety of the definition of “Defect” set forth in NRS 113.100. If the First Deed of
8 Trust remains an encumbrance on the Property, Plaintiff, or any other buyer, cannot know 1)
9 when the First Deed of Trust will be foreclosed and the junior interest eliminated, 2) the price to
10 avert foreclosure under the First Deed of Trust (i.e. what the principal, interest, escrow, fees etc..
11 are under the First Deed of Trust), and 3) the use during that time period (i.e. short-term rental,
12 long-term rental, sale, etc...). Thus, while the value of the Property as a *res* may remain
13 unchanged by an encumbrance, NRS 113 sets forth “value or use” which implies a more
14 extensive definition then merely the value of the Property as a collection of boards, pipes, and
15 wires.

16 **F. Plaintiff’s claim for special damages will be determined at the time of trial**

17 The attorney fees and costs allegations as set forth in each cause of action references any
18 claims that may be able to be adduced from the discovery in this case and/or the CC&R’s if the
19 HOA is successful in its argument under NRS 30.310. Pursuant to NRS 116.4117(6), “the court
20 may award reasonable attorney’s fees to the prevailing party” if the matter is subject to the
21 CC&R’s, which will be a factual determination by the Court.

22 **G. Plaintiff’s claims for punitive damages are not precluded in this case**

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

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

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

(a) By the association against:

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

(b) By a unit's owner against:

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

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

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

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

5. Punitive damages may not be awarded against:

- (a) The association;
- (b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or
- (c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.

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

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

8. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to 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.

1 IV. CONCLUSION

2 Based upon the foregoing, the Opposition should be sustained and the HOA's Motion and
3 HOA Trustee's Joinder should be denied.

4 DATED this 24th day of November, 2020.

5
6 ROGER P. CROTEAU & ASSOCIATES, LTD.

7 /s/ Raymond Jereza

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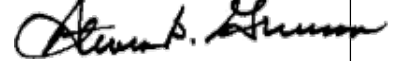
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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2020, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

An employee of
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DISTRICT COURT
CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,

Plaintiff,

CASE NO.: A-20-819781-C

DEPT. NO.: 20

vs.

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

Defendants.

**HARBOR COVE HOMEOWNERS
ASSOCIATION'S REPLY IN SUPPORT
OF MOTION TO DISMISS OR IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT**

COMES NOW, Defendant Harbor Cove Homeowners Association (the "HOA"), by and through its counsel of record, LIPSON NEILSON, P.C., and hereby submit this Reply in Support of its Motion to Dismiss or in the alternative, for Summary Judgment.

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1 This Reply is made and based on the following Memorandum of Points and
2 Authorities, the pleadings and papers on file, and any oral arguments the Court may
3 consider in this matter.

4 Dated this 9th day of December 2020.

5 LIPSON NEILSON, P.C.

6 */s/ Peter E. Dunkley*

7 By:

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I. INTRODUCTION

Plaintiff's introduction to its opposition ("Opposition") complicates a simple question: What is the duty of an HOA to bidders at a nonjudicial foreclosure sale under the HOA's NRS 116 lien? The simple answer is: The HOA must comply with NRS 116. The Nevada Supreme Court has said as much, multiple times in different contexts. For example: "because the relevant statutory scheme curtails an HOA's ability to dictate the method, manner, time, place, and terms of its foreclosure sale, an HOA has little autonomy in taking extra-statutory efforts to increase the winning bid at the sale." *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 645 (Nev. 2017). Accordingly, an HOA's duty is to follow NRS 116, which provided the notice requirements for a nonjudicial foreclosure sale. The notices are mailed out and publicly recorded at the County Recorder's Office, which provides notice to the world. None of the provisions of NRS 116 required divulging a homeowner's payment history in any greater detail than providing the total lien amount indicated in the publicly available nonjudicial foreclosure notices. Again from the Nevada Supreme Court: "The [publicly recorded] notices went to the homeowner and other junior lienholders, not just [the bank], so it was appropriate to state the total amount of the lien." *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757, 334 P.3d 408, 418 (2014).

The facts of this case are still undisputed, and because there is no genuine factual dispute, the Court may rule as a matter of law.

II. THE MATERIAL FACTS ARE STILL UNDISPUTED

The former homeowner was delinquent in paying HOA assessments which resulted in the recording of nonjudicial foreclosure notices as set forth in NRS 116. (Opposition 6:5-14.)

In May of 2011, the former homeowner made a partial payment which “cured the amount of the HOA Lien entitled to priority over the Deed of Trust.” (Opposition 6:15-20.)

1 About a year later, because an HOA Lien delinquency remained unpaid, a second
2 nonjudicial foreclosure sale notice was recorded, and the former homeowner became the
3 former homeowner when the Plaintiff purchased the home for \$5,500.00. (Opposition 7:4-
4 8.)

5 Plaintiff obtained title to the property via nonwarranty nonjudicial foreclosure deed as
6 mandated by NRS 116, which contained the recital that the HOA “complied with all
7 requirements of law....” (Opposition 7:9-10.)

8 In prior litigation between the Plaintiff and the bank, the Court determined that the
9 nonjudicial foreclosure sale did not extinguish the bank’s Deed of Trust because the former
10 homeowner’s partial payment in May of 2011 discharged the superpriority portion of the
11 HOA’s Lien. *See generally*, Court’s Order attached previously as Exhibit A to the HOA’s
12 Motion to Dismiss.

13 **III. THE IMMATERIAL AND HYPOTHETICAL FACTS AND LEGAL CONCLUSIONS**
14 **STILL DON’T MATTER**

15 In Plaintiff’s factual assertions in the Opposition, in paragraphs 12-29, Plaintiff
16 recites “facts” many of which are hypothetical (§ 18 (*if* bidders had known...)), or legal
17 conclusions, (§ 24 (The HOA conspired)), or unrelated to the HOA (§ 15 (“Lender”
18 alleges)). The recited “facts” do not allege that the HOA failed to follow any particular
19 provision of NRS 116. The recited hypothetical “facts” and legal conclusions are immaterial
20 for purposes of summary judgment. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 730 (2005)
21 (Only material facts that may affect the outcome may preclude summary judgment).

22 **IV. REPLY ARGUMENT**

23 **A. MISREPRESENTATION CLAIM FAILS BECAUSE NRS 116 DOES NOT**
24 **REQUIRE THE HOA TO DISCLOSE PAYMENT HISTORIES**

25 Plaintiff’s misrepresentation claim fails because NRS 116 did not require an HOA to
26 disclose the former owner’s payment history. Plaintiff argues that the HOA intentionally
27 failed to disclose the partial payment so it “would not chill the sale of the Property for [the
28 HOA’s] economic gain.” (Opposition 13: 2-4.) However, a common sense look at the facts

1 belies the argument. First, in 2012, there was no requirement in NRS 116 to disclose
2 payment histories of homeowners. The nonjudicial foreclosure notice provisions are spelled
3 out in NRS 116, and in 2012, the correct amount of the lien in the notices was the total lien
4 amount, because the notices, which were publicly recorded, went to all record lien holders
5 so it was "appropriate to state the total amount of the lien." *SFR Invs. Pool 1, LLC. v. U.S.*
6 *Bank, N.A.*, 130 Nev. 742, 757, 334 P.3d 408, 418 (2014).

7 In other words, if the HOA varied from NRS 116 and disclosed payment histories to
8 bidders, the HOA would be outside of the statutory notice requirements set forth in NRS
9 116, which the HOA is obligated to follow.

10 Second, under NRS 116, and HOA's best day at a nonjudicial foreclosure sale
11 results in a sale in which the HOA is made whole. The HOA does not receive any benefit
12 from a sale that results in proceeds exceeding the lien amount. See NRS 116.31164
13 providing how proceeds are distributed (excess to unit's owner). In other words, if the
14 bidder bids \$1 million, the HOA gets to keep only the amount of the lien, and the rest
15 (minus junior liens) goes to the former homeowner. There is no incentive for the HOA to
16 either chill or pump-up the sale. The HOA's only objective is to collect the money it has
17 already advanced due to the delinquent homeowner.

18 Third, it appears insincere that a purchaser of a \$600,000.00 house, for a payment
19 of \$5,500.00, was induced by the HOA's alleged nondisclosure of the partial payment made
20 by the former homeowner about a year before the nonjudicial foreclosure sale. It is
21 undisputed that there were two notices of sale recorded, the first one in March of 2011, and
22 the second in April of 2012. A more sincere source of chilling, if any, would be the public
23 knowledge that the first nonjudicial foreclosure sale was called off, and a second one
24 proceeded a year later.

25 On summary judgment, the non-moving party must come forward with admissible
26 evidence to avoid summary judgment. The Opposition provides none. The Court may
27 grant the HOA's Motion with respect to the misrepresentation claim.

28 ///

B. BREACH OF DUTY OF GOOD FAITH FAILS AS A MATTER OF LAW

Plaintiff alleges that the HOA breached an obligation of “good faith, honesty-in-fact, reasonable standards of fair dealing and candor pursuant to NRS 116.1113 and NRS 113.130.” (Opposition p. 13: 24-26.) The argument fails to present a genuine factual issue.

As addressed in the HOA’s MSJ, NRS 116.1113 imposes a duty of good faith ***in the performance of every contract or duty governed by the statute***, the only “duties” owed are outlined in sections 116.3116 through 116.31168. Here, the HOA fully complied with these duties by complying with all notice and recording requirements set forth in NRS 116 as it existed at the time of the sale. As established by the Prior Litigation, the nonjudicial foreclosure sale was valid, meaning there was no defect in the underlying sale. Accordingly, logic dictates that, in the absence of a defect in the nonjudicial foreclosure sale, the HOA complied with NRS 116.

Additionally, nothing in the 2012 version of NRS 116.1113, imposed a requirement to disclose a payment or payment history. *Compare* the 2017 version of NRS 116.31162(1)(b)(3)(11) (2017) (requiring an HOA to disclose if tender of the superpriority portion of the lien) with NRS 116.31162 (2005) (no disclosure requirement).

The “candor, honesty, reasonable standards” language in the comments of the UCIOA, on which NRS 116 is based, does not change the analysis. A statute is public knowledge and thus, complying with the statute should be the public expectation. An example of the fairness of complying with a public statute is that NRS 116, even in the 2012 version of NRS 116, had the legal requirement mandating the type of deed resulting from a nonjudicial foreclosure sale—a deed “without warranty.” NRS 116.31164(3)(a). Thus, according to the public statute and the public expectation, the HOA is specifically prohibited from giving any purchaser at the nonjudicial foreclosure auction a so-called warranty deed or making any promises or warranties regarding the physical condition of the property or the character of the title to the property.

Plaintiff claims reliance on the nonwarranty deed recitals, yet none of the recitals relate to the condition of the title of the property. The recitals are conclusive related to the

1 nonjudicial foreclosure process: (1) default, mailing and recording of notices of delinquency
2 and notice of default, (2) 90 days have passed, and (3) giving the notice of the sale. In
3 other words, the deed recitals protect the HOA's nonjudicial foreclosure procedure. The
4 recitals do not convert a nonjudicial foreclosure nonwarranty deed into a warranty deed.

5 The only way the Plaintiff can feign a lack of candor on the part of the HOA is by not
6 reading NRS 116, and unilaterally assuming the nonjudicial foreclosure deed is a warranty
7 deed, which shifts the alleged omission from the HOA's nonexistent disclosure, to an
8 omission more accurately described as the Plaintiff's willful ignorance to a nonwarranty
9 deed expressly required by NRS 116.

10 Plaintiff's argument about what the HOA knew or should have known regarding the
11 effect of the former homeowner's partial payment makes no sense, today, or in 2012. Not
12 until the Nevada Supreme Court's 2014 ruling in the *SFR Decision*, two years after the
13 nonjudicial foreclosure sale in this case, could anyone venture a prediction regarding
14 priority, superpriority, tenders, etc., and yet here we are, still litigating six years later.

15 On summary judgment, the non-moving party must come forward with admissible
16 evidence. The Opposition provides none that shows the HOA was not acting in good faith.
17 The HOA was not required to disclose the existence of a pre-sale partial payment.
18 Accordingly, Plaintiff's claim for breach of good faith based on an alleged duty which did not
19 exist in the 2012 version of NRS 116 fails as a matter of law. The Court should dismiss the
20 claim, with prejudice, or grant summary judgment in favor of the HOA.

21 **C. THE HOA DID NOT NEED TO RECORD A NOTICE OF THE PARTIAL**
22 **PAYMENT**

23 Plaintiff argues that under the reasoning of *Bank of America, N.A. v. SFR Invs. Pool*
24 *1, LLC*, 427 P.3d 113; 2018 Nev. LEXIS 73; 134 Nev. Adv. Rep. 72 (2018), the HOA is
25 obligated to acknowledge the partial payment to bidders at the nonjudicial foreclosure sale.
26 (Opposition p. 25.) However, the reasoning should not apply. In the *Bank of America*
27 decision, the Nevada Supreme Court analyzed the recording statutes and mortgage
28 instrument statute, NRS 111 and NRS 106 respectively. The court concluded the bank did

1 not have to record a preforeclosure tender for the tender to be effective, because the
2 tender protected the superpriority portion of the lien by operation of law. *Bank of America,*
3 *N.A.*, 427 P.3d 119-120. Plaintiff provides no authority or analysis on why it concludes:
4 “The party that needs to acknowledge the [partial payment] is the HOA....” (Opposition
5 25:20-21.) The Court may disregard this argument.

6 **D. NRS 113.130 STILL DOES NOT APPLY TO NONJUDICIAL**
7 **FORECLOSURES**

8 Plaintiff argues that NRS 113 applies to NRS 116 nonjudicial foreclosure sales.
9 Plaintiff is incorrect. Plaintiff argues the legislature did not exempt NRS 116 from NRS
10 113’s requirements. That’s the Plaintiff’s way of saying that NRS 113 does not cross-
11 reference NRS 116, nor does NRS 116 cross-reference NRS 113. The absence of a
12 reference to NRS 116 is conspicuous. Where NRS 116 invokes a different section of the
13 NRS, it does so expressly. *See e.g.*, NRS 116.310312 (referencing NRS 40 and NRS
14 107); *see also* NRS 116.31032 (referencing NRS 119A). NRS 116 does not incorporate
15 NRS 113, and NRS 113 does not incorporate NRS 116.

16 When construing statutes, the Court must look at the plain language and not alter or
17 add language that is not there. *In re Aragon*, No. 79638, 136 Nev. Adv. Rep. 75, 2020
18 Nev. LEXIS 72, at *3 (Dec. 3, 2020) (plain language); *see also, Maxwell v. State Indus. Ins.*
19 *Sys.*, 109 Nev. 327, 330, 849 P.2d 267, 269 (1993) (courts should not alter or add
20 language). *See also*, the persuasive authority, *Res. Group v. Grapevine Villas*
21 *Homeowners Ass’n*, 2020 Nev. Dist. LEXIS 404, *10 (Nev. Dist. Ct. May 13, 2020) (“the
22 plain language of NRS 113, NRS Chapter 113 does not apply to foreclosure sales
23 conducted pursuant to NRS Chapter 116”).

24 In this case, there is no language in NRS 113 which referenced, incorporates, or
25 relates to NRS 116. *See generally*, NRS 113. Thus, statutory construction does not require
26 an HOA to provide an SRPD.

27 Additionally, as noted in the HOA’s MSJ, other courts agree NRS 113 does not apply
28 to NRS 116 nonjudicial foreclosures. *See Saticoy Bay v. Silverstone Ranch Cmty. Ass’n*,

No. 80039, 2020 Nev. Unpub. LEXIS 993, at *2 (Oct. 16, 2020) (NRS 113 requires disclosure of “defects” not “superpriority tenders”).

[NRS] § 113 [is] inapplicable here as NRS § 116 provides different procedures and rights in HOA foreclosure sales. Specifically, for example, NRS § 116 does not require an SRPD, or recording of a subordination of a lien. *See, SFR Invs. Pool 1. LLC*, 427 P.3d 113. For this same reason, the NRED handbook is inapplicable because it specifically discusses the SPRD under NRS § 113, not NRS § 116.

Moreover, pursuant to NRS § 113.1100 (s), a seller is a person who sells or intends to sell any residential property. Pursuant to NRS § 116, the HOA was a foreclosing association and not a seller as defined under NRS § 113.130. NRS § 116 precludes the requirement of NRS § 113 for a SRPD as the foreclosure auction process does not follow the sale process referenced in NRS § 113 and the Investors claim for violation of NRS § 113 must be dismissed.

Saticoy Bay LLC Series 9076 Quarystone v. Md. Pebble at Silverado Homeowners Ass'n, 2019 Nev. Dist. LEXIS 1009, *4 (Eighth Judicial District, Sept. 23, 2019).

Plaintiff’s opposition does not address the HOA’s argument that any claim based on NRS 113 is time barred. Additionally, even if NRS 113 applies, (which it does not) the claim is time-barred because NRS 113 sets forth a one or two year statute of limitation. *See* NRS 113.150(4): “[a]n action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.”

Based on the discovery of the pre-foreclosure payment (which is not a defect), Plaintiff alleges the disclosure occurred on August 24, 2017 (Compl. ¶ 41). Accordingly, the statute of limitation expired one year after the disclosure, on August 24, 2018. The complaint was filed on August 20, 2020, nearly two years too late.

The claim fails substantively or procedurally. Thus, the Court may dismiss the complaint with prejudice, or grant summary judgment in favor of the HOA.

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E. PLAINTIFF'S DOES NOT OPPOSE DISMISSAL OF CONSPIRACY CLAIM

Other than the conclusory factual allegations, (Opposition p. 8:15, 23) Plaintiff's Opposition does not address the HOA's conspiracy argument. Accordingly, the court may grant this portion of the HOA's motion as unopposed. See EDCR 2.20(e); see also *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (court need not address non-cogent argument).

F. PLAINTIFF IS NOT ENTITLED TO SPECIAL DAMAGES AND TO THE EXTENT THE PLAINTIFF IS SEEKING DAMAGES FOR VIOLATION OF THE CC&RS, THE CLAIMS SHOULD BE DISMISSED PURSUANT TO NRS 38.310¹

Plaintiff argues it is entitled to special damages "if the matter is subject to the CC&Rs." (Opposition 30:19-21.) However, the complaint does not reference the CC&Rs as a source of relief for the Plaintiff or as the basis of any alleged misdeeds by the HOA. To the extent the CC&Rs are implicated in this case, the complaint should be dismissed pursuant to NRS 38.310, which requires an NRED mediation prior to filing a civil action. The case should be dismissed and an NRED mediation is required even if the issue is raised for the first time on appeal:

[Even if an HOA raises this issue the for the first time on appeal] Under NRS 38.310(1)(a) (2011), "[n]o civil action based upon a claim relating to . . . [t]he interpretation, application or enforcement of [an HOA's CC&Rs] . . . may be commenced in any court in this State unless the action has been submitted to mediation or arbitration." Additionally, NRS 38.310(2) provides that "[a] court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1." See also *McKnight Family, LLP v. Adept Mgmt. Servs.*, 129 Nev. 610, 614, 310 P.3d 555, 558 (2013).

Aliante Master Ass'n v. Prem Deferred Tr., 414 P.3d 300 (Nev. 2018).

¹ The undersigned understands NRS 38.310 was not raised as a basis for dismissal in the original motion—the complaint doesn't reference the CC&Rs as a source of the HOA's alleged wrongdoing. However, having raised the specter of a CC&R violation, for the first time in its opposition, the Court may consider this argument made for the first time in the reply. The HOA will not oppose a surreply solely on this issue.

1 In this case, the complaint did not cite to the CC&Rs nor allege that the HOA did not
2 comply with the CC&Rs. In opposition to the HOA's Motion, the Plaintiff argues a factual
3 determination will be made by the court. However, on summary judgment, the non-moving
4 party cannot rely on the pleadings but must set forth admissible evidence establishing a
5 genuine issue for trial. Plaintiff's Opposition includes none. There is no genuine fact issue.
6 The Court may grant summary judgment in favor of the HOA or dismiss the claim pursuant
7 to NRS 38.310.

8 **G. THERE IS NO BASIS FOR PUNITIVE DAMAGES**

9 The Opposition argues, without supporting facts or evidence, that punitive damages
10 are available. (Opposition p. 32.) However, as noted by Plaintiff, punitive damages
11 require "willful and material failure" to comply with NRS 116. The argument appears to be
12 the Plaintiff trying to have his cake and eat it too. "One cannot have his cake and eat it too."
13 *Ruppert v. Edwards*, 67 Nev. 200, 227, 216 P.2d 616, 629 (1950).

14 On the one hand, Plaintiff is arguing that the HOA is liable because the HOA should
15 NOT have complied with NRS 116 by disclosing the payment history of the former
16 homeowner. On the other hand, Plaintiff is arguing, IF there is "clear and convincing
17 evidence" of willful and material noncompliance with NRS 116, then Plaintiff gets punitive
18 damages. Thus, the HOA is wrong either way. But either way, on summary judgment, the
19 "non-moving party may not rest upon general allegations and conclusions, but must, by
20 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine
21 factual issue." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030-31 (2005).
22 Plaintiff's naked argument is insufficient. The Court may grant summary judgment in favor
23 of the HOA.

24 ///

25 ///

26 ///

1 **V. CONCLUSION**

2 Based on the foregoing, the Court should dismiss the complaint, with prejudice, or
3 alternatively, the Court may grant summary judgment in favor of the HOA because Plaintiff
4 has not provided any admissible evidence of a genuine factual issue. Further, the Plaintiff
5 has already established the character of the title it obtained through the District Court's
6 Order in the Prior Litigation. The complaint may be dismissed, or summary judgment
7 granted in favor of the HOA.

8 Dated this 9th day of December 2020.

9 LIPSON NEILSON, P.C.

10 */s/ Peter E. Dunkley*

11 By:

12 _____
13 KALEB D. ANDERSON, ESQ.
14 Nevada Bar No. 7582
15 PETER E. DUNKLEY, ESQ.
16 Nevada Bar No. 11110
17 9900 Covington Cross Drive, Ste. 120
18 Las Vegas, Nevada 89144
19 (702) 382-1500 phone
20 (702) 382-1512 fax
21 kanderson@lipsonneilson.com
22 pdunkley@lipsonneilson.com
23 *Attorneys for Harbor Cove HOA*
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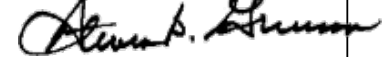
CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December 2020, an electronic copy of the following **HARBOR COVE HOMEOWNERS ASSOCIATION REPLY IN SUPPORT OF MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT** 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 P. Croteau, Esq.
Raymond Jereza, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89148
Attorney for Plaintiff

/s/ Renee M. Rittenhouse

An Employee of LIPSON NEILSON, P.C.



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

1 ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
2 RAYMOND JEREZA, ESQ.
Nevada Bar No. 11823
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7 ray@croteaulaw.com
Attorneys for Plaintiff

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 RIVER GLIDER AVENUE TRUST,

12 Plaintiff,

13 vs.

14 HARBOR COVE HOMEOWNERS
15 ASSOCIATION; and NEVADA
16 ASSOCIATION SERVICES, INC.,

17 Defendants.
18
19
20

Case No: A-20-819781-C

Dept No: 20

**PLAINTIFF'S ERRATA TO
OPPOSITION TO HARBOR COVE
HOMEOWNERS ASSOCIATION'S
MOTION TO DISMISS OR IN THE
ALTERNATIVE SUMMARY
JUDGMENT AND NEVADA
ASSOCIATION SERVICES, INC.'S
JOINDER THERETO**

21
22 COMES NOW, Plaintiff, RIVER GLIDER AVENUE TRUST, by and through its
23 attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Errata to its
24 Opposition to Harbor Cove Homeowners Association Motion to Dismiss, which was inadvertently
25 not filed with the Opposition.
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

1 See attached Declaration of Eddie Haddad.

2 DATED this 15th day of December, 2020.

3 ROGER P. CROTEAU & ASSOCIATES, LTD.

4
5 /s/ Roger P. Croteau
6 Roger P. Croteau, Esq.
7 Nevada Bar No. 4958
8 Raymond Jereza, Esq.
9 Nevada Bar No. 11823
10 2810 W. Charleston Blvd., Ste. 75
11 Las Vegas, Nevada 89102
12 Attorneys for Plaintiff
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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 November 24, 2020, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

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

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 Trustee of RIVER GLIDER AVENUE TRUST (“*River Glider*”). River Glider obtained its’ interest in the Property from the HOA Foreclosure Sale. In my capacity as set forth above, I have reviewed the foregoing Opposition to HOA’s Motion. 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 HOA Trustee prior to the HOA Foreclosure Sale to determine if the Property would in fact be sold on the date

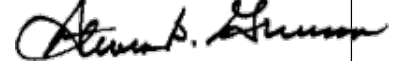
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Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 stated in the NOS, obtain the opening bid, so I could determine the amount of funds necessary for
2 the auction and inquire if any payments had been made; however, I never inquired if the “Super
3 Priority Lien Amount” had been paid. I personally do all of the research on any and all properties
4 that I purchased at the HOA Foreclosure Sales.
5

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

7 Executed this 14th day of December 2020..
8

9 /s/ Eddie Haddad
10 EDDIE HADDAD
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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

**HARBOR COVE HOMEOWNERS
ASSOCIATION'S ANSWER TO
PLAINTIFF'S COMPLAINT**

COMES NOW, Defendant Harbor Cove Homeowners Association (the "HOA"), by and through its counsel of record, LIPSON NEILSON, P.C., and hereby submit this Answer to the Complaint as follows:

PARTIES AND JURISDICTION

1. Admit.
2. HOA is without knowledge or information sufficient to form a belief about the truth of the allegation and thus denies.
3. Admit.

1 4. Admit HOA is a common interest community subject to NRS 116. HOA
2 denies the remainder.

3 5. This paragraph contains a legal conclusion. To the extent a response is
4 required, HOA is without knowledge or information sufficient to form a belief about the truth
5 of the allegation and thus denies.

6 6. This paragraph contains a legal conclusion which does not require a
7 response.

8 7. This paragraph contains a legal conclusion which does not require a
9 response.

10 **GENERAL ALLEGATIONS**

11 8. This paragraph contains a legal conclusion which does not require a
12 response. HOA admits NRS 116 applies to community associations.

13 9. This paragraph contains a legal conclusion which does not require a
14 response. HOA admits NRS 116 applies to community associations.

15 10. This paragraph contains a legal conclusion which does not require a
16 response. HOA admits NRS 116 applies to community associations.

17 11. This paragraph contains a legal conclusion which does not require a
18 response. HOA admits NRS 116 applies to community associations.

19 12. HOA is without knowledge or information sufficient to form a belief about the
20 truth of the allegation and thus denies.

21 13. HOA is without knowledge or information sufficient to form a belief about the
22 truth of the allegation and thus denies.

23 14. HOA is without knowledge or information sufficient to form a belief about the
24 truth of the allegation and thus denies.

25 15. HOA admits the former homeowner became delinquent in the obligation to
26 pay assessments. HOA denies the remainder.

27 16. HOA admits a notice of delinquent assessment lien was recorded on July 26,
28 2010 and admits the content thereof. HOA denies the remainder.

1 17. HOA admits a notice of default and election to sell under homeowners
2 association liens was recorded on September 3, 2010 and admits the content thereof.
3 HOA denies the remainder.

4 18. HOA admits the former owner made a partial payment, the effect of which
5 was determined in prior litigation to have paid the portion of the delinquency entitled to
6 priority over any first security interest. HOA denies the remainder.

7 19. HOA is without knowledge or information sufficient to form a belief about the
8 truth of the allegation and thus denies.

9 20. HOA admits a *second* Notice of Foreclosure Sale was recorded on April 16,
10 2012 and admits the content thereof. HOA denies the remainder.

11 21. HOA is without knowledge or information sufficient to form a belief about the
12 truth of the allegation and thus denies.

13 22. HOA admits the plaintiff's predecessor was the high bidder and paid \$5,500
14 to acquire title of the property through a nonwarranty foreclosure deed. HOA is without
15 knowledge or information sufficient to form a belief about the truth of the remaining
16 allegation and thus denies.

17 23. HOA admits the content of the foreclosure deed.

18 24. Deny. There were two notices of sale, the second of which indicated a
19 payment had been made and applied because the second notice of sale, recorded a year
20 after the first notice of sale, indicated a lesser amount due than the amount indicated on the
21 first notice of sale.

22 25. Deny. There were two notices of sale, the second of which indicated a lesser
23 amount due than the first notice of sale. HOA admits that in 2012, it is unaware of any
24 notices, anywhere in Nevada, which included the nomenclature "Super-Priority Lien
25 Amount."

26 26. HOA is without knowledge or information sufficient to form a belief about the
27 truth of the allegation and thus denies.
28

1 27. HOA is without knowledge or information sufficient to form a belief about the
2 truth of the allegation and thus denies.

3 28. HOA is without knowledge or information sufficient to form a belief about the
4 truth of the allegation and thus denies.

5 29. HOA is without knowledge or information sufficient to form a belief about the
6 truth of the hypothetical allegation and thus denies.

7 30. HOA is without knowledge or information sufficient to form a belief about the
8 truth of the hypothetical allegation and thus denies.

9 31. This paragraph contains a legal conclusion which does not require a
10 response. To the extent a response is required, HOA denies.

11 32. This paragraph contains a legal conclusion which does not require a
12 response. To the extent a response is required, HOA denies.

13 33. This paragraph contains a legal conclusion which does not require a
14 response. To the extent a response is required, HOA denies.

15 34. HOA is without knowledge or information sufficient to form a belief about the
16 truth of the hypothetical allegation and thus denies.

17 35. This paragraph contains a legal conclusion which does not require a
18 response. To the extent a response is required, HOA denies.

19 36. HOA is without knowledge or information sufficient to form a belief about the
20 truth of the hypothetical allegation and thus denies.

21 37. HOA is without knowledge or information sufficient to form a belief about the
22 truth of the allegation and thus denies.

23 38. HOA is without knowledge or information sufficient to form a belief about the
24 truth of the hypothetical allegation and thus denies.

25 39. HOA is without knowledge or information sufficient to form a belief about the
26 truth of the allegation and thus denies.

27 40. This paragraph contains a legal conclusion which does not require a
28 response. To the extent a response is required, HOA denies.

1 60. Deny.

2 61. Deny.

3 62. Deny.

4 63. Deny.

5 64. Deny.

6 65. Deny.

7 66. Deny.

8 67. Deny.

9 68. HOA is without knowledge or information sufficient to form a belief about the
10 truth of the hypothetical allegation and thus denies.

11 69. Deny.

12 70. This paragraph does not require a response. To the extent a response is
13 required, HOA denies.

14 **SECOND CLAIM FOR RELIEF**

15 **Breach of Duty of Good Faith**

16 71. HOA repeats and realleges its responses above and incorporates them
17 herein.

18 72. HOA admits NRS 116 et seq. applies. HOA denies any noncompliance with
19 NRS 116.

20 73. HOA denies any noncompliance with NRS 116. HOA denies the term
21 “candor” appears in any version of NRS 116 and therefore denies.

22 74. HOA is without knowledge or information sufficient to form a belief about the
23 truth of the allegation and thus denies.

24 75. HOA admits the former owner made a partial payment, the effect of which
25 was determined in prior litigation to have paid the portion of the delinquency entitled to
26 priority over any first security interest. HOA denies the remainder.

27 76. HOA admits the prior litigation determined a partial payment by the former
28 homeowner was accepted. HOA denies the remainder.

1 77. Deny.

2 78. HOA denies any noncompliance with NRS 116 and denies the remainder.

3 79. Deny.

4 80. Deny.

5 81. This paragraph does not require a response. To the extent a response is
6 required, HOA denies.

7 **THIRD CLAIM FOR RELIEF**

8 **Conspiracy**

9 82. HOA repeats and realleges its responses above and incorporates them
10 herein.

11 83. No response is necessary as this claim is dismissed. To the extent a
12 response is required, HOA denies.

13 84. No response is necessary as this claim is dismissed. To the extent a
14 response is required, HOA denies.

15 85. No response is necessary as this claim is dismissed. To the extent a
16 response is required, HOA denies.

17 86. No response is necessary as this claim is dismissed. To the extent a
18 response is required, HOA denies.

19 87. No response is necessary as this claim is dismissed. To the extent a
20 response is required, HOA denies.

21 **FOURTH CLAIM FOR RELIEF**

22 **(Violation of NRS 113)**

23 88. No response is necessary as this claim is dismissed. To the extent a
24 response is required, HOA denies.

25 89. No response is necessary as this claim is dismissed. To the extent a
26 response is required, HOA denies.

27 90. No response is necessary as this claim is dismissed. To the extent a
28 response is required, HOA denies.

1 91. No response is necessary as this claim is dismissed. To the extent a
2 response is required, HOA denies.

3 92. No response is necessary as this claim is dismissed. To the extent a
4 response is required, HOA denies.

5 93. No response is necessary as this claim is dismissed. To the extent a
6 response is required, HOA denies.

7 94. No response is necessary as this claim is dismissed. To the extent a
8 response is required, HOA denies.

9 95. No response is necessary as this claim is dismissed. To the extent a
10 response is required, HOA denies.

11 96. No response is necessary as this claim is dismissed. To the extent a
12 response is required, HOA denies.

13 97. No response is necessary as this claim is dismissed. To the extent a
14 response is required, HOA denies.

15 98. No response is necessary as this claim is dismissed. To the extent a
16 response is required, HOA denies.

17 99. No response is necessary as this claim is dismissed. To the extent a
18 response is required, HOA denies.

19 100. No response is necessary as this claim is dismissed. To the extent a
20 response is required, HOA denies.

21 101. No response is necessary as this claim is dismissed. To the extent a
22 response is required, HOA denies.

23 102. No response is necessary as this claim is dismissed. To the extent a
24 response is required, HOA denies.

25 103. No response is necessary as this claim is dismissed. To the extent a
26 response is required, HOA denies.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The claims are barred by the doctrine of laches, estoppel, waiver, unjust enrichment and unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is barred from asserting any claims against Defendant HOA because the alleged damages, if any, were the result of intervening, superseding conduct of others, over whom the Defendant has no control.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate damages, if any.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by contributory and comparative negligence.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are reduced, modified and/or barred by the doctrines of collateral estoppel or judicial estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to join one or more indispensable parties.

EIGHTH AFFIRMATIVE DEFENSE

HOA owed no duty to Plaintiff and breached no duty to Plaintiff.

NINTH AFFIRMATIVE DEFENSE

The nonjudicial foreclosure sale of the HOA lien complied with all the applicable statutes.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute or statutes of limitation.

ELEVENTH AFFIRMATIVE DEFENSE

It has been necessary for HOA to employ the services of an attorney to defend this action and a reasonable sum should be allowed for attorney's fees and costs.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's complaint is an abuse of process and HOA reserves the right to file counterclaims or separate complaint for abuse of process to recover damages.

THIRTEENTH AFFIRMATIVE DEFENSE

HOA is not the proximate or legal cause of Plaintiff's damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

HOA reserves the right to amend or otherwise modify this Answer to assert additional affirmative defenses as they become known through formal or informal discovery.

FIFTEENTH AFFIRMATIVE DEFENSE

HOA has no contractual relationship to Plaintiff to give rise to indemnification or warranties, including deed warranties.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff assumed the risk of the HOA foreclosure market and is not entitled to relief against the HOA.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Foreclosure Deed is conclusive evidence the HOA complied with NRS 116.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff failed to attend mediation as required by NRS § 38.310 and thus the Court lacks subject matter jurisdiction over this claim.

NINETEENTH AFFIRMATIVE DEFENSE

The HOA abided by NRS Chapter 116's requirements for the distribution of funds from the HOA non-judicial foreclosure sale.

PRAYER

WHEREFORE, HOA respectfully requests that this Court enter judgment as follows:

1. That Plaintiff take nothing by way of this complaint;
2. That Plaintiff's remaining claims should be dismissed with prejudice;
3. For an award of reasonable attorney's fees and costs of suit; and
4. For such other and further relief as the Court may deem just and proper.

DATED this 5th day of January, 2021.

LIPSON NEILSON, P.C.

/s/ Peter E. Dunkley

By: _____

KALEB D. ANDERSON, ESQ.

Nevada Bar No. 7582

PETER E. DUNKLEY, ESQ.

Nevada Bar No. 11110

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*Attorneys for Defendants Harbor Cove Homeowners
Association*

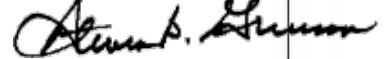
CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January 2021, an electronic copy of the following **HARBOR COVE HOMEOWNERS ASSOCIATION'S ANSWER TO PLAINTIFF'S COMPLAINT** 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 P. Croteau, Esq.
Raymond Jereza, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89148
Attorney for Plaintiff

/s/ Renee M. Rittenhouse

An Employee of LIPSON NEILSON, P.C.



1 ANS
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
11 *Attorney for Defendant Nevada Association*
12 *Services, Inc.*

13 **DISTRICT COURT FOR THE STATE OF NEVADA**
14 **IN AND FOR THE COUNTY OF CLARK**

15 RIVER GLIDER AVENUE TRUST,

16 Plaintiff,

17 vs.

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

21 Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: XX

**NEVADA ASSOCIATION SERVICES,
INC.'S ANSWER TO COMPLAINT**

22 COMES NOW, Defendant NEVADA ASSOCIATION SERVICES, INC. (hereinafter
23 "NAS"), by and through its attorneys, and files it's Answer to RIVER GLIDER AVENUE TRUST'S
24 Complaint as follows:

25 **PARTIES AND JURISDICTION**

26 1. Defendant lacks knowledge or information sufficient to form a belief about the truth of
27 the allegations in paragraph 1 and therefore must deny the allegation in its entirety.

28 2. Defendant lacks knowledge or information sufficient to form a belief about the truth of
the allegations in paragraph 2 and therefore must deny the allegation in its entirety.

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of
the allegations in paragraph 3 and therefore must deny the allegation in its entirety.

4. Defendant lacks knowledge or information sufficient to form a belief about the truth of
the allegations in paragraph 4 and therefore must deny the allegation in its entirety.

1 5. Defendant denies the allegations in paragraph 5.

2 6. Defendant lacks knowledge or information sufficient to form a belief about the truth of
3 the allegations in paragraph 6 and therefore must deny the allegation in its entirety.

4 7. Defendant lacks knowledge or information sufficient to form a belief about the truth of
5 the allegations in paragraph 7 and therefore must deny the allegation in its entirety.

6 **GENERAL ALLEGATIONS**

7 8. Defendant admits allegations in paragraph 8.

8 9. Defendant denies the allegations in paragraph 9.

9 10. Defendant lacks knowledge or information sufficient to form a belief about the truth of
10 the allegations in paragraph 10 and therefore must deny the allegation in its entirety.

11 11. Defendant lacks knowledge or information sufficient to form a belief about the truth of
12 the allegations in paragraph 11 and therefore must deny the allegation in its entirety.

13 12. Defendant lacks knowledge or information sufficient to form a belief about the truth of
14 the allegations in paragraph 12 and therefore must deny the allegation in its entirety.

15 13. Defendant lacks knowledge or information sufficient to form a belief about the truth of
16 the allegations in paragraph 13 and therefore must deny the allegation in its entirety.

17 14. Defendant lacks knowledge or information sufficient to form a belief about the truth of
18 the allegations in paragraph 14 and therefore must deny the allegation in its entirety.

19 15. Defendant lacks knowledge or information sufficient to form a belief about the truth of
20 the allegations in paragraph 15 and therefore must deny the allegation in its entirety.

21 16. Defendant admits the allegation, "On July 26, 2010, HOA Trustee, on behalf of HOA,
22 recorded a Notice of Delinquent Assessment Lien (the "NODAL"). The NODAL stated that the
23 amount due to the HOA was \$1,032.01, plus continuing assessments, interest, late charges, costs...
24 (the "HOA Lien")." Defendant lacks knowledge or information sufficient to form a belief about the
25 truth of the remaining allegations in paragraph 16.

26 17. Defendant admits the allegations in paragraph 17.

27 18. Defendant lacks knowledge or information sufficient to form a belief about the truth of
28 the allegations in paragraph 18 and therefore must deny the allegation in its entirety.

1 19. Defendant lacks knowledge or information sufficient to form a belief about the truth of
2 the allegations in paragraph 19 and therefore must deny the allegation in its entirety.

3 20. Defendant admits the allegations in paragraph 20.

4 21. Defendant lacks knowledge or information sufficient to form a belief about the truth of
5 the allegations in paragraph 21 and therefore must deny the allegation in its entirety.

6 22. Defendant lacks knowledge or information sufficient to form a belief about the truth of
7 the allegations in paragraph 22 and therefore must deny the allegation in its entirety.

8 23. Defendant admits the allegations in paragraph 23.

9 24. Defendant lacks knowledge or information sufficient to form a belief about the truth of
10 the allegations in paragraph 24 and therefore must deny the allegation in its entirety.

11 25. Defendant lacks knowledge or information sufficient to form a belief about the truth of
12 the allegations in paragraph 25 and therefore must deny the allegation in its entirety.

13 26. Defendant lacks knowledge or information sufficient to form a belief about the truth of
14 the allegations in paragraph 26 and therefore must deny the allegation in its entirety.

15 27. Defendant lacks knowledge or information sufficient to form a belief about the truth of
16 the allegations in paragraph 27 and therefore must deny the allegation in its entirety.

17 28. Defendant lacks knowledge or information sufficient to form a belief about the truth of
18 the allegations in paragraph 28 and therefore must deny the allegation in its entirety.

19 29. Defendant denies the allegations in paragraph 29.

20 30. Defendant lacks knowledge or information sufficient to form a belief about the truth of
21 the allegations in paragraph 30 and therefore must deny the allegation in its entirety.

22 31. Defendant admits the allegations in paragraph 31.

23 32. Defendant lacks knowledge or information sufficient to form a belief about the truth of
24 the allegations in paragraph 32 and therefore must deny the allegation in its entirety.

25 33. Defendant denies the allegations in paragraph 33.

26 34. Defendant lacks knowledge or information sufficient to form a belief about the truth of
27 the allegations in paragraph 34 and therefore must deny the allegation in its entirety.

28 35. Defendant denies the allegations in paragraph 35.

36. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 36 and therefore must deny the allegation in its entirety.

37. Defendant admits the allegation, "Plaintiff would contact the HOA Trustee prior to the HOA Foreclosure Sale to determine if the Property would in fact be sold on the date stated in the NOS...however, Plaintiff never inquired if the "Super-Priority Lien Amount" had been paid." Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 37.

38. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 38 and therefore must deny the allegation in its entirety.

39. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 and therefore must deny the allegation in its entirety.

40. Defendant denies the allegations in paragraph 40.

41. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 41 and therefore must deny the allegation in its entirety.

FIRST CLAIM FOR RELIEF

42. NAS adopts and incorporates by reference its responses to the preceding paragraphs of Plaintiff's complaint as if set forth fully herein.

43. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 43 and therefore must deny the allegation in its entirety.

44. Defendant denies the allegations in paragraph 44.

45. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 45 and therefore must deny the allegation in its entirety.

46. Defendant denies the allegations in paragraph 46.

47. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47 and therefore must deny the allegation in its entirety.

48. Defendant denies the allegations in paragraph 48.

49. Defendant denies the allegations in paragraph 49.

50. Defendant denies the allegations in paragraph 50.

1 51. Defendant denies the allegations in paragraph 51.
2 52. Defendant denies the allegations in paragraph 52.
3 53. Defendant lacks knowledge or information sufficient to form a belief about the truth of
4 the allegations in paragraph 53 and therefore must deny the allegation in its entirety.
5 54. Defendant denies the allegations in paragraph 54.
6 55. Defendant lacks knowledge or information sufficient to form a belief about the truth of
7 the allegations in paragraph 55 and therefore must deny the allegation in its entirety.
8 56. Defendant denies the allegations in paragraph 56.
9 57. Defendant denies the allegations in paragraph 57.
10 58. Defendant denies the allegations in paragraph 58.
11 59. Defendant denies the allegations in paragraph 59.
12 60. Defendant denies the allegations in paragraph 60.
13 61. Defendant denies the allegations in paragraph 61.
14 62. Defendant denies the allegations in paragraph 62.
15 63. Defendant denies the allegations in paragraph 63.
16 64. Defendant denies the allegations in paragraph 64.
17 65. Defendant denies the allegations in paragraph 65.
18 66. Defendant denies the allegations in paragraph 66.
19 67. Defendant denies the allegations in paragraph 67.
20 68. Defendant denies the allegations in paragraph 68.
21 69. Defendant denies the allegations in paragraph 69.
22 70. The allegations in paragraph 70 do not require a response. To the extent that a response
23 is required Defendant lacks knowledge or information sufficient to form a belief about the truth of the
24 allegations in paragraph 70 and therefore must deny the allegations in its entirety.

25 **SECOND CLAIM FOR RELIEF**

26 71. NAS adopts and incorporates by reference its responses to the preceding paragraphs of
27 Plaintiff's complaint as if set forth fully herein.

28 72. Defendant lacks knowledge or information sufficient to form a belief about the truth of

1 the allegations in paragraph 72 and therefore must deny the allegation in its entirety.

2 73. Defendant lacks knowledge or information sufficient to form a belief about the truth of
3 the allegations in paragraph 73 and therefore must deny the allegation in its entirety.

4 74. Defendant lacks knowledge or information sufficient to form a belief about the truth of
5 the allegations in paragraph 74 and therefore must deny the allegation in its entirety.

6 75. Defendant lacks knowledge or information sufficient to form a belief about the truth of
7 the allegations in paragraph 75 and therefore must deny the allegation in its entirety.

8 76. Defendant lacks knowledge or information sufficient to form a belief about the truth of
9 the allegations in paragraph 76 and therefore must deny the allegation in its entirety.

10 77. Defendant denies the allegations n paragraph 77.

11 78. Defendant denies the allegations n paragraph 78.

12 79. Defendant denies the allegations n paragraph 79.

13 80. Defendant denies the allegations n paragraph 80.

14 81. The allegations in paragraph 81 do not require a response. To the extent that a response
15 is required Defendant lacks knowledge or information sufficient to form a belief about the truth of the
16 allegations in paragraph 81 and therefore must deny the allegations in its entirety.

17 **THIRD CLAIM FOR RELIEF**

18 82. NAS adopts and incorporates by reference its responses to the preceding paragraphs of
19 Plaintiff's complaint as if set forth fully herein.

20 83. Defendant lacks knowledge or information sufficient to form a belief about the truth of
21 the allegations in paragraph 83 and therefore must deny the allegation in its entirety.

22 84. Defendant denies the allegations in paragraph 84.

23 85. Defendant denies the allegations in paragraph 85.

24 86. Defendant denies the allegations in paragraph 86.

25 87. The allegations in paragraph 87 do not require a response. To the extent that a response
26 is required Defendant lacks knowledge or information sufficient to form a belief about the truth of the
27 allegations in paragraph 87 and therefore must deny the allegations in its entirety.

28 ///

FOURTH CLAIM FOR RELIEF

88. NAS adopts and incorporates by reference its responses to the preceding paragraphs of Plaintiff's complaint as if set forth fully herein.

89. Defendant denies the allegations in paragraph 89.

90. Defendant denies the allegations in paragraph 90.

91. Defendant denies the allegations in paragraph 91.

92. Defendant denies the allegations in paragraph 92.

93. Defendant denies the allegations in paragraph 93.

94. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 94 and therefore must deny the allegation in its entirety.

95. Defendant denies the allegations in paragraph 95.

96. Defendant denies the allegations in paragraph 96.

97. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 97 and therefore must deny the allegation in its entirety.

98. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 98 and therefore must deny the allegation in its entirety.

99. Defendant denies the allegations in paragraph 99.

100. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 100 and therefore must deny the allegation in its entirety.

101. Defendant denies the allegations in paragraph 101.

102. Defendant denies the allegations in paragraph 102.

103. The allegations in paragraph 103 do not require a response. To the extent that a response is required Defendant lacks knowledge or information sufficient to form a belief about the

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1 truth of the allegations in paragraph 103 and therefore must deny the allegations in its entirety.

2 Dated this 26th day of January, 2021.

3

4

By: 

5

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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1 12. NAS did not make false material representation of fact which was not true, or if such
2 representation was made, which NAS specifically denies, NAS did not make the representation with
3 the intent either to deceive or to induce Plaintiff to act in reliance.

4 13. Plaintiff has waived, by conduct or otherwise, any claim against NAS.

5 14. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver,
6 acquiescence and/or ratification.

7 15. Plaintiff did not justifiably rely, in any fashion whatsoever, upon any statement,
8 representation, advice, or conduct of NAS, and did not act upon any statement, representation, advice,
9 or conduct to his damage.

10 16. By virtue of Plaintiff's conduct, Plaintiff should be barred from prosecuting its claims
11 against NAS by reason of the Doctrine of Estoppel.

12 17. No actual, justiciable controversy exists between NAS and Plaintiff and, thus,
13 Plaintiff's claims must be dismissed as to NAS.

14 18. Plaintiff's claims are barred against NAS, to the extent that they are from an alleged
15 contract or contracts with third parties which did not bind NAS.

16 19. Plaintiff's claims and allegations are barred against NAS by the doctrine of laches.

17 20. Plaintiff's claims and allegations are barred by its contributory and/or comparative
18 negligence.

19 21. Plaintiff's claims and allegations are barred by the applicable statute of limitation.

20 22. Plaintiff's claims and allegations are barred by the Doctrine of Assumption of Risk.

21 23. Plaintiff failed to plead any acts or omissions of NAS sufficient to warrant the
22 consideration of attorneys' fees or costs of suit, or a declaration that its deed of trust of Plaintiff
23 survived the assessment lien foreclosure sale, or an order quieting title in favor of Plaintiff.

24 24. Plaintiff is not entitled to equitable relief because it and its predecessors and
25 successors failed to avail themselves to the remedies expressly stated in its deed of trust.

26 25. Plaintiff has failed to join one or more indispensable parties.

27 26. Plaintiff's claims are barred because NAS complied with all applicable statutes,
28 requirements, and regulations necessary under Nevada law and Federal law.

1 27. Plaintiff is not entitled to the requested relief because the request is based, either in
2 whole or in part, on an erroneous interpretation of the applicable statutes, requirements, and
3 regulations under Nevada law and Federal law.

4 28. The claims, and each of them, are barred by Nevada Revised Statute 11.190.

5 Dated this 26th day of January, 2021.

6
7 By: _____

8 BRANDON E. WOOD
9 Nevada State Bar Number 12900
10 NEVADA ASSOCIATION SERVICES, INC.
11 6625 S. Valley View Blvd. Suite 300
12 Las Vegas, NV 89118
13 *Attorney for Defendant Nevada Association*
14 *Services, Inc.*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of February, 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 Answer to Complaint* 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	Croteau Admin receptionist@croteaulaw.com
Peter Dunkley, Esq. Lipson Neilson pdunkley@lipsonneilson.com	

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

IN THE SUPREME COURT OF NEVADA

RIVER GLIDER AVENUE TRUST

Appellant,

v.

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

Respondents.

Supreme Court Case No. 83689

APPELLANT'S APPENDIX

VOLUME 2

Counsel for Appellant:

Roger P. Croteau, Esq.

Nevada Bar No. 4958

ROGER P. CROTEAU & ASSOCIATES, LTD.

2810 W. Charleston Blvd., Ste. 75

Las Vegas, Nevada 89102

Tel: (702) 254-7775

Fax: (702) 228-7719

Email: croteaulaw@croteaulaw.com

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10/20/2020	Affidavit of Service	1	AA057
11/10/2020	Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment	1	AA058-093
11/10/2020	Nevada Association Services, Inc.'s Joinder to Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment	1	AA094-096
11/24/2020	Plaintiff's Opposition to Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative Summary Judgment and Nevada Association Services, Inc.'s Joinder Thereto	1	AA097-130
12/09/2020	Harbor Cove Homeowners Association's Reply in Support of Motion to Dismiss or in the Alternative, for Summary Judgment	1	AA131-143
12/15/2020	Plaintiff's Errata to Opposition to Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative Summary Judgment and Nevada Association Services, Inc.'s Joinder Thereto	1	AA144-148
01/05/2021	Harbor Cove Homeowners Association's Answer to Plaintiff's Complaint	1	AA149-160
02/01/2021	Nevada Association Services, Inc's Answer to Complaint	1	AA161-172

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07/23/2021	Nevada Association Services, Inc's Joinder to Defendant Harbor Cove Homeowners Association's Renewed, Motion for Summary Judgment	2	AA256-258
08/05/2021	Plaintiff's Opposition to Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment and Nevada Association Services, Inc's Joinder Thereto	2	AA259-286
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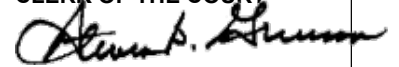
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8/20/2020	Complaint	1	AA001-055
1/5/2021	Harbor Cove Homeowners Association's Answer to Plaintiff's Complaint	1	AA149-160
11/10/2020	Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment	1	AA058-093
7/22/2021	Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment	2	AA173-255
12/9/2020	Harbor Cove Homeowners Association's Reply in Support of Motion to Dismiss or in the Alternative, for Summary Judgment	1	AA131-143
8/9/2021	Harbor Cove Homeowners Association's Reply in Support of Renewed, Motion for Summary Judgment	2	AA287-299
11/10/2020	Nevada Association Services, Inc.'s Joinder to Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative for Summary Judgment	1	AA094-096
2/1/2021	Nevada Association Services, Inc's Answer to Complaint	1	AA161-172
7/23/2021	Nevada Association Services, Inc's Joinder to Defendant Harbor Cove Homeowners Association's Renewed, Motion for Summary Judgment	2	AA256-258
10/20/2021	Notice of Appeal	2	AA338-340
9/23/2021	Notice of Entry of Order	2	AA322-337
9/21/2021	Order on Harbor Cove Homeowners Association's Renewed, Motion for Summary Judgment	2	AA309-321

12/15/2020	Plaintiff's Errata to Opposition to Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative Summary Judgment and Nevada Association Services, Inc.'s Joinder Thereto	1	AA144-148
11/24/2020	Plaintiff's Opposition to Harbor Cove Homeowners Association's Motion to Dismiss or in the Alternative Summary Judgment and Nevada Association Services, Inc.'s Joinder Thereto	1	AA097-130
8/5/2021	Plaintiff's Opposition to Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment and Nevada Association Services, Inc.'s Joinder Thereto	2	AA259-286
9/8/2021	Recorder's Transcript of Hearing: Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment; Nevada Association Services, Inc.'s Joinder to Defendant Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment	2	AA300-308

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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

Hearing Requested

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

Hearing Date:
Hearing Time:.

COMES NOW, Defendant Harbor Cove Homeowners Association (the "HOA"), by and through its counsel of record, LIPSON NEILSON, P.C., and hereby submits this Renewed Motion for Summary Judgment.

///

///

///

1 This Motion is made and based on the following Memorandum of Points and
2 Authorities, the pleadings and papers on file, and any oral arguments the Court may
3 consider in this matter.

4 Dated this 22nd day of July 2021.

5 LIPSON NEILSON, P.C.

6 */s/ Peter E. Dunkley*

7 By:

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BACKGROUND

This is the epilogue to one of the books in the series of HOA foreclosure litigation. The property is located at 8112 Lake Hills Drive, Las Vegas, Nevada 89128 (APN: 138-16-213-034) (the "Property"). The Plaintiff is suing the HOA (and the trustee, Nevada Association Services ("NAS")) because Plaintiff's acquisition of the Property, after a nonjudicial foreclosure sale, for \$5,500.00,¹ resulted in ownership of the Property subject to an existing deed of trust.

Plaintiff is still attempting to re-litigate the outcome of the *nonjudicial* foreclosure sale, turned into a *judicial* action (the Prior Litigation) which went all the way through appeal, and was affirmed. This second bite at the apple is based on theories through which Plaintiff recharacterizes the same issues from the Prior Litigation, apparently to avoid the outcome of the Prior Litigation.

Plaintiff has already appealed and lost, so Plaintiff's tactic here appears to be fabricating new facts in order to avoid losing again. However, in Nevada, one cannot invent facts in order to create a genuine factual issue for trial (or arbitration) to avoid summary judgment. The Nevada Supreme Court said it best:

The word "genuine" has moral overtones. We do not take it to mean a fabricated issue. Though aware that the summary judgment procedure is not available to test and resolve the credibility of opposing witnesses to a fact issue (*Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979), we hold that it may appropriately be invoked to defeat a lie from the mouth of a party against whom the judgment is sought, when that lie is claimed to be the source of a "genuine" issue of fact for trial.

Aldabe v. Adams, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965) (overruled on other grounds).

¹ According to Zillow.com, the current value is \$740,900.00. https://www.zillow.com/homes/8112-Lake-Hills-Drive,-Las-Vegas,-Nevada-_rb/6936988_zpid/ (Accessed July 18, 2021). In other words, Plaintiff paid less than 1 penny on the dollar, i.e., \$5,500 divided by \$740,900.00 equals: .007, which equals less than 1 percent.

1 The U.S. Supreme Court is of the same accord: "When opposing parties tell two
2 different stories, one of which is blatantly contradicted by the record, so that no reasonable
3 jury could believe it, a court should not adopt that version of the facts for purposes of ruling
4 on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769,
5 1776 (2007).

6 This matter is set for an arbitration to take place on September 15, 2021. However,
7 given the undisputed facts, and the further development of authority in the state courts, and
8 now federal courts, this Court may rule as a matter of law, "to secure the just, speedy, and
9 inexpensive determination of every action and proceeding." NRCP 1. See *also*, NAR 4(E)
10 (dispositive motions may be filed no later than 45 days prior to the arbitration).

11 **II. UNDISPUTED FACTS**

12 The effect of the nonjudicial foreclosure sale has already been litigated in case A-13-
13 683467-C (the "Prior Litigation").² According to the District Court's Order, affirmed on
14 appeal, the following is established:

15 1. The nonjudicial foreclosure sale was valid and conveyed the Property to the
16 Plaintiff *subject to* the existing deed of trust. A copy of the Order Granting Summary
17 Judgment in favor of the lender, is attached hereto, as **Exhibit A**.

18 2. Before the nonjudicial foreclosure sale, the prior owner of the Property had
19 satisfied the super-priority portion of the HOA's lien. Exhibit A, p. 3 ¶ 10, p. 5 ¶ 5.

20 3. The valid nonjudicial foreclosure sale occurred on May 11, 2012 ("HOA
21 Sale"). See Exhibit A, p. 4 ¶ 14. (See *also*, Complaint, ¶ 2 (same).)

22 4. River Glider Avenue Trust purchased the Property at the valid nonjudicial
23 foreclosures sale for \$5,500.00. Exhibit A, p. 4, at ¶ 15; Complaint ¶ 22.

24 5. "River Glider Avenue Trust purchased the Property subject to [a] deed of
25 trust." (*Id.*, at p. 5 ¶ 6.)

26
27 ² The Court may take judicial notice of facts: "Generally known within the territorial
28 jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources
whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable
dispute." NRS 47.130.

1 6. The District Court's Order was affirmed on Appeal. A copy of the Order of
2 Affirmance is attached as **Exhibit B**. The Plaintiff petitioned for rehearing, which was
3 denied on July 1, 2020. A copy of the Order Denying Rehearing is attached as **Exhibit C**.

4 **III. FABRICATED "FACT"**

5 7. Plaintiff alleges³ he called NAS before the May 11, 2012, nonjudicial
6 foreclosure sale to inquire regarding the Property, and NAS said nothing of the prior
7 homeowner's preforeclosure payments and NAS had a duty to do so.

8 a. This "fact" is not in the complaint but is asserted in Response to
9 Interrogatory No. 2: "Identify the date of any communications YOU had
10 with [NAS] prior to the HOA Foreclosure Sale." Plaintiff's response to
11 Interrogatory No. 2, sets forth the substance of the alleged call which
12 Plaintiff stated he "...would have contacted [NAS] on Thursday May 10
13 or Friday, May 11, 2012." A copy of Plaintiff's Interrogatory Responses
14 is attached as **Exhibit D**.

15 b. Plaintiff has no evidence to support this unsubstantiated "fact." See
16 Response First Request for Production of Documents No. 3, "no
17 written records would be kept" and Response to Second Request for
18 Production of Documents No. 4, "no records" of "telephone records,
19 invoices, or bills showing telephonic communications between
20 [Plaintiff] and [NAS] between May 1, 2012 and May 12, 2012." A copy
21 of Plaintiff's responses to Requests for Production of Documents, (First
22 and Second), is attached here as **Exhibits E-1** and **E-2**, respectively.

23 c. This "fact" is not actually a "fact" and is contradicted by NAS's Phone
24 Notes which were produced in this case on March 4, 2021. A copy of
25 Phone Notes is attached as **Exhibit F**.

26
27
28 ³ The "fact" was not alleged in the Complaint.

1 **d.** NAS testified that every communication, including telephonic inquiries
2 would have a corresponding entry in the Phone Notes. See
3 Declaration of Moses at ¶¶ 2-3, attached as **Exhibit G**. The
4 Declaration of Moses also authenticates Exhibit F, the attached Phone
5 Notes (see Exhibit G at ¶ 8).

6 **e.** There is no entry in the Phone Notes for the dates on which Plaintiff
7 says he called NAS. See Exhibit F, Phone Notes (no entries between
8 dates May 9, 2012 and May 17, 2012).

9 **f.** The allegation of a pre-foreclosure sale phone call to NAS is a
10 demonstrable change in Plaintiff's prior testimony, under oath, from
11 other cases. On July 27, 2017, Plaintiff testified that he would **not** have
12 contacted an HOA's trustee prior to the sale.⁴

13 **Question:** Prior to an HOA foreclosure sale, do you **ever** inquire from
14 the HOA or the HOA's agent conducting the sale whether there was an
15 attempt to pay the super priority portion of the liens prior to the sale?

16 **Answer:** No.

17 ...

18 **Question:** Prior to purchasing a property, do you **ever** reach out to the
19 HOA directly for information regarding the property?

20 **Answer:** No.

21 **Question:** What about the HOA trustee? So here that would be Alessi
22 & Koenig.

23 **Answer:** No.

24 Deposition of Haddad, p. 9:7-11; p. 11:17-23, taken July 27, 2017, in federal case 2:16-cv-
25 03009-RFB-CWH, (emphasis added) a copy of the relevant portions of the transcript is
26 attached as **Exhibit H**.

27

28 ⁴ The deposition transcript and trial transcript are admissible. See 51.035(2)(d) (transcript of
 testimony under oath not hearsay); NRS 50.135(2)(a) (admissible if the statement meets NRS
 51.035(3), i.e., it's Haddad's statement).

Mr. Haddad's deposition testimony was consistent with his testimony at trial:

Question: Did you talk to anyone at *Nevada Legal News*, NAS, or the HOA about this property prior to the sale?

Answer: I would not recall, but that would not be proper protocol. We would, you know, stand around and wait for the announcements to be made.

...

Question: Did you talk to the HOA about this property before you bid on it?

Answer: No. I'm sure I would not have.

Trial Testimony of Haddad, p. 159:16-20, p. 173:23-174:1, November 15, 2017, Case No. A707392. A copy of the relevant portions of the trial transcript is attached as **Exhibit I**.

IV. SUMMARY JUDGMENT STANDARD

"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**

1 issue for trial.” *Id.* at 587 (emphasis added); *See also Wood v. Safeway, Inc.*, 121 Nev. 724
2 (2005), *citing Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82 (2002).

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

15 As noted above, one cannot fabricate a “fact” to avoid summary judgment. *Aldabe*,
16 81 Nev. at 285, 402 P.2d at 37. And where there are two stories, but “one of which is
17 blatantly contradicted by the record, so that no reasonable jury could believe it, a court
18 should not adopt that version of the facts for purposes of ruling on a motion for summary
19 judgment.” *Scott*, 550 U.S. at 380. Where claims are unsubstantiated, the Nevada
20 Supreme Court has stated: “trial courts should not be reluctant in dispensing with such
21 claims, as they are instructive of the type of litigation that summary judgment is meant to
22 obviate.” *Boesiger v. Desert Appraisals, Ltd. Liab. Co.*, 444 P.3d 436, 440-41 (Nev. 2019).

23 **V. REQUEST FOR JUDICIAL NOTICE**

24 This court may take judicial notice of matters of fact that are generally known or that
25 are “[c]apable of accurate and ready determination by resort to sources whose accuracy
26 cannot reasonably be questioned’ when requested by a party. NRS 47.130; NRS 47.150.
27 Records of other courts are sources whose accuracy cannot reasonably be questioned.
28 *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981). A court may take

1 judicial notice of records from other cases if there is a close relationship between the
2 cases, and issues within the case justify taking judicial notice of the prior case. *Id.* Here, the
3 HOA requests that the Court take judicial notice of the District Court's Order in the Prior
4 Litigation (Exhibit A) as that case is closely related to this case in that the prior case
5 involves the same foreclosure sale and made express findings regarding issues raised in
6 this lawsuit. The HOA also requests that the Court take judicial notice of the transcripts of
7 Haddad's prior testimony, Exhibits H and I.

8 **VI. LEGAL ARGUMENT**

9 This matter is ripe for summary judgment in favor of the HOA because the Prior
10 Litigation, established the character of the Property's title through a valid nonjudicial
11 foreclosure sale, and the prior testimony of Plaintiff establishes that there is no ***genuine***
12 issue of material fact. Plaintiff is attempting to change the facts in order to change who
13 should pay for the sale. There was no defect in the foreclosure; there was no fraud or
14 procedural error which would invalidate the sale. The time and place to litigate the alleged
15 issues in this complaint was in the Prior Litigation.

16 Plaintiff's two remaining claims are: (1) misrepresentation, (2) breach of duty of good
17 faith. Each of the claims fail and because there is no ***genuine*** issue of material fact, the
18 Court should grant summary judgment in favor of the HOA.

19 **A. MISREPRESENTATION CLAIM FAILS BECAUSE THE HOA HAD NO** 20 **OBLIGATION TO DISCLOSE PAYMENTS**

21 Plaintiff's misrepresentation claim fails because an HOA had no duty to disclose the
22 former owner's payment. The elements for a claim of negligent misrepresentation are: (1)
23 defendant supplied information while in the course of its business; (2) the information was
24 false; (3) the information was supplied for the guidance of the plaintiff in its business
25 transactions; (4) defendant must have failed to exercise reasonable care or competence in
26 obtaining or communicating the information; (5) plaintiff must have justifiably relied upon
27 the information by taking action or refraining from it; and (6) plaintiff sustained damage as a
28

1 result of his reliance upon the accuracy of the information. NJI 9.05; *Barmettler v. Reno Air,*
2 *Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998).

3 Similarly, the elements for a claim of intentional misrepresentation are: (1) defendant
4 makes a false representation or misrepresentation as to a past or existing fact; (2)
5 defendant made the statement with knowledge or belief that the representation is false or
6 that defendant lacks sufficient basis of information to make the representation; (3)
7 defendant intended to induce plaintiff to act in reliance on the representation; (4) plaintiff
8 justifiably relied upon the representation; (5) causation and damages to plaintiff as a result
9 of relying on misrepresentation; and (6) must be proved by clear and convincing evidence
10 and be pled with specificity. NRCP 9; NJI 9.01; *Jordan v. State ex rel. Dep't of Motor*
11 *Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005).

12 Plaintiff's claim fails because an HOA is required to comply with NRS 116 and
13 NRS 116 did not require any such disclosure of a tender or payment made prior to the
14 nonjudicial foreclosure date. An HOA's nonjudicial foreclosure process is a creature of
15 statute. *SFR Invs. Pool 1 v. U.S. Bank, N.A.*, 130 Nev. 742, 744, 334 P.3d 408, 410
16 (2014). Pursuant to the statute, some HOAs have superpriority liens, while other HOAs do
17 not. *See MCM Capital Partners, LLC v. Saticoy Bay LLC Series 6684 Coronado Crest*,
18 No. 215CV1154JCMGWF, 2018 WL 4113332, at *3 (D. Nev. Aug. 29, 2018) (finding
19 limited-purpose associations may be exempt from many portions of NRS 116, including
20 the superpriority portion, thus leaving them without a split lien and only a subpriority lien),
21 *see also Bank of Am., N.A. v. Aspen Meadows - Fernley Flood Control Facility Maint.*
22 *Ass'n*, No. 316CV00413MMDWGC, 2019 WL 2437453, at *3 (D. Nev. June 10, 2019)
23 (finding the HOA "never had a superpriority lien on the Property").

24 Nevertheless, regardless of the type of HOA or foreclosure, in the year 2012, NRS
25 116 did not require any HOA (or NAS) to make a declaration at the sale, or before the
26 sale over the phone, or in their foreclosure notices, regarding the payment history on the
27 Property, or of the character of the nonjudicial foreclosure sale, i.e., whether the sale was
28 a super-priority or sub-priority lien sale.

1 **i. The HOA had no obligation to disclose it was foreclosing on a**
2 **superpriority lien**

3 An HOA does not have to disclose whether or not there is a superpriority lien, but
4 rather must state the total delinquency being foreclosed upon. See NRS 116.31162(1)(c)
5 (2013) (stating that the total amount of the HOA lien “includ[es] costs, fees and expenses
6 incident to its enforcement”). As the Nevada Supreme Court stated, because the
7 foreclosure notices go to all lien holders, whether junior or senior, “it was appropriate to
8 state the total amount of the lien.” *SFR Invs. Pool 1, LLC. v. U.S. Bank, N.A.*, 130 Nev.
9 742, 757, 334 P.3d 408, 418 (2014). There is no allegation that the notices were
10 incorrect. Accordingly, there is no basis for any misrepresentation claim.

11 **ii. The HOA has no obligation to disclose a prior payment of the**
12 **superpriority lien**

13 Plaintiff’s misrepresentation claim⁵ is based on an alleged failure to disclose the
14 former owner’s partial payment prior to the nonjudicial foreclosure sale. (Compl. ¶ 43.)
15 However, there is no such duty or obligation, and thus no misrepresentation. In *Noonan*
16 *v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (unpublished), the
17 Foreclosure Purchaser argued that the foreclosure agent had a duty to disclose a
18 preforeclosure tender. The Nevada Supreme Court found no such duty exists, stating:

19 Summary judgment was appropriate on the negligent
20 misrepresentation claim because [the Trustee] neither made an
21 affirmative false statement nor omitted a material fact it was bound to
22 disclose. See *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev.
23 394, 400, 302 P.3d 1148, 1153 (2013) (providing the elements for a
24 negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225,
25 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a material
26 fact which a party is bound in good faith to disclose is equivalent to a
27 false representation.” (internal quotation marks omitted)). **Compare**
28 **NRS 116.31162(1)(b)(3)(II) (2017) (requiring an HOA to disclose if**
 tender of the superpriority portion of the lien has been made),
 with NRS 116.31162 (2013) (not requiring any such disclosure).

⁵ Also characterized as negligent claims. (Compl. ¶ 50.) However, because there is no duty to disclose the payment, whether sounding in negligence or misrepresentation, the claim fails.

1 *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (emphasis added).
2 Therefore, according to the *Noonan* case, there was no duty to disclose a preforeclosure
3 payment until NRS 116 was amended in 2017 to require such a disclosure.

4 The Nevada Supreme Court continues to rule accordingly, albeit in unpublished
5 cases: **(1)** *Saticoy Bay v. Genevieve Court Homeowners Ass'n*, No. 80135, 2020 Nev.
6 Unpub. LEXIS 1000, at *1 (Oct. 16, 2020) (no duty to disclose); **(2)** *Saticoy Bay v.*
7 *Silverstone Ranch Cmty. Ass'n*, No. 80039, 2020 Nev. Unpub. LEXIS 993, at *1 (Oct. 16,
8 2020) (no duty to disclose, and NRS 113 does not apply to create such a disclosure) **(3)**
9 *Saticoy Bay Llc Series 10007 Liberty View v. S. Terrace Homeowners Ass'n*, 484 P.3d
10 276 (Nev. 2021) (same, issued April 16, 2021); **(4)**, *Bay v. Tripoly*, 482 P.3d 699 (Nev.
11 2021) (same, issued March 26, 2021); **(5)** *Saticoy Bay Llc Series 3237 v. Aliante Master*
12 *Ass'n*, 480 P.3d 836 (Nev. 2021) (same, issued February 16, 2021); **(6)** *Bay v. V.*, 478
13 P.3d 870 (Nev. 2021) (same, issued January 15, 2021).

14 The Nevada Supreme Court's decisions are consistent with those which are taking
15 place in the U.S. District Court, District of Nevada, where the U.S. District Court granted
16 summary judgment in favor of the HOA, "[b]ecause the HOA had no duty to disclose a
17 tender payment, Saticoy's cross-claim for failure to disclose fails as a matter of law."
18 *Jpmorgan Chase Bank, N.A. v. Saticoy Bay Llc Series 741 Heritage Vista*, No. 2:17-cv-
19 02646-APG-NJK, 2020 U.S. Dist. LEXIS 26484, at *5 (D. Nev. Feb. 14, 2020); *see also*,
20 *Fannie Mae v. Saticoy Bay Llc Series 8324 Charleston & Fulton Park Unit Owners' Ass'n*,
21 No. 2:17-cv-02051-APG-EJY, 2020 U.S. Dist. LEXIS 103267, at *8 (D. Nev. June 11,
22 2020) ("[N]othing in the statute required the HOA to disclose or announce anything..." (in
23 context of alleged Fannie Mae interest).

24 Thus, for any of the nonjudicial foreclosure sales which took place in May of 2012,
25 the undersigned can find no state or federal court in Nevada which finds a duty to
26 disclose a pre-foreclosure payment. As stated in *SFR* and its progeny, the Nevada
27 Supreme Court still finds the HOA's duties are to comply with NRS 116.

28

1 After the HOA's foreclosure sale on May 11, 2012, the Legislature substantially
2 revised NRS 116. See 2015 Nev. Stat., Ch. 266. However, the version of NRS 116 that
3 applies in this case is the version that was in effect in May of 2012. See *generally*
4 *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 313 P.3d 849, 853 (Nev. 2013) ("Substantive
5 statutes are presumed to only operate prospectively, unless it is clear that the drafters
6 intended the statute to be applied retroactively."); see also *Landgraf v. USI Film Products*,
7 114 S. Ct. 1483, 1487, 511 U.S. 244, 245 (U.S. Tex. 1994) ("The presumption against
8 statutory retroactivity is founded upon elementary considerations of fairness dictating that
9 individuals should have an opportunity to know what the law is and to conform their
10 conduct accordingly.").

11 Unlike the current version of NRS 116, the version of NRS 116 at the time of the
12 sale in 2012 contained no disclosure requirements. The prospective application of NRS
13 116's disclosure requirement is represented in each of the cases cited above.

14 Because NRS 116 contained no duty to disclose preforeclosure payments on May
15 11, 2012, the claim fails as a matter of law, whether or not it is based on an intentional or
16 a negligent misrepresentation. The Court should grant summary judgment in favor of the
17 HOA.

18 **iii. The foreclosure deed cannot create liability against the HOA**

19 The Court may grant summary judgment in favor of the HOA because the HOA
20 cannot be held liable for the character of title to the Property because the only deed
21 permitted by NRS 116 is a deed ***without warranty***. NRS 116.31164(3) states: "After the
22 sale, the person conducting the sale shall: (a) **Make, execute and, after payment is**
23 **made, deliver to the purchaser**, or his or her successor or assign, **a deed without**
24 **warranty** which conveys to the grantee all title of the unit's owner to the unit" (emphasis
25 added). The non-warranty deed vests title "without equity or right of redemption." NRS
26 116.31166(3).

27 A nonwarranty deed is the same as a quitclaim deed, which: "is sufficient to convey
28 whatever interest the grantor had in the property at the time the conveyance was made,"

1 *Brophy Min. Co. v. Brophy & Dale Gold & Silver Min. Co.*, 15 Nev. 101, 107 (1880). A
2 quitclaim deed “neither warrants nor professes that the title is valid.” Black’s Law Dictionary
3 (10th ed. 2014). For more than 100 years, a non-warranty deed has protected a grantor
4 from liability from deed warranties because the deed conveys only that which the grantor
5 holds and promises nothing more. *See Oliver v. Piatt*, 44 U.S. 333, 11 L. Ed. 622 (1845) (“A
6 purchaser by a deed of quitclaim without any covenant of warranty, is not entitled to
7 protection in a court of equity as a purchaser for a valuable consideration, without notice;
8 and he takes only what the vendor could lawfully convey.”) *See also, e.g., Platner v.*
9 *Vincent*, 194 Cal. 436, 444, 229 P. 24, 27 (1924) (‘Appellant [w]ould have [been] protected
10 [] from liability as a cograntor by executing a quitclaim deed [because s]uch deeds do not
11 carry covenants of warranty.”) *See also, Greek Catholic Congregation of Borough of*
12 *Olyphant v. Plummer*, 347 Pa. 351, 353–54, 32 A.2d 299, 300 (1943) (“One quit-claiming
13 his interest in a property is creating no liability against himself and the real owner of that
14 property: *See Power v. Foley, Newfoundland Reports*, 1897-1903, p. 540; *England v.*
15 *Cowley*, L. R. 8 Ex. 126; and *Owen v. Legh*, 3 B. & Ald. 470.”). *See also, Lowe v. Ragland*,
16 156 Tex. 504, 516, 297 S.W.2d 668, 675–76 (1957) (“All of the title which the grantor
17 owned or had the power to convey passes under the conveyance, but there is no liability on
18 the warranty for any impairment of title resulting from the prior conveyance.”)

19 Under NRS 116, the HOA **cannot** provide a nonjudicial foreclosure deed with any
20 deed warranties because NRS 116 expressly requires that the type of deed conferred is a
21 “deed without warranty.” The Nevada Supreme Court has concluded that the HOA has
22 “little autonomy in taking extra-statutory efforts” under the “elaborate” requirements of NRS
23 116. *Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d
24 641, 645 (Nev. 2017), reh'g denied (Dec. 13, 2017), reconsideration *en banc* denied (Feb.
25 23, 2018). In the Prior Litigation, there was no defect in the underlying nonjudicial
26 foreclosure sale. As the Nevada Supreme Court has said:

27 \l

28 \l

The language in the Notice of Sale clearly and accurately explained that the winning bidder would receive a deed without warranty, see NRS 116.31164(3)(a) (2005) (requiring the person conducting the foreclosure sale to deliver to the purchaser a deed without warranty), and [a deed without warranty] cannot reasonably be construed as suggesting that a first deed of trust would survive the foreclosure sale.

First Mortg. Corp. v. Saticoy Bay LLC Series 1828 La Calera, 432 P.3d 189 (Nev. 2018) (table) (emphasis added). In other words, the HOA grants a deed without any warranty, conveying whatever interest it holds, nothing more and nothing less. The deed does not include a representation that the HOA will defend the grantee's (Plaintiff's) title and does not include a right to sue the grantor (the HOA or trustee) under a theory that the deed should have included warranties or representations which cannot exist as a matter of law. The claim fails as a matter of law.

Similarly, in *A Oro, LLC v. Ditech Financial LLC*, 2019 WL 913129, 434 P.3d 929 (Nev. 2019) (unpublished disposition), the Nevada Supreme Court concluded that the district court correctly granted summary judgment to the HOA on the appellant foreclosure purchaser's fraudulent nondisclosure claim. In *A Oro*, the foreclosure purchaser challenged the district court's entry of summary judgment in favor of the lender on the tender issues. *Id.* The foreclosure purchaser had also asserted claims against the association based upon fraudulent non-disclosure of the lender's tender. However, the district court awarded summary judgment in favor of the association on the foreclosure purchaser's claim. *Id.* In upholding the district court decision, the Supreme Court determined (among other reasons) that there was no evidence that the association intended to induce appellant into placing the winning bid at the foreclosure sale, as the association was unaware of appellant's assumptions regarding the legal effect of the sale. *See id.*, citing *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) (setting forth the elements of a fraudulent nondisclosure claim).

As an additional reason why the claim had no merit, the Nevada Supreme Court noted, "that appellant has provided no legal support for the unorthodox proposition that the winning bidder at a foreclosure sale can bring a fraud claim against the auctioneer [or

1 the HOA] when the auctioneer's foreclosure notices have disclaimed any warranties
2 as to the title being conveyed." *Id.* at n.2 (emphasis added).

3 Here too, the Court should reject Plaintiff's unorthodox and unsubstantiated
4 proposition that it is entitled to bring misrepresentation claims against the HOA where the
5 Foreclosure Deed expressly disclaimed any warranties as to the quality of title being
6 conveyed.

7 **B. BREACH OF DUTY OF GOOD FAITH FAILS AS A MATTER OF LAW**

8 Plaintiff alleges that the HOA breached its duty of good faith under NRS 116.1113 by
9 failing to disclose the prior owner's payment. Compl. ¶ 77. This allegation is without merit.
10 While NRS 116.1113 imposes a duty of good faith *in the performance of every contract*
11 *or duty governed by the statute*, the only "duties" owed are outlined in sections 116.3116
12 through 116.31168. Here, the HOA fully complied with these duties by complying with all
13 notice and recording requirements set forth in NRS 116 as it existed at the time of the sale.
14 As established by the Prior Litigation, the nonjudicial foreclosure sale was valid, meaning
15 there was no defect in the underlying sale. The HOA complied with its duties. See
16 *generally*, Exhibit A.

17 Additionally, nothing in NRS 116.1113, in effect in May of 2012 imposed a duty to
18 disclose any preforeclosure payments. See Section A, *supra*. Compare, NRS
19 116.31162(1)(b)(3)(11) (2017) (requiring an HOA to disclose if tender of the superpriority
20 portion of the lien) with NRS 116.31162 (2005) (no disclosure requirement).⁶

21 The HOA was not required to disclose the existence of a pre-sale payment. Further,
22 as noted above, the HOA was specifically prohibited from giving any purchaser at the
23 auction a so-called warranty deed—the only type of deed it could give to any purchaser
24

25 ⁶ See the following decisions, cited for their persuasive authority: *Cypress v. Foothills at*
26 *Macdonald Ranch Master Ass'n*, No. 78849, 2020 Nev. Unpub. LEXIS 999, at *2 (Oct. 16, 2020)
27 (no duty to disclose tender of payment); *Tangiers Drive Tr. v. Foothills at Macdonald Ranch Master*
28 *Ass'n*, No. 78564, 2020 Nev. Unpub. LEXIS 996, at *3 (Oct. 16, 2020) (same); *Ln Mgmt. Llc Series*
4980 Droubay v. Squire Silver Springs Cmty. Ass'n, No. 79035, 2020 Nev. Unpub. LEXIS 1009, at
*2 (Oct. 16, 2020) (same).

1 was one made "without warranty" pursuant to NRS 116.31164(3)(a). Accordingly, Plaintiff's
2 claim for breach of good faith based on a nonexistent duty, which did not exist in NRS 116
3 fails as a matter of law. The Court should grant summary judgment in favor of the HOA.

4 **C. THE ALLEGED PRE-SALE PHONE CALL DOES NOT CREATE A GENUINE**
5 **ISSUE OF FACT**

6 Plaintiff alleges that the HOA and NAS owed a duty to disclose the prior
7 homeowner's pre-foreclosure payments when he allegedly called NAS before the
8 nonjudicial foreclosure sale. Plaintiff is incorrect. The two circumstances where a pre-
9 foreclosure disclosure would take place would be, (1) an announcement at the time of the
10 nonjudicial foreclosure sale, or (2) an announcement over the phone in a preforeclosure
11 sale conversation with NAS. As noted above, it is undisputed that there was no such
12 announcement at the sale. As discussed *ad nauseam* above, neither the HOA nor NAS
13 owed a duty under the statute to announce any pre-foreclosure payments under the version
14 of NRS 116 on the date of the sale.

15 To the extent that Plaintiff alleges he placed a telephone call to NAS prior to the
16 nonjudicial foreclosure sale and that NAS should have disclosed to Plaintiff whether the
17 former homeowner had made any pre-foreclosure payments during the phone call, the
18 analysis is the same. There was no duty under NRS 116 in May of 2012 to make such a
19 disclosure.

20 Additionally, even assuming Plaintiff made such a phone call (and there is no
21 reliable evidence Plaintiff did so) as established by the Declaration of Susan Moses, NAS
22 would **not** have disclosed any preforeclosure information to an unauthorized person or
23 entity, such as Plaintiff, because of the applicable federal statute which protects debtors'
24 privacy. 15 U.S.C.A. § 1692c. NAS would not, and did not discuss the Property with
25 Plaintiff in this case. See Exhibit G, Declaration of Moses at ¶ 12 (no disclosure without
26 consent, court order, or to effect a judicial remedy).

27 Therefore, to the extent Plaintiff alleges he did make a preforeclosure phonecall to
28 NAS (of which there is only contradicting evidence), the allegation, if true, still does not

1 create a genuine issue for trial because, ***whether or not Plaintiff called NAS, NAS would***
2 ***not have disclosed information about the Property.*** Plaintiff would have no information
3 to rely on whether or not he called. The call, or the absence of a call, would make no
4 difference. Thus, whether actual, or fabricated, the alleged phone call from Plaintiff to NAS
5 does not create a duty under NRS 116, for NAS to discuss the Property, which would then
6 violate 15 U.S.C.A. § 1692c (prohibiting third-party communications about debtor).

7 The putative phone call does not create a genuine issue of fact which would require
8 a trial. See *Aldabe v. Adams*, 81 Nev. at 285, 402 P.2d at 37 (cannot fabricate facts to
9 create summary judgment); *Scott v. Harris*, 550 U.S. at 380. (should not adopt factual
10 version contradicted by the record); *Boesiger v. Desert Appraisals, Ltd. Liab. Co.*, 444 P.3d
11 at 440-41 (unsubstantiated claims should be dispensed on summary judgment). The Court
12 should grant summary judgment in favor of the HOA.

13 **D. THE CLAIMS FOR CONSPIRACY AND BREACH OF NRS 116.1113 FAIL**

14 At the hearing on the HOA's initial motion to dismiss, which took place on December
15 15, 2020, the Court dismissed the claims for civil conspiracy and violation of NRS
16 116.1113. However, the parties agreed no written order would be required. The minutes of
17 the hearing, do not reflect the dismissal of the two claims. Accordingly, the argument below
18 is restated merely out of an abundance of caution.

19 **1. CONSPIRACY STILL FAILS**

20 A nonjudicial foreclosure, and the procedures therein, are expressly authorized by
21 statute, and are not unlawful. Accordingly, Plaintiff's conspiracy claim fails as a matter of
22 law because there was no unlawful objective by the HOA in its attempt to collect past due
23 assessments from the prior homeowner, through a publicly noticed and conducted auction.

24 To establish a claim for civil conspiracy, a plaintiff must show (1) defendants, by
25 acting in concert, intended to accomplish an unlawful objective for the purpose of harming
26 plaintiff; and (2) plaintiff sustained damages resulting from defendants' act or acts. See
27 *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 971 P.2d 1251
28 (1999); see also *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998).

1 Plaintiff cannot meet this evidentiary burden. Even in the context of a nonjudicial
2 foreclosure, a conspiracy claim requires unlawful conduct.⁷

3 Plaintiff's conclusory allegations are insufficient to show that the HOA intended to
4 accomplish an unlawful objective for the purpose of harming plaintiff. See *Romero v. State*,
5 No. 52420, 2009 Nev. Unpub. LEXIS 1, at *2 (July 29, 2009) (affirming dismissal of "naked"
6 and "conclusory" claims). The nonjudicial foreclosure sale was a public auction where
7 anyone present could have bid (including the HOA). Additionally, the winning bidder would
8 obtain a *nonwarranty* deed, which makes no promises (or representations or effects
9 anything unlawful) regarding the quality of title of the Property passed through the sale.
10 Additionally, during the Prior Litigation, there was no finding which could show the HOA
11 intended to harm Plaintiff by merely complying with the requirements of NRS 116 to
12 perform a valid nonjudicial foreclosure sale. See Exhibit A, (District Court Order holding the
13 nonjudicial foreclosure sale validly conveyed title of the Property to the Plaintiff). See also
14 Exhibit B, Nevada Supreme Court order of affirmance of the District Court Order. The
15 HOA's nonjudicial foreclosure sale complied with NRS 116 and did what NRS 116
16 permitted, it conveyed property to the highest bidder through the nonwarranty foreclosure
17 deed. A valid nonjudicial foreclosure sale is not an unlawful act which satisfies the required
18 elements of a conspiracy claim.

19 Finally, there can be no conspiracy under the preclusive weight of the intra-corporate
20 conspiracy doctrine, which stands for the proposition that "agents and employees of a
21 corporation cannot conspire with their corporate principal or employer where they act in
22 their official capacities on behalf of the corporation and not as individuals for their individual

23
24 ⁷ See for additional persuasive authority: *Mann St. v. Elsinore Homeowners Ass'n*, 466 P.3d
25 540 (Nev. 2020) (where breach of contract and breach of duty of good faith fail, "civil conspiracy
26 claim necessarily fails. See *Consol. Generator-Neu., Inc. v. Cummins Engine Co.*, 114 Nev. 1304,
27 1311, 971 P.2d 1251, 1256 (1998) (providing that a civil conspiracy requires, among other things, a
28 concerted action, intend[ed] to accomplish an unlawful objective for the purpose of harming
another") (internal quotes omitted); see also, *Bay v. Travata & Montage at Summerlin Ctr.*
Homeowners' Ass'n, No. 80162, 2020 Nev. Unpub. LEXIS 994, at *2-3 (Oct. 16, 2020) (affirming
dismissal of conspiracy, in absence of unlawful conduct).

1 advantage.” See *Collins v. Union Federal Sav. & Loan Ass’n*, 662 P.2d 610, 622, 99 Nev.
2 284, 303 (Nev.,1983). Therefore, to sustain a claim for conspiracy against agents and their
3 corporation, a plaintiff must show that one or more of the agents acted outside of the scope
4 of their employment “to render them a separate person for the purposes of conspiracy.”
5 See *Faulkner v. Arkansas Children’s Hosp.*, 69 S.W.3d 393, 407, 347 Ark. 941, 962
6 (Ark.,2002).

7 Plaintiff has not plead, and cannot establish facts sufficient to meet this standard.
8 The Complaint lacks any specific allegations that the HOA acted outside of its scope as
9 stated in NRS 116. Even if the Complaint was properly plead with specificity, it would be
10 disingenuous and inconsistent with the District Court’s Order from the Prior Litigation. The
11 logical outcome of pleading a nonjudicial foreclosure defect (conspiracy) would necessarily
12 result in finding the nonjudicial foreclosure sale void or setting it aside, with Plaintiff losing
13 the Property—probably not what the Plaintiff wants to happen. The Prior Litigation and the
14 Nevada Supreme Court has already ruled a valid foreclosure took place. Based upon the
15 foregoing reasons, summary judgment should be entered in the HOA’s favor.

16 **2. BREACH OF NRS 116.1113 STILL FAILS**

17 The Court should dismiss or grant summary judgment on the alleged violation of
18 NRS 113 claim because NRS 113 does not apply to a nonjudicial foreclosure under NRS
19 116, nor does NRS 113 require disclosure of preforeclosure payments. The Nevada
20 Supreme Court authority continues to grow: See *Saticoy Bay Llc Series 10007 Liberty View*
21 *v. S. Terrace Homeowners Ass’n*, 484 P.3d 276 (Nev. 2021) (unpublished) (NRS 113
22 required disclosure of title “defects” not “superpriority tenders”) (issued April 16, 2021); see
23 also *Saticoy Bay v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 Nev. Unpub. LEXIS
24 993, at *2 (Oct. 16, 2020) (same); see also, *Bay v. Tapestry at Town Ctr. Homeowners*
25 *Ass’n*, 480 P.3d 266 (Nev. 2021) (unpublished) (same, issued February 16, 2021); see
26 also, *Saticoy Bay Llc Series 3237 v. Aliante Master Ass’n*, 480 P.3d 836 (Nev. 2021)
27 (unpublished) (same, issued February 16, 2021).

1 As noted *ad nauseam* above, an HOA's duty in a nonjudicial foreclosure sale is to
2 comply with NRS 116. NRS 116 does not incorporate or reference NRS 113, nor does
3 NRS 113 incorporate or reference NRS 116. Injecting the requirements of NRS 113 makes
4 no sense in a nonjudicial foreclosure sale context ruled by NRS 116.

5 Other district courts agree, and though not mandatory authority, decisions in this
6 district have concluded:

7 [NRS] § 113 [is] inapplicable here as NRS § 116 provides different
8 procedures and rights in HOA foreclosure sales. Specifically, for example,
9 NRS § 116 does not require an SRPD, or recording of a subordination of a
10 lien. *See, SFR Invs. Pool 1. LLC*, 427 P.3d 113. For this same reason, the
NRED handbook is inapplicable because it specifically discusses the
SPRD under NRS § 113, not NRS § 116.

11 Moreover, pursuant to NRS § 113.1100 (s), a seller is a person who sells
12 or intends to sell any residential property. Pursuant to NRS § 116, the
13 HOA was a foreclosing association and not a seller as defined under NRS
14 § 113.130. NRS § 116 precludes the requirement of NRS § 113 for a
15 SRPD as the foreclosure auction process does not follow the sale process
16 referenced in NRS § 113 and the Investors claim for violation of NRS §
17 113 must be dismissed.

18 *Saticoy Bay LLC Series 9076 Quarrystone v. Md. Pebble at Silverado Homeowners Ass'n*,
19 2019 Nev. Dist. LEXIS 1009, *4 (Eighth Judicial District, Sept. 23, 2019). *See also Hitchen*
20 *v. S. Valley Ranch Cmty. Ass'n*, 2020 Nev. Dist. LEXIS 277, *15 (same).

21 Additionally, even if NRS 113 applies, (which it does not) the claim is time-barred
22 because NRS 113 sets forth a one or two year statute of limitation. *See* NRS 113.150(4):
23 "[a]n action to enforce the provisions of this subsection must be commenced not later than
24 1 year after the purchaser discovers or reasonably should have discovered the defect or 2
25 years after the conveyance of the property to the purchaser, whichever occurs later."

26 In this case, based on the date of the conveyance, the nonjudicial foreclosure
27 occurred on May 11, 2012 (Compl. ¶ 2). Thus, Plaintiff had two years, or until May 11,
28 2014 to bring a claim. The Complaint was filed on August 20, 2020, more than eight years
past the conveyance and more than six years past the expiration of the statute of limitation.

1 Alternatively, based on the discovery of the alleged defect (which is not a defect),
2 Plaintiff alleges the disclosure of the alleged defect (a payment) occurred on August 24,
3 2017 (Compl. ¶ 41). Accordingly, the statute of limitation expired one year after the
4 disclosure, on August 24, 2018. The complaint was filed on August 20, 2020, nearly two
5 years too late.

6 The claim fails substantively or procedurally. Thus, the Court may dismiss the claim
7 with prejudice, or grant summary judgment in favor of the HOA.

8 **VII. CONCLUSION**

9 Based on the foregoing, the Court should grant summary judgment in favor of the
10 HOA because there is no genuine issue of material fact for trial or arbitration. The Plaintiff
11 has already established the character of the title it obtained through the District Court's
12 Order in the Prior Litigation. Plaintiff should not be permitted to change its story in order to
13 avoid summary judgment in this case, and attempt to have the HOA or NAS supplement its
14 \$5,500.00 purchase of a \$700,000.00 property. The claims fail and there is no genuine
15 factual issue.

16 Dated this 22nd day of July 2021.

17 LIPSON NEILSON, P.C.

18 */s/ Peter E. Dunkley*

19 By:

20 _____
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Attorneys for Harbor Cove HOA

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July 2021, an electronic copy of the following
**HARBOR COVE HOMEOWNERS ASSOCIATION'S RENEWED MOTION FOR
SUMMARY JUDGMENT** was filed and e-served via the Court's electronic service system
to all persons who have registered for e-service in this case:

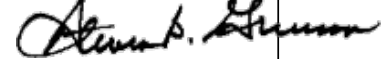
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Christopher Benner, Esq.
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2810 W. Charleston Blvd., Suite 75
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Attorney for Plaintiff

Renee M. Rittenhouse

An Employee of LIPSON NEILSON, P.C.

EXHIBIT A

EXHIBIT A



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*Attorneys for defendant/counterclaimant
Nationstar Mortgage LLC*

DISTRICT COURT
CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,
Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC;
MERIDIAN FORECLOSURE SERVICE
F/K/A MTDS, INC., A CALIFORNIA
CORPORATION DBA MERIDIAN TRUST
DEED SERVICE; AND THOMAS D.
MILLER,

Defendants.

Case No.: A-13-683467-C
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT/
COUNTERCLAIMANT NATIONSTAR
MORTGAGE LLC'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFF/COUNTER-
DEFENDANT RIVER GLIDER AVENUE
TRUST'S MOTION FOR SUMMARY
JUDGMENT**

NATIONSTAR MORTGAGE, LLC,
Counterclaimant,

vs.

RIVER GLIDER AVENUE TRUST; LAKE
HILLS DRIVE TRUST; HARBOR COVE
HOMEOWNERS ASSOCIATION; NEVADA
ASSOCIATION SERVICES, INC.; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER GRANTING DEFENDANT/**
3 **COUNTERCLAIMANT NATIONSTAR MORTGAGE LLC'S MOTION FOR**
4 **SUMMARY JUDGMENT AND DENYING PLAINTIFF/COUNTER-DEFENDANT**
5 **RIVER GLIDER AVENUE TRUST'S MOTION FOR SUMMARY JUDGMENT** has been
6 entered by this Court on the 11th day of July, 2018, in the above-captioned matter. A copy of
7 said Order is attached hereto as **Exhibit A.**

8 Dated this 12th day of July, 2018

9 **AKERMAN LLP**

10 /s/ Donna M. Wittig

11 MELANIE D. MORGAN, ESQ.

12 Nevada Bar No. 8386

13 DONNA M. WITTIG, ESQ.

14 Nevada Bar No. 11015

15 1635 Village Center Circle, Suite 200

16 Las Vegas, Nevada 89134

17 *Attorneys for defendant/counterclaimant,*
18 *Nationstar Mortgage, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 12th day of July, 2018, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT/COUNTERCLAIMANT NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF/COUNTER-DEFENDANT RIVER GLIDER AVENUE TRUST'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

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/s/ Carla Llarena

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

RIVER GLIDER AVENUE TRUST,
Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC;
MERIDIAN FORECLOSURE SERVICE
F/K/A MTDS, INC., A CALIFORNIA
CORPORATION DBA MERIDIAN TRUST
DEED SERVICE; AND THOMAS D.
MILLER,

Defendants.

Case No.: A-13-683467-C
Dept. No.: XVI

**ORDER GRANTING
DEFENDANT/COUNTERCLAIMANT
NATIONSTAR MORTGAGE LLC'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF/COUNTER-
DEFENDANT RIVER GLIDER AVENUE
TRUST'S MOTION FOR SUMMARY
JUDGMENT**

NATIONSTAR MORTGAGE, LLC,
Counterclaimant,

vs.

RIVER GLIDER AVENUE TRUST; LAKE
HILLS DRIVE TRUST; HARBOR COVE
HOMEOWNERS ASSOCIATION; NEVADA
ASSOCIATION SERVICES, INC.; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

JUN 22 2018

AKERMAN LLP

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TEL.: (702) 634-5000 – FAX: (702) 380-8572

<input checked="checked" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Judgment of Arbitration
<input type="checkbox"/> Voluntary Dismissal
<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Stipulated Dismissal
<input type="checkbox"/> Motion to Dismiss by Deft(s)

1 Defendant/counterclaimant, Nationstar Mortgage LLC (**Nationstar**)'s motion for
2 summary judgment (**Nationstar's motion**) regarding tender and statutorily defective
3 foreclosure sale, plaintiff/counter-defendant River Glider Avenue Trust (**plaintiff**)'s motions
4 for summary judgment (**plaintiff's motion**) and defendant/counter-defendant Harbor Cove
5 Homeowners Association (**Harbor Cove**)'s limited joinder to plaintiff's motion for summary
6 judgment came before the Court on December 7, 2017 at 9:00 a.m. Rock Jung, Esq. appeared
7 on behalf of Nationstar and Adam R. Trippiedi appeared on behalf of plaintiff. The Court
8 ordered the parties to submit supplemental briefing and continued the hearing to February 8,
9 2018. Specifically, plaintiff's supplemental brief was due January 15, 2018 and Nationstar's
10 reply brief was due January 29, 2018.

11 The motions and supplemental briefing came on for hearing before the Court on
12 February 8, 2018 at 9:00 a.m. Donna M. Wittig appeared on behalf of Nationstar; Michael F.
13 Bohn appeared on behalf of plaintiff; and Karen Kao appeared on behalf of Harbor Cove. The
14 Court continued the hearing to April 12, 2018 pending the Supreme Court's determination
15 whether they will grant the motion for reconsideration in *Saticoy Bay LLC Series 2141 Golden*
16 *Hill v. JP Morgan Chase Bank*, No. 71246, 408P.3d 558 (Nev. Dec. 22, 2017) (unpublished)
17 and if no decision rendered prior to the continued hearing, the Court would provide a decision
18 at the April 12, 2018 hearing.

19 The motions again came on for hearing on April 12, 2018. Natalie L. Winslow, Esq.
20 appeared on behalf of Nationstar; Michael F. Bohn, Esq. appeared on behalf of plaintiff and
21 Julie Funai, Esq. appeared on behalf of Harbor Cove. The Court, having reviewed Nationstar
22 and plaintiff's motions, joinder, the oppositions, replies, supplemental briefing, the exhibits, all
23 papers and pleadings, and oral argument of counsel, and for good cause appearing, makes the
24 following findings of fact and conclusions of law.

25 ...

26 ...

27 ...

28

FINDINGS OF FACT

1. On or about April 19, 2005, Miller purchased the Property.

2. The Deed of Trust executed by Miller identified Cameron Financial Group, Inc. DBA 1st Choice Mortgage as the Lender, Fidelity National Title as the Trustee and secured a loan in the amount of \$631,000.00 (hereinafter the "Miller Loan").

3. On April 19, 2012, a Corporate Assignment of Deed of Trust was recorded which assigned all beneficial interest under the Deed of Trust to Aurora Bank FSB.

4. On August 31, 2012, an Assignment of Deed of Trust was recorded by which Aurora Bank FSB assigned all its beneficial interest under the Deed of Trust to Nationstar.

5. Mr. Miller defaulted on his obligation to pay HOA assessments beginning in December 2008.

6. On July 26, 2010, a Notice of Delinquent Assessment Lien was recorded against the Property by NAS, with a lien amount of \$1,032.01.

7. In 2009 and 2010, the HOA assessments were \$70.00 per month.

8. On September 3, 2010, a Notice of Default and Election to Sell under Homeowners Association Lien was recorded against the Property by HOA Trustee on behalf of HOA, with a lien amount of \$2,110.87.

9. On March 31, 2011, a Notice of Foreclosure Sale was recorded against the Property by HOA the Trustee, with a lien amount of \$3,451.55.

10. In April 2011, Mr. Miller offered a settlement of his HOA assessments of \$1,232.88, which was \$69.43 less than what Mr. Miller owed. Harbor Cove accepted Mr. Miller's settlement offer, waiving the balance of \$69.43. Mr. Miller made the required payment by check dated May 27, 2011. Of Mr. Miller's payment, Harbor Cove credited \$500.00 to his assessment account on June 11, 2011, and credited two \$200.00 payments (total \$400.00) to his assessment account on August 30, 2011.

11. Mr. Miller continued to accrue assessments, and he never satisfied NAS's fees and costs in full.

12. Harbor Cove, through NAS, proceeded to foreclose.

13. On April 16, 2012, a second Notice of Foreclosure Sale was recorded against the Property by HOA Trustee, with a lien amount of \$3,346.53.

14. A non-judicial foreclosure sale occurred on May 11, 2012 (hereinafter the "HOA Sale").

15. River Glider Avenue Trust purchased the Property for \$5,500.00.

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

CONCLUSIONS OF LAW

1. Summary judgment is proper when there is no issue of material fact and the moving party is entitled to judgment as a matter of law. Nev. R. Civ. P. 56(c); *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030 (Nev. 2005). After the movant has carried its burden to identify issues where there is no genuine issue of material fact, the non-moving party must "set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood*, 121 Nev. at 732. Summary judgment is particularly appropriate where issues of law are controlling and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P.2d 274, 277 (1979).

2. The super-priority portion of the HOA's lien is equal to the amount of assessments that "would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien" *See* NRS 116.3116(2). A party has instituted "an action to enforce the lien" for purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment. *Saticoy Bay LLC Series 2021 Gray Eagle Way* 338 P.3d at 231. Here, the HOA provided its notice of delinquent assessment on July 26, 2010.

3. The superpriority, as calculated from the nine months preceding the recording of the notice of delinquent assessment lien, was \$630.00 (\$70.00 x 9 months).

4. The HOA's super-priority lien was extinguished by the homeowner's satisfaction of the super-priority. *Saticoy Bay LLC Series 2141 Golden Hill v. JP Morgan Chase Bank*, No. 71246, 408P.3d 558 (Nev. Dec. 22, 2017) (unpublished). Payments made by

1 the homeowner are held to have been applied first to the super-priority portion of the HOA's
2 lien as a matter of law.

3 5. The homeowner's satisfaction of the super-priority portion of the HOA's lien
4 preserved Nationstar's deed of trust.

5 6. River Glider Avenue Trust purchased the property subject to Nationstar's deed
6 of trust.

7 7. Because the homeowner's super-priority satisfaction is dispositive of the case,
8 the court does not address the remaining issues.

9 8. If any of these conclusions of law are more properly considered findings of fact,
10 they should be so construed.

11 **ORDER**

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Nationstar's
13 Motion for Summary Judgment is **GRANTED**, and plaintiff River Glider Avenue Trust's
14 Motion for Summary Judgment is **DENIED**;

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Harbor Cove's
16 limited joinder in plaintiff River Glider Avenue Trust's Motion for Summary Judgment is
17 **DENIED**;

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the super-
19 priority portion of the HOA's lien, recorded on or about July 26, 2010, was discharged and
20 extinguished prior to the HOA foreclosure sale;

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that River Glider
22 Avenue Trust purchased an interest in the Property, commonly known as 8112 Lake Hill
23 Drive, Las Vegas, Nevada 89128, APN Number 138-16-213-034, subject to the deed of trust
24 recorded on February 14, 2006 as Document Number 20070327-0004833;

25 ...

26 ...

27 ...

28 ...


1 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all remaining
2 claims not specifically mentioned, including all remaining claims in the complaint and
3 counterclaims, are dismissed with prejudice.

4 Dated: 7/3/18, 2018

5 
6 DISTRICT COURT JUDGE BT

7 Submitted by:

8 AKERMAN LLP

9 
10 MELANIE D. MORGAN, ESQ.
11 Nevada Bar No. 8386
12 DONNA M. WITTIG, ESQ.
13 Nevada Bar No. 11015
14 1635 Village Center Circle, Suite 200
15 Las Vegas, Nevada 89134

16 Attorneys for defendant/counterclaimant,
17 Nationstar Mortgage, LLC

18 Approved as to form and content by:


19 Dated: April __, 2018

Dated: May 30, 2018

20 LIPSON, NEILSON, COLE, SELTZER & GARIN,
21 P.C.

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

22 refused to sign
23 KALEB D. ANDERSON, ESQ.
24 Nevada Bar No. 7582
25 JULIE A. FUNAI, ESQ.
26 Nevada Bar No. 8752
27 9900 Covington Cross Dr., Suite 120
28 Las Vegas, NV 89144


MICHAEL F. BOHN, ESQ.
Nevada Bar No. 1641
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Attorneys for defendant/counter-defendant
Harbor Cove Homeowners Association

Attorneys for plaintiff/counter-defendant
River Glider Avenue Trust

EXHIBIT B

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVER GLIDER AVENUE TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 76683

FILED

MAY 15 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an action to quiet title. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge. Reviewing the summary judgment de novo, *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we affirm.¹

After the HOA foreclosure agent issued a notice of delinquent assessments, the homeowner entered into settlement agreements with both the HOA and the HOA's foreclosure agent. The homeowner paid the HOA the agreed-upon amount in order to settle the money owed to it for delinquent assessments and any late fees, and entered into a payment plan with the foreclosure agent to settle the amounts owed for the foreclosure agent's fees and costs. The district court concluded that the homeowner's payment to the HOA cured the superpriority default, such that the purchaser at the later foreclosure sale took title to the property subject to respondent's first deed of trust.

We recently held in *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.*, 136 Nev., Adv. Op. 8, 459 P.3d 227, 232 (2020), that payments made

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

by a homeowner could cure the default on the superpriority portion of an HOA lien such that the HOA's foreclosure sale would not extinguish the first deed of trust on the subject property. Whether a homeowner's payments actually cure a superpriority default, however, depends upon the actions and intent of the homeowner and the HOA and, if those cannot be determined, upon the district court's assessment of justice and equity. See *id.* at 231 (explaining that "[i]f neither the debtor nor the creditor makes a specific application of the payment, then it falls to the [district] court to determine how to apply the payment").

In this case, the district court correctly determined that the homeowner's payments could cure the default on the superpriority portion of the HOA's lien. The district court also correctly determined, based on the evidence before it, that the HOA and the homeowner intended for the homeowner's payment to cure the delinquent assessments incurred before the notice of delinquent assessments. Indeed, the emails between the homeowner, foreclosure agent, and HOA, and the foreclosure agent's testimony, leaves no doubt that the HOA and the homeowner intended for the homeowner's payment to cure the amounts in the notice of delinquent assessment,² which would include the nine months of assessments comprising the superpriority default amount. See NRS 116.3116(2) (2012) (describing the superpriority component of an HOA's lien as "the

²Because the HOA and the homeowner's settlement was premised on the agreement that the homeowner's payment would cure the delinquent assessments comprising the amount in the notice of delinquent assessments, we are not concerned with how the HOA or foreclosure agent actually applied the homeowner's payment to the amounts owed. See 9352 *Cranesbill*, 459 P.3d at 231 (recognizing that a debtor may direct how his payment is applied to various debts).

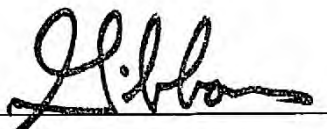
assessments for common expenses . . . which would have become due . . . during the 9 months immediately preceding institution of an action to enforce the lien”); *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A. (Gray Eagle)*, 133 Nev. 21, 25-26, 388 P.3d 226, 231 (2017) (recognizing that, under the pre-2015 version of NRS 116.3116, serving a notice of delinquent assessments constitutes institution of an action to enforce the lien). And, because the homeowner’s payment cured the superpriority default, the district court correctly determined that any purchaser at a later foreclosure sale would purchase the property subject to the first deed of trust on the property. *See 9352 Cranesbill*, 459 P.3d at 229.

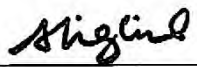
Although appellant correctly points out that there were new unpaid monthly assessments at the time of the sale, these unpaid monthly assessments could not have comprised a new superpriority lien absent a new notice of delinquent assessment. *See* NRS 116.3116(2) (2012) (limiting the monthly assessments subject to superpriority status as those incurred “during the 9 months immediately preceding institution of an action to enforce the lien”); *Gray Eagle*, 133 Nev. at 25-26, 388 P.3d at 231 (holding that serving the notice of delinquent assessments institutes proceedings to enforce the HOA’s lien); *cf. Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 133 Nev. 462, 466-67, 401 P.3d 728, 731-32 (2017) (observing that an HOA must restart the foreclosure process in order to enforce a second superpriority lien). And foreclosure fees and costs are never part of an HOA’s superpriority lien. *See* NRS 116.3116(2) (2009); *Horizons at Seven Hills Homeowners Ass’n v. Ikon Holdings, LLC*, 132 Nev. 362, 373, 373 P.3d 66, 73 (2016) (holding that a superpriority lien “does not include an additional amount for the collection fees and foreclosure costs” incurred preceding a foreclosure sale). We also need not address appellant’s

purported bona-fide-purchaser status when, as here, the superpriority default is cured before the foreclosure sale.³ See *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (providing that a party's status as a bona fide purchaser is irrelevant when the superpriority default is cured before the foreclosure sale).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Stiglich


_____, J.
Silver

cc: Hon. Timothy C. Williams, District Judge
Janet Trost, Settlement Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk

³We also decline to address appellant's arguments that equitable considerations did not warrant ruling in respondent's favor when the district court's decision was not based in equity.

EXHIBIT C

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVER GLIDER AVENUE TRUST,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 76683

FILED

JUL 01 2020


ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 76-5 DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

, J.
Gibbons

, J.
Stiglich

, J.
Silver

cc: Hon. Timothy C. Williams, District Judge
Law Offices of Michael F. Bohn, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk

EXHIBIT “D”

EXHIBIT “D”

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Attorneys for Plaintiff
8 River Glider Avenue Trust

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 RIVER GLIDER AVENUE TRUST,
12
13 Plaintiff,

14 vs.

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

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

**PLAINTIFF'S RESPONSES TO
DEFENDANT HARBOR COVE
HOMEOWNERS ASSOCIATION FIRST
SET OF INTERROGATORIES TO
RIVER GLIDER AVENUE TRUST**

19
20 Plaintiff River Glider Avenue Trust ("Plaintiff"), by and through its attorneys of record,
21 Roger P. Croteau & Associates, Ltd., submits its responses to Harbor Cove Homeowners
22 Association's (the "HOA") First Set of Interrogatories.

23 **GENERAL OBJECTIONS**

24
25 These responses are made solely for the purpose of, and in relation to, this action. Each
26 response is given subject to all appropriate objections (including, but not limited to, objections
27 concerning competency, relevancy, materiality, propriety and admissibility) which would require
28

1 the exclusion of any statement contained herein if the discovery request was asked of, or any
2 statement contained herein were made by, a witness present and testifying in court. All such
3 objections and grounds therefore are reserved and may be interposed at the time of trial. The party
4 on whose behalf the responses are given has not yet completed their investigation of the facts relating
5 to this action, has not yet completed their discovery in this action, and has not yet completed their
6 preparation for trial. Consequently, the following responses are given without prejudice to the
7 responding party's right to produce, at the time of trial, subsequently-discovered material.

8
9 Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to
10 be implied or inferred. The fact that any discovery request herein has been answered should not be
11 taken as an admission, or a concession, of the existence of any facts set forth or assumed by such
12 discovery request, or that such answer constitutes evidence of any facts set forth or assumed. All
13 responses must be construed as given on the basis of present recollection.

14
15 "YOU" as defined in these questions, and as represented below in the following responses
16 is understood to refer only to the answering party and to the agents, representatives, affiliates,
17 employees, attorneys and each person acting or purporting to act on behalf of the answering party
18 for this matter and does not extend to any other matter in which the agents, representatives, affiliates,
19 employees, attorneys or person may act for a related entity or trust.

20
21 **INTERROGATORY NO. 1:**

22 Identify the date of any communications YOU had with the HOA prior to the HOA
23 Foreclosure Sale.

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

25 Plaintiff did not communicate with the HOA prior to the HOA Foreclosure Sale.

26
27 **INTERROGATORY NO. 2:**

28

1 Identify the date of any communications YOU had with the HOA Trustee prior to the HOA
2 Foreclosure Sale.

3 **RESPONSE TO INTERROGATORY NO. 2:**

4 Objection, "HOA Trustee" is not defined. Notwithstanding same, and assuming "HOA
5 Trustee" refers to co-defendant Nevada Association Services, Inc. as it is defined in the Complaint;
6 Mr. Haddad would call the foreclosing agent/HOA Trustee, and confirm whether the sale was going
7 forward on the scheduled date; and in the context of an NRS 116 foreclosure sale, Mr. Haddad
8 would ask if anyone had paid anything on the account. Mr. Haddad would contact the office of the
9 foreclosing agent/HOA Trustee, Mr. Haddad would ask the relevant questions to the employee who
10 answered the phone with the understanding that an employee who answered for the foreclosing
11 agent/HOA Trustee would be able to answer his questions, or direct Mr. Haddad to another,
12 appropriate, employee. Mr. Haddad would contact the HOA Trustee prior to the HOA Foreclosure
13 Sale to determine if the Property would in fact be sold on the date stated in the Notice of Sale, obtain
14 the opening bid, so Mr. Haddad could determine the amount of funds necessary for the auction and
15 inquire if any payments had been made; however, Mr. Haddad never inquired if the "Super Priority
16 Lien Amount" had been paid. Mr. Haddad, on behalf of Plaintiff, would reasonably rely on the
17 information provided by employee representatives of the foreclosing agent/HOA Trustee who was
18 charged with responding to his inquiries. Mr. Haddad would personally do all of the research on the
19 Property, including review of recorded documents. As the sale in this matter is defined as having
20 occurred on May 11, 2012, Plaintiff would have contacted the HOA trustee on Thursday, May 10
21 or Friday, May 11, 2012.

22 Discovery is ongoing and Plaintiff reserves the right to supplement this response.

23 **INTERROGATORY NO. 3:**

1 Describe the substance of any communications YOU had with the HOA or Trustee prior to
2 the HOA Foreclosure Sale.

3 **RESPONSE TO INTERROGATORY NO. 3:**

4 Objection, "Trustee" is not defined. Notwithstanding same, and assuming "Trustee" refers
5 to co-defendant Nevada Association Services, Inc. as it is defined in the Complaint; Mr. Haddad
6 would call the foreclosing agent/HOA Trustee, and confirm whether the sale was going forward on
7 the scheduled date; and in the context of an NRS 116 foreclosure sale, Mr. Haddad would ask if
8 anyone had paid anything on the account. Mr. Haddad would contact the office of the foreclosing
9 agent/HOA Trustee, Mr. Haddad would ask the relevant questions to the employee who answered
10 the phone with the understanding that an employee who answered for the foreclosing agent/HOA
11 Trustee would be able to answer his questions, or direct Mr. Haddad to another, appropriate,
12 employee. Mr. Haddad would contact the HOA Trustee prior to the HOA Foreclosure Sale to
13 determine if the Property would in fact be sold on the date stated in the Notice of Sale, obtain the
14 opening bid, so Mr. Haddad could determine the amount of funds necessary for the auction and
15 inquire if any payments had been made; however, Mr. Haddad never inquired if the "Super Priority
16 Lien Amount" had been paid. Mr. Haddad, on behalf of Plaintiff, would reasonably rely on the
17 information provided by employee representatives of the foreclosing agent/HOA Trustee who was
18 charged with responding to his inquiries.

19
20
21
22 Discovery is ongoing and Plaintiff reserves the right to supplement this response.

23 **INTERROGATORY NO. 4:**

24 If You contend that the HOA or the HOA Trustee must announce at the foreclosure sale,
25 whether anyone or any entity has made payments toward the HOAs lien, prior to the HOA
26 Foreclosure Sale, Please explain the basis of Your contention.
27
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

2 Objection, “HOA Trustee” is not defined. Notwithstanding same, and assuming “HOA
3 Trustee” refers to co-defendant Nevada Association Services, Inc. as it is defined in the Complaint;
4 Plaintiff refers the HOA to Plaintiff’s Complaint which describes the facts Plaintiff alleges support
5 its claims. Plaintiff’s practice and procedure were that prior to attending and/or at an HOA
6 Foreclosure Sale pursuant to NRS 116 at all times relevant to this case, Mr. Haddad, on the behalf
7 of Plaintiff would attempt to ascertain whether anyone had attempted to or did tender any payment
8 regarding the homeowner association’s lien. Mr. Haddad would ask if anyone had paid anything on
9 the account. If Mr. Haddad learned that a “tender” had either been attempted or made, Mr. Haddad
10 would not purchase the property offered in that foreclosure sale. Mr. Haddad would and did rely on
11 whatever recital and/or announcements that were made at the HOA Foreclosure Sale. Mr. Haddad
12 reasonably relied upon the HOA and/or the HOA’s Trustee’s material omission of the tender and/or
13 Attempted Payment of the Super Priority Lien Amount and/or the Attempted Payment or any portion
14 thereof upon prior inquiry when Mr. Haddad purchased the Property on behalf of the Plaintiff.
15

16 Discovery is ongoing and Plaintiff reserves the right to supplement this response
17

18 **INTERROGATORY NO. 5:**

19 Identify any of the cases in the Eighth Judicial District Court, Clark County, Nevada in
20 which YOU or any of the entities or trusts YOU manage are a party, where the Court ruled that an
21 HOA has a duty to disclose a pre-foreclosure payment prior to an HOA’s nonjudicial foreclosure
22 sale
23

24 **RESPONSE TO INTERROGATORY NO. 5:**

25 Objection, this interrogatory does not seek factual information from Plaintiff, but solely legal
26 opinions and research and the production of public documents equally available to all parties.
27
28

1 Subject to, and notwithstanding same; none. Discovery is ongoing and Plaintiff reserves the right to
2 supplement this response.

3 **INTERROGATORY NO. 6:**

4 Identify any of the cases in the Nevada Supreme Court in which YOU or any of the entities
5 or trusts YOU manage are a party, where the Nevada Supreme Court ruled that an HOA has a duty
6 to disclose a pre-foreclosure payment prior to an HOA's nonjudicial foreclosure sale
7

8 **RESPONSE TO INTERROGATORY NO. 6:**

9 Objection, this interrogatory does not seek factual information from Plaintiff, but solely legal
10 opinions and research and the production of public documents equally available to all parties.
11 Subject to, and notwithstanding same; none. Discovery is ongoing and Plaintiff reserves the right to
12 supplement this response.
13

14 **INTERROGATORY NO. 7:**

15 Identify any of the cases in the U.S. District Court, District of Nevada, in which YOU or
16 any of the entities or trusts YOU manage are a party, where the Court ruled that an HOA has a
17 duty to disclose a pre-foreclosure payment prior to an HOA's nonjudicial foreclosure sale
18

19 **RESPONSE TO INTERROGATORY NO. 7:**

20 Objection, this interrogatory does not seek factual information from Plaintiff, but solely
21 legal opinions and research and the production of public documents equally available to all parties.
22 Subject to, and notwithstanding same; none. Discovery is ongoing and Plaintiff reserves the right
23 to supplement this response.
24

25 **INTERROGATORY NO. 8:**

26 Explain why YOU contend, in Paragraph 29 of YOUR complaint, that "if the bidders and
27 potential bidders at the HOA Foreclosure Sale were aware that an individual or entity had
28

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

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

5
6 As set forth in the complaint, if the bidders and potential bidders were aware of a payment
7 of the Super-Priority Lien Amount such that the interest purchased at the sale would be subject to
8 the first deed of trust, then bidders and potential bidders would not have bid on the Property because
9 the interest they would have acquired would have been subject to being eliminated when the first
10 deed of trust holder foreclosed.

11 **INTERROGATORY NO. 9:**

12
13 In Paragraph 37 of YOUR Complaint, YOU allege YOU “would contact the HOA Trustee
14 prior to” the sale and would “inquire if any payments had been made...” Explain why YOU would
15 ask about payments as indicated in Paragraph 37 of YOUR Complaint.

16 **RESPONSE TO INTERROGATORY NO.9:**

17
18 Objection, vague as to time and scope. Subject to, and notwithstanding same; assuming that
19 this interrogatory refers solely to the timing of this matter and this sale in May of 2012: Mr. Haddad
20 would ask if anyone had paid anything on the account. Mr. Haddad would contact the office of the
21 foreclosing agent/HOA Trustee, Mr. Haddad would ask the relevant questions to the employee who
22 answered the phone with the understanding that an employee who answered for the foreclosing
23 agent/HOA Trustee would be able to answer his questions, or direct Mr. Haddad to another,
24 appropriate, employee. Mr. Haddad would contact the HOA Trustee prior to the HOA Foreclosure
25 Sale to determine if the Property would in fact be sold on the date stated in the Notice of Sale, obtain
26 the opening bid, so Mr. Haddad could determine the amount of funds necessary for the auction and
27
28

1 inquire if any payments had been made. Mr. Haddad, on behalf of Plaintiff, would reasonably rely
2 on the information provided by employee representatives of the foreclosing agent/HOA Trustee who
3 was charged with responding to his inquiries.

4 **INTERROGATORY NO. 10:**

5
6 If YOU contend YOU contacted the HOA trustee in this case, about the HOA Foreclosure
7 Sale, please identify the date of the contact, and individual YOU contacted.

8 **RESPONSE TO INTERROGATORY NO. 10:**

9 Objection, "HOA Trustee" is not defined. Notwithstanding same, and assuming "HOA
10 Trustee" refers to co-defendant Nevada Association Services, Inc. as it is defined in the
11 Complaint; Mr. Haddad would contact the HOA Trustee either the day of or the day prior, for this
12 matter either Thursday, May 10 or Friday, May 11 of 2012, and Mr. Haddad would ask the
13 relevant questions to the employee who answered the phone with the understanding that the
14 employee who answered for the foreclosing agent/HOA Trustee would be able to answer any
15 questions, or direct Mr. Haddad to another, appropriate, employee.

16
17 **INTERROGATORY NO. 11:**

18 Identify the amount of damages YOU are claiming.

19
20 **RESPONSE TO INTERROGATORY NO..11:**

21 Plaintiff is claiming the economic loss set forth in paragraph 68 of the Complaint, namely,
22 "the funds paid by Lake Hills Drive Trust and Plaintiff to purchase, maintain, operate, and/or litigate
23 various cases and generally manage the Property would be lost along with the opportunity of
24 purchasing other available property offered for sale where a superpriority payment had not been
25 attempted, thereby allowing Lake Hills Drive Trust the opportunity to purchase a property free and
26

1 clear of the deed of trust and all other liens.” This amount is increasing as this matter is ongoing.

2 Discovery is ongoing and Plaintiff reserves the right to supplement this response.

3 **INTERROGATORY NO. 12:**

4 Identify the bases of the damages which support the amount of damages YOU are
5 claiming.

6 **RESPONSE TO INTERROGATORY NO. 12:**

7 See response to Interrogatory 11. Discovery is ongoing and Plaintiff reserves the right to
8 supplement this response.

9 **INTERROGATORY NO. 13:**

10 Identify any documents which indicate the damages YOU are claiming.

11 **RESPONSE TO INTERROGATORY NO. 13:**

12 Profit and Loss statments, to be provided by supplement.

13 Dated this June 17, 2021.

14 /s/ Christopher L. Benner

15 Roger P. Croteau, Esq.

16 Nevada Bar No. 4958

17 Christopher L. Benner, Esq.

18 Nevada Bar No. 8963

19 2810 W. Charleston Blvd., Ste. 75

20 Las Vegas, Nevada 89102

21 Attorneys for Plaintiff

22

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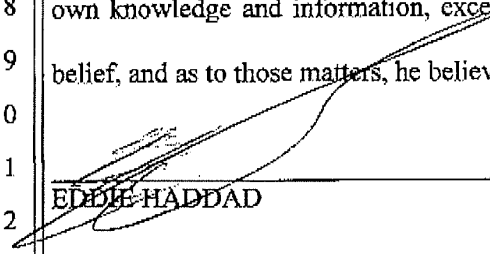
ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

VERIFICATION

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

Eddie Haddad being first duly sworn, deposes and says:

That he is the corporate designee for Plaintiff 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

SUBSCRIBED and SWORN to before me
this 17th day of June, 2021.


NOTARY PUBLIC in and for said
County and State



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 June 17, 2021, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

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

EXHIBIT “E-1”

EXHIBIT “E-1”

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

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 RIVER GLIDER AVENUE TRUST,
12
13 Plaintiff,

14 vs.

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

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

**PLAINTIFF'S RESPONSES TO
DEFENDANT HARBOR COVE
HOMEOWNERS ASSOCIATION FIRST
SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
RIVER GLIDER AVENUE TRUST**

19
20 Plaintiff River Glider Avenue Trust ("Plaintiff"), by and through its attorneys of record,
21 Roger P. Croteau & Associates, Ltd., submits its responses to Harbor Cove Homeowners
22 Association's (the "HOA") First Set of Requests for Production of Documents.

23 **GENERAL OBJECTIONS**

24
25 These responses are made solely for the purpose of, and in relation to, this action. Each
26 response is given subject to all appropriate objections (including, but not limited to, objections
27 concerning competency, relevancy, materiality, propriety and admissibility) which would require
28

1 the exclusion of any statement contained herein if the discovery request was asked of, or any
2 statement contained herein were made by, a witness present and testifying in court. All such
3 objections and grounds therefore are reserved and may be interposed at the time of trial. The party
4 on whose behalf the responses are given has not yet completed their investigation of the facts relating
5 to this action, has not yet completed their discovery in this action, and has not yet completed their
6 preparation for trial. Consequently, the following responses are given without prejudice to the
7 responding party's right to produce, at the time of trial, subsequently-discovered material.

8
9 Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to
10 be implied or inferred. The fact that any discovery request herein has been answered should not be
11 taken as an admission, or a concession, of the existence of any facts set forth or assumed by such
12 discovery request, or that such answer constitutes evidence of any facts set forth or assumed. All
13 responses must be construed as given on the basis of present recollection.

14
15 "YOU" as defined in these questions, and as represented below in the following responses
16 is understood to refer only to the answering party and to the agents, representatives, affiliates,
17 employees, attorneys and each person acting or purporting to act on behalf of the answering party
18 for this matter and does not extend to any other matter in which the agents, representatives, affiliates,
19 employees, attorneys or person may act for a related entity or trust.

20
21 **INTERROGATORY NO. 1:**

22 Produce all documents which support all bases of your damages claims. Documents should
23 include, but are not limited to receipts, ledgers, rent, maintenance expenses, financing or mortgage
24 payments, and/or refurbishing costs and expenses.

25
26 **RESPONSE TO INTERROGATORY NO. 1:**

1 Plaintiff is in the process of gathering all such documents and will supplement this response.
2 Discovery is ongoing and Plaintiff reserves the right to supplement this response.

3 **REQUEST FOR PRODUCTION NO. 2:**

4 Produce all communications between YOU and the HOA prior to the HOA Foreclosure
5 Sale.
6

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

8 Plaintiff did not communicate with the HOA prior to the HOA Foreclosure Sale

9 **REQUEST FOR PRODUCTION NO. 3:**

10 Produce all communications between YOU and the HOA Trustee prior to the HOA
11 Foreclosure Sale.
12

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

14 Objection, overbroad as to scope, and vague as to “HOA Trustee” which is not defined.
15 Notwithstanding same, and assuming “HOA Trustee” refers to co-defendant Nevada Association
16 Services, Inc., as it is defined in the Complaint, and that this request is limited to this matter only
17 and not as to Mr. Haddad or any other Saticoy LLC series entity; any communications would be
18 telephonic, such that no written records would be kept.
19

20 Dated this June 17, 2021.

21 /s/ Christopher L. Benner

22 Roger P. Croteau, Esq.

23 Nevada Bar No. 4958

24 Christopher L. Benner, Esq.

25 Nevada Bar No. 8963

26 2810 W. Charleston Blvd., Ste. 75

27 Las Vegas, Nevada 89102

28 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 June 17, 2021, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

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

EXHIBIT “E-2”

EXHIBIT “E-2”

1 ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
2 CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
3 ROGER P. CROTEAU & ASSOCIATES, LTD
4 2810 W. Charleston Blvd., Ste. 75
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5 (702) 254-7775
6 (702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
7 chris@croteaulaw.com
Attorneys for Plaintiff
8 River Glider Avenue Trust

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 RIVER GLIDER AVENUE TRUST,
12
13 Plaintiff,

14 vs.

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

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

**PLAINTIFF'S RESPONSES TO
DEFENDANT HARBOR COVE
HOMEOWNERS ASSOCIATION
SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
RIVER GLIDER AVENUE TRUST**

19
20 Plaintiff River Glider Avenue Trust ("Plaintiff"), by and through its attorneys of record,
21 Roger P. Croteau & Associates, Ltd., submits its responses to Harbor Cove Homeowners
22 Association's (the "HOA") Second Set of Requests for Production of Documents.

23 **GENERAL OBJECTIONS**

24
25 These responses are made solely for the purpose of, and in relation to, this action. Each
26 response is given subject to all appropriate objections (including, but not limited to, objections
27 concerning competency, relevancy, materiality, propriety and admissibility) which would require
28

1 the exclusion of any statement contained herein if the discovery request was asked of, or any
2 statement contained herein were made by, a witness present and testifying in court. All such
3 objections and grounds therefore are reserved and may be interposed at the time of trial. The party
4 on whose behalf the responses are given has not yet completed their investigation of the facts relating
5 to this action, has not yet completed their discovery in this action, and has not yet completed their
6 preparation for trial. Consequently, the following responses are given without prejudice to the
7 responding party's right to produce, at the time of trial, subsequently-discovered material.

9 Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to
10 be implied or inferred. The fact that any discovery request herein has been answered should not be
11 taken as an admission, or a concession, of the existence of any facts set forth or assumed by such
12 discovery request, or that such answer constitutes evidence of any facts set forth or assumed. All
13 responses must be construed as given on the basis of present recollection.

15 "YOU" as defined in these questions, and as represented below in the following responses
16 is understood to refer only to the answering party and to the agents, representatives, affiliates,
17 employees, attorneys and each person acting or purporting to act on behalf of the answering party
18 for this matter and does not extend to any other matter in which the agents, representatives, affiliates,
19 employees, attorneys or person may act for a related entity or trust.

21 **REQUEST FOR PRODUCTION NO. 4:**

22 Produce all YOUR telephone records, invoices, or bills which show the telephonic
23 communication between YOU and the Nevada Association Services, Inc. from May 1, 2012 and
24 May 12, 2012.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

1 Objection, this request is burdensome and oppressive. Notwithstanding this objection, while
2 Plaintiff conducted a search in an effort to respond, Plaintiff does not retain the “records, invoices,
3 or bills” requested, and does not have a policy and procedure for maintaining records of this type
4 for 9 years between the date requested and the date of this request.
5

6 Dated this July 15, 2021.

7 /s/ Christopher L. Benner
8 Roger P. Croteau, Esq.
9 Nevada Bar No. 4958
10 Christopher L. Benner, Esq.
11 Nevada Bar No. 8963
12 2810 W. Charleston Blvd., Ste. 75
13 Las Vegas, Nevada 89102
14 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2021, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

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

EXHIBIT “F”

EXHIBIT “F”



Phone Notes

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone (702) 804-8885
Fax (702) 804-8887
Toll Free (888) 627-5544

Thomas Miller

Harbor Cove HOA

8112 Lake Hills Drive

N60025

000064-03

Special Note:

deed sent to record 5/16/2012 mb recorded deed mailed to new owner. 5/18/2012 mb

Date	By	Note
04/12/2011	cjarrard	Phone Note: Ho called, transferred to Elissas vm
04/12/2011	ehollander	Phone Note: returned call to HO - 300-2618 - miranda read - I went over the account with him and I went over the payment plan with him. He was out for a while as he travels for work and he didn't realize that his payments that were on auto pay were ...
04/12/2011	ehollander	... not going thru. He is going to submit a settlement offer to our office and I told him that I will submit it to the association and I will get back to him with a response. I gave him my email address. He thanked me, call ended.
04/25/2011	ehollander	Phone Note: spoke with HO - I went over the payment plan with him again and he will be coming by the office to drop off his payment plan request and his deposit to our office. He thanked me, call ended.
04/26/2011	ehollander	Phone Note: Ho came into the office and he asked for the updated account balance. I advised him that I am going to have to update the account as it has not been updated since March. I told him that I will request the updated accounting ledger and I ...
04/26/2011	ehollander	... will update the account and I will get back to him. He also had a check in his hand and a Settlement Offer and I advised him that if he wants to do the Settlement Offer I will have to see if the Management Company will approve it first before I ...
04/26/2011	ehollander	... can accept his payment but his payment was not for the full amount of the Settlement offer and it was only for half which I told him that we can accept as a partial payment and do a payment plan but he did not want to do that. He is going to ...
04/26/2011	ehollander	... back to the office and he will email me his Settlement Offer and once I find out if it is accepted he will than bring back full payment. He thanked me and he left.
05/04/2011	ehollander	Phone Note: spoke with HO - he was following up with me in regards to his settlement offer. I advised him that I have sent another email to the management company and I am waiting to hear back but the HOA Sale has been postponed until 6/3/11. I ...
05/04/2011	ehollander	... told him that as soon as I hear something I will email him or call him back. He thanked me, call ended
05/23/2011	kjacoway	Phone Note: ho called, transferred to Elissa's vm
05/23/2011	ehollander	Phone Note: spoke with HO - I went over the account with him. I advised him that his Settlement Offer for the HOA Assessments was approved and his payment needs to be sent to our office within 5 days. I also advised him that he can set up a payment ...
05/23/2011	ehollander	... plan for NAS Fees & Costs but he will need to send his request in writing and he needs to be specific on the amount of time that he is requesting for the payment plan and he can also include a certain day of the month that he prefers his payments ...
05/23/2011	ehollander	... to fall. I advised him that NAS gave him a \$300.00 courtesy reduction as well. He said he is sending us his payment for the HOA Settlement and he will also email Shanell requesting the payment plan for NAS fees & costs. He thanked me, call ended.
06/01/2011	jgerber	Phone Note: *processed partial payment*
06/22/2011	smacias	Phone Note: The HO called and wanted to go over the PP with me. He didn't understand the amounts. He wanted to know if the assessments were included within the PP. He thanked me and ended the call.
07/29/2011	jgerber	Phone Note: *processed partial payment*
08/09/2011	cjarrard	Phone Note: Ho left message on gen vm, transferred to Elissas vm
08/09/2011	ehollander	Phone Note: returned call to HO - 300-2618 - miranda read - left message on voice mail
08/09/2011	jgerber	Phone Note: *processed partial payment*
08/10/2011	ehollander	Phone Note: spoke with HO - 300-2618 - he would like to make his final payment on the account. I advised him that I will need to request an updated accounting ledger from the management company and I will need to update his account and I can than ...
08/10/2011	ehollander	... give him the balance. He asked me to email him the balance. His email address is tmiller@visionairlines.com. I told him that I will do that as soon as I receive the information that I need from the management company. He said that will be ...



Phone Notes

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone (702) 804-8885
Fax (702) 804-8887
Toll Free (888) 627-5544

Thomas Miller

Harbor Cove HOA
N60025

8112 Lake Hills Drive

000064-03

Date	By	Note
08/10/2011	ehollander	... great, he thanked me, call ended.
11/10/2011	ehollander	Phone Note: spoke with HO - He would like the balance on the account. I advised him that I will have to request an updated accounting ledger from the management and I will update the account for him and I can call him back with the balance or I can ...
11/10/2011	ehollander	... email or fax him a copy of the breakdown. He said that he would prefer that I email it to him. His email address is tmiller@visionairlines.com . I told him that as soon as I have the information that I need I will send this over to him. He ...
11/10/2011	ehollander	... thanked me, call ended.
05/09/2012	dkluska	Phone Note: Tom Kelly called. he wanted me to go over the procedures for going to sale. he wants to see the date down before confirming. i told him to email Misty to order the date down and then call him before giving the posting and pub co ...
05/09/2012	dkluska	... instructions.
05/09/2012	mblanchard	Phone Note: called number above for homeowner and it is now out of service.
05/09/2012	mblanchard	Phone Note: no phone number on skip trace.
05/17/2012	jgerber	Phone Note: paid in full w/ cc - sold to 3rd party at HOA sale
07/16/2012	jgerber	Phone Note: Steven Marzullo, Esq. called about the excess proceeds he received. I explained that the property went to a 3rd party and the excess went to pay off some of the judgement that was owed to him. he said fantastic and thanked me.

EXHIBIT “G”

EXHIBIT “G”

1
2 **DECLARATION OF SUSAN MOSES IN SUPPORT OF SUMMARY JUDGMENT**

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

6 I, Susan Moses, declare:

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

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

12 3. When NAS receives communications, including telephone calls, such
13 communications are documented by entering notations in NAS's collection file as "Phone Notes."

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

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

26 6. I am the Custodian of Records for NAS and in that capacity, I am the Custodian of
27 Records for the documents produced in case number: A-21-819781-C.
28

1 7. On or about March 4, 2021, NAS produced the entire collection file ("Collection
2 File") Bates Stamped NAS0000001 through NAS000248, associated with the property commonly
3 known as: 8112 Lake Hills Drive, Las Vegas, NV 89128 (the "Subject Property").

4 8. I have reviewed the Collection File associated with the Subject Property in this case.
5 The Collection File is a true and accurate copy of the original as it is kept in the regular course of
6 business.

7 9. The Collection File included Phone Notes at Bates Stamp NAS000218-NAS000219.

8 10. My review of the Collection File revealed that Mr. Eddie Haddad ("Haddad") or
9 individuals on behalf of Lake Hills Drive Trust or of River Glider Avenue Trust (the "Trusts"), did
10 not contact NAS regarding the Subject Property, and did not inquire if any payments were made
11 prior to the nonjudicial foreclosure sale of the Subject Property.

12 11. My review of the entire Collection File further revealed that Haddad or individuals on
13 behalf of the Trusts were not individuals or entities which were associated with the Subject Property,
14 named on the deed of trust, or otherwise previously identified, in writing, as individuals or entities
15 authorized to discuss the account of the Subject Property with NAS.

16 12. If Haddad or any individuals on behalf of the Trusts attempted to inquire about the
17 account of the Subject Property, NAS would have informed him/them that NAS is prohibited by
18 federal law from disclosing collection account details without first receiving (1) written consent
19 from the debtor to communicate with the third-party, (2) express permission of a court of competent
20 jurisdiction, or (3) unless reasonably necessary to effectuate a postjudgment judicial remedy. See 15
21 U.S.C.A. § 1692c.

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

24 EXECUTED this 19th day of July 2021.

25
26
27 
28 SUSAN MOSES

EXHIBIT “H”

EXHIBIT “H”

Eddie Haddad ~ July 27, 2017
30(b)(6) Rep. for Saticoy Bay, LLC Series 10777 Vestone St.

Page 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 * * * * *
4 U.S. BANK NATIONAL)
5 ASSOCIATION, AS TRUSTEE FOR)
6 THE CERTIFICATEHOLDERS OF) Case No.:
7 HARBORVIEW MORTGAGE LOAN) 2:16-cv-03009-RFB-CWH
8 TRUST 2005-10, MORTGAGE LOAN)
9 PASSTHROUGH CERTIFICATES,)
10 SERIES 2005-10,)
11 Plaintiff,)
12 vs.)
13 CAPAROLA AT SOUTHERN)
14 HIGHLANDS HOMEOWNERS)
15 ASSOCIATION AND SATICOY)
16 BAY LLC SERIES 10777 VESTONE)
17 ST.,)
18 Defendants.)
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Eddie Haddad ~ July 27, 2017
30(b)(6) Rep. for Saticoy Bay, LLC Series 10777 Vestone St.

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1 SATICOY BAY LLC SERIES 10777)
2 VESTONE ST.,)
3 Counterclaimant,)
4 vs.)
5 U.S. BANK NATIONAL)
6 ASSOCIATION, AS TRUSTEE FOR)
7 THE CERTIFICATEHOLDERS OF)
8 HARBORVIEW MORTGAGE LOAN)
9 TRUST 2005-10, MORTGAGE LOAN)
10 PASSTHROUGH CERTIFICATES,)
11 SERIES 2005-10,)
12 Counter-Defendant.)
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25

DEPOSITION OF EDDIE HADDAD

30(b)(6) REPRESENTATIVE FOR SATICOY BAY, LLC
SERIES 10777 VESTONE ST.

Taken on Thursday, July 27, 2017

At 1:15 p.m.

Taken at 1160 North Town Center Drive

Suite 300

Las Vegas, Nevada

Eddie Haddad ~ July 27, 2017
30(b)(6) Rep. for Saticoy Bay, LLC Series 10777 Vestone St.

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1 DEPOSITION OF EDDIE HADDAD, 30(b)(6) REPRESENTATIVE FOR
2 SATICOY BAY LLC SERIES 10777 VESTONE ST., taken at
3 All-American Court Reporters, 1160 North Town Center
4 Drive, Suite 300, Las Vegas, Nevada, on Thursday, July 27,
5 2017, at 1:15 p.m., before Terri M. Hughes, Certified
6 Court Reporter, in and for the State of Nevada.

7 APPEARANCES:

8 For the Plaintiff/Counter-Defendant:

9 DONNA M. WITTIG, ESQ.
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12 Suite 330
13 Las Vegas, Nevada 89144
14 (702) 634-5000

15 For Caparola at Southern Highlands Homeowners Association:

16 PHIL W. SU, ESQ.
17 Gordon & Rees LLP
18 300 South Fourth Street
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20 Las Vegas, Nevada 89101
21 (702) 577-9300

22 For Saticoy Bay LLC Series 10777 Vestone St.:

23 MICHAEL F. BOHN, ESQ.
24 Law Offices of Michael F. Bohn
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Suite 140
Las Vegas, Nevada 89119
(702) 642-3113

Eddie Haddad ~ July 27, 2017
30(b)(6) Rep. for Saticoy Bay, LLC Series 10777 Vestone St.

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1	I N D E X		
2	Witness: EDDIE HADDAD		
3		Examination	Further Examination
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7	E X H I B I T S		
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10	2 - Trustee's Deed Upon Sale.....		7
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1 Q. Do you normally keep notes or documentation of any
2 of your research?

3 A. I do not.

4 Q. Do you normally request a title report before
5 purchase?

6 A. No.

7 Q. Prior to an HOA foreclosure sale, do you ever
8 inquire from the HOA or the HOA's agent conducting the
9 sale whether there was an attempt to pay the super
10 priority portion of the lien prior to the sale?

11 A. No.

12 Q. Were you the sole decisionmaker in the decision to
13 purchase this property?

14 A. Yes.

15 Q. Prior to the start of the bidding on a property,
16 do you have a maximum amount that you're willing to pay
17 for the property?

18 A. Yes.

19 Q. How do you come to that decision?

20 A. That's my trade secret.

21 Q. Okay. Is it based on that research that you
22 conduct prior to the sale?

23 A. Yes.

24 Q. When you're looking at the Clark County Website,
25 what information are you gathering from that Website?

1 A. Anything of record. Anything that puts us on
2 notice.

3 Q. Notice of what?

4 A. Any foreclosure activity, if there's a first Deed
5 of Trust that's trying to foreclose, I'd have to hire my
6 attorney to block that sale. It is a race to foreclose
7 state, so --

8 Q. When you bought this property back in 2015, did
9 you have an expectation that there would be litigation
10 with the first deed holder for priority title to this
11 property?

12 A. Reasonable expectation, yes.

13 Q. What do you mean by "reasonable expectation"? Why
14 did you qualify it with that word?

15 A. Because it's not a hundred percent. By this time
16 SFR decision had already come out, so --

17 Q. So you believed it was a reasonable probability?

18 A. Oh, yeah, less than 20 percent probably.

19 Q. Less than 20 percent that there would be
20 litigation over it?

21 A. Yeah. Yeah.

22 Q. Can you tell me when the SFR decision came out in
23 relation to this property sale?

24 A. I can't exactly.

25 Q. Was that maybe six months prior, five months

1 prior?

2 A. Sounds about right.

3 Q. Okay. If you could remember, if you can recall
4 back to the time, so about five months after that decision
5 came out, did you believe that the SFR decision resolved
6 the issues relating to the disputes between the lenders
7 and the HOA purchasers?

8 A. Yes.

9 Q. At that time did you believe that the first Deed
10 of Trust holders had any defenses to getting title in
11 first priority?

12 A. Not valid ones.

13 Q. Okay. Do you still own this property through this
14 trust?

15 A. The LLC Series owns it, yes.

16 Q. I meant to say the LLC, not the trust. Thank you.

17 Prior to purchasing a property, do you ever reach
18 out to the HOA directly for information regarding the
19 property?

20 A. No.

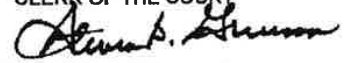
21 Q. What about the HOA trustee? So here that would be
22 Alessi & Koenig.

23 A. No.

24 Q. Prior to purchasing a property, is it normally
25 your practice to take a look at the CC&Rs that are

EXHIBIT “I”

EXHIBIT “I”



1 **RTRAN**

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 PARADISE HARBOR TRUST PLACE,)

6 Plaintiff,)

CASE NO. A707392

7 vs.)

DEPT. NO. XXVIII

8 US NATIONAL BANK ASSOCIATION,)

9 Defendant.)

13 BEFORE THE HONORABLE RONALD ISRAEL,

14 DISTRICT COURT JUDGE

15 WEDNESDAY, NOVEMBER 15, 2017

16 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 1**

19 APPEARANCES:

20 For the Plaintiffs: RICHARD VILKIN

21 For the Defendants: DARREN BRENNER
22 REX GARNER

23 RECORDED BY: JUDY CHAPPELL, DISTRICT COURT

24 TRANSCRIBED BY: MATTHEW KENNEDY, CSR No. 13822

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21	CROSS-EXAMINATION BY MR. VILKIN	1	108
22	SHERI XANDER		
23	DIRECT EXAMINATION BY MR. GARNER	1	218
24	CROSS-EXAMINATION BY MR. VILKIN	1	231
25			

1 A Yes, I did.

2 Q And how did you pay?

3 A Most likely would have been cashier checks. I
4 believe that's on page 431 and 432.

5 Q Prior to the time you purchased the property on that
6 date, did you have any information about the property other
7 than what was in the recorded documents that had been recorded
8 prior to the sale?

9 A Most likely I would have driven the property to take
10 a look at the outside of the property but not have access to
11 the inside of the property.

12 Q Okay. Other than driving by the property, did you
13 have any other information about the property other than what
14 was in the recorded documents?

15 A Nothing else besides the recorded documents.

16 Q Did you talk to anyone at Nevada Legal News, NAS, or
17 the HOA about this property prior to the sale?

18 A I would not recall, but that would not be proper
19 protocol. We would, you know, stand around and wait for the
20 announcements to be made.

21 Q In making your purchase that day, did you rely or
22 did you expect that the foreclosure agent was complying with
23 NRS 116 in --

24 A Absolutely.

1 Q So then if I were to ask you did you ask the HOA or
2 NAS if the bank had made any payment toward that lien, what
3 would your answer be?

4 A Well, first of all, I mean, when you say HOA or NAS,
5 it would be an authorized agent that would have held the sale.
6 I don't know who the authorized agent was at this time, so
7 that authorized agent could have been an employee of Nevada
8 Legal News. So possibly there's no way to ask an authorized
9 agent that's doing a sale whether it's NRS 107 or 116 because
10 they're just not going to have that information.

11 Q Okay.

12 A You wait for the announcement to be made and if it's
13 made, you know, or if it's not made. And then also, you know,
14 these sales go on and on. There's so many of the sales. You
15 know, it's impossible to interrupt the auctioneer on any
16 particular property and say, you know -- because nobody wants
17 to get ejected from the sale for --

18 Q Let me try --

19 A -- disrupting the sale.

20 Q Let me try it a different way. Did you talk to
21 Nevada Legal News about this property before you bid on it?

22 A No. I'm sure -- I'm sure --

23 Q Did you talk to the HOA about this property before
24 you bid on it?

1 A No. I'm sure I would not have.

2 Q Did you talk to NAS about this property before you
3 bid on it?

4 A I'm not sure I would not have.

5 Q Okay. And the fact that you didn't have any
6 information other than what you gleaned from public records
7 did not prevent you from bidding because you were the winning
8 bidder.

9 A Yes, that is correct.

10 Q And the -- the public records that you look at on
11 the Clark County Recorder's website, that also shows you
12 whether or not there is a deed of trust recorded on this
13 property; correct?

14 A Yes, that is correct.

15 Q And if you want to get a copy of that deed of trust,
16 you know how to do that?

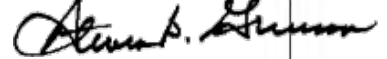
17 A Correct.

18 Q And this property was purchased for long-term rental
19 hold and possible resale; correct?

20 A Investment purposes.

21 Q Has the property been rented to anyone during the
22 time that either Goldstone Avenue Trust or the Plaintiff here,
23 Paradise Harbor Trust, has owned it?

24 A Yes, I'm sure it has.



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 RIVER GLIDER AVENUE TRUST,

15 Plaintiff,

16 vs.

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

20 Defendants.

CASE NO.: A-20-819781-C

DEPT. NO.: XX

**NEVADA ASSOCIATION SERVICES,
INC.'S JOINDER TO DEFENDANT
HARBOR COVE HOMEOWNERS
ASSOCIATION'S RENEWED, MOTION
FOR SUMMARY JUDGMENT**

21 COMES NOW, NEVADA ASSOCIATION SERVICES, INC. (hereinafter "NAS"), and
22 hereby submits its Joinder to HARBOR COVE HOMEOWNERS ASSOCIATION'S Renewed
23 Motion for Summary Judgment. NAS incorporates the arguments, points and authorities, and Exhibits
24 set forth by HARBOR COVE HOMEOWNERS ASSOCIATION as though fully set forth herein.

25 **CONCLUSION**

26 For all the reasons set forth in its Motion, HARBOR COVE HOMEOWNERS
27 ASSOCIATION'S Motion for Summary Judgment should be **GRANTED** as to HARBOR COVE

28 ///

///

///

///

1 HOMEOWNERS ASSOCIATION and NAS.

2 Dated this 23rd day of July, 2021.



4 By: _____

5 BRANDON E. WOOD
6 Nevada State Bar Number 12900
7 NEVADA ASSOCIATION SERVICES, INC.
8 6625 S. Valley View Blvd. Suite 300
9 Las Vegas, NV 89118
10 *Attorney for Defendant Nevada Association*
11 *Services, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd 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 Defendant Harbor Cove Homeowners Association's Renewed 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:

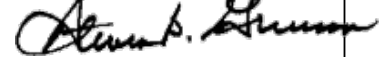
Roger Croteau, Esq. croteaulaw@croteaulaw.com	Croteau Admin receptionist@croteaulaw.com
Peter Dunkley, Esq. Lipson Neilson pdunkley@lipsonneilson.com	

/s/Susan E. Moses

Employee of Nevada Association Services, Inc.

ROGER P. CROTEAU & ASSOCIATES, LTD.
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14 **DISTRICT COURT**
15
16 **CLARK COUNTY, NEVADA**

17 RIVER GLIDER AVENUE TRUST,
18
19 Plaintiff,

20 vs.

21 HARBOR COVE HOMEOWNERS
22 ASSOCIATION; and NEVADA
23 ASSOCIATION SERVICES, INC.,
24
25 Defendants.

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

**PLAINTIFF'S OPPOSITION TO
HARBOR COVE HOMEOWNERS
ASSOCIATION'S RENEWED MOTION
FOR SUMMARY JUDGMENT AND
NEVADA ASSOCIATION SERVICES,
INC.'S JOINDER THERETO**

26 COMES NOW, Plaintiff, RIVER GLIDER AVENUE TRUST, ("Plaintiff") by and
27 through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its
28 Opposition to Harbor Cove Homeowners Association's Renewed Motion for Summary Judgment
(the "HOA's Motion") and Nevada Association Services, Inc.'s Joinder thereto (the "HOA
Trustee's Motion"). This Opposition is made and based upon the attached Memorandum of Points

1 and Authorities, the papers and pleadings on file herein, and any oral argument that this Honorable
2 Court may entertain at the time of hearing of this matter.

3 DATED this August 5, 2021

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5 /s/ Roger P. Croteau

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., Ste. 75

11 Las Vegas, Nevada 89102

12 Attorneys for Plaintiff

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

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

II. STATEMENT OF FACTS

1. On or about April 19, 2005, Thomas D. Miller (the “Former Owner”) purchased the Property. Thereafter, the Former Owner obtained a loan for the Property from Cameron Financial Group, Inc. (“Lender”), that was evidenced by a promissory note and secured by a deed of trust between the Former Owner and Lender, recorded against the Property on March 27, 2007, for the loan amount of \$631,000.00.
2. The Former Owner executed a Planned Unit Development Riders along with the Deed of Trust.
3. The Former Owner of the Property failed to pay to the HOA all amounts due pursuant to the HOA’s governing documents.
4. Accordingly, on July 26, 2010, Nevada Association Services, Inc. (“HOA Trustee”), on behalf of Harbor Cove Homeowners Association (“HOA”), recorded a Notice of Delinquent Assessment Lien (the “NODAL”). The NODAL stated that the amount due to the HOA was \$1,032.01, plus continuing assessments, interest, late charges, costs, and attorney’s fees (the “HOA Lien”).
5. On September 3, 2010, HOA Trustee, on behalf of HOA, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien (the “NOD”). The NOD stated that the HOA Lien amount was \$2,110.87.
6. Upon information and belief, in April 2011, the Former Owner offered a settlement of the HOA Lien in the amount of \$1,232.88, which was accepted by the HOA. The Former Owner made the payment by check dated May 27, 2011 (the “Attempted Payment”). Of the Former Owner’s Attempted Payment, the HOA credited \$500.00 to his assessment account on June 11, 2011 and \$400.00 to his assessment account on August 30, 2011, which cured the amount of the HOA Lien entitled to priority over the Deed of Trust (“Super-Priority Lien Amount”).

- 1 7. On April 16, 2012, HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure
2 Sale against the Property (“NOS”). The NOS stated that the total amount due the HOA was
3 \$3,346.53 and set a sale date for the Property of May 11, 2012, at 10:00 a.m., to be held at
4 Nevada Legal News.
5
- 6 8. On August 27, 2012, the Deed of Trust was assigned to Nationstar Mortgage, LLC
7 (“Nationstar”) via Assignment of Deed of Trust, which was recorded against the Property on
8 August 31, 2012.
9
- 10 9. Despite the Former Owner’s Attempted Payment, on May 11, 2012, HOA Trustee then
11 proceeded to non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure
12 Deed, which stated that the HOA Trustee sold the HOA’s interest in the Property to Lake Hills
13 Drive Trust at the HOA Foreclosure Sale for the highest bid amount of \$5,500.00.
14
- 15 10. The HOA Foreclosure Deed states that HOA Trustee “has complied with all requirements of
16 law ...”
17
- 18 11. In none of the recorded documents, nor in any other notice recorded with the Clark County
19 Recorder’s Office, did HOA and/or HOA Trustee specify or disclose that any individual or
20 entity, including but not limited to the Former Owner, had attempted to pay any portion of the
21 HOA Lien in advance of the HOA Foreclosure Sale.
22
- 23 12. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders at the
24 HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted
25 to pay the Super-Priority Lien Amount.
26
- 27 13. If the bidders and potential bidders at the HOA Foreclosure Sale were aware that an individual
28 or entity had attempted to pay 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

1 ostensibly being sold subject to the Deed of Trust, the bidders and potential bidders would not
2 have bid on the Property.

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

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

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

10 17. 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 acceptance 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

15 18. The information related to any Attempted Payment or payments made by the Former Owner,
16 Lender, or others to the Super-Priority Lien Amount, was not recorded and would only be
17 known by the Former Owner, Lender, the HOA, and HOA Trustee.
18

19 19. HOA and HOA Trustee conspired to withhold and hide the aforementioned information for
20 their own economic gain and to the detriment of the bidders and potential bidders at the HOA
21 Foreclosure Sale.

22 20. As part of Plaintiff's practice and procedure in both NRS Chapter 107 and NRS Chapter 116
23 foreclosure sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm whether
24 the sale was going forward on the scheduled date; and in the context of an NRS Chapter 116
25 foreclosure sale, Plaintiff would ask if anyone had paid anything on the account. See Exhibit 1,
26 Declaration of Iyadd Haddad, page 4.
27
28

21. Plaintiff would contact the HOA Trustee prior to the HOA Foreclosure Sale to determine if the Property would in fact be sold on the date stated in the NOS, obtain the opening bid, so Plaintiff could determine the amount of funds necessary for the auction and inquire if any payments had been made; however, Plaintiff never inquired if the “Super-Priority Lien Amount” had been paid. See Exhibit 1, Declaration of Iyadd Haddad, page 4-5.

22. Iyad Haddad was the trustee of the Lake Hills Drive Trust and Plaintiff at all relevant times and the conveyance of title ownership of the Property from Lake Hills Drive Trust to Plaintiff was done for estate planning purposes. As such, there has always been a unity of interest between Lake Hills Drive Trust, Plaintiff, and the Property such that Plaintiff can raise the claims in this Complaint.

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

24. Lender first disclosed the Attempted Payment by the Former Owner in Lender’s First Supplemental Disclosure of Witnesses and Documents served on Plaintiff on August 24, 2017, (“Discovery”) in Clark County Case No. A-13-683467-C (the “Case”).

III. PROCEDURAL BACKGROUND

In the Case, Plaintiff did not sue the HOA, nor the HOA Trustee. In the Case, Plaintiff sued Nationstar for quiet title and declaratory relief. Plaintiff did not elect to sue the HOA and/or the HOA Trustee in the Case. None of the allegations set forth in this Complaint would require a compulsory claim by Plaintiff in the Case. Plaintiff filed this Complaint on August 18, 2020 to preserve its three (3) year statute of limitations pursuant to NRS 11.190 (a)-(d).

IV. LEGAL ARGUMENT

A. STATEMENT OF THE LAW

Pursuant to N.R.C.P. 56, two substantive requirements must be met before a Court may grant a motion for summary judgment: (1) there must be no genuine issue as to any material fact; and, (2) the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight Equipment Corp.*, 108 Nev. 212, 826 P.2d 570 (1992). 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*, 121 Nev. Adv. Op. 73, 121 P.3d 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at 713, 57 P.3d at 87 (2003). In deciding whether these requirements have been met, the Court must first determine, in the light most favorable to the non-moving party “whether issues of material fact exist, thus precluding judgment by summary proceeding.” *National Union Fire Ins. Co. of Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

The Nevada Supreme Court has indicated that summary judgment is a drastic remedy and that the trial judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84 Nev. 507, 445 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d 168 (1995). “Actions for declaratory relief are governed by the same liberal pleading standards that are applied in other civil actions.” See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260-61 (1993). “The formal sufficiency of a claim is governed by NRCP 8(a), which requires only that the claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.” See *id.* (quoting NRCP 8(a)).

1 **B. PLAINTIFF’S CLAIM FOR MISREPRESENTATION DOES NOT FAIL AS A**
2 **MATTER OF LAW**

3 In this case, Plaintiff asserts that the HOA and HOA Trustee intentionally/negligently made the
4 determination not to disclose the Attempted Payment despite their actual knowledge to the contrary,
5 and as such, the Attempted Payment was known only to the HOA, HOA Trustee, and the Former
6 Owner. In *Nelson v. Heer*, the Court defined intentional misrepresentation as being established by
7 demonstrating:
8

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

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

21 123 Nev. 217, 225 (2007). The Court in *Nelson* provided that the omission of a material fact such
22 as the Attempted Payment of the HOA Lien is deemed to be a false representation which Defendants
23 are bound by the mandates of NRS 116.1113 and NRS 113.130 to disclose to potential bidders upon
24 **reasonable inquiry** from potential bidders at the HOA Foreclosure Sale, and such intentional
25 omission is equivalent to a false representation under the facts of this case.

26 Plaintiff has demonstrated that the HOA, by and through its agent, the HOA Trustee,
27 intentionally did not disclose the Attempted Payment to Plaintiff or the potential bidders at the HOA
28 Foreclosure Sale. Unlike NRS Chapter 107 sales, NRS Chapter 116 sales provide for a super and
subpriority lien portion related the Deed of Trust. Absent the recording of any notice of payment
of the Super Priority Lien Amount, as is mandated with the NRS Chapter 116 amendments in 2015,

1 the only way Plaintiff and/or potential bidders at the HOA Foreclosure Sale would know if any party
2 tendered the Super Priority Lien Amount and/or Attempted Payment is if the HOA and/or the HOA
3 Trustee informed the bidders of the Attempted Payment, **especially when asked**. It is clear from
4 the facts of this case that the HOA Trustee was aware of the Attempted Payment and its rejection
5 by the HOA Trustee.
6

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

14 In this case, Defendants are not guilty of an *affirmative* false representation, but they are
15 guilty of intentionally not disclosing a material fact regarding the payment of the Attempted
16 Payment concerning the Deed of Trust in response to Plaintiff's inquiry (with any question of fact
17 regarding Plaintiff's inquiry being viewed in a light favorable to Plaintiff). Thus, Defendants are
18 guilty of making a material omission of a fact subject to this claim. As Mr. Haddad sets forth in his
19 declaration (previously set forth in response to the Motion to Dismiss, filed on December 16, 2020
20 as "Plaintiff's Errata to Opposition to Harbor Cove Homeowners Association's Motion to Dismiss
21 or in the Alternative Summary Judgment and Nevada Association Services, Inc.'s Joinder thereto,"
22 and attached hereto as Exhibit 1), he relied upon the non-disclosure of the Attempted Payment to
23 indicate that no tender had been attempted or accomplished. The discrepancy is underscored by the
24 fact that the HOA Trustee had a policy for responding to inquiries, as set forth in Exhibit "G" of the
25 Motion, the Declaration of Susan Moses of refusing to provide information, that would have directly
26
27
28

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

6 As to the “practices and procedures” of Mr. Haddad, the Declaration states that Mr. Haddad
7 “never inquired if the ‘Super Priority Lien Amount’ had been paid.” The HOA need not present
8 testimony from a deposition in another matter (See Exhibit H of HOA’s Motion) as to this point;
9 Plaintiff did not specifically ask for a “super Priority Lien Amount” and thus the declaration and
10 response are consistent. Likewise, as to the question “[d]o you ever reach out to the HOA directly
11 for information regarding the property?” the previously supplied declaration does not state that Mr.
12 Haddad reached out to the HOA, but the HOA Trustee. Finally, the HOA’s next quoted question,
13 from a deposition regarding a different property “What about the HOA trustee? So here that would
14 be Alessi & Koenig” shows that the question itself was limited immediately after being asked.
15 Inferring that the broad question as to “ever reach out to the HOA” applies to the narrow question
16 which follows simply creates a question of fact, and not a “fabricated fact” as the HOA alleges.
17 Likewise, the trial testimony, from yet another matter regarding a different property, again quotes
18 questions regarding the HOA, when the declaration of Mr. Haddad never states he would ask the
19 HOA. HOA Motion page 7. Even in the abbreviated trial testimony presented by the HOA, Mr.
20 Haddad’s response to the question “Did you talk to NAS about this property before you bid on it?
21 Answer: I’m not sure I would have” is only further substantiated by the Declaration of Susan Moses,
22 where she states that NAS would not have provided any information. Furthermore, this possible
23 exchange creates an issue of fact regarding the NAS phone logs; Would NAS have a record of
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1 refusing to inform Mr. Haddad of the payments to the lien? NAS does forth it's policies; NAS does
2 not set forth what is recorded if NAS refuses to reply to an inquiry.

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

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

16 In support of it argument, the HOA relies on *Noonan v. Bayview Loan Serv'g*, 438 P.3d 335
17 (Nev. 2019) (unpublished disposition). However, the HOA's reliance on *Noonan* is misplaced,
18 because it is factually distinguishable from this case. It is true the *Noonan* court stated, "Hampton
19 neither made an affirmative false statement nor omitted a material fact it was bound to disclose,"
20 *Noonan*, 438 P.3d at 335, certainly the HOA and the HOA Trustee were bound to tell the truth here
21 when Plaintiff inquired whether a tender/payment had been attempted or made. *See* Declaration of
22 Iyad Haddad attached herein. The *Noonan* decision is based upon a factual determination of whether
23 a material, factual, question had been asked and if it was answered or there was a material omission
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1 of fact. The *Noonan* court did not consider the arguments presented in this matter about NRS
2 116.1113, NRS Chapter 113 (below), and their relevant analysis regarding Plaintiff's inquiry, and
3 the HOA Trustee's unwillingness, to respond.

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

13 The Plaintiff is not alleging that the HOA and HOA failed to *volunteer* the information, but
14 that the HOA, through the HOA Trustee, failed to respond to Plaintiff's inquiry, and through this
15 failure, misrepresented the interest sold. The HOA and HOA Trustee did not respond to inquiries,
16 as the discovery responses also show. This difference, either taken as a fact pursuant to the motion
17 to dismiss standard or as a disputed fact pursuant to the motion for summary judgment request,
18 requires denial of the HOA's Motion.

19 The HOA relies on the *A Oro, LLC v. Ditech Financial LLC*, 434 P.3d 929 (Nev. 2019)
20 decision to support the HOA's argument that the district court should the misrepresentation claims,
21 and that the HOA could only provide a "deed without warranty." However, *A Oro* is distinguishable.
22 First, it should be noted that *A Oro* was based on an appeal of an order granting summary judgment.
23 *See A Oro*, 434 P.3d at *1. In its Order, the Nevada Supreme Court affirmed summary judgment
24
25
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28

1 for the homeowners' association and its foreclosure trustee, because "there is ***no evidence*** that Treo
2 intended to induce appellant into placing the winning bid at the foreclosure sale ..." *Id.* at *2
3 (emphasis added). In this matter, the refusal to respond to Mr. Haddad's, and the HOA Trustee's
4 policy not to respond to Mr. Haddad, created an inducement to bid. Second, *A Oro*, like *Noonan*, is
5 inapplicable, because there is no evidence that the winning bidder in *A Oro* asked the homeowners'
6 association or its foreclosing trustee about a tender/attempted payment, like happened here. Third,
7 the HOA's reliance on *A Oro* for the proposition that the HOA and HOA Trustee had no duties of
8 disclosure, because the HOA Foreclosure Deed was without warranty, is incorrect. The *A Oro* Court
9 did not consider the arguments presented here about NRS 116.1113, NRS Chapter 113, and their
10 relevant analysis as it applies to the HOA Foreclosure Deed. For example, the HOA Foreclosure
11 Deed states that the HOA Trustee has complied with "[a]ll requirements of law. However, as set
12 forth above, this is the very basis of Plaintiff's contention, that the refusal to respond to Mr.
13 Haddad's inquiry created a misrepresentation.

14
15
16 Plaintiff presented the facts and argument that it sought to ascertain whether a tender had
17 occurred, or been attempted, as this information would play a prominent role in determining whether
18 Plaintiff, through Mr. Haddad, would purchase an interest in any given property. The basis for this
19 factual scenario where Plaintiff inquired as to the status of a "tender" is set forth in the complaint
20 by the reference to Plaintiff's receipt of information from the HOA and HOA Trustee "either **orally**
21 or in writing," (emphasis added) showing that Plaintiff had not solely "relied upon the (written)
22 recitals in the foreclosure deed." Mr. Haddad's affirmative efforts indicate that some steps were
23 taken to obtain information regarding the sale via verbal communication. Thus, it is likely that Mr.
24 Haddad inquired of any "tender" at the time of the HOA Sale. This factual scenario, wherein Mr.
25 Haddad verbally inquired as to the status of a "tender" in the matter, and a resulting response (or
26
27
28

1 lack thereof) from the HOA or HOA Trustee that did not disclose the “tender” by the holder of the
2 First Deed of Trust, would result in a violation of NRS 113 and “supply[ing] false information”
3 pursuant to *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 294, 400, 302 P.3d 1148, 1153
4 (2013), or making “a false representation” pursuant to *Nelson v. Heer*, 123 Nev. 217, 225 (2007).
5

6 **C. PLAINTIFF’S TESTIMONY IS CONSISTENT**

7 Plaintiff’s discovery responses as set forth by the HOA, allegations in this matter, and
8 testimony by way of the Declaration are consistent; the HOA and HOA Trustee are simply overeager
9 in their reading of the responses, which they characterize as “fabricated facts.” First, a simple point
10 of clarification before going into the analysis; there is a difference between asking a question and
11 receiving an answer, as Susan Moses’ Declaration makes clear. Mr. Haddad can ask the HOA
12 Trustee regarding a sale; Susan Moses stated that it was the policy of the HOA Trustee that it would
13 not respond. Thus, when Plaintiff’s representative Mr. Haddad responded that it did not receive
14 information on the Subject Property from the HOA or HOA Trustee other than that provided in the
15 Notice of Foreclosure Sale prior to the HOA Sale, as set forth in Exhibit “D” and Exhibit “E” of the
16 HOA’s motion, he was relating the exact problem; that Mr. Haddad requested information and was
17 denied information. Indeed, the fact that that the HOA provides this testimony and now holds it up
18 in their motion, in light of the Declaration of the HOA Trustee in a similar matter, proves that the
19 HOA Trustee recognized Mr. Haddad *did in fact* ask and that they did not provide the information,
20 taking this matter beyond the prior case law of “affirmative” duty to produce the information and
21 into “withholding” of information in response to an inquiry.
22
23

24 The various admissions, in the limited context of the questions asked, show that there was
25 no communication between the HOA and HOA Trustee and Plaintiff. However, the lack of
26 communication is shown to be due to the policies and procedures of the HOA Trustee; refusing to
27 respond to questions due to their interpretation of the law means that Plaintiff did not get the
28

1 information Plaintiff sought, not that Plaintiff did not inquire. Furthermore, the fact that there was a
2 policy and procedure of not responding indicates that Mr. Haddad did inquire, so often in fact, that
3 there became a policy and procedure of how *not to respond* to him when he did inquire. Thus, the
4 inquiry by Mr. Haddad does illustrate a relevant factual question, with the response of the HOA
5 Trustee, or lack thereof, creating a factual question as to the factual underpinning of the HOA's
6 Motion.

7
8 **D. PLAINTIFF PROPERLY SET FORTH THE CLAIM FOR RELIEF UNDER NRS**
9 **113.**

10 As additional proof of the intentional/negligent misrepresentation, the HOA and HOA
11 Trustee are obligated to follow the disclosures mandated by NRS Chapter 113. NRS Chapter 113
12 also requires disclosures by the HOA and HOA Trustee. NRS Chapter 113 is not generally
13 applicable to NRS Chapter 107 foreclosure sales, but it does have certain provisions that do apply
14 in NRS Chapter 116 foreclosure sales. NRS Chapter 116 foreclosure sales are not exempted from
15 NRS Chapter 113's disclosure requirements to the extent that the HOA and the HOA Trustee, as
16 agent for the HOA, have specific knowledge of the facts required for disclosure. Pursuant to Chapter
17 113, the HOA and the HOA Trustee must disclose the Attempted Payment and/or any payments
18 made or attempted to be made by the Former Owner, or any agents of any other party to the bidders
19 and Plaintiff at the HOA Foreclosure Sale. NRS 113.130 provides as follows:

22 NRS 113.130 Completion and service of disclosure form before conveyance of
23 property; discovery or worsening of defect after service of form; exceptions;
24 waiver.

25 1. Except as otherwise provided in subsection 2:

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

27 (1) The seller shall complete a disclosure form regarding the residential property;
28 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.

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

3 The HOA and HOA Trustee are required to, and must, provide a Seller’s Real Property
4 Disclosure Form (“SRPDF”) to the “Purchaser” as defined in NRS Chapter 116, at the time of the
5 HOA Foreclosure Sale. NRS Chapter 116 foreclosure sales are not exempt from the mandates of
6 NRS Chapter 113. To the extent known to the HOA, and the HOA Trustee, as the agent of the
7 HOA, the HOA and HOA Trustee must complete and answer the questions posed in the SRPDF in
8 its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f), and
9 Section 11, that provide as follows:
10

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

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

15 (b) Any periodic or recurring association fees?

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

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

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

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

21 . . .

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

23 *Id.* (emphasis added). Section 11 of the SRPDF relates directly to information known to the
24 HOA and the HOA Trustee that materially affects the value of the Property and defined as a “defect”
25 in NRS 113.100(1). In this case, if the Super Priority Lien Amount is paid, or if the Attempted
26 Payment is rejected, it would have a materially adverse effect on the overall value of the Property,
27 and therefore, must be disclosed in the SRPDF by the HOA and the HOA Trustee. Section 9(c) -
28

1 (e) of the SRPDF would provide notice of any payments made by BANA or others on the HOA
2 Lien.

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

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

12 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.

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

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

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

19 A Buyer may rescind the contract without penalty if he does not receive a fully
20 and properly completed Seller's Real Property Disclosure form. If a Buyer closes
21 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).

22 *Id.* Pursuant to NRS 113.130(4), the HOA and HOA Trustee are required to provide the
23 information set forth in the SRPDF to the bidders at the HOA Foreclosure Sale and no later than the
24 drop of the gavel. The HOA and the HOA Trustee did not provide an SRPDF to the Plaintiff/Mr.
25 Haddad at the HOA Foreclosure Sale nor did they provide any information orally. The foregoing
26 demonstrates the HOA and the HOA Trustee's duty and obligation to disclose the Attempted
27
28

1 Payment to the Plaintiff at the HOA Foreclosure Sale. Failure to make the foregoing disclosures is
2 a breach of duty of good faith and candor and a duty owed by the Defendants to Plaintiff under NRS
3 Chapter 116. The HOA and HOA Trustee's duty is codified pursuant to NRS Chapter 113 and was
4 breached in this case.

5
6 The HOA argues that Plaintiff's claims are time barred by NRS 113.150. However, the HOA
7 sets forth only a portion of NRS 113.150(4). The entire relevant portion is as follows:

8 [I]f a seller conveys residential property to a purchaser without complying with the
9 requirements of NRS 113.130 or otherwise providing the purchaser or the
10 purchaser's agent with written notice of all defects in the property of which the
11 seller is aware, and there is a defect in the property of which the seller was aware
12 before the property was conveyed to the purchaser and of which the cost of repair
13 or replacement was not limited by provisions in the agreement to purchase the
14 property, the purchaser is entitled to recover from the seller treble the amount
15 necessary to repair or replace the defective part of the property, together with court
16 costs and reasonable attorney's fees. An action to enforce the provisions of this
17 subsection must be commenced not later than 1 year after the purchaser discovers
18 or reasonably should have discovered the defect or 2 years after the conveyance of
19 the property to the purchaser, whichever occurs later.

20 Plaintiff is not seeking to "recover from the seller treble the amount necessary to repair or replace
21 the defective part of the property" as NRS 113.150(4) sets forth. Indeed, Plaintiff cannot repair the
22 "defect" created by the HOA and HOA Trustee. Thus, Plaintiff is not seeking to enforce subsection
23 NRS 113.150(4), and instead merely sets forth the violation of NRS 113 as a claim, in conjunction
24 with the other claims of the Complaint, and is not seeking the treble damages prohibited by the
25 statute of limitations set forth by NRS 113.150(4). Thus the HOA's arguments as to the time
26 limitation on Plaintiff's claim are irrelevant.

27 Additionally, while the Nevada Supreme Court Orders cited in the HOA's briefing note that
28 the "value" of the Property technically remains the same whether encumbered or not, to the extent
that it differs from a construction defect or other physical impairment that could decrease the value
by a fixed amount for repairs of same, it fails to account for the entirety of the definition of "Defect"

1 set forth in NRS 113.100. If the First Deed of Trust remains an encumbrance on the Property,
2 Plaintiff, or any other buyer, cannot know 1) when the First Deed of Trust will be foreclosed and
3 the junior interest eliminated, 2) the price to avert foreclosure under the First Deed of Trust (i.e.
4 what the principal, interest, escrow, fees etc.. are under the First Deed of Trust), and 3) the use
5 during that time period (i.e. short-term rental, long-term rental, sale, etc...). Thus, while the value
6 of the Property as a *res* may remain unchanged by an encumbrance, NRS 113 sets forth “value or
7 use” which implies a more extensive definition than merely the value of the Property as a collection
8 of boards, pipes, and wires. Thus, the failure to make the disclosure did, indeed, impact the “value”
9 of the Property, and thus, Plaintiff’s claims are properly brought and supported at this early juncture.
10

11 **E. PLAINTIFF’S CLAIM FOR CIVIL CONSPIRACY SHOULD BE SUSTAINED**

12 The Supreme Court of Nevada has recognized that co-conspirators, like the HOA and the
13 HOA Trustee in this matter, are deemed to be each other’s agents while acting in furtherance of the
14 conspiracy. *Tricarichi v. Cooperative Rabobank, U.A.*, 440 P.3d 645, 653 (Nev. 2019) (observing
15 in the context of a conspiracy claim for purposes of establishing personal jurisdiction, “co-
16 conspirators are deemed to be each other’s agents, the contacts that one co-conspirator made with a
17 forum while acting in furtherance of the conspiracy may be attributed for jurisdictional purposes to
18 the other co-conspirators.”). Likewise, Plaintiff here contends that the HOA and the HOA Trustee
19 were co-conspirators of one another in failing or refusing to disclose the Attempted Payment to
20 Plaintiff.
21

22 The actions of one co-conspirator, those of the HOA Trustee, are properly attributable to the
23 other co-conspirator, the HOA, and vice versa. *See id.* As the HOA and the HOA Trustee are
24 separate legal entities, the legal bar which Defendants will likely assert exists to a conspiracy
25 between the HOA Trustee and the HOA simply does not exist. *See, e.g., Nanopierce Techs. Inc. v.*
26 *Depository Trust and Clearing Corp.*, 168 P.3d 73, 85 n.49 (Nev. 2007). The HOA’s Motion should
27
28

1 be denied on this basis, as well. If the court deems the parties to be in an agency relationship, with
2 the HOA responsible pursuant to Respondeat Superior liability, then the conspiracy claim need not
3 lie, however, if the parties are deemed to not be liable for its agent, then the conspiracy claim stands.
4

5 IV. CONCLUSION

6 Based upon the foregoing, the Opposition should be sustained and the HOA's Motion and
7 HOA Trustee's Joinder should be denied.

8 DATED this August 5, 2021.

9
10 ROGER P. CROTEAU & ASSOCIATES, LTD.

11 /s/ Roger P. Croteau
12 Roger P. Croteau, Esq.
13 Nevada Bar No. 4958
14 Christopher L. Benner Esq.
15 Nevada Bar No. 8963
16 2810 W. Charleston Blvd., Ste. 75
17 Las Vegas, Nevada 89102
18 Attorneys for Plaintiff
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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

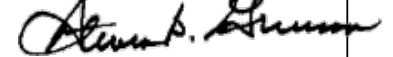
I hereby certify that on this August 5, 2021, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

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

EXHIBIT 1

EXHIBIT 1



1 ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
2 RAYMOND JEREZA, ESQ.
Nevada Bar No. 11823
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7 ray@croteaulaw.com
Attorneys for Plaintiff

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 RIVER GLIDER AVENUE TRUST,
12 Plaintiff,

13 vs.

14 HARBOR COVE HOMEOWNERS
15 ASSOCIATION; and NEVADA
16 ASSOCIATION SERVICES, INC.,
17 Defendants.

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

**PLAINTIFF'S ERRATA TO
OPPOSITION TO HARBOR COVE
HOMEOWNERS ASSOCIATION'S
MOTION TO DISMISS OR IN THE
ALTERNATIVE SUMMARY
JUDGMENT AND NEVADA
ASSOCIATION SERVICES, INC.'S
JOINDER THERETO**

18
19
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21
22 COMES NOW, Plaintiff, RIVER GLIDER AVENUE TRUST, by and through its
23 attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Errata to its
24 Opposition to Harbor Cove Homeowners Association Motion to Dismiss, which was inadvertently
25 not filed with the Opposition.
26
27
28

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1 See attached Declaration of Eddie Haddad.

2 DATED this 15th day of December, 2020.

3 ROGER P. CROTEAU & ASSOCIATES, LTD.

4
5 /s/ Roger P. Croteau
6 Roger P. Croteau, Esq.
7 Nevada Bar No. 4958
8 Raymond Jereza, Esq.
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12 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2020, a true copy of the foregoing was served via electronic means on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, pursuant to EDCR 8.05(a).

/s/ Joe Koehle

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

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 Trustee of RIVER GLIDER AVENUE TRUST (“*River Glider*”). River Glider obtained its’ interest in the Property from the HOA Foreclosure Sale. In my capacity as set forth above, I have reviewed the foregoing Opposition to HOA’s Motion. 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 HOA Trustee prior to the HOA Foreclosure Sale to determine if the Property would in fact be sold on the date

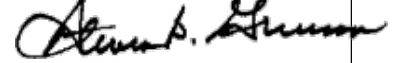
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1 stated in the NOS, obtain the opening bid, so I could determine the amount of funds necessary for
2 the auction and inquire if any payments had been made; however, I never inquired if the “Super
3 Priority Lien Amount” had been paid. I personally do all of the research on any and all properties
4 that I purchased at the HOA Foreclosure Sales.
5

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

7 Executed this 14th day of December 2020..
8

9 /s/ Eddie Haddad
10 EDDIE HADDAD
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**LIPSON NEILSON P.C.**

KALEB D. ANDERSON, ESQ.

Nevada Bar No. 7582

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kanderson@lipsonneilson.compdunkley@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

**HARBOR COVE HOMEOWNERS
ASSOCIATION'S REPLY IN SUPPORT
OF RENEWED MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Defendant Harbor Cove Homeowners Association (the "HOA"), by and through its counsel of record, LIPSON NEILSON, P.C., and hereby submits this Reply in Support of its Renewed Motion for Summary Judgment.

REPLY MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiff's opposition ("Opposition") doubles down on its most recent "standard policy" of allegedly inquiring of NAS regarding lien payments prior to the nonjudicial foreclosure sale, with no evidence to corroborate the self-serving declaration alleging the policy of preforeclosure inquiry, which contradicts Haddad's prior trial and deposition testimony.

Whether or not there was a preforeclosure inquiry, (there wasn't), other than by providing the publicly recorded notice of default and the two notices of sale, which included the delinquency amounts, the HOA or NAS had no statutory obligation or duty of good faith to disclose a homeowner's payment history to a stranger on the phone, and no extra-statutory duty to prospective bidders at the sale. Accordingly, even if the court believes there is genuine issue of fact regarding whether Haddad inquired, and whether NAS responded, would not change the outcome—the sale has been ruled valid, for a mere \$5,500.00, Plaintiff rightfully and validly obtained title to the Property currently valued at approximately \$745,600.00¹. Any ruling to the contrary, that the HOA or NAS made an error would necessarily result in an invalid sale, and Plaintiff would lose the Property, an outcome that not even Plaintiff actually wants. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 612, 427 P.3d 113, 121 (2018) (seller passes no title if sale void).

There is still no genuine issue of material fact which would require an arbitration or a trial. Summary judgment in favor of the HOA is appropriate at this time.

II. REPLY TO STATEMENT OF FACTS

Most of the enumerated "facts" were adjudicated in the Prior Litigation, which found that the foreclosure sale was valid and the Plaintiff acquired title to the Property for \$5,500.00. *See* Order, attached to the HOA's Renewed Motion for Summary Judgment, at Exhibit A.² Other than alleging that Haddad called NAS on either May 10, or May 11, Plaintiff does not dispute any of the HOA's statement of undisputed facts.

However, beginning at paragraph 13 of the Opposition, the metaphorical wheels fall off Plaintiff's alleged "facts" bus. Plaintiff alleges the "fact" on behalf of himself, and all non-party "bidders and potential bidders" that they would not have bid at the sale if they knew of

¹ According to Zillow.com, the current value is \$740,900.00. *See* https://www.zillow.com/homes/8112-Lake-Hills-Drive,-Las-Vegas,-Nevada-_rb/6936988_zpid/ (Accessed August 8, 2021). In other words, Plaintiff paid less than 1 penny on the dollar, i.e., \$5,500 divided by \$745,600.00 equals .007, which equals less than 1 percent.

² The HOA will not reattach the Exhibits previously filed with the Court. EDCR 2.27(e).

1 an "Attempted Payment prior to the HOA Foreclosure Sale. (Opposition p. 4 at ¶ 13.) On its
2 face, this hypothetical, i.e., speculative statement, posited on behalf of non-parties, does
3 not state a "fact" or create a factual issue. See *Cuzze v. Univ. & Cmty. Coll. Sys.*, 123 Nev.
4 598, 603, 172 P.3d 131, 134 (2007) ("to defeat summary judgment, the nonmoving party
5 must transcend the pleadings and, by affidavit or other **admissible evidence**, introduce
6 specific facts that show a genuine issue of material fact") (emphasis added). See also,
7 *Wood v. Safeway, Inc.* 121 Nev. at 732, 121 P.3d at 1031 (indicating that a party seeking to
8 avoid summary judgment may not build a case on speculation).

9 What is actually an undisputed fact is that there were two notices of sale in this case,
10 publicly recorded more than a year apart. The first notice was recorded on March 31,
11 2011, and indicated a lien amount of \$3,451.55. (See Order from Prior Litigation, Exhibit A
12 to the Renewed MSJ, at p. 3: 18-19.) The second notice of sale was recorded more than a
13 year later on April 16, 2012, and indicated a lien amount of \$3,346.53. (*Id.*, at 4:1-2.)
14 Logic, common sense, and experience, strongly indicates that the delinquency amount in
15 the second notice of sale, 13 months after the first notice of sale, would include additional
16 assessments and fees, and would therefore increase from the delinquency amount in the
17 first notice of sale. However, in this case, the amount of the delinquency indicated in the
18 second notice of sale **decreased** from \$3,452.55 to \$3,346.53, **which is less than the**
19 **amount indicated in the first notice of sale.** (*Id.*) The inescapable, unavoidable,
20 undeniable conclusion is that the reduced delinquency amount indicated in the second
21 notice of sale was because a payment or payments had been made by someone.

22 It is undisputed that both notices of sale were publicly recorded, and therefore
23 actually reviewed by Plaintiff in this case. To the extent Plaintiff argues there was no
24 disclosure of the payment by the HOA or NAS, the recording of the two notices of sale,
25 imparts notice to the entire world, and has for more than 100 years in Nevada. See *First*
26 *Nat'l Bank v. Meyers*, 40 Nev. 284, 293, 150 P. 308, 931, 161 P. 929, 931 (1916)
27 (recording gives notice to the world). See also, *SFR Invs, Pool 1, LLC v. First Horizon*
28 *Home Loans*, 134 Nev., Adv. Op. 4, 409 P.3d 891, 894 (2018) (observing that the purpose

1 of Nevada's recording statutes is to "impart notice to all persons of the contents thereof"
2 and that "subsequent purchasers and mortgagees shall be deemed to purchase and take
3 with notice").

4 Therefore, if Plaintiff claims he didn't have "notice" about the payment for the
5 sequentially decreasing amounts in the notices of sale, it has to be because he didn't
6 bother to look at the publicly recorded notices of sale. But Plaintiff testified, "I personally do
7 all the research on any and all properties that I purchased at the HOA Foreclosure Sales."
8 (Declaration of Haddad, p. 5:3-4.)

9 Whether or not Plaintiff looked at the notices, does not create any extra-statutory
10 disclosure duties on the HOA or NAS. *Nationstar Mortg., LLC v. Saticoy Bay LLC Series*
11 *2227 Shadow Canyon*, 133 Nev. 740, 744, 405 P.3d 641, 645 (2017) ("the relevant
12 statutory scheme curtails an HOA's ability to dictate the method, manner, time, place, and
13 terms of its foreclosure sale, an HOA has little autonomy in taking extra-statutory efforts to
14 increase the winning bid at the sale").

15 Accordingly, the speculative "fact" Plaintiff stated in paragraph 13 of the Opposition,
16 is not a "fact" and does not create a genuine issue for trial.

17 Paragraphs 14, 15, 16, 17, 18, and 19, are also not "facts" but conclusions or pure
18 speculation, none of which create a genuine issue for trial.

19 Which brings us to alleged facts of ¶¶ 20-23, which is based on the December 2020
20 Declaration of Iyad Haddad,³ in which he flatly contradicts himself when comparing his
21 adopted policy of December 2020, to what he testified to during a deposition on July 27,
22 2017, and during a trial on November 14, 2017. See Exhibits H and I to the Renewed
23 Motion for Summary Judgment.

24 Paragraph 24 relates to the Prior Litigation and does not factor into this case.

25 _____
26 ³ The Court should not consider those parts of the Declaration which are not factual but are instead,
27 argument or conclusory. *See, e.g.*, DRC 13(5) ("Affidavits shall contain only factual, evidentiary matter, shall conform
28 with the requirements of NRCP 56(e), and shall avoid mere general conclusions or argument. Affidavits substantially
defective in these respects may be stricken, wholly or in part.").

1 As noted in the HOA's Renewed MSJ, the "facts" in the Declaration are
2 uncorroborated by NAS's telephone records, and Plaintiff's discovery responses admit he
3 does not have any phone records which would show that any such communication actually
4 took place. See Plaintiff's discovery responses, relevant portions of which were attached to
5 the Renewed Motion for Summary Judgment as Exhibits E, E-1, and E-2 (confirming no
6 phone records).

7 One cannot avoid summary judgment by fabricating "facts."

8 **III. REPLY ARGUMENT**

9 **A. MISREPRESENTATION**

10 Summary judgment is still appropriate on the misrepresentation claim because the
11 HOA is not required to disclose attempted payments. See NRS 116 *et seq.* (notice
12 requirements for nonjudicial foreclosure sales).

13 Plaintiff relies on *Nelson v. Heer* 123 Nev. 217, 225 (2007) for the position that the
14 HOA was required to provide extra-statutory disclosure if asked. However, the
15 nondisclosure in *Nelson v. Heer* was related to a seller's knowledge of water damage,
16 which in "good faith" would require disclosure.

17 On the contrary, when an HOA forecloses on a property, the HOA is bound to
18 comply with NRS 116, which expressly sets forth the notice requirements, which in 2012,
19 did not require discussing any attempted payments. A comparison of the 2012 version of
20 NRS 116 with the 2015 version confirms that the HOA, complying with NRS 116, did not
21 disclose the information. See *also*, Order from the Prior Litigation finding valid sale. The
22 Nevada Supreme Court, and many District Courts have not found misrepresentation in the
23 circumstances alleged by Plaintiff:

24 [C]laims for misrepresentation and breach of NRS 116.1113 fail because
25 respondents had no duty to proactively disclose whether a superpriority
26 tender had been made. Compare NRS 116.31162(1)(b)(3)(II) (2017)
27 (requiring an HOA to disclose if tender of the superpriority portion of the
28 lien has been made), with NRS 116.31162 (2012) (not requiring any such
disclosure); see *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394,
400, 302 P.3d 1148, 1153 (2013) (providing the elements for a negligent
misrepresentation claim, one of which is "supply [ing] false information"

[*2] (internal quotation marks omitted)); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) (providing the elements for an intentional misrepresentation claim, one of which is making "a false representation").

Saticoy Bay Llc Series 10007 Liberty View v. S. Terrace Homeowners Ass'n, 484 P.3d 276 (Nev. 2021).

Additionally, even in *Nelson v. Heer*, the misrepresentation claim still failed because there was no evidence that the alleged nondisclosure was the cause of any damages. *Nelson v. Heer*, 123 Nev. at 226.

Thus, even if the 2012 version of NRS 116 required such a disclosure (it didn't), Plaintiff has not established that any nondisclosure caused any damages, e.g., Plaintiff acquired a house worth hundreds of thousands of dollars, for \$5,500.00, and then received rent revenues.⁴

An even bigger problem for Plaintiff is that he cannot establish that: (1) he ever spoke to NAS, and (2) that NAS ignored his purported call. In other words, let's not put the cart before the horse and assume that Plaintiff actually called and inquired. As discussed in more detail below, he did not. Without credible evidence of an actual inquiry or an actual injury, Plaintiff is asking the Court to find a duty or obligation that did not exist in 2012, and that not separately disclosing the payment history was required, even though the delinquency amounts in the consecutive notices of sale was decreasing, which provided notice that a payment was made. Plaintiff has not sufficiently established a claim for misrepresentation.

Plaintiff's attempt to distinguish the HOA's authority is unavailing and still relies on the assumption there was an actual inquiry (which there wasn't) and that if there was an inquiry, then NAS would should have provided the information (which it didn't have to).

The HOA (and NAS) complied with the disclosure requirements of NRS 116. The information provided to the world through the recorded notices of sale, demonstrated, if the world looked at them, that a payment had been made, reducing the delinquency amount.

⁴ Plaintiff's disclosure alleges \$45,000 in damages, but attaches not one document, receipt, or cancelled check, to support the assertion.

1 Plaintiff cannot ignore the publicly recorded information and then attempt to blame the HOA
2 or NAS for their respective compliance with NRS 116. There is no genuine issue of fact
3 regarding the misrepresentation claim. The HOA is entitled to summary judgment.

4 **B. MISREPRESENTATION, PART DEUX**

5 Plaintiff argues that the Declaration of Susan Moses confirms NAS's policy of
6 "refusing to provide information." (Opposition 9:25-17.) The argument mischaracterizes the
7 statement. What the Declaration actually says, is when someone like a representative of
8 Plaintiff calls NAS: "NAS informed such individuals or entities that NAS is prohibited by
9 federal law from disclosing collection account details without receiving (1) written consent
10 from the debtor to communicate with the third-party, (2) express permission of a court of
11 competent jurisdiction, or (3) unless reasonably necessary to effectuate a postjudgment
12 judicial remedy." In other words, ***NAS responded to inquiries and provided people the***
13 ***information necessary for NAS to provide additional information.*** Plaintiff could have
14 asked the homeowner or obtained the homeowner's consent, but did not, and does not
15 allege to have tried. Plaintiff could have petitioned a court of competent jurisdiction to
16 receive permission, but did not, and does not allege to have tried. Plaintiff did not claim to
17 be effectuating a postjudgment remedy, and has not alleged to be doing so. This Court
18 should not permit Plaintiff's failure to inquire, or follow NAS's instructions (if Plaintiff actual
19 did inquire) as a misrepresentation claim against the HOA or NAS. If somebody calls NAS,
20 and NAS provides the caller with information to obtain the information requested, the caller
21 should not be permitted to claim that the HOA or NAS "obstructed Plaintiff's opportunity" to
22 conduct due diligence. (Opposition 11:6-7.)

23 Plaintiff's mischaracterization of the Declaration of Moses is particularly glaring when
24 considering the sequentially decreasing delinquency amounts indicated on the publicly
25 recorded notices of sale. There was no obstruction, only compliance with 2012's NRS 116.

26 There is no genuine issue of fact. The Court may grant summary judgment in favor
27 of the HOA.

28 ///

C. NRS 116.1113 DOES NOT CREATE AN ENHANCED DUTY TO DISCLOSE

Plaintiff appears to agree there is no “affirmative duty to disclose” but alleges a duty to “respond to the inquiry.” (Opposition 12:10-12.) Plaintiff cites no authority in support of its position of an alleged duty to respond v. duty to disclose. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

To the contrary, as noted in the Renewed MSJ, the library of authority finding no such duty exists, continues to grow. See, e.g., *Saticoy Bay Llc Series 10007 Liberty View v. S. Terrace Homeowners Ass’n*, 484 P.3d 276 (Nev. 2021) (“breach of NRS 116.1113 fails because respondents had no duty to proactively disclose whether a superpriority tender had been made”). Plaintiff’s argument regarding proactive disclosure as opposed to duty to respond does not create a genuine issue of fact for arbitration or trial because argument is not evidence. See *Randolph v. State*, 117 Nev. 970, 984, 36 P.3d 424, 433 (2001) (noting jury instruction “[s]tatements, arguments and opinions of counsel are not evidence in the case”(alteration in original)); *Greene v. State*, 113 Nev. 157, 169, 931 P.2d 54, 61 (1997) (reiterating the district court’s admonishment that “arguments of counsel are not evidence, as I’ve told you earlier, and neither are the personal beliefs of counsel as to—as to the implications of that evidence”), overruled on other grounds by *Byford v. State*, 116 Nev. 215, 235, 994 P.2d 700, 713 (2000); *Flanagan v. State*, 112 Nev. 1409, 1420, 930 P.2d 691, 698 (1996) (highlighting the jury instruction that “[s]tatements, arguments and opinions of counsel are not evidence in the case” (alteration in original)); *Bonacci v. State*, 96 Nev. 894, 896-97, 620 P.2d 1244, 1246 (1980) (reiterating the district court’s admonishment that “arguments of counsel are not evidence”).

Factually, even if the Court assumes the unsupported allegation that Plaintiff called NAS, NAS would have responded to the caller and provided the instructions to Plaintiff, in order for NAS to provide information in addition to what was already public knowledge as contained in the publicly recorded notices of sale. (See Declaration of Moses, Renewed

1 MSJ Exhibit G, at ¶ 5 (NAS informed inquirers of what NAS would need from the inquirers
2 to provide additional information, i.e., homeowners consent to discuss, or court order). Just
3 because a response from NAS would not have included the information sought by a caller
4 does not mean NAS did not respond, it only means that Plaintiff didn't like the response it
5 received.

6 There is no genuine dispute that, if Plaintiff had called, NAS would have responded,
7 with instructions for the caller to take further action to receive more information. Plaintiff's
8 alleged unhappiness with NAS's response does not make a breach of NRS 116.1113
9 claim. The HOA is entitled to summary judgment.

10 **D. INCONSISTENT TESTIMONY DOES NOT CREATE A GENUINE ISSUE**

11 The Opposition argues that Plaintiff's testimony is consistent. However, Plaintiff still
12 provides no corroborating evidence that a call from Haddad actually occurred. Plaintiff
13 argues that the HOA's and NAS's evidence that establishes that Haddad *did not* contact
14 NAS or the HOA, is somehow evidence that he "*did in fact ask*" but was not provided
15 information. (Opposition 14:21.) The argument makes no sense in light of the undisputed
16 facts:

- 17 (1) This nonjudicial foreclosure sale took place in 2012.
- 18 (2) In 2017, Haddad testified, under oath, at trial and during deposition, that he
19 ***did not ever reach*** out to NAS or the HOA prior to the sale. See Renewed
20 MSJ Exhibit H, and I.
- 21 (3) In 2020, Haddad testified that he called NAS (not the HOA) on "Thursday,
22 May 10 or Friday May 11, 2012. (Response to Interrogatory 2, Renewed MSJ
23 Exhibit D.)
- 24 (4) NAS produced its Phone Notes, for this case, which does not show there was
25 a phone call from anyone on May 10 or May 11. (Phone Notes, Renewed
26 MSJ, Exhibit F.)
- 27 (5) NAS testified that even if Haddad had called, in order to communicate with
28 third-parties regarding collection information, NAS would have informed

Haddad that NAS would require the debtor's consent, court permission, or a post-judgment judicial remedy. (Declaration of Moses, Renewed MSJ, at Exhibit G, ¶ 5.)

In other words, to avoid summary judgment, Plaintiff must do more than generically draft an affidavit that contradicts prior testimony. To survive a motion for summary judgment, the Plaintiff "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). Additionally:

[I]f the court finds that an affidavit constituted a "sham" produced for the sole purpose of falsely circumventing summary judgment, it can ignore the affidavit. See e.g., *Nutton v Sunset Station, Inc.*, 131 Nev. 279, 294-95, 357 P.3d 966, 976-77 (Ct. App. 2015). In such situations, the court can find an affidavit to be a sham if it contains assertions that directly contradict other assertions previously made by that same witness during discovery and the contradiction cannot otherwise be legitimately reconciled as anything but manufactured. *Id.*

Cynthia Pickett, MSW, LCSW, LADC, Inc. v. McCarran Mansion, LLC, 2019 Nev. App. Unpub. LEXIS 1091, *15, 2019 WL 7410795 (unpublished). Federal Courts invoke the same rule:

A "party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." *Yeager v. Bowlin*, 693 F.3d 1076, 1080 (9th Cir. 2012) (quotation omitted). "This sham affidavit rule prevents a party who has been examined at length on deposition from rais[ing] an issue of fact simply by submitting an affidavit contradicting his own prior testimony, which would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact." *Id.* (quotation omitted).

Tuttobene v. Trans Union, LLC, No. 2:19-cv-01999-APG-NJK, 2021 U.S. Dist. LEXIS 101472, at *17-18 (D. Nev. May 28, 2021).

There are circumstances where a court may disregard a self-serving affidavit at the summary judgment stage. For example, a "conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *Nilsson v. City of Mesa*, 503 F.3d 947, 952 n.2 (9th Cir. 2007) (quotation omitted).

1 *Smith v. Albertsons LLC*, No. 2:13-cv-01479-APG-CWH, 2015 U.S. Dist. LEXIS 89274, at
2 *5 (D. Nev. July 8, 2015)

3 In this case, a contradictory affidavit, alleging "Plaintiff **would have** contacted the
4 HOA trustee on Thursday, May 10 or Friday, May 11, 2012" (emphasis added) directly
5 contradicts prior testimony that Plaintiff **would not have** contracted the HOA trustee, and is
6 not a specific fact showing a genuine issue.

7 To avoid summary judgment, Plaintiff must do more than generically draft an
8 affidavit that contradicts prior testimony; Plaintiff must do more than ask hypothetical,
9 through irrelevant, questions, "Would NAS have a record of refusing to inform Mr. Haddad
10 of the payments to the lien?" Ostensibly, the answer to the hypothetical is: YES. See
11 Phone Logs (memorializing all phone calls).

12 In this case, a contradictory affidavit, alleging "Plaintiff **would have** contacted the
13 HOA trustee on Thursday, May 10 or Friday, May 11, 2012" (emphasis added) directly
14 contradicts prior testimony that he would not have contracted NAS, and is not a specific or
15 supported fact showing a genuine issue to empanel a jury.

16 Summary judgment in favor of the HOA is still appropriate because argument of
17 counsel, even creative argument, is not fact with which to avoid summary judgment. See
18 *Bonacci v. State*, 96 Nev. 894, 896-97, 620 P.2d 1244, 1246 (1980) (reiterating the district
19 court's admonishment that "arguments of counsel are not evidence").

20 **E. CONSPIRACY AND NRS 113 CLAIMS WERE DISMISSED**

21 The conspiracy claim and the claim for violation of NRS 113 were dismissed on
22 December 15, 2020. Argument was included in an abundance of caution and because
23 there are no new facts or law raised in the Opposition, which would revive the dismissed
24 claims, the HOA will not restate its argument and incorporates its argument from the
25 Renewed MSJ with regard to Plaintiff's arguments in Sections D and E. See Renewed
26 Motion for Summary Judgment; see *also*, HOA's answer, filed January 5, 2021 (indicating
27 dismissal of claims).

28 ///

1 **IV. CONCLUSION**

2 The Opposition does not present any facts which would create a genuine issue for
3 arbitration or trial. The Plaintiff has already established the character of the title it obtained
4 at the valid nonjudicial foreclosure, as conclusively determined, through the District Court's
5 Order, affirmed on appeal, in the Prior Litigation. Plaintiff should not be permitted to try to
6 change its story in order to avoid summary judgment in this case, and attempt to have the
7 HOA or NAS supplement its \$5,500.00 purchase of a \$745,000.00 property.

8 Dated this 9th day of August 2021.

9 LIPSON NEILSON, P.C.

10 *Peter E. Dunkley*

11 By:

12 _____
13 KALEB D. ANDERSON, ESQ.
14 Nevada Bar No. 7582
15 PETER E. DUNKLEY, ESQ.
16 Nevada Bar No. 11110
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18 Las Vegas, Nevada 89144
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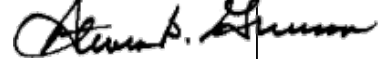
CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August 2021, an electronic copy of the following
**HARBOR COVE HOMEOWNERS ASSOCIATION'S REPLY IN SUPPORT OF
RENEWED MOTION FOR SUMMARY JUDGMENT** 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 P. Croteau, Esq.
Christopher Benner, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89148
Attorney for Plaintiff

Renee M. Rittenhouse

An Employee of LIPSON NEILSON, P.C.



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 RIVER GLIDER AVENUE TRUST,
9 Plaintiff,

CASE NO. A-20-819781
DEPT. NO. XX

10 vs.

11 HARBOR COVE HOMEOWNERS
12 ASSOCIATION, etc.,
13 Defendants,

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
15 WEDNESDAY, SEPTEMBER 08, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **HARBOR COVE HOMEOWNERS ASSOCIATION'S RENEWED**
18 **MOTION FOR SUMMARY JUDGMENT; NEVADA ASSOCIATION**
19 **SERVICES, INC.'S JOINDER TO DEFENDANT HARBOR COVE**
20 **HOMEOWNERS ASSOCIATIONS' RENEWED MOTION FOR**
21 **SUMMARY JUDGMENT**

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25 SEE APPEARANCES ON PAGE 2

RECORDED BY: SARAH RICHARDSON, COURT RECORDER

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APPEARANCES

For the Plaintiff:

CHRISTOPHER L. BENNER, ESQ.
[Via BlueJeans]

For Defendant

Nevada Association Services: BRANDON E. WOOD, ESQ.
[Via BlueJeans]

For Defendant

Harbor Cover: PETER E. DUNKLEY, ESQ.
[Via BlueJeans]

1 Las Vegas, Nevada, Wednesday, September 08, 2021

2

3 [Hearing began at 9:06 a.m.]

4 THE COURT: River Glider Avenue Trust versus Harbor Cover
5 Homeowners Association, case number A819781. Counsel, please note
6 your appearances for the record.

7 MR. BENNER: Christopher Benner on behalf of River Glider
8 Avenue Trust, Plaintiff.

9 MR. DUNKLEY: Good morning, Your Honor. Peter Dunkley for
10 Harbor Cove HOA.

11 MR. WOOD: Good morning, Your Honor. Brandon Wood on behalf
12 of Defendant Nevada Association Services.

13 THE CLERK: That's it.

14 THE COURT: All right, very good. All right, we're here on Harbor
15 Cover Homeowners Association's Renewed Motion for Summary
16 Judgment and Nevada Association Services's Joinder to that motion. I
17 received the motion. I received the briefing.

18 Let me turn to Plaintiff; in looking at this, let me just make sure
19 I'm not missing -- I just see in terms of the factual allegations from your
20 side that, there was a call made to the homeowner's association -- or
21 actually the association services and asked if there was any payment
22 made by the homeowner toward the HOA lien and neither the
23 homeowner's association or NAS said anything.

24 Am I right that that's the extent you've got in terms of material
25 omission or misrepresentation?

1 MR. BENNER: Christopher Benner for Plaintiffs, Your Honor. And
2 I'll make the correction now because I know that the defendants will set
3 this forth is that, it was the -- the declaration states that it was the client's
4 practice and procedure to make those communications. He was not
5 able to state or provide specific records of reaching out to the HOA
6 Trustee, NAS in this case, so I'll make that correction now because I
7 know defendant will set it forth.

8 But otherwise than that, yes, Your Honor. NAS included
9 their -- or NAS had a policy of not providing that information, so that's
10 not surprising that he did not receive any information regarding any
11 payments made towards the underlying lien.

12 THE COURT: Okay. I don't think that; until there was statutory
13 change was made that, there was any obligation on the homeowner's
14 association or NAS's part to make that information available. If there
15 isn't any obligation, and they didn't say anything, how was there a
16 material omission that your client should have relied upon?

17 MR. BENNER: Yes, Your Honor. There's no statutory requirement
18 for proactive response. And again -- not to steal defendant's thunder,
19 but there is a -- there's been some orders; no decisions from the Nevada
20 Supreme Court, but there's no proactive duty.

21 However, our argument at this juncture is that, with a policy and
22 procedure of making a request and a -- and NAS's policy and procedure
23 of not answering that request because of an alleged of requirements for
24 protection of the homeowner's confidential information that that
25 effectively prevented our client from obtaining the information regarding

1 the underlying lien. Well the -- until 2015, there was no requirement per
2 statute to volunteer or proactively provide the information. I would
3 contest that's still a duty -- or still a breach of duty of good faith to not
4 respond to inquiries regarding any payments turning the underlying loan.

5 THE COURT: All right.

6 MR. BENNER: I'm sorry, Your Honor, underlying assessment lien.
7 I'm sorry, Your Honor.

8 THE COURT: All right. Let me turn to Defendant, either side.

9 MR. DUNKLEY: Thank you, Your Honor. This is Peter Dunkley for
10 the HOA. So I think we're all in agreement that the statute doesn't
11 create a duty to provide this information. The statute also doesn't
12 include a duty to respond if an uninterested third party calls and ask, or
13 the HOA, prior to a foreclosure sale.

14 The issue that we have and the reason why I filed this motion
15 is rather than burn everyone's time at an arbitration. The facts really
16 don't matter because here's the allegation, and I appreciate Mr. Benner
17 stealing my -- stealing the thunder earlier. But there is no specific
18 factual allegation that River Glider called and asked. He says it was his
19 policy and procedure to do so. That policy and procedure, as I put in my
20 briefing, as in direct contravention to prior policy and procedure as it
21 suits the convenience of River Glider's principal, I guess.

22 NAS also has a policy and procedure, and it's policy and
23 procedure is to actually respond to inquiries. So the really -- the sole
24 issue for this Court and for -- if it gets sent to arbitration, which will waste
25 everyone's time, is -- was NAS's response sufficient? And here's what

1 NAS's policy and procedure is and has been, and it's never changed
2 and was supported by the declaration of Susan Moses is, if someone
3 called and wanted information about this property and payment history;
4 they'd say, look, I can't give you this information unless you get the
5 homeowner's consent, a court order; or you're affecting a post judgment,
6 so that's -- that is a response. And so to the extent the plaintiff says
7 there's a duty to respond; the response is this is how we can help you;
8 you need to go get the homeowner's consent; otherwise, we expose
9 ourselves to -- under the Fair Debt Collections Practices Act, and so
10 there was a response.

11 If there was a call -- there's no evidence of a call in this case.
12 The plaintiff is not, with confidence, saying there was; even in the
13 declaration, this is a practice of what they said. We have produced the
14 phone records of NAS and a declaration of NAS saying that there was
15 no call on the dates; that if plaintiffs -- plaintiffs basically says, if I called,
16 it would've been on these two dates. We looked at the phone records,
17 there's no calls recorded. We know what NAS would've said if there
18 was a call which there wasn't.

19 So that's where we are, Judge. There's no genuine or
20 material fact. The fact dispute is, in my opinion, disingenuous. And
21 even if there was a call, it's immaterial. Because as the Court noted,
22 when -- the first thing, there's no statutory duty. And so -- in fact, the
23 Nevada Supreme Court had said, in a prior opinion, that the HOA's
24 duties are prescribed by NRS 116. And there's no statutory duty, you
25 can't go outside the statute to create an incentive forbidden at the sale.

1 THE COURT: All right.

2 MR. DUNKLEY: So that's where we're at, Judge. There's no
3 genuine issue of material fact; you can grant summary judgment and --
4 based on -- based on that. There's really no dispute, and that's all I got,
5 Your Honor. Thank you.

6 THE COURT: Thank you.

7 Counsel for NAS, I'm not asking you to say anything. To be
8 honest, you probably could only hurt yourself.

9 MR. WOOD: Your Honor, we would -- we would -- yeah, we would
10 just echo what Mr. Dunkley stated as of the general issue of dispute
11 here and would request that the Court grant the motion for summary
12 judgment.

13 THE COURT: All right. It's not obviously your motion, Mr. Benner,
14 but any final word?

15 MR. BENNER: Only to address two points that were raised there, 1)
16 was that if there was no -- if there was a policy and procedure of not
17 responding, then it seems a little bit suspicious to say that there would
18 be no -- there would be a record of that. I don't know that many
19 institutions keep records of when they will not respond to something.
20 And I would say the policy and procedure of not responding itself is -- in
21 the reply by the plaintiff. They set forth that as further evidence that the
22 clients in this case, Mr. Haddad, did not reach out and did not actually
23 have a policy of reaching out and alleged to several other cases.

24 Just to correct one or two points there, 1) a lot of the
25 interrogatory responses included were addressing the HOA that Mr.

1 Haddad would not reach out to the HOA because they weren't
2 conducting the sale. The other point being that in -- essentially in
3 reaching out during that timeframe, it's -- the question of fact of whether
4 there would be a record -- any type of a record of not providing of
5 information. Those are the only two tentacle issues I'd provide and
6 underscore our previous argument that, yes, there's no affirmative duty
7 pursuant to the statute as the Court -- as Nevada Supreme Court has
8 set forth, but that's not our argument. And our argument is that there's --
9 if there's a name inquiry, there's a responsibility to reply to that inquiry.

10 THE COURT: All right. Well I will grant the motion for summary
11 judgment. I find, as noted, I mean there's no definitive determination
12 that an inquiry was made. The response is, if in an inquiry was made,
13 they would've said that they couldn't respond to it. But ultimately,
14 there's no representation being made by plaintiff that there was some
15 sort of representation, and I don't find anything in the statute that
16 required a response.

17 If you don't get a response, I don't think you can make the
18 assumption that no payment was made by the homeowner. So I don't
19 find that there was a material omission here that was improperly made
20 or occurred, and so I will grant the motion for summary judgment on that
21 basis. I'll ask Defendant to prepare an order with detail findings of facts
22 and conclusion of law. Submit it in a Word form to my law clerk, so if I
23 want to make any changes to it, I can do that.

24 MR. DUNKLEY: Yes, Your Honor. Thank you.

25 MR. BENNER: Thank you, Your Honor.

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MR. WOOD: Thank you, Your Honor.

THE COURT: Thank you.

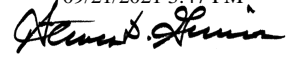
[Hearing concluded at 9:18 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Angie Calvillo
Court Recorder/Transcriber


CLERK OF THE COURT

LIPSON NEILSON P.C.
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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;

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that NAS's Joinder is **GRANTED**, in favor of NAS.

IT IS SO ORDERED.

Dated 2021. Dated this 21st day of September, 2021


DISTRICT COURT JUDGE

F4B 0B7 8AAB 2238
Eric Johnson
District Court Judge

Submitted by:

LIPSON NEILSON, P.C.

/s/ Peter E. Dunkley

By: _____
KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
PETER E. DUNKLEY, ESQ.
Nevada Bar No. 11110
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kanderson@lipsonneilson.com
pdunkley@lipsonneilson.com
Attorneys for Harbor Cove 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



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and Peter E. Dunkley, Esq.
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Las Vegas, NV 89144
(702) 382-1500
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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!



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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

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Good Afternoon:

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Thank you,



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Thanks!



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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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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)

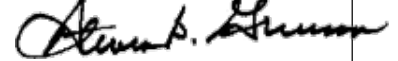
11 **AUTOMATED CERTIFICATE OF SERVICE**

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
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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

\\

\\

\\

\\

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

4 Dated this 23rd day of September, 2021.

5 LIPSON NEILSON, P.C.

6 By: /s/ Peter E. Dunkley
7 KALEB D. ANDERSON, ESQ.
8 Nevada Bar No. 7582
9 PETER E. DUNKLEY, ESQ.
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15 kanderson@lipsonneilson.com
16 pdunkley@lipsonneilson.com
17 *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.
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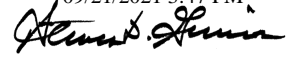
Arbitrator

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*Attorney for Defendant Nevada Association
Services, Inc.*

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.


CLERK OF THE COURT

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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;

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that NAS's Joinder is **GRANTED**, in favor of NAS.

IT IS SO ORDERED.

Dated 2021. Dated this 21st day of September, 2021


DISTRICT COURT JUDGE

F4B 0B7 8AAB 2238
Eric Johnson
District Court Judge

Submitted by:

LIPSON NEILSON, P.C.

/s/ Peter E. Dunkley

By: _____
KALEB D. ANDERSON, ESQ.
Nevada Bar No. 7582
PETER E. DUNKLEY, ESQ.
Nevada Bar No. 11110
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144
(702) 382-1500 phone
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kanderson@lipsonneilson.com
pdunkley@lipsonneilson.com
Attorneys for Harbor Cove 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.
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Las Vegas, NV 89144
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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
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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

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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
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1 **NOAS**
2 ROGER P. CROTEAU, ESQ.
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13 *Attorneys for Plaintiff*

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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 APPEAL

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

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*
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• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
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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 &
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