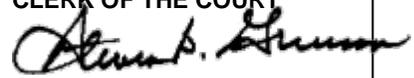


ROGER P. CROTEAU & ASSOCIATES, LTD.  
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •  
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

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**NOAS**  
ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
CHRISTOPHER L. BENNER, ESQ.  
Nevada Bar No. 8963  
ROGER P. CROTEAU & ASSOCIATES, LTD  
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(702) 254-7775 (telephone)  
(702) 228-7719 (facsimile)  
croteaulaw@croteaulaw.com  
chris@croteaulaw.com  
*Attorneys for Plaintiff*

Electronically Filed  
8/18/2021 2:15 PM  
Steven D. Grierson  
CLERK OF THE COURT



Electronically Filed  
Aug 23 2021 08:38 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DAISY TRUST, a Nevada trust,  
  
Plaintiff,  
  
vs.  
  
EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION, a  
domestic Nevada non-profit corporation,  
  
Defendants

Case No: A-19-789674-C  
Dept. No: 14

**NOTICE OF APPEAL**

//  
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//  
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//

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NOTICE IS HEREBY GIVEN that Plaintiff DAISY TRUST, by and through its attorneys, Roger P. Croteau & Associates, Ltd., hereby appeals to the Supreme Court of Nevada the Findings of Fact and Conclusions of Law and Order Granting El Capitan Ranch Landscape Maintenance Associations’ Motion for Summary Judgment, and all rulings and interlocutory orders giving rise to or made appealable by the final judgment.

Dated August 18, 2021.

ROGER P. CROTEAU & ASSOCIATES, LTD.

*/s/ Christopher L. Benner*

\_\_\_\_\_  
Roger P. Croteau, Esq.  
Nevada Bar No. 4958  
Christopher L. Benner, Esq.  
Nevada Bar No. 8963  
2810 W. Charleston Blvd., Suite 75  
Las Vegas, Nevada 89102  
*Plaintiff Daisy Trust*

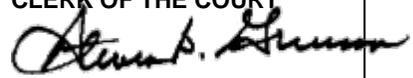
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

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



1 **ASTA**  
2 **ROGER P. CROTEAU, ESQ.**  
3 Nevada Bar No. 4958  
4 **CHRISTOPHER L. BENNER, ESQ.**  
5 Nevada Bar No. 8963  
6 **ROGER P. CROTEAU & ASSOCIATES, LTD**  
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10 (702) 228-7719 (facsimile)  
11 croteaulaw@croteaulaw.com  
12 [chris@croteaulaw.com](mailto:chris@croteaulaw.com)  
13 Attorneys for Plaintiff

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 **DAISY TRUST, a Nevada trust,**  
17 **Plaintiff,**

18 **vs.**

19 **EL CAPITAN RANCH LANDSCAPE**  
20 **MAINTENANCE ASSOCIATION, a**  
21 **domestic Nevada non-profit corporation,**  
22 **Defendants.**

23 **Case No: A-19-789674-C**  
24 **Dept. No: 14**

25 **CASE APPEAL STATEMENT**

26 Plaintiff Daisy Trust, by and through its attorneys, Roger P. Croteau & Associates, Ltd.,  
27 submits its Case Appeal Statement.

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

Daisy Trust

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

The Honorable Adriana Escobar

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

a. Daisy Trust

1 Roger P. Croteau, Esq.  
2 Christopher L. Benner, Esq.  
3 Roger P. Croteau & Associates, Ltd.  
4 2810 West Charleston Blvd., #75  
Las Vegas, Nevada 89102  
(702) 254-7775

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

8 a. El Capitan Ranch Landscape Maintenance Association

9 Respondent’s appellate counsel is unknown at this time but will presumably be  
10 Respondent’s trial counsel.

11 Sean L. Anderson  
12 Nevada Bar No. 7259  
13 T. Chase Pittsenbarger  
14 Nevada Bar No. 13740  
15 2525 Box Canyon Drive  
16 Las Vegas, Nevada 89128  
17 *Attorneys for Defendant El Capitan*  
18 *Ranch*

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

23 N/A

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

26 Retained counsel.

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

28 Retained counsel.

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

3 N/A

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

6  
7 The original Complaint in this matter was filed on February 19<sup>th</sup>, 2019 in the Eighth Judicial  
8 District Court of the State of Nevada in and for Clark County, Nevada, Case No. A-19-  
9 789674-C

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

13  
14 The instant action relates to real property that was the subject of a  
15 homeowners' association lien foreclosure sale pursuant to NRS Chapter 116. Generally,  
16 based upon current case law, absent some special circumstances, foreclosure trustees  
17 performing foreclosure sales pursuant to NRS Chapter 107 have no duty to the bidders and/or  
18 purchasers of the property being foreclosed upon. The body of common law has developed  
19 from the precept that information exists in the public domain to conduct reasonable due  
20 diligence under the circumstances to properly inform a potential bidder; however, that  
21 information is not available under any circumstances to the bidder of all liens and their  
22 priority in a NRS Chapter 116 foreclosure sale.

23  
24 This case focuses on the duties and obligations owed by a homeowners' association  
25 by and through its agent, the foreclosure trustee, to inform the bidders and purchasers at the  
26 NRS Chapter 116 foreclosure sale as to the bifurcated status of the homeowners' association's  
27 lien vis a vis the first deed of trust secured by the property, pursuant to NRS 116.3116. The  
28

1 question is whether, with inquiry from an NRS Chapter 116 bidder, and certainly with actual  
2 inquiry by the actual purchaser of the homeowner’s foreclosure sale, does that homeowners’  
3 association and/or its foreclosure trustee have an obligation of good faith, honesty in fact, and  
4 candor pursuant to NRS 116.3116 to the NRS Chapter 116 foreclosure bidders to disclose  
5 any attempted and/or actual tender or payment of the superpriority lien amounts, thereby  
6 rendering the sale, and the purchaser’s interest in the property, subject to the first deed of trust  
7 or not?

8  
9 On May 27, 2021, the HOA filed a Motion for Summary Judgment (the “HOA’s MSJ”).  
10 After briefing and argument, the district court granted the HOA’s MSJ. Plaintiff contends  
11 that the district court erred as a matter of law. The Notice of entry of the Finding of Facts,  
12 Conclusions of Law and Judgment granting the HOA’s MSJ was filed on July 21, 2021.

13  
14 **11. Indicate whether the case has previously been the subject of an appeal or an original**  
15 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**  
16 **number of the prior proceeding:**

17 N/A.

18  
19 **12. Indicate whether this appeal involves child custody or visitation:**

20 N/A

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

22 Appellant believes that the possibility of settlement exists.

23 Dated this 18th day of August, 2021.

24 ROGER P. CROTEAU & ASSOCIATES, LTD.

25 /s/ Christopher L. Benner

26 Roger P. Croteau, Esq.

27 Nevada Bar No. 4958

28 Christopher L. Benner, Esq.

Nevada Bar No. 8963

2810 W. Charleston Blvd., Suite 75

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Las Vegas, Nevada 89102  
Attorneys for Plaintiff

ROGER P. CROTEAU & ASSOCIATES, LTD.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 18th, 2021 I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

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

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-19-789674-C**

**Daisy Trust, Plaintiff(s)**  
 vs.  
**El Capitan Ranch Landscape Maintenance Association,**  
**Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 14**  
 Judicial Officer: **Escobar, Adriana**  
 Filed on: **02/19/2019**  
 Cross-Reference Case Number: **A789674**

CASE INFORMATION

**Statistical Closures**  
 07/20/2021 Summary Judgment

Case Type: **Intentional Misconduct**

Case Status: **07/20/2021 Closed**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number	A-19-789674-C
Court	Department 14
Date Assigned	02/19/2019
Judicial Officer	Escobar, Adriana

PARTY INFORMATION

<b>Plaintiff</b>	<b>Daisy Trust</b>	<i>Lead Attorneys</i> <b>Croteau, Roger P, ESQ</b> <i>Retained</i> 702-254-7775(W)
<b>Defendant</b>	<b>El Capitan Ranch Landscape Maintenance Association</b>	<b>Anderson, Sean L.</b> <i>Retained</i> 702-538-9074(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

**EVENTS**

02/19/2019	 <b>Complaint</b> Filed By: Plaintiff Daisy Trust <i>[1] Complaint</i>
02/19/2019	 <b>Initial Appearance Fee Disclosure</b> Filed By: Plaintiff Daisy Trust <i>[2] Initial Appearance Fee Disclosure</i>
02/19/2019	 <b>Summons Electronically Issued - Service Pending</b> Party: Plaintiff Daisy Trust <i>[3] Summons</i>
02/22/2019	 <b>Affidavit of Service</b> Filed By: Plaintiff Daisy Trust <i>[4] Affidavit of Service</i>
03/13/2019	 <b>Answer</b> Filed By: Defendant El Capitan Ranch Landscape Maintenance Association <i>[5] El Capitan Ranch Landscape Maintenance Association's Answer to Complaint</i>
03/13/2019	 <b>Initial Appearance Fee Disclosure</b>

**CASE SUMMARY**

**CASE NO. A-19-789674-C**

Filed By: Defendant El Capitan Ranch Landscape Maintenance Association  
*[6] Initial Appearance Fee Disclosure*

04/29/2019  Appointment of Arbitrator  
*[7] Appointment of Arbitrator*

05/15/2019  Arbitration Discovery Order  
Filed By: Arbitrator Leung, Ka H., ESQ  
*[8] DISCOVERY SCHEDULING ORDER AND NOTICE OF APPEAR FOR ARBITRATION HEARING*

10/03/2019  Stipulation and Order  
Filed by: Plaintiff Daisy Trust  
*[9] Stipulation and Order to extend Deadlines and Continue Hearing*

10/03/2019  Stipulation and Order  
Filed by: Plaintiff Daisy Trust  
*[10] Stipulation and Order to Extend Deadlines and Continue Hearing*

01/10/2020  Notice to Appear for Arbitration Hearing  
Filed by: Arbitrator Leung, Ka H., ESQ  
*[11] Amended Notice to Appear for Arbitration Hearing*

02/20/2020  Motion  
Filed By: Defendant El Capitan Ranch Landscape Maintenance Association  
*[12] El Capitan Ranch Landscape Maintenance Association's Motion to Dismiss Arbitration*

02/21/2020  Opposition to Motion  
Filed By: Plaintiff Daisy Trust  
*[13] Plaintiff's Opposition To El Capitan Ranch Landscape Maintenance Association's Motion To Dismiss Arbitration*

03/09/2020  Arbitration Award  
Filed By: Arbitrator Leung, Ka H., ESQ  
*[14] Arbitration Award*

03/09/2020  Arbitrator's Decision  
*[15] Arbitrator's Decision*

03/13/2020  Application for Attorney's Fees, Costs and/or Interest  
Filed by: Defendant El Capitan Ranch Landscape Maintenance Association  
*[16] El Capitan Ranch Landscape Maintenance Association's Application for Attorney's Fees and Costs*

03/18/2020  Opposition  
Filed By: Plaintiff Daisy Trust  
*[17] Plaintiff's Opposition to El Capitan Ranch Landscape Maintenance Association's Application For Attorney's Fees And Costs*

03/25/2020  Reply to Application for Attorney's Fees  
Filed by: Defendant El Capitan Ranch Landscape Maintenance Association  
*[18] El Capitan Ranch Landscape Maintenance Association's Reply in Support of Application for Attorney's Fees and Costs*

04/02/2020

**CASE SUMMARY**

**CASE NO. A-19-789674-C**

-  Arbitrator's Decision on Request for Fees/Costs/Interest  
Filed by: Arbitrator Leung, Ka H., ESQ  
*[19] ARBITRATOR'S DECISION ON REQUEST FOR FEES/COSTS/INTEREST*
- 04/02/2020  Arbitrators Bill for Fees and Costs  
Filed By: Arbitrator Leung, Ka H., ESQ  
*[20] Arbitrator's Bill for Fees and Costs*
- 04/06/2020  Request for Trial De Novo  
Date Served: 04/06/2020  
Filed by: Plaintiff Daisy Trust  
*[21] Request for Trial De Novo*
- 04/15/2020  Demand for Removal from the Short Trial Program  
Filed By: Plaintiff Daisy Trust  
*[22] Demand for Removal from the Short Trial Program*
- 04/16/2020  Demand for Jury Trial  
Filed By: Plaintiff Daisy Trust  
*[23] Demand for Jury Trial*
- 05/14/2020  Joint Case Conference Report  
Filed By: Plaintiff Daisy Trust  
*[24] Joint Case Conference Report*
- 06/09/2020  Mandatory Rule 16 Conference Order  
*[25] Mandatory Rule 16 Conference Order*
- 06/15/2020  Mandatory Rule 16 Conference Order  
*[26] AMENDED MANDATORY RULE 16 PRE-TRIAL SCHEDULING CONFERENCE ORDER*
- 07/28/2020  Order Setting Civil Jury Trial and Calendar Call  
*[27] Scheduling Order And Order Setting Civil Jury Trial*
- 05/27/2021  Motion for Summary Judgment  
Filed By: Defendant El Capitan Ranch Landscape Maintenance Association  
*[28] El Capitan Ranch Landscape Maintenance Association's Motion for Summary Judgment*
- 05/27/2021  Clerk's Notice of Hearing  
*[29] Notice of Hearing*
- 06/07/2021  Motion to Compel  
Filed By: Defendant El Capitan Ranch Landscape Maintenance Association  
*[30] El Capitan Ranch Landscape Maintenance Association's Motion to Compel Responses to Discovery*
- 06/07/2021  Appendix  
Filed By: Defendant El Capitan Ranch Landscape Maintenance Association  
*[31] Appendix of Exhibits to El Capitan Ranch Landscape Maintenance Association's Motion to Compel Response to Discovery*
- 06/07/2021  Clerk's Notice of Hearing  
*[32] Notice of Hearing*

**CASE SUMMARY**

**CASE NO. A-19-789674-C**

- 06/10/2021  Opposition to Motion For Summary Judgment  
Filed By: Plaintiff Daisy Trust  
*[33] Plaintiff's Opposition to El Capitan Ranch Landscape Association's Motion for Summary Judgment*
- 06/10/2021  Joint Case Conference Report  
Filed By: Plaintiff Daisy Trust  
*[34] Joint Case Conference Report*
- 06/21/2021  Opposition to Motion to Compel  
Filed By: Plaintiff Daisy Trust  
*[35] Opposition to Motion to Compel*
- 06/22/2021  Reply  
Filed by: Defendant El Capitan Ranch Landscape Maintenance Association  
*[36] El Capitan Ranch Landscape Maintenance Association's Reply in Support of Motion for Summary Judgment*
- 06/23/2021  Notice of Entry of Order  
Filed By: Plaintiff Daisy Trust  
*[37] Notice of Entry of Order Setting Settlement Conference*
- 07/16/2021  Order  
*[38] ORDER SETTING SETTLEMENT CONFERENCE*
- 07/20/2021  Findings of Fact, Conclusions of Law and Judgment  
Filed by: Defendant El Capitan Ranch Landscape Maintenance Association  
*[39] Findings of Fact, Conclusions of Law*
- 07/21/2021  Notice of Entry of Findings of Fact, Conclusions of Law  
Filed By: Defendant El Capitan Ranch Landscape Maintenance Association  
*[40] Notice of Entry of Findings of Fact, Conclusions of Law*
- 07/23/2021  Memorandum of Costs and Disbursements  
Filed By: Defendant El Capitan Ranch Landscape Maintenance Association  
*[41] Memorandum of Costs and Disbursements*
- 07/23/2021  Order  
*[42] ORDER VACATING SETTLEMENT CONFERENCE*
- 08/11/2021  Motion for Attorney Fees and Costs  
Filed By: Defendant El Capitan Ranch Landscape Maintenance Association  
*[43] Defendant Motion for Attorneys' Fees and Costs*
- 08/11/2021  Clerk's Notice of Hearing  
*[44] Notice of Hearing*
- 08/18/2021  Notice of Appeal  
Filed By: Plaintiff Daisy Trust  
*[45] Notice of Appeal*
- 08/18/2021  Case Appeal Statement

**CASE SUMMARY**

**CASE NO. A-19-789674-C**

Filed By: Plaintiff Daisy Trust  
[46] Case Appeal Statement

**DISPOSITIONS**

07/20/2021 **Summary Judgment** (Judicial Officer: Escobar, Adriana)  
Debtors: Daisy Trust (Plaintiff)  
Creditors: El Capitan Ranch Landscape Maintenance Association (Defendant)  
Judgment: 07/20/2021, Docketed: 07/21/2021

**HEARINGS**

02/24/2020 **Arbitration Hearing** (7:00 AM)

07/08/2020  **Mandatory Rule 16 Conference** (10:30 AM) (Judicial Officer: Escobar, Adriana)

Trial Date Set;  
Journal Entry Details:  
*Case involves intentional misconduct with trial to last two to three days. Mr. Glover requested that deadlines be extended due to COVID-19. Mr. Pittsenbarger did not concur. The Court informed counsel the deadlines will be extended an additional sixty days. Colloquy regarding settlement discussions. COURT ORDERED, deadlines as follows: Discovery Cut Off, 4/29/21; Amend Pleadings and Add Parties, 1/27/21; Initial Disclosure, 1/27/21/ Rebuttal Disclosure, 2/26/21 Dispositive Motions, 5/27/21; Trial Ready Date, 7/26/21. COURT FURTHER ORDERED, trial and status check dates SET. 5/18/21 9:30 AM STATUS CHECK: SETTLEMENT PROGRESS 8/19/21 9:30 AM CALENDAR CALL 9/7/21 9:30 AM JURY TRIAL;*

05/18/2021  **Status Check** (10:00 AM) (Judicial Officer: Escobar, Adriana)

*Settlement Progress*  
Set Status Check;  
Journal Entry Details:  
*Christopher Benner, Esq. present. Upon Court's inquiry, parties are conducting discovery and working through a discovery dispute and do not believe settlement discussion will be fruitful. Colloquy. COURT ORDERED, parties to schedule and settlement conference and send a detailed e-mail to the Judicial Executive Assistant (JEA) and Law Clerk stating who the settlement is with, where, when, and the time. FURTHER ORDERED, status check SET. 06/16/21 STATUS CHECK: SETTLEMENT CONFERENCE (CHAMBERS CALENDAR);*

06/16/2021 **CANCELED Status Check** (3:00 AM) (Judicial Officer: Escobar, Adriana)

*Vacated - Case Closed*  
*STATUS CHECK: SCHEDULING OF SETTLEMENT CONF.*

06/29/2021  **Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Escobar, Adriana)

*El Capitan Ranch Landscape Maintenance Association's Motion for Summary Judgment*  
Granted;  
Journal Entry Details:  
*All appearances made via the BlueJeans Videoconferencing Application Arguments by counsel regarding the merits of and opposition to the motion. COURT ORDERED, El Capitan Ranch Landscape Maintenance Association's Motion for Summary Judgment GRANTED. Mr. Pittsenbarger to prepare the order and submit it to opposing counsel for approval as to form and content. Court directed Mr. Pittsenbarger to include in the order the findings in his pleadings.;*

07/13/2021 **CANCELED Motion to Compel** (9:30 AM) (Judicial Officer: Truman, Erin)

*Vacated*  
*El Capitan Ranch Landscape Maintenance Association's Motion to Compel Responses to Discovery*

08/12/2021 **CANCELED Settlement Conference** (10:30 AM)

*Vacated*

08/19/2021 **CANCELED Calendar Call** (2:00 PM) (Judicial Officer: Escobar, Adriana)

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-19-789674-C**

	<i>Vacated - Case Closed</i>	
09/07/2021	<b>CANCELED Jury Trial</b> (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Vacated - Case Closed</i>	
10/21/2021	<b>Motion for Attorney Fees</b> (10:00 AM) (Judicial Officer: Escobar, Adriana) <i>[43] Defendant Motion for Attorneys' Fees and Costs</i>	

DATE	FINANCIAL INFORMATION
------	-----------------------

<b>Defendant</b> El Capitan Ranch Landscape Maintenance Association	
Total Charges	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 8/20/2021</b>	<b>0.00</b>
<b>Plaintiff</b> Daisy Trust	
Total Charges	294.00
Total Payments and Credits	294.00
<b>Balance Due as of 8/20/2021</b>	<b>0.00</b>
<b>Plaintiff</b> Daisy Trust	
Short Trial - Removal Balance as of 8/20/2021	<b>1,000.00</b>

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Daisy Trust c/o Roger P. Croteau & Associates, Ltd 2810 W. Charleston Blvd., Ste. 75 Las Vegas, NV 89102	Defendant(s) (name/address/phone): El Capitan Ranch Landscape Maintenance Assn.
Attorney (name/address/phone): Roger P. Croteau, Esq. (SBN 4958) 2810 W. Charleston Blvd., Ste. 75 Las Vegas, NV 89102 702-254-7775	Attorney (name/address/phone):

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

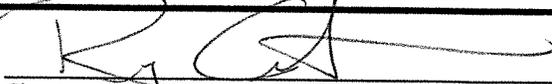
**Civil Case Filing Types**

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

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

2/19/19

Date

  
Signature of initiating party or representative

See other side for family-related case filings.

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14 *Attorneys for Defendant El Capitan*  
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,  
12 Plaintiff,  
13 vs.  
14 EL CAPITAN RANCH LANDSCAPE  
15 MAINTENANCE ASSOCIATION, a  
16 domestic non-profit corporation,  
17 Defendant.

Case No.: A-19-789674-C  
Dept. No.: 14

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW**

16 On May 27, 2021, El Capitan Ranch Landscape Maintenance Association (the  
17 “Association”) filed its Motion for Summary Judgment (“Motion”). On June 10, 2021, Daisy  
18 Trust (“Plaintiff”) filed its Opposition to Motion for Summary Judgment. On June 22, 2021, the  
19 Association filed its Reply in Support of Motion for Summary Judgment.

20 Said Motion was set for hearing on June 28, 2021, before this Court and the Honorable  
21 Adriana Escobar. T. Chase Pittsenbarger appeared for the Association; Christopher L. Benner  
22 appeared on behalf of Plaintiff Daisy Trust. The Court, having carefully considered all pleadings  
23 and papers on file herein and for good cause appearing, finds as follows:

24 ///

26 ///

28 ///

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

**FINDINGS OF FACT**

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

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

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

11 4. On or about April 19, 2019, the case was assigned to the Court Annexed  
12 Arbitration Program.

13 5. On February 24, 2020, the Arbitration was held.

14 6. On March 9, 2020, the Arbitrator issued his decision finding in favor of the  
15 Association.

16 7. On April 6, 2020, Plaintiff requested Trial De Novo.

**CONCLUSIONS OF LAW**

17  
18 1. In Nevada, “summary judgment is appropriate when the moving party is entitled  
19 to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*,  
20 100 Nev. 178,179, 678 P.2d 674 (1984)(citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676  
21 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v.*  
22 *Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)).

23 2. Summary judgment is appropriate under NRCP 56 if “the pleadings, depositions,  
24 answer to interrogatories, admissions, and affidavits, if any, that are properly before the court  
25 demonstrates that no genuine issue of material fact exists, and the moving party is entitled to  
26 judgment as a matter of law.” NRCP 56(c); *Cuzze v. Univ. and Cmty Coll. Sys. of Nev.*, 123  
27 Nev. 598,602, 172 P.3d 131, 134 (Nev. 2008).

28 3. Summary judgment should not be regarded as a “disfavored procedural short cut;”

1 rather, where appropriate, it furthers the “just, speedy and inexpensive determination of every  
2 action.” *Celotex Corp v. Catrell*, 477 U.S. 317, 327, 106 S.Ct. 2548 (1986).

3 4. Plaintiff’s Complaint is premised on the allegations that NRS Chapter 116  
4 contains a duty to disclose that a law firm “attempted to contact” a third party to make a partial  
5 payment of the Association’s delinquent assessment lien.

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

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

11 7. State foreclosure statutes should not be second guessed or usurped, otherwise  
12 “every piece of realty purchased at foreclosure” would be challenged and title would be clouded  
13 in contravention of the very policies underlying non-judicial foreclosure sales. *BFP v.*  
14 *Resolution Trust Company*, 511 U.S. 531, 539-40, 544, 144 S.Ct. 1757, 128 L.Ed.2d 556 (1994);  
15 *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989, 997 (1969).

16 8. Nevada has followed this same line, *i.e.* *Charmicor Inc. v. Bradshaw Finance*  
17 *Co.*, 550 P.2d 413, 92 Nev. 310 (1976) (Court did not abuse its discretion in denying an  
18 injunction of the foreclosure procedure under the theory that non-judicial foreclosure sales  
19 violate the principles of due process and equal protection).

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

23 10. There is no Nevada authority creating a separate common law duty to announce  
24 that a law firm “attempted to contact” a third party to make a partial payment of the  
25 Association’s lien.

26 11. An HOA non-judicial foreclosure sale is a creature of statute.

27 12. NRS Chapter 116 contains a comprehensive statutory scheme regulating non-  
28 judicial foreclosures. *See generally* NRS 116.3116-31168.

1           13.     The scope and nature of the Association’s duties are exclusively defined by these  
2 governing statutes.

3           14.     In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the  
4 Supreme Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower  
5 court’s award of summary judgment in favor of the collection company holding that “[s]ummary  
6 judgment was appropriate on the negligent misrepresentation claim because Hampton neither  
7 made an affirmative false statement nor omitted a material fact it was bound to disclose.” *Id.*  
8 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153  
9 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123  
10 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a material fact  
11 which a party is bound in good faith to disclose is equivalent to a false representation.”(internal  
12 quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to  
13 disclose if tender of the superpriority portion of the lien has been made), with NRS 116.31162  
14 (2013) (not requiring any such disclosure).

15           15.     Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions  
16 Plaintiff’s allegation that the Association had a duty to disclose that a third party attempted to  
17 make a partial payment of the Association’s delinquent assessment lien. See *Mann St. Tr. v.*  
18 *Elsinore Homeowners Ass’n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda*  
19 *Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at \*1 (Nev. Oct.  
20 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners’ Association*,  
21 No. 80134, 2020 WL 6129970, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El*  
22 *Diablo v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 WL 6129887, at \*1 (Nev. Oct. 16,  
23 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass’n, Inc.*, No.  
24 80135, 2020 WL 6130912, at \*1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980*  
25 *Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL  
26 6131470, at \*1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald*  
27 *Ranch Master Association*, No. 78849, 2020 WL 6131467, at \*1 (Nev. Oct. 16, 2020); *Tangiers*  
28 *Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78564, 2020 WL

1 6131435, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and*  
2 *Montage*, No. 80162, 2020 WL 6129987, at \*1 (Nev. Oct. 16, 2020). *LN Management LLC*  
3 *Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL  
4 620513, at \*1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures*  
5 *Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at \*1 (Nev. Feb. 16, 2021);  
6 *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021  
7 WL 620978, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at*  
8 *Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at \*1 (Nev. Feb. 16, 2021).

9 16. In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims  
10 asserted against the Association in this matter. *See Saticoy Bay, LLC Series 8320 Bermuda*  
11 *Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at  
12 \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC,*  
13 *Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward,*  
14 2020 WL 6129987, at \*1.

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

17 18. Finally, the Arbitrator expressly rejected Plaintiff’s allegations in his Arbitrator’s  
18 Decision.

19 19. Specifically, the Arbitrator held “Plaintiff has cited no statutory authority  
20 mandating the Defendant to make disclosure as to any attempted tender.”

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

22 20. In *Noonan*, Appellants’ argued the lower court erred in awarding summary  
23 judgment in favor of the collection company on Appellants’ claim for negligent  
24 misrepresentation. *Id.*

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

28 22. The Supreme Court of Nevada affirmed the lowers court’s award of summary

1 judgment in favor of the collection company holding that “[s]ummary judgment was appropriate  
2 on the negligent misrepresentation claim because Hampton neither made an affirmative false  
3 statement **nor omitted a material fact it was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v.*  
4 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the  
5 elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d  
6 420, 426 (2007) (“[T]he suppression or omission of a material fact which a party is bound in  
7 good faith to disclose is equivalent to a false representation.”(internal quotation marks omitted)).  
8 *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the  
9 superpriority portion of the lien has been made), *with* NRS 116.31162 (2013) (not requiring any  
10 such disclosure.) As such, Appellant’s argument that there was a misrepresentation by omission  
11 fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

12 23. Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of  
13 misrepresentation on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*,  
14 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ;  
15 *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series*  
16 *3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL  
17 6129987, at \*1.

18 **Plaintiff’s Claim for Breach of Good Faith.**

19 24. The Supreme Court of Nevada has affirmed dismissal of the exact claim on  
20 numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at  
21 \*1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail  
22 because respondents had no duty to proactively disclose whether a superpriority tender had been  
23 made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at \*1(“In  
24 particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because  
25 respondents had no duty to proactively disclose whether a superpriority tender had been made”);  
26 *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude  
27 that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing  
28 because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to

1 base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS  
2 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been  
3 made.”).

4 **Plaintiff’s Claim for Civil Conspiracy.**

5 25. Similar to the other claims asserted by Plaintiff in this action, the Supreme Court  
6 of Nevada has rejected this claim on numerous occasions. *See Saticoy Bay, LLC Series 8320*  
7 *Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL  
8 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy*  
9 *Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339*  
10 *Colinward*, 2020 WL 6129987, at \*1.

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

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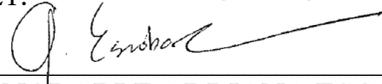
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28 ///

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**THEREFORE, IT IS HEREBY ORDERED** that the Association’s Motion for Summary Judgment is **GRANTED**.

**IT IS SO ORDERED** this \_\_\_\_ day of July 2021. ~~Dated this 20th day of July, 2021~~

  
\_\_\_\_\_  
HONORABLE ADRIANA ESCOBAR  
DISTRICT COURT JUDGE

**A1A 4E3 95B7 E9F0**  
**Adriana Escobar**  
**District Court Judge**

Submitted By:

Approved as to content and form:

**LEACH KERN GRUCHOW ANDERSON SONG**

**ROGER P. CROTEAU & ASSOCIATES, LTD.**

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**From:** [Chris Benner](#)  
**To:** [Chase Pittsenbarger](#); [Yalonda Dekle](#)  
**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law  
**Date:** Tuesday, July 20, 2021 2:17:06 PM  
**Attachments:** [image001.png](#)

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The additional facts are not dispositive, so leaving them out is fine, I just added them present the additional context for the final conclusion. In any case, you can remove them and submit with my e-signature.

**Christopher L. Benner, Esq.**  
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**From:** Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>  
**Sent:** Monday, July 19, 2021 2:24 PM  
**To:** Chris Benner <chris@croteaulaw.com>; Yalonda Dekle <ydekle@lkglawfirm.com>  
**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Chris,

I will agree to everything but the addition of paragraphs 1-10 to the findings of fact. Let me know.



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**From:** Chris Benner <[chris@croteaulaw.com](mailto:chris@croteaulaw.com)>

**Sent:** Tuesday, July 13, 2021 7:42 AM

**To:** Yalonda Dekle <[ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com)>; Chase Pittsenbarger <[CPittsenbarger@lkglawfirm.com](mailto:CPittsenbarger@lkglawfirm.com)>

**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Sorry for the delay, I added some additional facts and made some minor format edits. If acceptable, please feel free to use my e-signature.

**Christopher L. Benner, Esq.**

**Roger P. Croteau & Associates**

**2810 Charleston Boulevard, No. H-75**

**Las Vegas, NV 89102**

**(702) 254-7775**

**[chris@croteaulaw.com](mailto:chris@croteaulaw.com)**

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**From:** Yalonda Dekle <[ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com)>

**Sent:** Wednesday, July 07, 2021 3:19 PM

**To:** Chris Benner <[chris@croteaulaw.com](mailto:chris@croteaulaw.com)>

**Cc:** Chase Pittsenbarger <[CPittsenbarger@lkglawfirm.com](mailto:CPittsenbarger@lkglawfirm.com)>

**Subject:** Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Good afternoon Mr. Benner:

Please find attached a Findings of Fact, Conclusions of Law in the above-entitled matter. Please review and advise if you have any revisions. Also, please advise if we may use your e-signature to submit to the department.

Thank you.

Our Las Vegas and Reno offices are currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. LKG is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. You may also e-mail our offices at [info@lkglawfirm.com](mailto:info@lkglawfirm.com).

-



Yalonda Dekle  
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-

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

8 El Capitan Ranch Landscape  
9 Maintenance Association,  
10 Defendant(s)

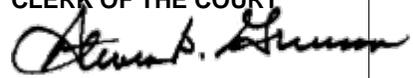
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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18 Roger Croteau	croteaulaw@croteaulaw.com
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1 **NEFF**  
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7 **T. CHASE PITTSBARGER**  
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10 2525 Box Canyon Drive  
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12 Telephone: (702) 538-9074  
13 Facsimile: (702) 538-9113  
14 *Attorneys for Defendant El Capitan*  
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,  
12 Plaintiff,

Case No.: A-19-789674-C  
Dept. No.: 14

13 vs.

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW**

14 EL CAPITAN RANCH LANDSCAPE  
15 MAINTENANCE ASSOCIATION, a  
16 domestic non-profit corporation,  
17 Defendant.

18 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW**  
19 was entered in the above-entitled case on July 20, 2021, a copy of which is attached hereto.

20 DATED this 21<sup>st</sup> day of July 2021

**LEACH KERN GRUCHOW ANDERSON SONG**

*/s/ T. Chase Pittsenbarger*

21  
22 Sean L. Anderson  
23 Nevada Bar No. 7259  
24 T. Chase Pittsenbarger  
25 Nevada Bar No. 13740  
26 2525 Box Canyon Drive  
27 Las Vegas, Nevada 89128  
28 *Attorneys for Defendant El Capitan Ranch  
Landscape Maintenance Association*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW ANDERSON SONG, hereby certifies that on this 21<sup>st</sup> day of July 2021, service of the foregoing, **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW**, was made on all parties via the Court’s CM/ECF System, as follows:

Roger P. Croteau  
Christopher L. Benner  
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[chris@croteaulaw.com](mailto:chris@croteaulaw.com)  
*Attorneys for Plaintiff*

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

1 **FFCL**  
2 **LEACH KERN GRUCHOW**  
3 **ANDERSON SONG**  
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14 *Attorneys for Defendant El Capitan*  
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,  
12 Plaintiff,

Case No.: A-19-789674-C  
Dept. No.: 14

13 vs.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW**

14 EL CAPITAN RANCH LANDSCAPE  
15 MAINTENANCE ASSOCIATION, a  
16 domestic non-profit corporation,  
17 Defendant.

18 On May 27, 2021, El Capitan Ranch Landscape Maintenance Association (the  
19 "Association") filed its Motion for Summary Judgment ("Motion"). On June 10, 2021, Daisy  
20 Trust ("Plaintiff") filed its Opposition to Motion for Summary Judgment. On June 22, 2021, the  
21 Association filed its Reply in Support of Motion for Summary Judgment.

22 Said Motion was set for hearing on June 28, 2021, before this Court and the Honorable  
23 Adriana Escobar. T. Chase Pittsenbarger appeared for the Association; Christopher L. Benner  
24 appeared on behalf of Plaintiff Daisy Trust. The Court, having carefully considered all pleadings  
25 and papers on file herein and for good cause appearing, finds as follows:

26 ///

27 ///

28 ///

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

**FINDINGS OF FACT**

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

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

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

11 4. On or about April 19, 2019, the case was assigned to the Court Annexed  
12 Arbitration Program.

13 5. On February 24, 2020, the Arbitration was held.

14 6. On March 9, 2020, the Arbitrator issued his decision finding in favor of the  
15 Association.

16 7. On April 6, 2020, Plaintiff requested Trial De Novo.

**CONCLUSIONS OF LAW**

17  
18 1. In Nevada, “summary judgment is appropriate when the moving party is entitled  
19 to judgment as a matter of law, and no genuine issue remains for trial.” *Shepard v. Harrison*,  
20 100 Nev. 178,179, 678 P.2d 674 (1984)(citing *Cladianos v. Coldwell Banker*, 100 Nev. 138, 676  
21 P.2d 804 (1984); *Allied Fidelity Ins. Co. v. Pico*, 99 Nev. 15, 656 P.2d 849 (1983); *Nehls v.*  
22 *Leonard*, 97 Nev. 325, 630 P.2d 258 (1981)).

23 2. Summary judgment is appropriate under NRCP 56 if “the pleadings, depositions,  
24 answer to interrogatories, admissions, and affidavits, if any, that are properly before the court  
25 demonstrates that no genuine issue of material fact exists, and the moving party is entitled to  
26 judgment as a matter of law.” NRCP 56(c); *Cuzze v. Univ. and Cmty Coll. Sys. of Nev.*, 123  
27 Nev. 598,602, 172 P.3d 131, 134 (Nev. 2008).

28 3. Summary judgment should not be regarded as a “disfavored procedural short cut;”

1 rather, where appropriate, it furthers the “just, speedy and inexpensive determination of every  
2 action.” *Celotex Corp v. Catrell*, 477 U.S. 317, 327, 106 S.Ct. 2548 (1986).

3 4. Plaintiff’s Complaint is premised on the allegations that NRS Chapter 116  
4 contains a duty to disclose that a law firm “attempted to contact” a third party to make a partial  
5 payment of the Association’s delinquent assessment lien.

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

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

11 7. State foreclosure statutes should not be second guessed or usurped, otherwise  
12 “every piece of realty purchased at foreclosure” would be challenged and title would be clouded  
13 in contravention of the very policies underlying non-judicial foreclosure sales. *BFP v.*  
14 *Resolution Trust Company*, 511 U.S. 531, 539-40, 544, 144 S.Ct. 1757, 128 L.Ed.2d 556 (1994);  
15 *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989, 997 (1969).

16 8. Nevada has followed this same line, *i.e.* *Charmicor Inc. v. Bradshaw Finance*  
17 *Co.*, 550 P.2d 413, 92 Nev. 310 (1976) (Court did not abuse its discretion in denying an  
18 injunction of the foreclosure procedure under the theory that non-judicial foreclosure sales  
19 violate the principles of due process and equal protection).

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

23 10. There is no Nevada authority creating a separate common law duty to announce  
24 that a law firm “attempted to contact” a third party to make a partial payment of the  
25 Association’s lien.

26 11. An HOA non-judicial foreclosure sale is a creature of statute.

27 12. NRS Chapter 116 contains a comprehensive statutory scheme regulating non-  
28 judicial foreclosures. *See generally* NRS 116.3116-31168.

1           13.     The scope and nature of the Association’s duties are exclusively defined by these  
2 governing statutes.

3           14.     In *Noonan v. Bayview Loan Servicing, LLC*, 438 P.3d 335 (Nev. 2019) the  
4 Supreme Court of Nevada agreed. Specifically, Supreme Court of Nevada affirmed the lower  
5 court’s award of summary judgment in favor of the collection company holding that “[s]ummary  
6 judgment was appropriate on the negligent misrepresentation claim because Hampton neither  
7 made an affirmative false statement nor omitted a material fact it was bound to disclose.” *Id.*  
8 (citing *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153  
9 (2013) (providing the elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123  
10 Nev. 217, 225, 163 P.3d 420, 426 (2007) (“[T]he suppression or omission of a material fact  
11 which a party is bound in good faith to disclose is equivalent to a false representation.”(internal  
12 quotation marks omitted)). Compare NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to  
13 disclose if tender of the superpriority portion of the lien has been made), with NRS 116.31162  
14 (2013) (not requiring any such disclosure).

15           15.     Since *Noonan*, the Supreme Court of Nevada has rejected on numerous occasions  
16 Plaintiff’s allegation that the Association had a duty to disclose that a third party attempted to  
17 make a partial payment of the Association’s delinquent assessment lien. See *Mann St. Tr. v.*  
18 *Elsinore Homeowners Ass’n*, 466 P.3d 540 (Nev. 2020); *Saticoy Bay, LLC Series 8320 Bermuda*  
19 *Beach v. South Shores Community Association*, No. 80165, 2020 WL 6130913, at \*1 (Nev. Oct.  
20 16, 2020); *Saticoy Bay LLC 6408 Hillside Brook v. Mountain Gate Homeowners’ Association*,  
21 No. 80134, 2020 WL 6129970, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay, LLC, Series 8920 El*  
22 *Diablo v. Silverstone Ranch Cmty. Ass’n*, No. 80039, 2020 WL 6129887, at \*1 (Nev. Oct. 16,  
23 2020); *Saticoy Bay, LLC, Series 3123 Inlet Bay v. Genevieve Court Homeowners Ass’n, Inc.*, No.  
24 80135, 2020 WL 6130912, at \*1 (Nev. Oct. 16, 2020); *LN Management LLC Series 4980*  
25 *Droubay v. Squire Village at Silver Springs Community Association*, No. 79035, 2020 WL  
26 6131470, at \*1 (Nev. Oct. 16, 2020); *Cypress Manor Drive Trust v. The Foothills at Macdonald*  
27 *Ranch Master Association*, No. 78849, 2020 WL 6131467, at \*1 (Nev. Oct. 16, 2020); *Tangiers*  
28 *Drive Trust v. The Foothills at Macdonald Ranch Master Association*, No. 78564, 2020 WL

1 6131435, at \*1 (Nev. Oct. 16, 2020); *Saticoy Bay LLC, Series 11339 Colinward v. Travata and*  
2 *Montage*, No. 80162, 2020 WL 6129987, at \*1 (Nev. Oct. 16, 2020). *LN Management LLC*  
3 *Series 2216 Saxton Hill, v. Summit Hills Homeowners Association*, No. 80436, 2021 WL  
4 620513, at \*1 (Nev. Feb. 16, 2021); *LN Management LLC Series 5246 Ferrell, v. Treasures*  
5 *Landscape Maintenance Association*, No. 80437, 2021 WL 620930, at \*1 (Nev. Feb. 16, 2021);  
6 *Saticoy Bay, LLC, Series 3237 Perching Bird, v. Aliante Master Association*, No. 80760, 2021  
7 WL 620978, at \*1 (Nev. Feb. 16, 2021); *Saticoy Bay, LLC, Series 9157 Desirable v. Tapestry at*  
8 *Town Ctr. Homeowners Ass'n*, No. 80969, 2021 WL 620427, at \*1 (Nev. Feb. 16, 2021).

9 16. In fact, the Supreme Court of Nevada has affirmed dismissal of the exact claims  
10 asserted against the Association in this matter. *See Saticoy Bay, LLC Series 8320 Bermuda*  
11 *Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at  
12 \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC,*  
13 *Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward,*  
14 2020 WL 6129987, at \*1.

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

17 18. Finally, the Arbitrator expressly rejected Plaintiff’s allegations in his Arbitrator’s  
18 Decision.

19 19. Specifically, the Arbitrator held “Plaintiff has cited no statutory authority  
20 mandating the Defendant to make disclosure as to any attempted tender.”

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

22 20. In *Noonan*, Appellants’ argued the lower court erred in awarding summary  
23 judgment in favor of the collection company on Appellants’ claim for negligent  
24 misrepresentation. *Id.*

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

28 22. The Supreme Court of Nevada affirmed the lowers court’s award of summary

1 judgment in favor of the collection company holding that “[s]ummary judgment was appropriate  
2 on the negligent misrepresentation claim because Hampton neither made an affirmative false  
3 statement **nor omitted a material fact it was bound to disclose.**” *Id.* (citing *Halcrow, Inc. v.*  
4 *Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the  
5 elements for a negligent misrepresentation claim); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d  
6 420, 426 (2007) (“[T]he suppression or omission of a material fact which a party is bound in  
7 good faith to disclose is equivalent to a false representation.”(internal quotation marks omitted)).  
8 *Compare* NRS 116.31162(1)(b)(3)(II)(2017) (requiring an HOA to disclose if tender of the  
9 superpriority portion of the lien has been made), *with* NRS 116.31162 (2013) (not requiring any  
10 such disclosure.) As such, Appellant’s argument that there was a misrepresentation by omission  
11 fails because the Association did not “omit a material fact it was bound to disclose.” *Id.*

12 23. Since *Noonan*, the Supreme Court of Nevada has rejected Plaintiff’s claims of  
13 misrepresentation on numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*,  
14 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL 6129970, at \*1 ;  
15 *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy Bay, LLC, Series*  
16 *3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339 Colinward*, 2020 WL  
17 6129987, at \*1.

18 **Plaintiff’s Claim for Breach of Good Faith.**

19 24. The Supreme Court of Nevada has affirmed dismissal of the exact claim on  
20 numerous occasions. *See Saticoy Bay, LLC Series 8320 Bermuda Beach*, 2020 WL 6130913, at  
21 \*1 (“In particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail  
22 because respondents had no duty to proactively disclose whether a superpriority tender had been  
23 made”); *Saticoy Bay, LLC, Series 3123 Inlet Bay*, No. 80135, 2020 WL 6130912, at \*1 (“In  
24 particular, appellant's claims for misrepresentation and **breach of NRS 116.1113** fail because  
25 respondents had no duty to proactively disclose whether a superpriority tender had been made”);  
26 *LN Management LLC Series 4980 Droubay*, No. 79035, 2020 WL 6131470 (“We next conclude  
27 that appellant failed to state a viable claim for breach of the duty of good faith and fair dealing  
28 because such duty presupposes the existence of a contract. . . To the extent that appellant seeks to

1 base this claim on NRS 116.1113, we note that nothing in the applicable version of NRS  
2 116.3116-.3117 imposes a duty on an HOA to disclose whether a superpriority tender had been  
3 made.”).

4 **Plaintiff’s Claim for Civil Conspiracy.**

5 25. Similar to the other claims asserted by Plaintiff in this action, the Supreme Court  
6 of Nevada has rejected this claim on numerous occasions. *See Saticoy Bay, LLC Series 8320*  
7 *Bermuda Beach*, 2020 WL 6130913, at \*1 ; *Saticoy Bay LLC 6408 Hillside Brook*, 2020 WL  
8 6129970, at \*1 ; *Saticoy Bay, LLC, Series 8920 El Diablo*, 2020 WL 6129887, at \*1 ; *Saticoy*  
9 *Bay, LLC, Series 3123 Inlet Bay*, 2020 WL 6130912, at \*1; *Saticoy Bay LLC, Series 11339*  
10 *Colinward*, 2020 WL 6129987, at \*1.

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

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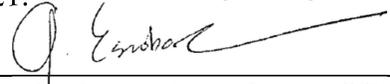
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28 ///

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**THEREFORE, IT IS HEREBY ORDERED** that the Association’s Motion for Summary Judgment is **GRANTED**.

**IT IS SO ORDERED** this \_\_\_\_ day of July 2021 **Dated this 20th day of July, 2021**



HONORABLE ADRIANA ESCOBAR  
DISTRICT COURT JUDGE

**A1A 4E3 95B7 E9F0**  
**Adriana Escobar**  
**District Court Judge**

Submitted By:

Approved as to content and form:

**LEACH KERN GRUCHOW ANDERSON  
SONG**

**ROGER P. CROTEAU & ASSOCIATES, LTD.**

/s/ T. Chase Pittsenbarger  
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Nevada Bar No. 7259  
T. Chase Pittsenbarger  
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Association*

/s/ Christopher L. Benner  
Roger P. Croteau  
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*Attorney for Plaintiff*

**From:** [Chris Benner](#)  
**To:** [Chase Pittsenbarger](#); [Yalonda Dekle](#)  
**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law  
**Date:** Tuesday, July 20, 2021 2:17:06 PM  
**Attachments:** [image001.png](#)

---

The additional facts are not dispositive, so leaving them out is fine, I just added them present the additional context for the final conclusion. In any case, you can remove them and submit with my e-signature.

**Christopher L. Benner, Esq.**  
**Roger P. Croteau & Associates**  
**2810 Charleston Boulevard, No. H-75**  
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**From:** Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>  
**Sent:** Monday, July 19, 2021 2:24 PM  
**To:** Chris Benner <chris@croteaulaw.com>; Yalonda Dekle <ydekle@lkglawfirm.com>  
**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Chris,

I will agree to everything but the addition of paragraphs 1-10 to the findings of fact. Let me know.

---

**LKG** LEACH | KERN | GRUCHOW  
ANDERSON | SONG

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---

**From:** Chris Benner <[chris@croteaulaw.com](mailto:chris@croteaulaw.com)>

**Sent:** Tuesday, July 13, 2021 7:42 AM

**To:** Yalonda Dekle <[ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com)>; Chase Pittsenbarger <[CPittsenbarger@lkglawfirm.com](mailto:CPittsenbarger@lkglawfirm.com)>

**Subject:** RE: Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Sorry for the delay, I added some additional facts and made some minor format edits. If acceptable, please feel free to use my e-signature.

**Christopher L. Benner, Esq.**

**Roger P. Croteau & Associates**

**2810 Charleston Boulevard, No. H-75**

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**(702) 254-7775**

**[chris@croteaulaw.com](mailto:chris@croteaulaw.com)**

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**From:** Yalonda Dekle <[ydekle@lkglawfirm.com](mailto:ydekle@lkglawfirm.com)>

**Sent:** Wednesday, July 07, 2021 3:19 PM

**To:** Chris Benner <[chris@croteaulaw.com](mailto:chris@croteaulaw.com)>

**Cc:** Chase Pittsenbarger <[CPittsenbarger@lkglawfirm.com](mailto:CPittsenbarger@lkglawfirm.com)>

**Subject:** Daisy Trust v. El Capitan Ranch LMA -Findings of Fact, Conclusions of Law

Good afternoon Mr. Benner:

Please find attached a Findings of Fact, Conclusions of Law in the above-entitled matter. Please review and advise if you have any revisions. Also, please advise if we may use your e-signature to submit to the department.

Thank you.

Our Las Vegas and Reno offices are currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. LKG is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. You may also e-mail our offices at [info@lkglawfirm.com](mailto:info@lkglawfirm.com).

-



Yalonda Dekle  
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Website: [www.lkglawfirm.com](http://www.lkglawfirm.com)

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

8 El Capitan Ranch Landscape  
9 Maintenance Association,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

17 Service Date: 7/20/2021

18 Roger Croteau	croteaulaw@croteaulaw.com
19 Croteau Admin	receptionist@croteaulaw.com
20 Sean Anderson	sanderson@lkglawfirm.com
21 Robin Callaway	rcallaway@lkglawfirm.com
22 Patty Gutierrez	pgutierrez@lkglawfirm.com
23 T. Pittsenbarger	cpittsenbarger@lkglawfirm.com
24 Yalonda Dekle	ydekle@lkglawfirm.com
25 Christopher Benner	chris@croteaulaw.com
26 Matt Pawlowski	matt@croteaulaw.com

27  
28

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Intentional Misconduct**

**COURT MINUTES**

**July 08, 2020**

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A-19-789674-C      Daisy Trust, Plaintiff(s)  
vs.  
El Capitan Ranch Landscape Maintenance Association, Defendant(s)

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**July 08, 2020      10:30 AM      Mandatory Rule 16  
Conference**

**HEARD BY:** Escobar, Adriana      **COURTROOM:** RJC Courtroom 14C

**COURT CLERK:** Denise Husted

**RECORDER:** Sandra Anderson

**REPORTER:**

**PARTIES**

**PRESENT:**      Glover, Chet A.      Attorney  
                 Pittsenbarger, Timothy C.      Attorney

**JOURNAL ENTRIES**

- Case involves intentional misconduct with trial to last two to three days. Mr. Glover requested that deadlines be extended due to COVID-19. Mr. Pittsenbarger did not concur. The Court informed counsel the deadlines will be extended an additional sixty days. Colloquy regarding settlement discussions. COURT ORDERED, deadlines as follows: Discovery Cut Off, 4/29/21; Amend Pleadings and Add Parties, 1/27/21; Initial Disclosure, 1/27/21/ Rebuttal Disclosure, 2/26/21 Dispositive Motions, 5/27/21; Trial Ready Date, 7/26/21. COURT FURTHER ORDERED, trial and status check dates SET.

5/18/21 9:30 AM STATUS CHECK: SETTLEMENT PROGRESS

8/19/21 9:30 AM CALENDAR CALL

9/7/21 9:30 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Intentional Misconduct**

**COURT MINUTES**

**May 18, 2021**

A-19-789674-C      Daisy Trust, Plaintiff(s)  
vs.  
El Capitan Ranch Landscape Maintenance Association, Defendant(s)

**May 18, 2021      10:00 AM      Status Check**

**HEARD BY:** Escobar, Adriana      **COURTROOM:** RJC Courtroom 14C

**COURT CLERK:** Nylasia Packer

**RECORDER:** Stacey Ray

**REPORTER:**

**PARTIES**

**PRESENT:**      Pittsenbarger, Timothy C.      Attorney

**JOURNAL ENTRIES**

- Christopher Benner, Esq. present.

Upon Court's inquiry, parties are conducting discovery and working through a discovery dispute and do not believe settlement discussion will be fruitful. Colloquy. COURT ORDERED, parties to schedule and settlement conference and send a detailed e-mail to the Judicial Executive Assistant (JEA) and Law Clerk stating who the settlement is with, where, when, and the time. FURTHER ORDERED, status check SET.

06/16/21 STATUS CHECK: SETTLEMENT CONFERENCE (CHAMBERS CALENDAR)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Intentional Misconduct**

**COURT MINUTES**

**June 29, 2021**

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A-19-789674-C      Daisy Trust, Plaintiff(s)  
vs.  
El Capitan Ranch Landscape Maintenance Association, Defendant(s)

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**June 29, 2021      9:30 AM      Motion for Summary  
Judgment**

**HEARD BY:** Escobar, Adriana      **COURTROOM:** RJC Courtroom 14C

**COURT CLERK:** Nicole McDevitt

**RECORDER:** Stacey Ray

**REPORTER:**

**PARTIES**

**PRESENT:**      Pittsenbarger, Timothy C.      Attorney

**JOURNAL ENTRIES**

- All appearances made via the BlueJeans Videoconferencing Application

Arguments by counsel regarding the merits of and opposition to the motion. COURT ORDERED, El Capitan Ranch Landscape Maintenance Association's Motion for Summary Judgment GRANTED. Mr. Pittsenbarger to prepare the order and submit it to opposing counsel for approval as to form and content. Court directed Mr. Pittsenbarger to include in the order the findings in his pleadings.



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

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

**DATE: August 20, 2021**  
**CASE: A-19-789674-C**

**RE CASE:** DAISY TRUST vs. EL CAPITAN RANCH LANDSCAPE MAINTENANCE ASSOCIATION

NOTICE OF APPEAL FILED: August 18, 2021

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

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

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

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

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

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

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

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

DAISY TRUST,

Plaintiff(s),

vs.

EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION,

Defendant(s),

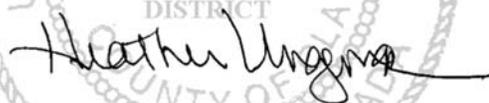
Case No: A-19-789674-C

Dept No: XIV

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 20 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

