

Wesley Rusch

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Las Vegas, NV 89173

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Electronically Filed  
Jul 28 2022 10:50 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**CLARK COUNTY, NEVADA**

WESLEY RUSCH, an individual, and OLIVER  
LONGBOY, an individual,

Plaintiffs,

vs.

THE MARTIN CONDOMINIUM UNIT  
OWNERS' ASSOCIATION, domestic non-  
profit; DOE Individuals I through X; and ROE  
Corporations and Organizations I through X,

Defendant.

CASE NO. A-20-826568-C  
Dept. No.: 27

Consolidated with:  
Case No. A-21-840526-C

**NOTICE OF APPEAL**

**Notice is hereby given that Wesley Rusch Defendant hereby appeals  
from the order entered in the court on July 1, 2022**

BY /S/ Wesley Rusch  
WESLEY RUSCH  
Defendant

**Out Home was sold by Red Rock on behalf of the Martin Condominium Unit Owners Association in VIOLATION OF NEVADA LAW and Constitutional Right of Due Process of Law and therefore the SALE IS NULL AND VOID.**

#### **POINTS AND AUTHORITIES**

**HOA Boards Beware: Nevada Courts Require Strict Statutory Compliance to Lien and Foreclose**

**Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act.** it is implicit that

HOAs must also closely **follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.**

Because of the technical nature of the Act and the courts' apparent deference to err in favor of due process protections for HOA owners (not too dissimilar from the

protections typically afforded to California tenants in unlawful detainer proceedings), the Act is fertile ground for mistakes. **These recent cases make clear that even minor or technical violations can invalidate the lien and foreclosure process.**

Please note the following court case:

G.R. No. 200969, August 03, 2015 - CONSOLACION D. ROMERO AND ROSARIO S.D. DOMINGO, Petitioners, v. ENGRACIA D. SINGSON, Respondent.

**SECOND DIVISION**

**G.R. No. 200969, August 03, 2015**

**CONSOLACION D. ROMERO AND ROSARIO S.D. DOMINGO, *Petitioners*, v. ENGRACIA D. SINGSON, *Respondent*.**

When the deed of sale in favor of respondent was purportedly executed by the parties thereto and notarized on June 6, 2006, it is perfectly obvious that the signatures of the vendors therein, Macario and Felicidad, were forged. They could not have signed the same, because both were by then long deceased: Macario died on February 22, 1981, while Felicidad passed away on September 14, 1997. This makes the June 6, 2006 **deed of sale null and void**; being so, it is **"equivalent to nothing**; it produces no civil effect; and it does not create, modify or extinguish a juridical relation."

And while it is true that respondent has in her favor a Torrens title over the subject property, she

nonetheless **acquired no right or title in her favor by virtue of the null and void** June 6, 2006 **deed**. "Verily, when the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property."<sup>35</sup>

In sum, the fact that respondent has in her favor a certificate of title is of no moment; her title cannot be used to validate the forgery or cure the void sale. As has been held in the past:

**Insofar as a person who fraudulently obtained a property is concerned, the registration of the property in said person's name would not be sufficient to vest in him or her the title to the property. A certificate of title merely confirms or records title already existing and vested. The indefeasibility of the Torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property.** Good faith must concur with registration because, otherwise, registration would be an exercise in futility. **A Torrens title does not furnish a shield for fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world.** The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.<sup>36</sup> (*Emphasis supplied*)<sup>36</sup>*Spouses Reyes v. Montemayor*, 614 Phil. 256, 274-275 (2009) UD

Since respondent acquired no right over the subject property, the same remained in the name of the original registered owners, Macario and Felicidad. Being heirs of the owners, petitioners and respondent thus became, and remain co-owners - by succession - of the subject property. As such, petitioners may exercise all attributes of ownership over the same, including possession - whether *de facto* or *de jure*; respondent thus has no right to exclude them from this right through an action for ejectment.

In contrast to RM Lifestyles and Reynolds are two cases cited by Defendants. First, in an early Utah Supreme Court case, the court held a trust sale void where it was not performed by the person authorized under the deed of trust:

The deed of trust authorized the sale to be made by the United States Marshal.

This was not done. One of his deputies made the sale as auctioneer. It is not claimed that he acted as deputy, but simply that a person who was a deputy acted as the auctioneer. Nor do we think that the marshal could have acted by deputy, unless the deed of trust had shown express authority to the effect, which it did not do. The fact that no injury or fraud in the sale has been shown, does not affect the question. Nor is it affected by the fact, that the purchaser was an innocent party.

The sale was made by one not authorized to make it. and cannot be upheld. It is simply void. and no one gains any rights under it. A purchaser must know that the sale is made by the proper person. The deed of trust shows who could make the sale. A trustee can no doubt employ an auctioneer to act for him in crying off the property; but the trustee must be present and superintend the sale. The

trustee in the present instance says that he does not think he was present at the sale.

Sinper Mfg. Co. v. Chalmers, 2 Utah 542, 546-47 (Utah Tea. 1880) (emphasis added).

More recently, the Court of Appeals affirmed a trial court ruling that a nonjudicial foreclosure sale for delinquent assessments owed to a condominium association was void where the sale was conducted by the association's attorney because "[t]he record reveal[ed] that, though its attorney may have qualified as a trustee under the Trust Deed Act, the Association failed to appoint its attorney as such." McQueen v. Jordan Pines Townhomes Owners Ass'n, Inc., 2013 UT App 53, ¶¶ 19-21 & 28, 298 P.3d 666.

**Failure to send notice of sale** as per Tex. Prop. Code § 51.002 is sufficient reason for a trial court to **set aside a foreclosure sale and hold the sale to be void**. *Shearer v.*

**Sometimes homeowners aren't aware that a foreclosure sale has been scheduled until after it's already been completed. Even if your home has been sold, you might be able to invalidate the sale.**

### **Sale of Rusch condo is void**

If the property was foreclosed non judicially, the homeowner will usually have to **file a lawsuit in state court** to void the sale.

### **Reasons a Foreclosure Sale May Be Set Aside**

Generally, to set aside a foreclosure sale, the homeowner must show:

irregularity in the foreclosure process that makes the sale void under state law

### **Irregularity in the Foreclosure Process**

State statutes lay out the procedures for a foreclosure. If there are irregularities in the foreclosure process—meaning, **the foreclosure is conducted in a manner not authorized by the statute—the sale can be invalidated**

The **Martin HOA's agent Red Rock did not comply with NRS 116.31162 et seq** and CCR 17.2 when they sold Rusch and Longboy's home

## Notice of Delinquent Assessments

Before starting the foreclosure, the **HOA must mail a notice of delinquent assessment to the homeowner**, which states: the **amount of the assessments and other sums that are due** a description of the unit against which the lien is imposed, and the name of the record owner of the unit. (Nev. Rev. Stat. § 116.31162).

**NRS 116.31162 specifically provides that: Foreclosure of liens: Mailing of notice of delinquent assessment; recording of notice of default and election to sell; period during which unit's owner may pay lien to avoid foreclosure; limitations on type of lien that may be foreclosed.**

Except as otherwise provided in subsection 4, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the **association may foreclose its lien by sale after all of the following occur:**

(a) **The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her**



**address**, if known, and at the address of the unit, **a notice of delinquent assessment which states the amount of the assessments and other sums which are due** *The Martin Failed to do this.* in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) **Not less than 30 days after mailing the notice of delinquent assessment** pursuant to paragraph (a), the association or other person conducting the sale **has executed and caused to be recorded, with the county recorder of the county** *The Martin failed to do this* in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU  
COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit, whichever date occurs later.

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

(Added to NRS by 1991, 569; A 1993, 2371; 1997, 3121; 1999, 3011; 2003, 2244, 2273; 2005, 2608)

**No Notice of the August 10 Sale as required by Nevada Law**

**Rusch did not receive any written or oral notice of a proposed sale of his property . Rusch first learned of the sale by a call from an attorney's office. Therefore the sale was illegal and must be reversed.**

## Declaration of Wesley A Rusch

Declarant has personal knowledge of the following and being deposed and sworn states under penalty of perjury under the Laws of the State of Nevada, as follow:

I am over the age of Eighteen.

That myself and Oliver B Longboy, are the two individuals who purchased the real property commonly known as 4471 Dean Martin, Apt 2206, Las Vegas NV 89103.

We own no other property and have no other place to live.

Hollyvale Rental Holdings, LLC is based on information and belief an entity that speculates in real estate. They are not a real person and do not need a place to live.

On the other hand Rusch and Longboy are two individuals who are two real people who need a place to live.

Neither Rusch or Longboy received any notice of any proposed or ported auction of their property for August 10, 2017. Red Rock as agent for the Martin violated Nevada law by selling their property without complying with Nevada law. The sale therefore must be voided and rescinded and the property returned to its rightful owners Rusch and Longboy.

Our real property was sold at auction purportedly for delinquent HOA fees on August 10, 2017. When in fact the Martin owed Rusch more than the HOA fees. On about June 29 a sprinkler pipe broke in the unit at the end of the 22<sup>nd</sup> floor causing water to flow down the hallway and into Rusch's unit. According to Nigro there was water in Rusch's walls that had to be replaced. The Martin failed to mitigate the damage by not opening the sliding glass door to allow the water to flow down the side of the building instead of down the hall. The Martin also let the water flow for several hours before turning off the water. Had the Martin done either of the foregoing Rusch's Condo would not have suffered damage. As a consequence, Rusch was required to relocate for nearly four months while Nigro repaired his unit. Nigro did not even complete the job and Rusch had to hire his own contractor to complete the job. Rusch incurred expenses in excess of \$25,000 as a result thereof. Rusch therefore claims that amount as an offset

to his HOA fess and therefore does not own the Martin any money and in fact the Martin owes Rusch money.

That neither myself nor Oliver B Longboy had received any notice of the impending HOA sale of our real property.

March 1, 2022

FURTHER DECLARANT SAVETH NAUGHT

/S/ Wesley Rusch

WESLEY A RUSCH

**The sales of Rusch's condo was in violation of Nevada Law. Red Rock was required to comply with Nevada Law and they did not therefore the sale is VOID and the sale must be reversed and Rusch must be returned to his condo. Therefore the posession of the Martin condo must be restored to Rusch and Longboy immediately No Notice of the August 10 Sale as required by Nevada Law**

Respectfully Submitted

/s/ Wesley Rusch

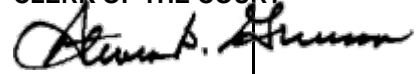
Wesley Rusch

**Respecfully Submitted**

**Wesley Rusch**

**/S/ Wesley Rusch**





1 ASTA  
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7 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
8 **STATE OF NEVADA IN AND FOR**  
9 **THE COUNTY OF CLARK**

10 WESLEY RUSCH; OLIVER LONGBOY,

11 Plaintiff(s),

12 vs.

13 THE MARTIN CONDOMINIUM UNIT OWNERS'  
14 ASSOCIATION,

15 Defendant(s),  
16

Case No: A-20-826568-C

Dept No: XXVII

17 **CASE APPEAL STATEMENT**  
18

19 1. Appellant(s): Wesley Rusch

20 2. Judge: Nancy Allf

21 3. Appellant(s): Wesley Rusch

22 Counsel:

23 Wesley Rusch  
24 Box 30907  
25 Las Vegas, NV 89173

26 4. Respondent (s): The Martin Condominium Unit Owners' Association

27 Counsel:

28 Marc S. Cwik, Esq.  
6385 S. Rainbow Blvd., Ste 600



Las Vegas, NV 89118

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: Yes, May 20, 2022  
*\*\*Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: N/A  
Date Application(s) filed: N/A

9. Date Commenced in District Court: December 16, 2020

10. Brief Description of the Nature of the Action: REAL PROPERTY - Other

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

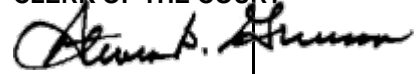
Dated This 26 day of July 2022.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Wesley Rusch



1 ASTA

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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
7 **STATE OF NEVADA IN AND FOR**  
8 **THE COUNTY OF CLARK**  
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10 WESLEY RUSCH; OLIVER LONGBOY,

11 Plaintiff(s),

12 vs.

13 THE MARTIN CONDOMINIUM UNIT OWNERS'  
14 ASSOCIATION,

15 Defendant(s),  
16

Case No: A-20-826568-C

*Consolidated with A-21-840526-C*

Dept No: XXVII

**Amended**

17 **CASE APPEAL STATEMENT**  
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19 1. Appellant(s): Wesley Rusch

20 2. Judge: Nancy Allf

21 3. Appellant(s): Wesley Rusch

22 Counsel:

23 Wesley Rusch  
24 Box 30907  
25 Las Vegas, NV 89173

26 4. Respondent (s): The Martin Condominium Unit Owners' Association

27 Counsel:

28 Marc S. Cwik, Esq.  
6385 S. Rainbow Blvd., Ste 600

Las Vegas, NV 89118

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: Yes, May 20, 2022  
*\*\*Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: N/A  
Date Application(s) filed: N/A

9. Date Commenced in District Court: December 16, 2020

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12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 26 day of July 2022.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Wesley Rusch

**CASE SUMMARY****CASE NO. A-20-826568-C****Wesley Rusch, Plaintiff(s)****vs.****The Martin Condominium Unit Owners' Association,  
Defendant(s)**§  
§  
§  
§  
§Location: **Department 27**Judicial Officer: **Allf, Nancy**Filed on: **12/16/2020**Cross-Reference Case **A826568**

Number:

**CASE INFORMATION****Related Cases**

A-21-840526-C (Consolidated)

Case Type: **Other Real Property****Statistical Closures**

06/30/2022 Motion to Dismiss by the Defendant(s)

11/09/2021 Motion to Dismiss by the Defendant(s)

Case  
Status: **06/30/2022 Dismissed****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-20-826568-C  
Court Department 27  
Date Assigned 12/16/2020  
Judicial Officer Allf, Nancy**PARTY INFORMATION****Plaintiff****Longboy, Oliver***Lead Attorneys***Pro Se****Rusch, Wesley****Pro Se**  
7027640001(H)**Defendant****The Martin Condominium Unit Owners' Association****Cwik, Marc S.**  
*Retained*  
702-893-3383(W)**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

12/16/2020



Complaint

Filed By: Plaintiff Rusch, Wesley  
[1] *New Complaint for Compensation*

12/17/2020



Clerk's Notice of Nonconforming Document

[2] *Clerk's Notice of Nonconforming Document*

01/04/2021



Application to Proceed in Forma Pauperis

Filed By: Plaintiff Rusch, Wesley  
[3] *Application to Proceed in Forma Pauperis*

01/25/2021



Notice

Filed By: Plaintiff Rusch, Wesley; Plaintiff Longboy, Oliver  
[4] *Plaintiff Notice of Default and Request for Compensation*

02/02/2021



Notice

Filed By: Plaintiff Rusch, Wesley; Plaintiff Longboy, Oliver  
[5] *Plaintiffs Notice of Default and Request for Compensation*


# CASE SUMMARY

CASE NO. A-20-826568-C

02/13/2021	 Filing Filed By: Plaintiff Rusch, Wesley <i>[6] Statue Re: Defendants Default and Plaintiff Request for Compensation</i>
02/15/2021	 Summons Filed by: Plaintiff Rusch, Wesley Party served: Defendant The Martin Condominium Unit Owners' Association <i>[7] (Unissued - incomplete and incorrect document code) Summons in a Civil Action</i>
02/18/2021	 Notice of Entry of Judgment by Default Party: Plaintiff Rusch, Wesley <i>[8] Note of Default and Judgment Order</i>
02/18/2021	 Affidavit in Support Filed By: Plaintiff Rusch, Wesley <i>[9] Affidavit in Support of Judgment by Default</i>
02/19/2021	 Clerk's Notice of Nonconforming Document <i>[10] Clerk's Notice of Nonconforming Document</i>
02/28/2021	 Affidavit of Service Filed By: Plaintiff Rusch, Wesley <i>[11] Affidavit of service (Incomplete document - missing Process server's signature)</i>
03/02/2021	 Order to Proceed In Forma Pauperis <i>[12] Order to Proceed in Forma Pauperis</i>
03/03/2021	 Clerk's Notice of Nonconforming Document <i>[13] Clerk's Notice of Nonconforming Document</i>
03/09/2021	 Affidavit of Service Filed By: Plaintiff Rusch, Wesley <i>[14] Affidavit of service</i>
03/25/2021	 Order <i>[16] Order to Strike</i>
04/12/2021	 Summons Filed by: Plaintiff Rusch, Wesley; Plaintiff Longboy, Oliver Party served: Defendant The Martin Condominium Unit Owners' Association <i>[17] Summons in a Civil Action</i>
05/06/2021	 Motion for Entry of Judgment Filed By: Plaintiff Rusch, Wesley; Plaintiff Longboy, Oliver <i>[18] Plaintiffs Motion to Entry of Default Judgment Order</i>
05/07/2021	 Clerk's Notice of Nonconforming Document <i>[19] Clerk's Notice of Nonconforming Document</i>
05/15/2021	 Writ of Execution Filed by: Plaintiff Rusch, Wesley <i>[20] Writ of Exucution</i>

# CASE SUMMARY

CASE NO. A-20-826568-C

06/03/2021	 Request Filed by: Plaintiff Rusch, Wesley <i>[21] Plaintiff's Request for Order</i>
06/15/2021	 Application for Default Judgment <i>[22] Application for Default Judgment</i>
06/20/2021	 Application for Default Judgment <i>[23] Application for Default Judgment</i>
06/22/2021	 Order Denying <i>[24] Order Denying Applications for Default Judgment Filed June 15, 2021 and June 20, 2021 without Prejudice</i>
06/27/2021	 Application for Default Judgment Party: Plaintiff Rusch, Wesley <i>[25] Please enter Default Judgment</i>
07/01/2021	 Application for Entry of Default Filed By: Plaintiff Rusch, Wesley <i>[26] Application for Default Judgment</i>
07/05/2021	 Application for Default Judgment <i>[27] Application for Default Judgment</i>
08/09/2021	 Order <i>[28] Order Setting Hearing</i>
08/13/2021	 Order Shortening Time Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[29] Defendant's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiffs' New Complaint for Compensation on Order Shortening Time</i>
08/13/2021	 Initial Appearance Fee Disclosure Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[30] Initial Appearance Fee Disclosure</i>
08/13/2021	 Notice of Entry of Order Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[31] Notice of Entry of Order Shortening Time on Hearing of Defendant's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiffs' New Complaint for Compensation on Order Shortening Time</i>
08/23/2021	 Reply to Motion Filed By: Plaintiff Rusch, Wesley <i>[32] Reply to Motion to Quash et al</i>
08/25/2021	 Reply Filed by: Plaintiff Rusch, Wesley <i>[33] reply</i>
08/26/2021	 Supplement

**CASE SUMMARY**

**CASE NO. A-20-826568-C**

Filed by: Plaintiff Rusch, Wesley  
*[34] Supplemental Reply to Motion to Quash Et Al*

11/02/2021	 <b>Recorders Transcript of Hearing</b> <i>[35] Transcript of Proceedings, Defendant's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiff's New Complaint for Compensation, on Order Shortening Time, Heard on September 1, 2021</i>
11/09/2021	 <b>Order Granting Motion</b> <i>[36] Order Granting Motion to Quash &amp; Motion to Dismiss Plaintiff's New Complaint for Compensation Without Prejudice</i>
11/10/2021	 <b>Notice of Entry of Order</b> Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[37] Notice of Entry of Order Quashing Service of Process, Striking Writ of Execution Filed on May 15, 2021 and Dismissing Plaintiffs' New Complaint for Compensation Without Prejudice</i>
11/29/2021	 <b>Motion</b> Filed By: Plaintiff Rusch, Wesley <i>[38] Plaintiff's Motion for Reconsideration of Defendant the Martin's Motion to Strike</i>
12/01/2021	 <b>Clerk's Notice of Hearing</b> <i>[39] Notice of Hearing</i>
12/01/2021	 <b>Clerk's Notice of Hearing</b> <i>[40] Notice of Vacated Hearing</i>
12/06/2021	 <b>Clerk's Notice of Hearing</b> <i>[41] Notice of Hearing</i>
12/14/2021	 <b>Opposition to Motion</b> Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[42] Defendant's Opposition to Plaintiffs' Motion for Reconsideration</i>
12/17/2021	 <b>Order Shortening Time</b> <i>[43] Notice of Related Cases and Motion to Consolidate Complaint [Rusch]</i>
12/17/2021	 <b>Order Shortening Time</b> <i>[44] Amended Notice of Related Cases and Motion to Consolidate Complaint [Rusch]</i>
12/17/2021	 <b>Notice of Entry of Order</b> Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[45] Notice of Entry of Defendant Martin Unit Owners' Association's Amended Notice of Related Cases and Motion to Consolidate on Order Shortening Time; and Defendant Martin Unit Owners' Notice of Related Cases and Motion to Consolidate on Order Shortening Time</i>
12/30/2021	 <b>Reply in Support</b> Filed By: Plaintiff Rusch, Wesley <i>[46] Counter-Reply in Support of Motion for Reconsideration</i>
12/30/2021	 <b>Reply in Support</b> Filed By: Plaintiff Longboy, Oliver <i>[47] Counter-Reply in Support of Motion for Reconsideration</i>

# CASE SUMMARY

CASE NO. A-20-826568-C

12/30/2021	 Motion Filed By: Plaintiff Rusch, Wesley <i>[48] Motion for Reconsideration</i>
01/11/2022	 Clerk's Notice of Nonconforming Document <i>[49] Clerk's Notice of Nonconforming Document</i>
02/10/2022	 Motion Filed By: Plaintiff Rusch, Wesley <i>[50] Rusch Request to Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to its Rightful Owners Rusch &amp; Longboy</i>
02/14/2022	 Clerk's Notice of Hearing <i>[51] Notice of Hearing</i>
02/15/2022	 Recorders Transcript of Hearing <i>[52] Transcript of Proceedings, Plaintiffs' Pro Se Motion to Strike; Defendant's Motion to Consolidate on OST, Heard on January 6, 2022</i>
02/15/2022	 Order Granting Motion <i>[53] Order Granting Motion to Consolidate</i>
02/15/2022	 Order Denying Motion <i>[54] Order Denying Motion for Reconsideration</i>
02/16/2022	 Notice of Entry of Order Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[55] Notice Of Entry Order Denying Plaintiffs Motion For Reconsideration</i>
02/16/2022	 Notice of Entry of Order Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[56] Notice of Entry of Order Granting Defendant's Motion to Consolidate Case No. A-20-826568-C with Case No. A-21-840526-C</i>
02/24/2022	 Opposition to Motion Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[57] Opposition to Plaintiff Wesley Rusch's Request to Nullify Sale and Restore Possession of Condo</i>
02/28/2022	 Motion to Reconsider Filed By: Plaintiff Rusch, Wesley <i>[58] Motion of Reconsideration of Motion for Consolidation and Fraud by Martins Counsel</i>
03/01/2022	 Clerk's Notice of Hearing <i>[59] Notice of Hearing</i>
03/11/2022	 Opposition to Motion Filed By: Defendant The Martin Condominium Unit Owners' Association <i>[60] Opposition to Plaintiffs' Motion for Reconsideration Filed on February 28, 2022</i>
03/13/2022	 Motion Filed By: Plaintiff Longboy, Oliver



# CASE SUMMARY

CASE NO. A-20-826568-C

*[61] Rusch Request to Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to Its Rightful Owners Rusch and Longboy*

03/13/2022



Reply

Filed by: Plaintiff Longboy, Oliver

*[62] Joinder in reply*

03/23/2022



Recorders Transcript of Hearing

*[63] Recorder's Transcript of Hearing All Pending Motions March 16, 2022*

03/31/2022



Order Denying Motion

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[64] Order Denying Plaintiff's Request to Nullify Sale and Restore Possession of Condo*

04/01/2022



Notice of Entry of Order

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[65] Notice of Entry of Order Denying Plaintiffs' Request to Nullify Sale and Restore Possession of Condo*

04/29/2022



Order Denying Motion

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[66] Order Denying Plaintiff's Motion Entitled "Motion for Reconsideration and Fraud by Martin's Counsel"*

04/29/2022



Notice of Entry of Order

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[67] Notice of Entry of Order Denying Plaintiff's Motion Entitled "Motion for Reconsideration and Fraud by Martin's Counsel"*

04/30/2022



Motion for Sanctions

Filed By: Plaintiff Rusch, Wesley

*[68] Motion for an Award of Sanctions for Fraud by Martins Counsel*

05/02/2022



Clerk's Notice of Hearing

*[69] Notice of Hearing*

05/03/2022



Motion To Dismiss - Alternative Motion For Summary Judgment

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[70] Defendant The Martin Condominium Unit Owners' Association's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment*

05/03/2022



Appendix

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[71] Appendix of Exhibits in Support of Defendant The Martin Condominium Unit Owners' Association's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment*

05/03/2022



Motion for Order

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[72] Motion for (1) Pre-Filing Order Against Plaintiffs Pursuant to Nevada' Vexatious Litigant Standard and (2) An Award of Attorney's Fees and Costs Resulting From Plaintiffs' Ongoing Vexatious Conduct*

05/03/2022



Appendix

Filed By: Defendant The Martin Condominium Unit Owners' Association

# CASE SUMMARY

CASE NO. A-20-826568-C

*[73] Appendix of Exhibits in Support of Motion for (1) Pre-Filing Order Against Plaintiffs Pursuant to Nevada' Vexatious Litigant Standard and (2) An Award of Attorney's Fees and Costs Resulting From Plaintiffs' Ongoing Vexatious Conduct*

05/03/2022



Clerk's Notice of Hearing

*[74] Notice of Hearing*

05/03/2022



Clerk's Notice of Hearing

*[75] Notice of Hearing*

05/16/2022



Opposition to Motion

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[76] Opposition to Plaintiffs' Motion for an Award of Sanctions for Fraud by Martin's Counsel*

05/20/2022



Order to Proceed In Forma Pauperis

*[77] Order to Proceed in Forma Pauperis*

06/08/2022



Reply in Support

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[78] Defendant The Martin Condominium Unit Owners' Association's Reply in Support of Its Motion to Dismiss, or in the Alternative, Motion for Summary Judgment*

06/08/2022



Reply in Support

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[79] Defendant The Martin Condominium Unit Owners' Association's Reply in Support of Its Motion for (1) Pre-Filing Order Against Plaintiffs Pursuant to Nevada' Vexatious Litigant Standard and (2) An Award of Attorney's Fees and Costs Resulting From Plaintiffs' Ongoing Vexatious Conduct*

06/16/2022



Order Denying Motion

*[80] Order Denying Plaintiff's Motion for an Award of Sanctions*

06/17/2022



Notice of Entry of Order

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[81] Notice of Entry of Order Denying Plaintiffs' Motion for an Award of Sanctions for Fraud by Martins (sic) Counsel*

06/30/2022



Order

*[82] Order Granting In Part, And Denying In Part, The Martin Condominium Unit Owners Association s Motion For (1) Pre-Filing Order Against Plaintiffs Pursuant To Nevada s Vexatious Litigant Standard And (2) An Award Of Attorney s Fees And Costs Resulting From Plaintiffs Ongoing Vexatious Conduct*

06/30/2022



Order Granting Motion

*[83] Order Granting Defendant The Martin Condominium Unit Owners Association s Motion To Dismiss, Or In The Alternative, Motion For Summary Judgment*

07/01/2022



Notice of Entry of Order

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[84] Notice of Entry of Order Granting Defendant The Martin Condominium Unit Owners' Association's Motion to Dismiss or in the Alternative, Motion for Summary Judgment*

07/01/2022



Notice of Entry of Order

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[85] Notice of Entry of Vexatious Litigant and Pre-Filing Order Against Plaintiffs*

# CASE SUMMARY

CASE NO. A-20-826568-C

07/24/2022



Notice of Appeal

*[86] Notice of Appeal*

07/24/2022



Motion

Filed By: Plaintiff Rusch, Wesley

*[87] motion*

07/24/2022



Objection

Filed By: Plaintiff Rusch, Wesley

*[88] Plaintiff's Objection to Martin Orders*

07/24/2022



Objection

Filed By: Plaintiff Rusch, Wesley

*[89] objection*

07/24/2022



Order Granting Summary Judgment

Filed By: Defendant The Martin Condominium Unit Owners' Association

*[90] Order Granting Plaintiff's Motion for Summary Judgment*

07/24/2022



Motion

Filed By: Plaintiff Rusch, Wesley

*[91] Motion for Reconsideration*

07/25/2022



Clerk's Notice of Hearing

*[92] Notice of Hearing*

07/26/2022



Case Appeal Statement

*Case Appeal Statement*

07/26/2022



Case Appeal Statement

*Amended Case Appeal Statement*

## **DISPOSITIONS**

11/09/2021

**Order of Dismissal Without Prejudice** (Judicial Officer: Allf, Nancy)

Debtors: Wesley Rusch (Plaintiff), Oliver Longboy (Plaintiff)

Creditors: The Martin Condominium Unit Owners' Association (Defendant)

Judgment: 11/09/2021, Docketed: 11/10/2021

06/30/2022

**Summary Judgment** (Judicial Officer: Allf, Nancy)

Debtors: Wesley Rusch (Plaintiff), Oliver Longboy (Plaintiff)

Creditors: The Martin Condominium Unit Owners' Association (Defendant)

Judgment: 06/30/2022, Docketed: 07/01/2022

## **HEARINGS**

02/16/2021



**Status Check** (3:00 AM) (Judicial Officer: Allf, Nancy)

*Status Check: Summons*

Vacate;

Journal Entry Details:

*COURT FINDS after review that on December 16, 2020 a Complaint in Interpleader was filed. COURT FURTHER FINDS after review that an Application to Proceed in Forma Pauperis was filed. COURT FURTHER FINDS after review that on January 25, 2021 Plaintiff's Notice of Default and Request for Compensation was filed. COURT FURTHER FINDS after review that on February 2, 2021 Plaintiff's Notice of Default and Request for Compensation was filed. COURT FURTHER FINDS after review that on February 13, 2021 a Notice of*

# CASE SUMMARY

CASE NO. A-20-826568-C

Default was filed. COURT FURTHER FINDS after review that on February 15, 2021 a Summons- Martin Unit Owners Association was filed. COURT FURTHER FINDS after review that a Status Check: Summons was scheduled on February 16, 2021 on Chambers calendar. THEREFORE COURT ORDERS for good cause and after review that because a Summons has been issued, the Status Check: Summons scheduled on February 16, 2021 on Chambers calendar is hereby VACATED. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 2/18/2021 ;

08/31/2021



## Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy)

Minute Order: BlueJeans Appearance

Minute Order - No Hearing Held; Minute Order: BlueJeans Appearance

Journal Entry Details:

Department 27 Information to Appear Telephonically Re: Matter set on September 1, 2021, 9:00 a.m. Please be advised that due to the COVID-19 pandemic, Department 27 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. Counsel have the choice to appear either by phone or computer/video, however, if appearing remotely via BlueJeans, please appear by audio AND video. Also, in person hearings are now being held in Department 27, at the option of counsel. Mask wearing protocols will be strictly enforced. As of May 1, 2021, the Governor has relaxed the capacity to 80%, so that the courtroom can now accommodate up to 32 people. Dial the following number: 1-408-419-1715 Meeting ID: 897 138 369 Meeting URL: <https://bluejeans.com/897138369> To connect by phone dial the number provided and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. Please be mindful of rustling papers, background noise, and coughing or loud breathing. Please be mindful of where your camera is pointing. We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 8/31/2021. ;

09/01/2021



## Motion to Quash (9:00 AM) (Judicial Officer: Allf, Nancy)

Defendant's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiff's New Complaint for Compensation, On Order to Shortening Time.

Granted; Defendant's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiff's New Complaint for Compensation, On Order to Shortening Time.

Journal Entry Details:

Present in Court: Wesley Rusch, Plaintiff Present via the BlueJeans Videoconferencing Application. Arguments by Mr. Cwik and Mr. Rusch regarding the merits of and opposition of motion. Court stated its findings and ORDERED, Defendant's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiff's New Complaint for Compensation, On Order to Shortening Time GRANTED in all respects, DISMISSAL WITHOUT PREJUDICE. Mr. Rusch requested extension of time to file. Court stated the time had already passed. Mr. Cwik to prepare the order and submit it to Mr. Rusch one week before submission to the Court.;

01/04/2022



## Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy)

Minute Order: BlueJeans Information


Minute Order - No Hearing Held; Minute Order: BlueJeans Information

Journal Entry Details:

# CASE SUMMARY

CASE NO. A-20-826568-C

Department 27 Information to Appear Telephonically Re: Matter set on January 6, 2022  
Please be advised that due to the COVID-19 pandemic, Department 27 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. Counsel have the choice to appear either by phone or computer/video, however, if appearing remotely via BlueJeans, please appear by audio AND video. Also, in person hearings are now being held in Department 27, at the option of counsel. Mask wearing protocols will be strictly enforced. As of May 1, 2021, the Governor has relaxed the capacity to 80%, so that the courtroom can now accommodate up to 32 people. Dial the following number: 1-408-419-1715 Meeting ID: 897 138 369 Meeting URL: <https://bluejeans.com/897138369> To connect by phone dial the number provided and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. Please be mindful of rustling papers, background noise, and coughing or loud breathing. Please be mindful of where your camera is pointing. We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole Cejas, to all registered parties for Odyssey File & Serve. /nc 1/4/2022 ;

- 01/05/2022 **CANCELED Motion to Strike** (9:00 AM) (Judicial Officer: Allf, Nancy)  
Vacated - Set in Error  
Motion for Strike
- 01/06/2022 **Motion to Strike** (9:30 AM) (Judicial Officer: Allf, Nancy)  
Events: 11/29/2021 Motion  
Plaintiff's Motion for Reconsideration of Defendant the Martin's Motion to Strike  
Denied;
- 01/06/2022 **Motion to Consolidate** (9:30 AM) (Judicial Officer: Allf, Nancy)  
Defendant Martin Unit Owners' Notice of Related Cases and Motion to Consolidate on Order Shortening Time  
Granted;
- 01/06/2022  **All Pending Motions** (9:30 AM) (Judicial Officer: Allf, Nancy)  
Matter Heard;  
Journal Entry Details:  
PLAINTIFF'S MOTION FOR RECONSIDERATION OF DEFENDANT THE MARTIN'S MOTION TO STRIKE...DEFENDANT MARTIN UNIT OWNER'S NOTICE OF RELATED CASES AND MOTION TO CONSOLIDATE ON ORDER SHORTENING TIME. Appearance via BlueJeans Videoconferencing Application: Marc Cwik, Esq. Present in person: Wesley Rusch, pro se. Arguments made by counsel and Mr. Rusch regarding the merits of and opposition of Defendant's Motion. COURT ORDERED Defendant Martin Unit Owner's Notice of Related Cases and Motion to Consolidate on Order Shortening Time GRANTED. Mr. Cwik to prepare a simple order and submit it to Mr. Rusch for his review and approval of form. Following colloquy regarding the time needed to hear the remaining mater and in the interest of judicial economy, MATTER TRAILED. MATTER RECALLED. All parties present as before. Arguments made by counsel and Mr. Rusch regarding the merits of and opposition of Plaintiff's Motion. COURT ORDERED Plaintiff's Motion for Reconsideration of Defendant the Martin's Motion To Strike DENIED. Mr. Cwik to prepare a simple order and submit it to Mr. Rusch for his review and approval of form. Court stated Mr. Cwik to prepare two separate orders regarding each motion that was heard. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole Cejas, to all registered parties for Odyssey File & Serve. /nc 1/24/2022;



# CASE SUMMARY

CASE NO. A-20-826568-C

03/16/2022



**Motion** (9:00 AM) (Judicial Officer: Allf, Nancy)

*Rusch Request to Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to its Rightful Owners Rusch & Longboy Denied; Rusch Request to Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to its Rightful Owners Rusch & Longboy*

Journal Entry Details:

*Present via BlueJeans Videoconferencing Application: Marc S. Cwik, Esq. Arguments by Mr. Rusch and Mr. Cwik regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Rusch Request to Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to its Rightful Owners Rusch & Longboy DENIED. Mr. Cwik to prepare the order and provide it to Mr. Rusch for review.;*

03/16/2022

**CANCELED Motion** (9:00 AM) (Judicial Officer: Allf, Nancy)

*Vacated - Duplicate Entry*

*Plaintiffs' Pro Se Rusch Request to Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to Its Rightful Owners Rusch and Longboy (Motion filed into A840526)*

04/05/2022



**Motion For Reconsideration** (3:00 AM) (Judicial Officer: Allf, Nancy)

Events: 02/28/2022 Motion to Reconsider

*Plaintiff's Pro Per Motion of Reconsideration of Motion for Consolidation and Fraud by Martins Counsel*

Denied;

Journal Entry Details:

*COURT FINDS after review that on February 28, 2022, a Motion for Reconsideration of Motion for Consolidation and Fraud (Motion for Reconsideration) was filed. COURT FURTHER FINDS after review that on March 11, 2022, an Opposition to the Motion for Reconsideration was filed. COURT FURTHER FINDS after review EDCR 2.24(a) provides in relevant part: No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of court granted upon motion therefor, after notice of such motion to the adverse parties. COURT FURTHER FINDS after review that a Motion for Reconsideration is scheduled for April 5, 2022, on Chamber Calendar. COURT FURTHER FINDS after review that Plaintiff does not offer any new evidence or new facts for the Court to reconsider. THEREFORE COURT ORDERS for good cause appearing and after review the Motion for Reconsideration is hereby DENIED and the matter scheduled on April 5, 2022, on Chamber Calendar is hereby VACATED. Movant to prepare the Order in compliance with EDCR 7.21 and email it in pdf format to DC27Inbox@ClarkCountyCourts.us CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 4/5/2022;*

06/01/2022



**Motion for Sanctions** (9:00 AM) (Judicial Officer: Allf, Nancy)

*Plaintiff's Motion for an Award of Sanctions for Fraud by Martins Counsel*

Denied; Plaintiff's Motion for an Award of Sanctions for Fraud by Martins Counsel

Journal Entry Details:

*Mr. Cwik appeared via BlueJeans Videoconferencing App. Upon Court's inquiry as to whether Mr. Cwik had heard anything from Plaintiffs, Mr. Cwik stated that there has been no communication from Plaintiffs. Court stated its findings and ORDERED Plaintiff's Motion for an Award of Sanctions for Fraud by Martin's Counsel, DENIED. Court instructed that Defendant prepare Findings of Fact and Conclusions of Law that are consistent with the Opposition to said Motion.;*

06/15/2022

**Motion to Dismiss** (10:00 AM) (Judicial Officer: Allf, Nancy)

*Defendant The Martin Condominium Unit Owners' Association's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment*

Granted;

06/15/2022


**Motion for Order** (10:00 AM) (Judicial Officer: Allf, Nancy)

*Defendant's Motion for (1) Pre-Filing Order Against Plaintiffs Pursuant to Nevada' Vexatious*

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-20-826568-C**

	<p><i>Litigant Standard and (2) An Award of Attorney's Fees and Costs Resulting From Plaintiffs' Ongoing Vexatious Conduct</i></p> <p>Granted in Part;</p>
06/15/2022	<p> <b>All Pending Motions</b> (10:00 AM) (Judicial Officer: Allf, Nancy)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>DEFENDANT THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT...DEFENDANT'S MOTION FOR (1) PRE-FILING ORDER AGAINST PLAINTIFFS PURSUANT TO NEVADA VEXATIOUS LITIGANT STANDARD AND (2) AN AWARD OF ATTORNEY'S FEES AND COSTS RESULTING FROM PLAINTIFFS' ONGOING VEXATIOUS CONDUCT</i> Mr. Cwik appeared via BlueJeans Videoconferencing App. Arguments on the merits of and opposition to the motions presented by counsel. Upon Court's inquiry as to the time frame of when bankruptcy was filed relative to the date of foreclosure, Mr. Rusch stated that said bankruptcy was filed prior to the foreclosure. Court noted that an opposition to Defendant the Martin Condominium Unit Owners' Association's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment was not filed, but instead, an oral counter-motion was presented by Mr. Rusch. Court stated its findings and <b>ORDERED</b> said Defendant's motion <b>GRANTED</b>; and Plaintiff's oral counter-motion <b>DENIED</b>. <b>COURT FURTHER ORDERED</b> Defendant's Motion for (1) Pre- Filing Order Against Plaintiffs Pursuant to Nevada Vexatious Litigant Standard and (2) An Award Of Attorney's Fees And Costs Resulting From Plaintiffs' Ongoing Vexatious Conduct, <b>GRANTED IN PART</b> as to the motion for pre-filing Order; <b>DENIED WITHOUT PREJUDICE, IN PART</b> as to attorneys fees and costs. Mr. Cwik to prepare both of the Orders and submit to Mr. Rusch for review of form. Court instructed that if any objections relative to form arise, said objection must be filed.;</p>
08/30/2022	<p><b>Motion For Reconsideration</b> (3:00 AM) (Judicial Officer: Allf, Nancy)</p> <p><i>Plaintiff's Motion for Reconsideration</i></p>

**DATE**

**FINANCIAL INFORMATION**

<b>Defendant</b> The Martin Condominium Unit Owners' Association	
Total Charges	423.00
Total Payments and Credits	423.00
<b>Balance Due as of 7/26/2022</b>	<b>0.00</b>
<b>Plaintiff</b> Longboy, Oliver	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 7/26/2022</b>	<b>0.00</b>
<b>Plaintiff</b> Rusch, Wesley	
Total Charges	270.00
Total Payments and Credits	270.00
<b>Balance Due as of 7/26/2022</b>	<b>0.00</b>

# DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

Electronically Filed  
2/28/2021 9:26 PM  
Steven D. Grierson  
CLERK OF THE COURT



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

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Wesley Rusch</div> <div style="text-align: center;">Oliver Longboy</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Martin Condominium Unit Owners Association</div>
Attorney (name/address/phone): <div style="text-align: center;">PO Box 30907</div> <div style="text-align: center;">Las Vegas NV 89173</div>	Attorney (name/address/phone):

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

### Civil Case Filing Types

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

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

12 24 2020

Date

Signature of initiating party or representative

*See other side for family-related case filings.*



*Heather S. Smith*  
CLERK OF THE COURT

1 **OGM**

2 MARC S. CWIK, ESQ.

3 Nevada Bar No. 006946

4 E-Mail: [Marc.Cwik@lewisbrisbois.com](mailto:Marc.Cwik@lewisbrisbois.com)

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 6385 S. Rainbow Boulevard, Suite 600

7 Las Vegas, Nevada 89118

8 702.893.3383

9 FAX: 702.893.3789

10 *Attorney for Defendant,*

11 *The Martin Condominium Unit Owners'*

12 *Association*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 WESLEY RUSCH, an individual, and  
16 OLIVER LONGBOY, an individual,

17 Plaintiffs,

18 vs.

19 THE MARTIN CONDOMINIUM UNIT  
20 OWNERS' ASSOCIATION, domestic non-  
21 profit; DOE Individuals I through X; and ROE  
22 Corporations and Organizations I through X,

23 Defendant.

CASE NO. A-20-826568-C  
Dept. No.: 27

Consolidated with:  
Case No. A-21-840526-C

**ORDER GRANTING DEFENDANT THE  
MARTIN CONDOMINIUM UNIT  
OWNERS' ASSOCIATION'S MOTION  
TO DISMISS, OR IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

DATE: 6/15/2022  
TIME: 10:00 A.M.

24 Defendant, THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION  
25 ("Martin CUOA"), filed its Motion to Dismiss, or in the Alternative, Motion for Summary  
26 Judgment and supporting Appendix (hereinafter the "Dispositive Motion") on May 3, 2022;  
27 Plaintiffs filed their Reply and a separately filed Reply and Request for Summary Judgment on  
28 June 5, 2022; and Martin CUOA filed its Reply in Support of Its Motion to Dismiss, or in the  
Alternative, Motion for Summary Judgment on June 8, 2022.

1 Martin CUOA's Dispositive Motion came on for hearing before the Honorable Judge  
2 Nancy L. Alff on June 15, 2022; Marc S. Cwik, Esq. of LEWIS BRISBOIS BISGAARD &  
3 SMITH LLP appeared on behalf Martin CUOA through the BlueJeans video conferencing service;  
4 Plaintiff Wesley Rusch appeared Pro Se and in person; and Plaintiff Oliver Longboy, who is Pro  
5 Se, did not appear.  
6

7 The Court, having reviewed and considered the pleadings and papers on file herein, as well as  
8 the oral arguments by Mr. Cwik and Mr. Rusch at the hearing, and for good cause appearing,  
9 finds, concludes and orders, as follows:

10 **I.**

11 **FINDINGS OF FACT**

12 **A. The Parties and the Subject Foreclosure.**

13 1. Plaintiff Wesley Rusch ("Rusch") and Plaintiff Oliver Longboy ("Longboy"),  
14 collectively the "Plaintiffs," are former owners of a condominium located at The Martin (f/k/a  
15 Panorama Towers), 4471 Dean Martin Drive, Unit 2206, Las Vegas, Nevada 89103 (the "Subject  
16 Property").  
17

18 2. Martin CUOA is a Nevada Domestic Nonprofit Corporation established to be the  
19 Unit Owners' Association for The Martin.

20 3. Red Rock Financial Services, LLC ("RFFS"), a non-party, was retained by Martin  
21 CUOA to handle collections matters, including the foreclosure of delinquent units within The  
22 Martin under the provisions of NRS Chapter 116.  
23

24 4. The Subject Property was foreclosed upon by Martin CUOA and sold at a  
25 foreclosure sale conducted by RFFS on behalf of Martin CUOA related to Plaintiffs' being  
26 delinquent on paying their monthly assessments, late fees, and other fines they were assessed as  
27 residents at The Martin. Per publicly-available records, the foreclosure sale took place on August  
28

1 10, 2017 and the Foreclosure Deed was recorded on October 17, 2017.

2 5. This Court finds that prior to the foreclosure, RRFS provided various required  
3 notices to Plaintiffs, including but not limited to, the amount of Plaintiffs' delinquency, Martin  
4 CUOA's lien, Martin CUOA's intent to proceed with foreclosure of the lien, and notice of the  
5 foreclosure sale.  
6

7 6. This Court finds that prior to the foreclosure being completed, both Plaintiffs filed  
8 voluntary petitions for bankruptcy and received discharges of the debt owing to Martin CUOA.

9 7. This Court finds that Plaintiffs failed to present any credible evidence that RRFS  
10 failed to give proper notice or otherwise failed to properly conduct the foreclosure on behalf of  
11 Martin CUOA.  
12

13 8. This Court finds that on February 22, 2018, Plaintiffs received the excess proceeds  
14 from the foreclosure sale.

15 9. This Court finds that on February 22, 2018, prior to receiving the excess proceeds,  
16 Plaintiffs executed a Disbursement and Indemnification Agreement prepared by RRFS which  
17 noted the foreclosure resulted from Plaintiffs' failure to pay Martin CUOA's assessments, fees and  
18 costs, including related collection fees and costs, and indemnified and released RRFS with regard  
19 to all claims related to distribution of the Excess Funds and claims arising out of or in connection  
20 with the sale of the Subject Condominium.  
21

22 10. This Court further finds that when executing the Disbursement and Indemnification  
23 Agreement, Plaintiffs sent a letter to their attorney, Bryan Naddafi, which stated the following:  
24 "Bryan, Please acknowledge receipt and give Red Rock Koch & Scow OK to distribute funds to  
25 me today. Wes."  
26

27 11. This Court further finds that when Plaintiffs accepted the excess proceeds of the  
28 foreclosure sale from RRFS, they did so without any condition of protest.

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8. The 2018 Action was mandatorily dismissed on March 27, 2019, since Plaintiffs failed to comply with NRS 38.310.

9. Thereafter, Judge Jacqueline Bluth repeatedly denied attempts by Plaintiffs to reopen the 2018 Action and it remained dismissed.

### Third Lawsuit

10. The third lawsuit was an action filed by Plaintiffs against Martin UOA on December 16, 2020, over three years after the foreclosure had concluded, Clark County District Court Case No. A-20-826568-C, captioned *Wesley Rusch and Oliver Longboy v. The Martin Condominium Unit Owners Association* (hereinafter the “2020 Action”).

11. On November 9, 2021, this Court entered an order dismissing the 2020 Action, without prejudice.

12. This Court also concluded in its Order entered on November 9, 2021 that any re-filing of Plaintiffs' Complaint in the 2020 Action would appear to be time barred under NRS 116.31166(3) and NRS 107.080(6).

### *Fourth Lawsuit*

13. The fourth lawsuit is Plaintiffs’ presently pending action in this Court against Martin CUOA, Case No. A-21-840526-C, captioned *Wesley Rusch and Oliver Longboy v. The Martin Condominium Unit Owners Association*, which was filed on September, 2021 (hereinafter the “2021 Action”).

14. On March 31, 2022, this Court entered an Order denying Plaintiffs' Request to Nullify Sale and Restore Possession of Condo, which Plaintiffs had filed on February 10, 2022. In that Order, this Court entered findings/conclusions that Plaintiffs no longer have any rights to the Subject Property and, therefore, no rights to pursue the claims set forth in their Complaints against Martin CUOA filed in the 2020 Action and the 2021 Action.

1                   **C. Consolidation of Plaintiffs' 2020 Action and 2021 Action.**

2           1.       This Court previously found that Plaintiffs' 2020 Action and 2021 Action against  
3 Martin CUOA were substantially similar and warranted consolidation under NRCP 42(a) and  
4 EDCR 2.50(a)(1), due to the number of lawsuits Plaintiffs have filed against Martin CUOA.  
5

6           2.       Therefore, on February 15, 2022, this Court entered an order consolidating the 2021  
7 Action with the 2020 Action to promote judicial economy.

8                   **D. Gravamen of Plaintiffs' 2020 Action and the 2021 Action.**

9           1.       This Court previously found in an Order entered on November 9, 2021 in the 2020  
10 Action that the gravamen of Plaintiffs' Complaint in the 2020 Action, based upon Plaintiffs'  
11 allegations and the statements made on the record by Rusch during the Hearing held on September  
12 1, 2021 in the 2020 Action, is a claim challenging the notice of default and election to sell that was  
13 recorded against the condominium for the purpose of seeking to recover possession of the Subject  
14 Property.  
15

16           2.       This Court hereby finds that the gravamen of Plaintiffs' claims in the 2021 Action  
17 is likewise a claim challenging the notice of default and election to sell that was recorded against  
18 the condominium for the purpose of seeking to recover possession of the Subject Property. This  
19 Court's finding is premised upon the following facts: (a) pages 6 through 9 of Plaintiffs'  
20 Complaint in the 2021 Action includes allegations seeking restoration of the Subject Property; (b)  
21 the filings of the Plaintiffs, both in the 2020 Action and the 2021 Action, have repeatedly  
22 requested this Court to set aside the sale and restore possession of the condominium to the  
23 Plaintiffs; and (3) most noteworthy is the fact that on February 10, 2022, before Martin CUOA  
24 filed its Dispositive Motion, Plaintiffs filed a dispositive motion, requesting this Court to nullify  
25 the foreclosure sale and restore possession of the Subject Property to Plaintiffs, which this Court  
26 denied in its Order entered on March 31, 2022.  
27  
28

1 II.

2 CONCLUSIONS OF LAW

3 A. Martin CUOA's Dispositive Motion is Treated as a Motion for Summary Judgment.

4 1. Under NRCP 12(b)(5), dismissal of a Complaint is permitted when it fails to state a  
5 claim upon which relief can be granted. *See Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824,  
6 221 P.3d 1276, 1280 (2009).

7  
8 2. Dismissal is appropriate under NRCP 12(b)(5) where the allegations in the  
9 Complaint, taken at "face value," and construed favorably in the Plaintiff's behalf, fail to state a  
10 cognizable claim. *See Morris v. Bank of Am.*, 110 Nev. 1274, 886 P.2d 454 (1994); *Buzz Stew,*  
11 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

12 3. A district court is to accept the plaintiff's factual allegations as true, but the  
13 allegations must still be legally sufficient to constitute the elements of the claim(s) asserted. *See*  
14 *Malfabon v. Garcia*, 111 Nev. 793, 796, 898 P.2d 107, 108 (1995). The test for determining  
15 whether the allegations of a complaint are sufficient to assert a claim for relief is whether the  
16 allegations give fair notice of the nature and basis of a legally sufficient claim and the relief  
17 requested. *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984).

18  
19 4. If the proper showing is made by the movant, a motion to dismiss for failure to  
20 state a claim may be granted irrespective of the type of action involved or its complexity. *See,*  
21 *e.g., Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 21 P.3d 16 (2001).

22  
23 5. A court may take into account matters of public record, orders, items present in the  
24 record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss  
25 for failure to state a claim upon which relief can be granted. *See Breliant v. Preferred Equities*  
26 *Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (citing 5A Charles A. Wright & Arthur R.  
27 Miller, *Federal Practice and Procedure*, Civil 2D §§ 1356 and 1357 (2d ed. 1990) (discussing the  
28

1 federal counterpart to NRCP 12(b)(5)).

2 6. When a motion is made pursuant to NRCP 12(b)(5) and matters outside the  
3 pleadings which are outside the rule set forth in *Breliant* are presented to and not excluded by the  
4 court, the motion is to be treated as a motion for summary judgment and disposed of as provided  
5 for in NRCP 56. *See* NRCP 12(d).

6 7. A court can dismiss a complaint for failure to state a claim upon which relief can be  
7 granted if the action is barred by the statute of limitations. *See Bemis v. Estate of Bemis*, 114 Nev.  
8 1021, 967 P.2d 437 (1998); *Shupe & Yost, Inc. v. Fallon Nat'l Bank*, 109 Nev. 99, 100, 100-102,  
9 847 P.2d 720, 720-721 (1993).

10 8. NRCP 56 provides the following: "The court shall grant summary judgment if the  
11 movant shows that there is no genuine dispute as to any material fact and the movant is entitled to  
12 judgment as a matter of law. The court should state on the record the reasons for granting or  
13 denying the motion."  
14

15 9. This Court concludes that Martin CUOA's dispositive motion is to be treated as a  
16 summary judgment motion pursuant to NRCP 12(d) and NRCP 56, since this Court concludes that  
17 the exhibits to Martin CUOA's Dispositive Motion are relevant and related to the factual  
18 allegations and claims asserted in Plaintiffs' Complaint and this Court does not exclude them and  
19 chooses to consider them.  
20

21 10. This Court further concludes that Martin CUOA's Dispositive Motion is granted in  
22 its entirety, with prejudice, and Plaintiffs' Request for Summary Judgment in their favor is denied,  
23 with prejudice.  
24

25 **B. Plaintiffs' Complaint in the 2021 Action Requires Dismissal, With Prejudice, Under**  
26 **Principles of Collateral Estoppel.**

27 1. This Court concludes that Plaintiffs' challenge to the validity of the foreclosure and  
28 title to the Subject Property has already been adjudicated in the Quiet Title Action, such



1 adjudication is final, and therefore, under principles of collateral estoppel, Plaintiffs have no  
2 further rights to the Subject Property nor to assert claims against Martin CUOA challenging the  
3 foreclosure or to seek damages. *See Pohl v. U.S. Bank*, 859 F.3d 1226, 1231 (10th Cir. 2017)  
4 (holding that given the finality of a quiet title action and the grant of ‘full relief’ afforded by the  
5 court in such an action, it is incumbent upon a party in such action to raise his/her claims, issues or  
6 defenses in such action so that there is only one, single action); *Five Star Capital Corp. v. Ruby*,  
7 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (discussing doctrines of issue preclusion and claim  
8 preclusion); *State Eng’r v. Sustacha*, 108 Nev. 223, 226, 826 P.2d 959, 961 (1992) (recognizing  
9 that “one district generally cannot set aside another district court’s order”); *Truesdell v. State*, 129  
10 Nev. 194, 198, 304 P.3d 396, 399 (2013) (holding that litigant could not collaterally attack the  
11 validity of a TPO in a subsequent court proceeding).  
12

13  
14 **C. Plaintiffs’ Complaint in the 2021 Action Also Requires Dismissal, With Prejudice,**  
15 **Because If It Were Not Subject to Dismissal Under Collateral Estoppel Principles, It**  
16 **Is Still Clearly Time-Barred.**

17 1. This Court concludes that even if Plaintiffs’ Complaint in the 2021 Action were not  
18 subject to dismissal under collateral estoppel principles, it is still subject to dismissal with  
19 prejudice under application of Nevada’s statutes of limitations, whether or not this Court’s findings  
20 concerning the gravamen of the Complaint are applied.

21 2. Application of this Court’s finding that the gravamen of Plaintiffs’ Complaint in the  
22 2021 Action is a claim challenging the notice of default and election to sell that was recorded  
23 against the condominium for the purpose of seeking to recover possession of the Subject Property,  
24 NRS 116.31166(3), which applies to foreclosures performed by community associations, would  
25 have required Plaintiffs to file their Complaint within 60 days of the date the Foreclosure Deed  
26 was recorded. Since Plaintiffs’ Complaint in the 2021 Action was filed years later, this Court  
27 concludes Plaintiffs’ Complaint in the 2021 Action is time-barred.  
28

1           3.       This Court's conclusion that Plaintiffs' Complaint in the 2021 Action is time-barred  
2 under application of this Court's findings of the gravamen of the Complaint further follows from  
3 the fact that even if this Court applied NRS 107.080(6), which would have required Plaintiffs to  
4 have filed suit within 90 days of the date the Foreclosure Deed was recorded, Plaintiffs' Complaint  
5 in the 2021 Action was filed years later. Therefore, this Court again concludes that Plaintiffs'  
6 Complaint in the 2021 Action is time-barred.  
7

8           4.       This Court further concludes that even if it alternatively concluded that the  
9 gravamen of Plaintiffs' Complaint in the 2021 Action is not a repossession claim (which would be  
10 contrary to Plaintiffs' repeated filings and arguments in the 2020 Action and the 2021 Action), but  
11 a claim premised upon a wrongful foreclosure in violation of the provisions of NRS Chapter 116,  
12 this Court still concludes that Plaintiffs' Complaint in the 2021 Action is time-barred.  
13

14           5.       This Court's alternate conclusion follows from the premise that under Nevada law,  
15 claims based upon a liability created by statute are subject to a three-year statute of limitations and  
16 Plaintiffs' did not file their Complaint in the 2021 Action until more than three years after the  
17 Foreclosure Deed was recorded, even taking into account the period of tolling of all statutes of  
18 limitations in 2020 under the Nevada Governor's Declaration of Emergency Directive 009  
19 (Revised) (beginning tolling on April 1, 2020) and Declaration of Emergency Directive No. 026  
20 (ending tolling on July 31, 2020). *See* NRS 11.190(3)(a); *Las Vegas Rental Homes Corp v. Bank*  
21 *of N.Y. Mellon*, 2020 Nev. Dist. LEXIS 14, \*12 (Eighth Judicial District Court of Nevada, Clark  
22 County, Case No. A-19-791976-C, Jan. 9, 2020).  
23

24           6.       Finally, this Court concludes that Plaintiffs have failed to allege on the face of their  
25 Complaint in the Present Action (i.e., 2021 Action), or in their Reply to Martin CUOA's  
26 Dispositive Motion, any cognizable claim for relief which would not be time-barred under NRS  
27 116.31166(3), NRS 107.080(6), or any of the provisions of NRS 11.190.  
28

1           7.       Based upon all of the above findings and conclusions, this Court concludes that  
2 Plaintiffs' Complaint in the 2021 Action is time-barred in its entirety and must be dismissed, with  
3 prejudice.  
4

5       **D. Plaintiffs' Complaint in the 2021 Action is Further Subject to Dismissal, With**  
6 **Prejudice, Under Various Substantive Legal Principles, Including the Doctrine of**  
7 **Waiver, Application of Bankruptcy Law, and the Impossibility of Plaintiffs Ever**  
8 **Establishing All Required Elements of a Wrongful Foreclosure Claim.**

9           1.       This Court concludes that, in addition to its conclusions that Plaintiffs' Complaint  
10 in the 2021 Action is subject to dismissal, with prejudice, under both collateral estoppel principles  
11 and application of Nevada's statutes of limitations, Plaintiffs' Complaint in the 2021 Action is  
12 further subject to dismissal with prejudice under various substantive legal principles.

13           2.       First, this Court concludes that because Plaintiffs accepted the excess proceeds from  
14 the foreclosure sale of the Subject Property without any condition of protest, they have waived a  
15 right to challenge the validity of the foreclosure sale or to seek damages against Martin CUOA.  
16 *See Havas v. Atlantic Ins. Co.*, 96 Nev. 586, 588, 614 P.2d 1, 2 (1980) (defining waiver as an  
17 intentional relinquishment of a known right and it may be expressed or implied from the  
18 circumstances); and *Pollock v. Pesapane*, 732 S.W.2d 253, 254 (Mo. Ct. App. 1987) (holding a  
19 property owner effectively waived his right of redemption when he accepted the proceeds of the  
20 foreclosure sale and that he was estopped from denying the validity of the sale).

21           3.       Second, this Court concludes that under bankruptcy law, once Plaintiffs were  
22 personally discharged of the debt owing to Martin CUOA concerning the Subject Property, the  
23 foreclosure was permitted to proceed against the Subject Property itself, as it is a long-standing  
24 principle of American law that while a bankruptcy may discharge a debtor's personal liability, it  
25 does not prevent foreclosure on the collateral property. *See Long v. Bullard*, 117 U.S. 617, 621  
26 (1886); accord *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992) ("the creditor's lien stays with the real  
27

1 property until the foreclosure”); *Farrey v. Sanderfoot*, 500 U.S. 291, 297 (1991) (“Ordinarily, liens  
2 and other secured interests survive bankruptcy.”); *Johnson v. Home State Bank*, 501 U.S. 78, 84  
3 (1991) (“[A] bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an  
4 action against the debtor in personam—while leaving intact another—namely, an action against the  
5 debtor in rem.”); *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 493-494  
6 (9th Cir. 2015). Nevada follows this rule of law, as in *Property Plus Invs., LLC v. Mortgage Elec.*  
7 *Registration Sys.*, 133 Nev. 462, 467-68, 401 P.3d 728, 732 (2017), the Nevada Supreme Court  
8 held that a bankruptcy discharge “extinguishes only ‘the personal liability of the debtor’” (citing  
9 *Johnson, supra*), and that a “bankruptcy discharge extinguishes only one mode of enforcing a  
10 claim—namely, an action against the debtor in personam—while leaving intact another—namely,  
11 an action against the debtor in rem,” thereby holding that foreclosure of HOA fees and assessments  
12 which arose before the bankruptcy discharge may proceed (citing *Farrey* and *Johnson, supra*).  
13

14  
15 4. Third, this Court concludes that since Plaintiffs’ filed for bankruptcy to extinguish  
16 the debt owed to Martin CUOA, they could never sustain a wrongful foreclosure claim against  
17 Martin CUOA. The elements of a wrongful foreclosure claim in Nevada are (1) the defendant  
18 exercised a power of sale or foreclosed on plaintiff’s property; and (2) no breach of condition or  
19 failure of performance existed on the mortgagor’s or trustor’s part which would have authorized  
20 the foreclosure or exercise of the power of sale. *See Collins v. Union Fed. S&L Ass’n*, 99 Nev.  
21 284, 304 (1983). The Court’s conclusion, therefore, follows from the Court’s determination that it  
22 is an impossibility for Plaintiffs to ever establish the second element of a wrongful foreclosure  
23 claim because by operation of law, Plaintiffs’ bankruptcy to extinguish the debt owed to Martin  
24 CUOA operates as a party admission that they cannot establish they were not in breach of their  
25 obligations to pay assessments at The Martin at the time the foreclosure was conducted.  
26

27 ///  
28

1           5.       Based upon these above three conclusions, this Court concludes that Plaintiffs'  
2 Complaint in the 2021 Action must be dismissed, with prejudice. In addition, Plaintiffs' Request  
3 for Summary Judgment in their favor must be denied, with prejudice.  
4

5                               **ORDER**

6           Based upon the Findings of Fact and Conclusions of Law set forth above, both under  
7 procedural law and substantive law, and good cause appearing, this Court orders, as follows:

8           **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Martin CUOA's  
9 Dispositive Motion is GRANTED in its entirety and summary judgment is entered in favor of  
10 Martin CUOA and against Plaintiffs, WITH PREJUDICE;

11           **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that  
12 Plaintiffs' Request for Summary Judgment in their favor is DENIED, WITH PREJUDICE;  
13

14           **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that  
15 Plaintiffs' Complaint in the 2021 Action is DISMISSED, WITH PREJUDICE; and

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Wesley Rusch, Plaintiff(s)

CASE NO: A-20-826568-C

7 vs.

DEPT. NO. Department 27

8 The Martin Condominium Unit  
9 Owners' 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 Order Granting Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 6/30/2022

16 Marc Cwik

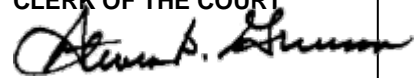
Marc.Cwik@lewisbrisbois.com

17 Susan Awe

susan.awe@lewisbrisbois.com

18 Wesley Rusch

dirofcomp@yahoo.com



1 **NEOJ**  
2 MARC S. CWIK, ESQ.  
3 Nevada Bar No. 006946  
4 E-Mail: [Marc.Cwik@lewisbrisbois.com](mailto:Marc.Cwik@lewisbrisbois.com)  
5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6 6385 S. Rainbow Boulevard, Suite 600  
7 Las Vegas, Nevada 89118  
8 702.893.3383  
9 FAX: 702.893.3789  
10 *Attorney for Defendant The Martin*  
11 *Condominium Unit Owners' Association*

7  
8 **DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

10 WESLEY RUSCH, an individual, and  
11 OLIVER LONGBOY, an individual,

12 Plaintiffs,

13 vs.

14 THE MARTIN CONDOMINIUM UNIT  
15 OWNERS' ASSOCIATION, domestic non-  
16 profit; DOE Individuals I through X; and ROE  
17 Corporations and Organizations I through X,

18 Defendant.

CASE NO. A-20-826568-C  
DEPT. NO.: 27

Consolidated with:  
Case No. A-21-840526-C

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANT THE MARTIN  
CONDOMINIUM UNIT OWNERS'  
ASSOCIATION'S MOTION TO DISMISS,  
OR IN THE ALTERNATIVE, MOTION  
FOR SUMMARY JUDGMENT**

19 NOTICE IS HEREBY GIVEN that an **ORDER GRANTING DEFENDANT THE**  
20 **MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION'S MOTION TO DISMISS,**  
21 **OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** was entered into

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 4859-3425-6935.1



1 the above captioned matter on June 30, 2022; a true and correct copy is attached hereto as **Exhibit**  
2 **A.**

3 DATED this 1<sup>st</sup> day of July, 2022.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5  
6 By /s/ Marc S. Cwik

MARC S. CWIK, ESQ.

7 Nevada Bar No. 006946

8 6385 S. Rainbow Boulevard, Suite 600

9 Las Vegas, Nevada 89118

10 *Attorney for Defendant The Martin Condominium*  
11 *Unit Owners' Association*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LEWIS BRISBOIS  
3 BISGAARD & SMITH LLP and that on this 1<sup>st</sup> day of July, 2022, I did cause a true copy of the  
4 foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT THE MARTIN**  
5 **CONDOMINIUM UNIT OWNERS' ASSOCIATION'S MOTION TO DISMISS, OR IN**  
6 **THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** to be served via the  
7 Court's electronic filing and service system to all parties on the current service list. This  
8 document applies to Case No. A-21-840526-C.

9  
10 ***VIA EMAIL AND U.S. MAIL TO:***

11 Wesley Rusch and Oliver Longboy  
12 P.O. Box 30907  
13 Las Vegas, NV 89173  
14 (702) 764-0001  
15 [dirofcomp@yahoo.com](mailto:dirofcomp@yahoo.com)

16 By /s/ Susan Awe  
17 an Employee of  
18 LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT A

EXHIBIT A

1 **OGM**

2 MARC S. CWIK, ESQ.

3 Nevada Bar No. 006946

4 E-Mail: [Marc.Cwik@lewisbrisbois.com](mailto:Marc.Cwik@lewisbrisbois.com)

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 6385 S. Rainbow Boulevard, Suite 600

7 Las Vegas, Nevada 89118

8 702.893.3383

9 FAX: 702.893.3789

10 *Attorney for Defendant,*

11 *The Martin Condominium Unit Owners'*

12 *Association*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 WESLEY RUSCH, an individual, and  
16 OLIVER LONGBOY, an individual,

17 Plaintiffs,

18 vs.

19 THE MARTIN CONDOMINIUM UNIT  
20 OWNERS' ASSOCIATION, domestic non-  
21 profit; DOE Individuals I through X; and ROE  
22 Corporations and Organizations I through X,

23 Defendant.

CASE NO. A-20-826568-C  
Dept. No.: 27

Consolidated with:  
Case No. A-21-840526-C

**ORDER GRANTING DEFENDANT THE  
MARTIN CONDOMINIUM UNIT  
OWNERS' ASSOCIATION'S MOTION  
TO DISMISS, OR IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

DATE: 6/15/2022  
TIME: 10:00 A.M.

24 Defendant, THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION  
25 ("Martin CUOA"), filed its Motion to Dismiss, or in the Alternative, Motion for Summary  
26 Judgment and supporting Appendix (hereinafter the "Dispositive Motion") on May 3, 2022;  
27 Plaintiffs filed their Reply and a separately filed Reply and Request for Summary Judgment on  
28 June 5, 2022; and Martin CUOA filed its Reply in Support of Its Motion to Dismiss, or in the  
Alternative, Motion for Summary Judgment on June 8, 2022.

1 Martin CUOA's Dispositive Motion came on for hearing before the Honorable Judge  
2 Nancy L. Alff on June 15, 2022; Marc S. Cwik, Esq. of LEWIS BRISBOIS BISGAARD &  
3 SMITH LLP appeared on behalf Martin CUOA through the BlueJeans video conferencing service;  
4 Plaintiff Wesley Rusch appeared Pro Se and in person; and Plaintiff Oliver Longboy, who is Pro  
5 Se, did not appear.  
6

7 The Court, having reviewed and considered the pleadings and papers on file herein, as well as  
8 the oral arguments by Mr. Cwik and Mr. Rusch at the hearing, and for good cause appearing,  
9 finds, concludes and orders, as follows:

10 **I.**

11 **FINDINGS OF FACT**

12 **A. The Parties and the Subject Foreclosure.**

13 1. Plaintiff Wesley Rusch ("Rusch") and Plaintiff Oliver Longboy ("Longboy"),  
14 collectively the "Plaintiffs," are former owners of a condominium located at The Martin (f/k/a  
15 Panorama Towers), 4471 Dean Martin Drive, Unit 2206, Las Vegas, Nevada 89103 (the "Subject  
16 Property").  
17

18 2. Martin CUOA is a Nevada Domestic Nonprofit Corporation established to be the  
19 Unit Owners' Association for The Martin.

20 3. Red Rock Financial Services, LLC ("RRFS"), a non-party, was retained by Martin  
21 CUOA to handle collections matters, including the foreclosure of delinquent units within The  
22 Martin under the provisions of NRS Chapter 116.  
23

24 4. The Subject Property was foreclosed upon by Martin CUOA and sold at a  
25 foreclosure sale conducted by RRFS on behalf of Martin CUOA related to Plaintiffs' being  
26 delinquent on paying their monthly assessments, late fees, and other fines they were assessed as  
27 residents at The Martin. Per publicly-available records, the foreclosure sale took place on August  
28

1 10, 2017 and the Foreclosure Deed was recorded on October 17, 2017.

2 5. This Court finds that prior to the foreclosure, RRFS provided various required  
3 notices to Plaintiffs, including but not limited to, the amount of Plaintiffs' delinquency, Martin  
4 CUOA's lien, Martin CUOA's intent to proceed with foreclosure of the lien, and notice of the  
5 foreclosure sale.  
6

7 6. This Court finds that prior to the foreclosure being completed, both Plaintiffs filed  
8 voluntary petitions for bankruptcy and received discharges of the debt owing to Martin CUOA.

9 7. This Court finds that Plaintiffs failed to present any credible evidence that RRFS  
10 failed to give proper notice or otherwise failed to properly conduct the foreclosure on behalf of  
11 Martin CUOA.  
12

13 8. This Court finds that on February 22, 2018, Plaintiffs received the excess proceeds  
14 from the foreclosure sale.

15 9. This Court finds that on February 22, 2018, prior to receiving the excess proceeds,  
16 Plaintiffs executed a Disbursement and Indemnification Agreement prepared by RRFS which  
17 noted the foreclosure resulted from Plaintiffs' failure to pay Martin CUOA's assessments, fees and  
18 costs, including related collection fees and costs, and indemnified and released RRFS with regard  
19 to all claims related to distribution of the Excess Funds and claims arising out of or in connection  
20 with the sale of the Subject Condominium.  
21

22 10. This Court further finds that when executing the Disbursement and Indemnification  
23 Agreement, Plaintiffs sent a letter to their attorney, Bryan Naddafi, which stated the following:  
24 "Bryan, Please acknowledge receipt and give Red Rock Koch & Scow OK to distribute funds to  
25 me today. Wes."

26 11. This Court further finds that when Plaintiffs accepted the excess proceeds of the  
27 foreclosure sale from RRFS, they did so without any condition of protest.  
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8. The 2018 Action was mandatorily dismissed on March 27, 2019, since Plaintiffs failed to comply with NRS 38.310.

9. Thereafter, Judge Jacqueline Bluth repeatedly denied attempts by Plaintiffs to reopen the 2018 Action and it remained dismissed.

### Third Lawsuit

10. The third lawsuit was an action filed by Plaintiffs against Martin UOA on December 16, 2020, over three years after the foreclosure had concluded, Clark County District Court Case No. A-20-826568-C, captioned *Wesley Rusch and Oliver Longboy v. The Martin Condominium Unit Owners Association* (hereinafter the “2020 Action”).

11. On November 9, 2021, this Court entered an order dismissing the 2020 Action, without prejudice.

12. This Court also concluded in its Order entered on November 9, 2021 that any re-filing of Plaintiffs' Complaint in the 2020 Action would appear to be time barred under NRS 116.31166(3) and NRS 107.080(6).

### *Fourth Lawsuit*

13. The fourth lawsuit is Plaintiffs’ presently pending action in this Court against Martin CUOA, Case No. A-21-840526-C, captioned *Wesley Rusch and Oliver Longboy v. The Martin Condominium Unit Owners Association*, which was filed on September, 2021 (hereinafter the “2021 Action”).

14. On March 31, 2022, this Court entered an Order denying Plaintiffs' Request to Nullify Sale and Restore Possession of Condo, which Plaintiffs had filed on February 10, 2022. In that Order, this Court entered findings/conclusions that Plaintiffs no longer have any rights to the Subject Property and, therefore, no rights to pursue the claims set forth in their Complaints against Martin CUOA filed in the 2020 Action and the 2021 Action.



1                   **C. Consolidation of Plaintiffs' 2020 Action and 2021 Action.**

2           1.       This Court previously found that Plaintiffs' 2020 Action and 2021 Action against  
3 Martin CUOA were substantially similar and warranted consolidation under NRCP 42(a) and  
4 EDCR 2.50(a)(1), due to the number of lawsuits Plaintiffs have filed against Martin CUOA.  
5

6           2.       Therefore, on February 15, 2022, this Court entered an order consolidating the 2021  
7 Action with the 2020 Action to promote judicial economy.

8                   **D. Gravamen of Plaintiffs' 2020 Action and the 2021 Action.**

9           1.       This Court previously found in an Order entered on November 9, 2021 in the 2020  
10 Action that the gravamen of Plaintiffs' Complaint in the 2020 Action, based upon Plaintiffs'  
11 allegations and the statements made on the record by Rusch during the Hearing held on September  
12 1, 2021 in the 2020 Action, is a claim challenging the notice of default and election to sell that was  
13 recorded against the condominium for the purpose of seeking to recover possession of the Subject  
14 Property.  
15

16           2.       This Court hereby finds that the gravamen of Plaintiffs' claims in the 2021 Action  
17 is likewise a claim challenging the notice of default and election to sell that was recorded against  
18 the condominium for the purpose of seeking to recover possession of the Subject Property. This  
19 Court's finding is premised upon the following facts: (a) pages 6 through 9 of Plaintiffs'  
20 Complaint in the 2021 Action includes allegations seeking restoration of the Subject Property; (b)  
21 the filings of the Plaintiffs, both in the 2020 Action and the 2021 Action, have repeatedly  
22 requested this Court to set aside the sale and restore possession of the condominium to the  
23 Plaintiffs; and (3) most noteworthy is the fact that on February 10, 2022, before Martin CUOA  
24 filed its Dispositive Motion, Plaintiffs filed a dispositive motion, requesting this Court to nullify  
25 the foreclosure sale and restore possession of the Subject Property to Plaintiffs, which this Court  
26 denied in its Order entered on March 31, 2022.  
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II.

**CONCLUSIONS OF LAW**

**A. Martin CUOA's Dispositive Motion is Treated as a Motion for Summary Judgment.**

1. Under NRCP 12(b)(5), dismissal of a Complaint is permitted when it fails to state a claim upon which relief can be granted. *See Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009).

2. Dismissal is appropriate under NRCP 12(b)(5) where the allegations in the Complaint, taken at "face value," and construed favorably in the Plaintiff's behalf, fail to state a cognizable claim. *See Morris v. Bank of Am.*, 110 Nev. 1274, 886 P.2d 454 (1994); *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

3. A district court is to accept the plaintiff's factual allegations as true, but the allegations must still be legally sufficient to constitute the elements of the claim(s) asserted. *See Malfabon v. Garcia*, 111 Nev. 793, 796, 898 P.2d 107, 108 (1995). The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested. *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984).

4. If the proper showing is made by the movant, a motion to dismiss for failure to state a claim may be granted irrespective of the type of action involved or its complexity. *See, e.g., Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 21 P.3d 16 (2001).

5. A court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, Civil 2D §§ 1356 and 1357 (2d ed. 1990) (discussing the

1 federal counterpart to NRCP 12(b)(5)).

2 6. When a motion is made pursuant to NRCP 12(b)(5) and matters outside the  
3 pleadings which are outside the rule set forth in *Breliant* are presented to and not excluded by the  
4 court, the motion is to be treated as a motion for summary judgment and disposed of as provided  
5 for in NRCP 56. *See* NRCP 12(d).

6 7. A court can dismiss a complaint for failure to state a claim upon which relief can be  
7 granted if the action is barred by the statute of limitations. *See Bemis v. Estate of Bemis*, 114 Nev.  
8 1021, 967 P.2d 437 (1998); *Shupe & Yost, Inc. v. Fallon Nat'l Bank*, 109 Nev. 99, 100, 100-102,  
9 847 P.2d 720, 720-721 (1993).

10 8. NRCP 56 provides the following: "The court shall grant summary judgment if the  
11 movant shows that there is no genuine dispute as to any material fact and the movant is entitled to  
12 judgment as a matter of law. The court should state on the record the reasons for granting or  
13 denying the motion."  
14

15 9. This Court concludes that Martin CUOA's dispositive motion is to be treated as a  
16 summary judgment motion pursuant to NRCP 12(d) and NRCP 56, since this Court concludes that  
17 the exhibits to Martin CUOA's Dispositive Motion are relevant and related to the factual  
18 allegations and claims asserted in Plaintiffs' Complaint and this Court does not exclude them and  
19 chooses to consider them.  
20

21 10. This Court further concludes that Martin CUOA's Dispositive Motion is granted in  
22 its entirety, with prejudice, and Plaintiffs' Request for Summary Judgment in their favor is denied,  
23 with prejudice.  
24

25 **B. Plaintiffs' Complaint in the 2021 Action Requires Dismissal, With Prejudice, Under**  
26 **Principles of Collateral Estoppel.**

27 1. This Court concludes that Plaintiffs' challenge to the validity of the foreclosure and  
28 title to the Subject Property has already been adjudicated in the Quiet Title Action, such

1 adjudication is final, and therefore, under principles of collateral estoppel, Plaintiffs have no  
2 further rights to the Subject Property nor to assert claims against Martin CUOA challenging the  
3 foreclosure or to seek damages. *See Pohl v. U.S. Bank*, 859 F.3d 1226, 1231 (10th Cir. 2017)  
4 (holding that given the finality of a quiet title action and the grant of ‘full relief’ afforded by the  
5 court in such an action, it is incumbent upon a party in such action to raise his/her claims, issues or  
6 defenses in such action so that there is only one, single action); *Five Star Capital Corp. v. Ruby*,  
7 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (discussing doctrines of issue preclusion and claim  
8 preclusion); *State Eng’r v. Sustacha*, 108 Nev. 223, 226, 826 P.2d 959, 961 (1992) (recognizing  
9 that “one district generally cannot set aside another district court’s order”); *Truesdell v. State*, 129  
10 Nev. 194, 198, 304 P.3d 396, 399 (2013) (holding that litigant could not collaterally attack the  
11 validity of a TPO in a subsequent court proceeding).  
12

13  
14 **C. Plaintiffs’ Complaint in the 2021 Action Also Requires Dismissal, With Prejudice,**  
15 **Because If It Were Not Subject to Dismissal Under Collateral Estoppel Principles, It**  
**Is Still Clearly Time-Barred.**

16 1. This Court concludes that even if Plaintiffs’ Complaint in the 2021 Action were not  
17 subject to dismissal under collateral estoppel principles, it is still subject to dismissal with  
18 prejudice under application of Nevada’s statutes of limitations, whether or not this Court’s findings  
19 concerning the gravamen of the Complaint are applied.  
20

21 2. Application of this Court’s finding that the gravamen of Plaintiffs’ Complaint in the  
22 2021 Action is a claim challenging the notice of default and election to sell that was recorded  
23 against the condominium for the purpose of seeking to recover possession of the Subject Property,  
24 NRS 116.31166(3), which applies to foreclosures performed by community associations, would  
25 have required Plaintiffs to file their Complaint within 60 days of the date the Foreclosure Deed  
26 was recorded. Since Plaintiffs’ Complaint in the 2021 Action was filed years later, this Court  
27 concludes Plaintiffs’ Complaint in the 2021 Action is time-barred.  
28

1           3.       This Court's conclusion that Plaintiffs' Complaint in the 2021 Action is time-barred  
2 under application of this Court's findings of the gravamen of the Complaint further follows from  
3 the fact that even if this Court applied NRS 107.080(6), which would have required Plaintiffs to  
4 have filed suit within 90 days of the date the Foreclosure Deed was recorded, Plaintiffs' Complaint  
5 in the 2021 Action was filed years later. Therefore, this Court again concludes that Plaintiffs'  
6 Complaint in the 2021 Action is time-barred.  
7

8           4.       This Court further concludes that even if it alternatively concluded that the  
9 gravamen of Plaintiffs' Complaint in the 2021 Action is not a repossession claim (which would be  
10 contrary to Plaintiffs' repeated filings and arguments in the 2020 Action and the 2021 Action), but  
11 a claim premised upon a wrongful foreclosure in violation of the provisions of NRS Chapter 116,  
12 this Court still concludes that Plaintiffs' Complaint in the 2021 Action is time-barred.  
13

14           5.       This Court's alternate conclusion follows from the premise that under Nevada law,  
15 claims based upon a liability created by statute are subject to a three-year statute of limitations and  
16 Plaintiffs' did not file their Complaint in the 2021 Action until more than three years after the  
17 Foreclosure Deed was recorded, even taking into account the period of tolling of all statutes of  
18 limitations in 2020 under the Nevada Governor's Declaration of Emergency Directive 009  
19 (Revised) (beginning tolling on April 1, 2020) and Declaration of Emergency Directive No. 026  
20 (ending tolling on July 31, 2020). *See* NRS 11.190(3)(a); *Las Vegas Rental Homes Corp v. Bank*  
21 *of N.Y. Mellon*, 2020 Nev. Dist. LEXIS 14, \*12 (Eighth Judicial District Court of Nevada, Clark  
22 County, Case No. A-19-791976-C, Jan. 9, 2020).  
23

24           6.       Finally, this Court concludes that Plaintiffs have failed to allege on the face of their  
25 Complaint in the Present Action (i.e., 2021 Action), or in their Reply to Martin CUOA's  
26 Dispositive Motion, any cognizable claim for relief which would not be time-barred under NRS  
27 116.31166(3), NRS 107.080(6), or any of the provisions of NRS 11.190.  
28

1           7.       Based upon all of the above findings and conclusions, this Court concludes that  
2 Plaintiffs' Complaint in the 2021 Action is time-barred in its entirety and must be dismissed, with  
3 prejudice.  
4

5       **D. Plaintiffs' Complaint in the 2021 Action is Further Subject to Dismissal, With**  
6 **Prejudice, Under Various Substantive Legal Principles, Including the Doctrine of**  
7 **Waiver, Application of Bankruptcy Law, and the Impossibility of Plaintiffs Ever**  
8 **Establishing All Required Elements of a Wrongful Foreclosure Claim.**

9           1.       This Court concludes that, in addition to its conclusions that Plaintiffs' Complaint  
10 in the 2021 Action is subject to dismissal, with prejudice, under both collateral estoppel principles  
11 and application of Nevada's statutes of limitations, Plaintiffs' Complaint in the 2021 Action is  
12 further subject to dismissal with prejudice under various substantive legal principles.

13           2.       First, this Court concludes that because Plaintiffs accepted the excess proceeds from  
14 the foreclosure sale of the Subject Property without any condition of protest, they have waived a  
15 right to challenge the validity of the foreclosure sale or to seek damages against Martin CUOA.  
16 *See Havas v. Atlantic Ins. Co.*, 96 Nev. 586, 588, 614 P.2d 1, 2 (1980) (defining waiver as an  
17 intentional relinquishment of a known right and it may be expressed or implied from the  
18 circumstances); and *Pollock v. Pesapane*, 732 S.W.2d 253, 254 (Mo. Ct. App. 1987) (holding a  
19 property owner effectively waived his right of redemption when he accepted the proceeds of the  
20 foreclosure sale and that he was estopped from denying the validity of the sale).  
21

22           3.       Second, this Court concludes that under bankruptcy law, once Plaintiffs were  
23 personally discharged of the debt owing to Martin CUOA concerning the Subject Property, the  
24 foreclosure was permitted to proceed against the Subject Property itself, as it is a long-standing  
25 principle of American law that while a bankruptcy may discharge a debtor's personal liability, it  
26 does not prevent foreclosure on the collateral property. *See Long v. Bullard*, 117 U.S. 617, 621  
27 (1886); accord *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992) ("the creditor's lien stays with the real  
28

1 property until the foreclosure”); *Farrey v. Sanderfoot*, 500 U.S. 291, 297 (1991) (“Ordinarily, liens  
2 and other secured interests survive bankruptcy.”); *Johnson v. Home State Bank*, 501 U.S. 78, 84  
3 (1991) (“[A] bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an  
4 action against the debtor in personam—while leaving intact another—namely, an action against the  
5 debtor in rem.”); *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477, 493-494  
6 (9th Cir. 2015). Nevada follows this rule of law, as in *Property Plus Invs., LLC v. Mortgage Elec.*  
7 *Registration Sys.*, 133 Nev. 462, 467-68, 401 P.3d 728, 732 (2017), the Nevada Supreme Court  
8 held that a bankruptcy discharge “extinguishes only ‘the personal liability of the debtor’” (citing  
9 *Johnson, supra*), and that a “bankruptcy discharge extinguishes only one mode of enforcing a  
10 claim—namely, an action against the debtor in personam—while leaving intact another—namely,  
11 an action against the debtor in rem,” thereby holding that foreclosure of HOA fees and assessments  
12 which arose before the bankruptcy discharge may proceed (citing *Farrey* and *Johnson, supra*).  
13

14  
15 4. Third, this Court concludes that since Plaintiffs’ filed for bankruptcy to extinguish  
16 the debt owed to Martin CUOA, they could never sustain a wrongful foreclosure claim against  
17 Martin CUOA. The elements of a wrongful foreclosure claim in Nevada are (1) the defendant  
18 exercised a power of sale or foreclosed on plaintiff’s property; and (2) no breach of condition or  
19 failure of performance existed on the mortgagor’s or trustor’s part which would have authorized  
20 the foreclosure or exercise of the power of sale. *See Collins v. Union Fed. S&L Ass’n*, 99 Nev.  
21 284, 304 (1983). The Court’s conclusion, therefore, follows from the Court’s determination that it  
22 is an impossibility for Plaintiffs to ever establish the second element of a wrongful foreclosure  
23 claim because by operation of law, Plaintiffs’ bankruptcy to extinguish the debt owed to Martin  
24 CUOA operates as a party admission that they cannot establish they were not in breach of their  
25 obligations to pay assessments at The Martin at the time the foreclosure was conducted.  
26

27 ///

1           5.       Based upon these above three conclusions, this Court concludes that Plaintiffs'  
2 Complaint in the 2021 Action must be dismissed, with prejudice. In addition, Plaintiffs' Request  
3 for Summary Judgment in their favor must be denied, with prejudice.  
4

5                               **ORDER**

6           Based upon the Findings of Fact and Conclusions of Law set forth above, both under  
7 procedural law and substantive law, and good cause appearing, this Court orders, as follows:

8           **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Martin CUOA's  
9 Dispositive Motion is GRANTED in its entirety and summary judgment is entered in favor of  
10 Martin CUOA and against Plaintiffs, WITH PREJUDICE;

11           **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that  
12 Plaintiffs' Request for Summary Judgment in their favor is DENIED, WITH PREJUDICE;  
13

14           **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that  
15 Plaintiffs' Complaint in the 2021 Action is DISMISSED, WITH PREJUDICE; and

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Wesley Rusch, Plaintiff(s)

CASE NO: A-20-826568-C

7 vs.

DEPT. NO. Department 27

8 The Martin Condominium Unit  
9 Owners' 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 Order Granting Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 6/30/2022

16 Marc Cwik

Marc.Cwik@lewisbrisbois.com

17 Susan Awe

susan.awe@lewisbrisbois.com

18 Wesley Rusch

dirofcomp@yahoo.com

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Real Property**

**COURT MINUTES**

**February 16, 2021**

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A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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**February 16, 2021      3:00 AM      Status Check**

**HEARD BY:** Allf, Nancy      **COURTROOM:** No Location

**COURT CLERK:** Nicole McDevitt

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COURT FINDS after review that on December 16, 2020 a Complaint in Interpleader was filed.

COURT FUTHER FINDS after review that an Application to Proceed in Forma Pauperis was filed.

COURT FURTHER FINDS after review that on January 25, 2021 Plaintiff s Notice of Default and Request for Compensation was filed.

COURT FURTHER FINDS after review that on February 2, 2021 Plaintiff s Notice of Default and Request for Compensation was filed.

COURT FURTHER FINDS after review that on February 13, 2021 a Notice of Default was filed.

COURT FURTHER FINDS after review that on February 15, 2021 a Summons- Martin Unit Owners Association was filed.

COURT FURTHER FINDS after review that a Status Check: Summons was scheduled on February 16, 2021 on Chambers calendar.

THEREFORE COURT ORDERS for good cause and after review that because a Summons has been issued, the Status Check: Summons scheduled on February 16, 2021 on Chambers calendar is hereby VACATED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 2/18/2021

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Real Property**

**COURT MINUTES**

**August 31, 2021**

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A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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August 31, 2021	3:00 AM	Minute Order	Minute Order: BlueJeans Appearance
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**HEARD BY:** Allf, Nancy **COURTROOM:** No Location

**COURT CLERK:** Nicole McDevitt

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Department 27 Information to Appear Telephonically

Re: Matter set on September 1, 2021, 9:00 a.m.

Please be advised that due to the COVID-19 pandemic, Department 27 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. Counsel have the choice to appear either by phone or computer/video, however, if appearing remotely via BlueJeans, please appear by audio AND video. Also, in person hearings are now being held in Department 27, at the option of counsel. Mask wearing protocols will be strictly enforced. As of May 1, 2021, the Governor has relaxed the capacity to 80%, so that the courtroom can now accommodate up to 32 people.

Dial the following number: 1-408-419-1715

Meeting ID: 897 138 369

Meeting URL: <https://bluejeans.com/897138369>

To connect by phone dial the number provided and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 8/31/2021.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Real Property**

**COURT MINUTES**

**September 01, 2021**

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A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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September 01, 2021	9:00 AM	Motion to Quash	Defendant's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiff's New Complaint for Compensation, On Order to Shortening Time.
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**HEARD BY:** Allf, Nancy

**COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Nicole McDevitt

**RECORDER:** Deloris Scott

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Cwik, Marc S. Rusch, Wesley	Attorney Plaintiff
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**JOURNAL ENTRIES**

- Present in Court: Wesley Rusch, Plaintiff  
Present via the BlueJeans Videoconferencing Application.

Arguments by Mr. Cwik and Mr. Rusch regarding the merits of and opposition of motion. Court stated its findings and ORDERED, Defendant's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiff's New Complaint for

PRINT DATE: 07/26/2022

Page 5 of 16

Minutes Date: February 16, 2021

Compensation, On Order to Shortening Time GRANTED in all respects, DISMISSAL WITHOUT PREJUDICE. Mr. Rusch requested extension of time to file. Court stated the time had already passed. Mr. Cwik to prepare the order and submit it to Mr. Rusch one week before submission to the Court.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Real Property**

**COURT MINUTES**

**January 04, 2022**

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A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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<b>January 04, 2022</b>	<b>3:00 AM</b>	<b>Minute Order</b>	<b>Minute Order: BlueJeans Information</b>
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**HEARD BY:** Allf, Nancy

**COURTROOM:** No Location

**COURT CLERK:** Nicole Cejas

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Department 27 Information to Appear Telephonically

Re: Matter set on January 6, 2022

Please be advised that due to the COVID-19 pandemic, Department 27 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. Counsel have the choice to appear either by phone or computer/video, however, if appearing remotely via BlueJeans, please appear by audio AND video. Also, in person hearings are now being held in Department 27, at the option of counsel. Mask wearing protocols will be strictly enforced. As of May 1, 2021, the Governor has relaxed the capacity to 80%, so that the courtroom can now accommodate up to 32 people.

Dial the following number: 1-408-419-1715

Meeting ID: 897 138 369

PRINT DATE: 07/26/2022

Page 7 of 16

Minutes Date: February 16, 2021

Meeting URL: <https://bluejeans.com/897138369>

To connect by phone dial the number provided and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole Cejas, to all registered parties for Odyssey File & Serve. /nc 1/4/2022

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Real Property**

**COURT MINUTES**

**January 06, 2022**

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A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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**January 06, 2022      9:30 AM      All Pending Motions**

**HEARD BY:** Allf, Nancy **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Nicole McDevitt  
Nicole Cejas

**RECORDER:** Brynn White

**REPORTER:**

**PARTIES**

<b>PRESENT:</b> Cwik, Marc S. Rusch, Wesley	Attorney Plaintiff
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**JOURNAL ENTRIES**

- PLAINTIFF'S MOTION FOR RECONSIDERATION OF DEFENDANT THE MARTIN'S MOTION TO STRIKE...DEFENDANT MARTIN UNIT OWNER'S NOTICE OF RELATED CASES AND MOTION TO CONSOLIDATE ON ORDER SHORTENING TIME.

Appearance via BlueJeans Videoconferencing Application: Marc Cwik, Esq.  
Present in person: Wesley Rusch, pro se.

Arguments made by counsel and Mr. Rusch regarding the merits of and opposition of Defendant's Motion. COURT ORDERED Defendant Martin Unit Owner's Notice of Related Cases and Motion to Consolidate on Order Shortening Time GRANTED. Mr. Cwik to prepare a simple order and submit it to Mr. Rusch for his review and approval of form. Following colloquy regarding the time needed to hear the remaining mater and in the interest of judicial economy, MATTER TRAILED.

MATTER RECALLED. All parties present as before. Arguments made by counsel and Mr. Rusch regarding the merits of and opposition of Plaintiff's Motion. COURT ORDERED Plaintiff's Motion for Reconsideration of Defendant the Martin's Motion To Strike DENIED. Mr. Cwik to prepare a simple order and submit it to Mr. Rusch for his review and approval of form. Court stated Mr. Cwik to prepare two separate orders regarding each motion that was heard.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole Cejas, to all registered parties for Odyssey File & Serve. /nc 1/24/2022

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Real Property**

**COURT MINUTES**

**March 16, 2022**

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A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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<b>March 16, 2022</b>	<b>9:00 AM</b>	<b>Motion</b>	<b>Rusch Request to Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to its Rightful Owners Rusch &amp; Longboy</b>
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**HEARD BY:** Alf, Nancy

**COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Nicole McDevitt

**RECORDER:** Brynn White

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Cwik, Marc S. Rusch, Wesley	Attorney Plaintiff
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**JOURNAL ENTRIES**

- Present via BlueJeans Videoconferencing Application: Marc S. Cwik, Esq.

Arguments by mr. Rusch and Mr. Cwik regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Rusch Request to Nullify Sale Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to its Rightful Owners Rusch & Longboy DENIED. Mr. Cwik to prepare the order and provide it to Mr. Rusch for review.

PRINT DATE: 07/26/2022

Page 11 of 16

Minutes Date: February 16, 2021

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Real Property**

**COURT MINUTES**

**April 05, 2022**

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A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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<b>April 05, 2022</b>	<b>3:00 AM</b>	<b>Motion For Reconsideration</b>
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**HEARD BY:** Alf, Nancy

**COURTROOM:** No Location

**COURT CLERK:** Nicole McDevitt

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COURT FINDS after review that on February 28, 2022, a Motion for Reconsideration of Motion for Consolidation and Fraud (Motion for Reconsideration) was filed.

COURT FURTHER FINDS after review that on March 11, 2022, an Opposition to the Motion for Reconsideration was filed.

COURT FURTHER FINDS after review EDCR 2.24(a) provides in relevant part: No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of court granted upon motion therefor, after notice of such motion to the adverse parties.

COURT FURTHER FINDS after review that a Motion for Reconsideration is scheduled for April 5, 2022, on Chamber Calendar.

COURT FURTHER FINDS after review that Plaintiff does not offer any new evidence or new facts for

the Court to reconsider.

THEREFORE COURT ORDERS for good cause appearing and after review the Motion for Reconsideration is hereby DENIED and the matter scheduled on April 5, 2022, on Chamber Calendar is hereby VACATED. Movant to prepare the Order in compliance with EDCR 7.21 and email it in pdf format to DC27Inbox@ClarkCountyCourts.us

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 4/5/2022

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Real Property**

**COURT MINUTES**

**June 01, 2022**

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A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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<b>June 01, 2022</b>	<b>9:00 AM</b>	<b>Motion for Sanctions</b>	<b>Plaintiff's Motion for an Award of Sanctions for Fraud by Martins Counsel</b>
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**HEARD BY:** Allf, Nancy

**COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Nicole McDevitt  
Kimberly Gutierrez

**RECORDER:** Velvet Wood

**REPORTER:**

**PARTIES**

**PRESENT:** Cwik, Marc S. Attorney

**JOURNAL ENTRIES**

- Mr. Cwik appeared via BlueJeans Videoconferencing App.

Upon Court's inquiry as to whether Mr. Cwik had heard anything from Plaintiffs, Mr. Cwik stated that there has been no communication from Plaintiffs. Court stated its findings and ORDERED Plaintiff's Motion for an Award of Sanctions for Fraud by Martin's Counsel, DENIED. Court instructed that Defendant prepare Findings of Fact and Conclusions of Law that are consistent with the Opposition to said Motion.



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

## Other Real Property

# COURT MINUTES

**June 15, 2022**

A-20-826568-C Wesley Rusch, Plaintiff(s)  
vs.  
The Martin Condominium Unit Owners' Association, Defendant(s)

**June 15, 2022                      10:00 AM                      All Pending Motions**

**HEARD BY:** Allf, Nancy **COURTROOM:** RJC Courtroom 16A

**COURT CLERK:** Nicole McDevitt  
Kimberly Gutierrez

**RECORDER:** Brynn White

**REPORTER:**

## PARTIES

**PRESENT:** Cwik, Marc S. Attorney  
Rusch, Wesley Plaintiff

## JOURNAL ENTRIES

- DEFENDANT THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT...DEFENDANT'S MOTION FOR (1) PRE-FILING ORDER AGAINST PLAINTIFFS PURSUANT TO NEVADA VEXATIOUS LITIGANT STANDARD AND (2) AN AWARD OF ATTORNEY'S FEES AND COSTS RESULTING FROM PLAINTIFFS' ONGOING VEXATIOUS CONDUCT

Mr. Cwik appeared via BlueJeans Videoconferencing App.

Arguments on the merits of and opposition to the motions presented by counsel. Upon Court's inquiry as to the time frame of when bankruptcy was filed relative to the date of foreclosure, Mr. Rusch stated that said bankruptcy was filed prior to the foreclosure. Court noted that an opposition to Defendant the Martin Condominium Unit Owners' Association's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment was not filed, but instead, an oral counter-motion was presented by Mr. Rusch. Court stated its findings and ORDERED said Defendant's motion

GRANTED; and Plaintiff's oral counter-motion DENIED. COURT FURTHER ORDERED Defendant's Motion for (1) Pre- Filing Order Against Plaintiffs Pursuant to Nevada Vexatious Litigant Standard and (2) An Award Of Attorney's Fees And Costs Resulting From Plaintiffs' Ongoing Vexatious Conduct, GRANTED IN PART as to the motion for pre-filing Order; DENIED WITHOUT PREJUDICE, IN PART as to attorneys fees and costs. Mr. Cwik to prepare both of the Orders and submit to Mr. Rusch for review of form. Court instructed that if any objections relative to form arise, said objection must be filed.

# 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; AMENDED CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANT THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES

WESLEY RUSCH; OLIVER LONGBOY,

Plaintiff(s),

vs.

THE MARTIN CONDOMINIUM UNIT  
OWNERS' ASSOCIATION,

Defendant(s),

Case No: A-20-826568-C  
*Consolidated with A-21-840526-C*  
Dept No: XXVIII

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 26 day of July 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

