

Wesley Rusch

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Box 30907

Las Vegas, NV 89173

702 764 0001

Electronically Filed
Aug 02 2022 02:26 p.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."³⁵

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.³⁶ (*Emphasis supplied*)³⁶*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 22nd 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

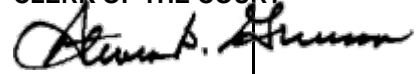
/s/ Wesley Rusch

Wesley Rusch

Respecfully Submitted

Wesley Rusch

/S/ Wesley Rusch



1 ASTA

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4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

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-21-840526-C

Consolidated with 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, 05/20/2022
**Expires 1 year from date filed (From A826568)

Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: September 2, 2021

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

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 85084

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 1 day of August 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-21-840526-C****Wesley Rusch, Plaintiff(s)****vs.****Martin Condominium Unit Owners Association,
Defendant(s)**§
§
§
§
§Location: **Department 27**Judicial Officer: **Allf, Nancy**Filed on: **09/02/2021**

Case Number History:

Cross-Reference Case
Number: **A840526****CASE INFORMATION****Related Cases**

A-20-826568-C (Consolidated)

Case Type: **Judicial Foreclosure**Case
Status: **09/02/2021 Open****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-21-840526-C
Court	Department 27
Date Assigned	02/25/2022
Judicial Officer	Allf, Nancy

PARTY INFORMATION**Plaintiff****Longboy, Oliver****Pro Se**
702-764-0001(H)**Rusch, Wesley****Pro Se**
17027640001(H)**Defendant****Martin Condominium Unit Owners Association****Cwik, Marc S.**
Retained
702-893-3383(W)**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

09/02/2021

Complaint in Intervention
Filed By: Plaintiff Rusch, Wesley
[1] complaint summons waivers

09/02/2021

Application to Proceed in Forma Pauperis
Filed By: Plaintiff Rusch, Wesley
[2]

09/02/2021

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

09/04/2021

Summons
Filed by: Defendant Martin Condominium Unit Owners Association
[4] issue summons

09/08/2021

Clerk's Notice of Nonconforming Document
[5] Clerk's Notice of Nonconforming Document
















CASE SUMMARY

CASE NO. A-21-840526-C

09/09/2021	 Summons Filed by: Plaintiff Rusch, Wesley <i>[7] Summons (Not Issue, Inocorrect Filing Code)</i>
09/14/2021	 Clerk's Notice of Nonconforming Document <i>[8] Clerk's Notice of Nonconforming Documents</i>
12/16/2021	 Notice Filed By: Defendant Martin Condominium Unit Owners Association <i>[9] Notice of Representation</i>
12/17/2021	 Motion to Consolidate Filed By: Defendant Martin Condominium Unit Owners Association <i>[10] Martin Unit Owners' Association's Notice of Related Cases and Motion to Consolidate</i>
12/23/2021	 Clerk's Notice of Nonconforming Document <i>[11] Clerk's Notice of Nonconforming Document</i>
01/11/2022	 Application for Default Judgment <i>[12] PlApplication for Default Judgment</i>
02/10/2022	 Motion Filed By: Plaintiff Rusch, Wesley <i>[13] 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</i>
02/11/2022	 Clerk's Notice of Hearing <i>[14] Notice of Hearing</i>
02/11/2022	 Clerk's Notice of Nonconforming Document and Curative Action <i>[15] Clerk's Notice of Nonconforming Document & Curative Action</i>
02/25/2022	 Notice of Department Reassignment <i>[16] Notice of Department Reassignment</i>
02/28/2022	 Writ Filed by: Plaintiff Rusch, Wesley <i>[17] writ</i>
03/10/2022	 Reply in Support Filed By: Plaintiff Rusch, Wesley <i>[18] Rusch Reply to Request to Nulify Sale Base on Violation of Constitutional Right of Due Process and Nevada Law and Restore Possession of the Condo to Its Rightful Owners Rusch and Longboy</i>
03/29/2022	 Default Filed By: Plaintiff Rusch, Wesley <i>[19] Default</i>
04/05/2022	 Clerk's Notice of Nonconforming Document <i>[20] Clerk's Notice of Nonconforming Document</i>

CASE SUMMARY

CASE NO. A-21-840526-C

04/06/2022	 Writ of Execution <i>[21] Writ</i>
04/13/2022	 Notice of Execution <i>[22] Notice of Execution of Judgment</i>
06/05/2022	 Reply Filed by: Plaintiff Rusch, Wesley <i>[23] Rusch Reply and Request for Summary Judgment</i>
06/05/2022	 Reply Filed by: Plaintiff Rusch, Wesley <i>[24] reply and requires for sanctions</i>
06/11/2022	 Supplement Filed by: Plaintiff Rusch, Wesley <i>[25] counter reply</i>
06/11/2022	 Supplemental Filed by: Plaintiff Rusch, Wesley <i>[26] counrter reply argument</i>
06/17/2022	 Clerk's Notice of Nonconforming Document <i>[27] Clerk's Notice of Nonconforming Document</i>
07/12/2022	 Request Filed by: Plaintiff Rusch, Wesley <i>[28] Request to fil</i>
07/12/2022	 Objection Filed By: Plaintiff Rusch, Wesley <i>[29] objection to ordersr</i>
07/12/2022	 Motion Filed By: Plaintiff Rusch, Wesley <i>[30] Motion for sj</i>
07/12/2022	 Objection Filed By: Plaintiff Rusch, Wesley <i>[31] Objection</i>
07/12/2022	 Objection <i>[32] Objection</i>
07/12/2022	 Motion Filed By: Plaintiff Rusch, Wesley <i>[33] Motion for Reconsideration</i>
07/18/2022	 Notice of Appeal Filed By: Plaintiff Rusch, Wesley <i>[34] Notice of Appeal</i>
08/01/2022	 Case Appeal Statement

CASE SUMMARY

CASE NO. A-21-840526-C

[35] Case Appeal Statement

HEARINGS

03/15/2022

CANCELED Motion (10:00 AM) (Judicial Officer: Peterson, Jessica K.)

Vacated - Subordinate Case

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

DATE

FINANCIAL INFORMATION

Plaintiff Rusch, Wesley

Total Charges

300.00

Total Payments and Credits

0.00

Balance Due as of 8/1/2022

300.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

Electronically Filed
9/9/2021 10:29 AM
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

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

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

992021 /S/ Wes Risch

Date

Signature of initiating party or representative

See other side for family-related case filings.

1 **OGM**
2 MARC S. CWIK, ESQ.
3 Nevada Bar No. 006946
4 E-Mail: 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.
28

1 **B. Lawsuits Involving Plaintiffs Concerning the Subject Property; Validity of the**
2 **Foreclosure of the Property Having Already Been Adjudicated.**

3 1. This Court finds that Plaintiffs have been involved in four (4) lawsuits to date
4 concerning the foreclosure of the subject property.

5 **First Lawsuit**

6 2. This Court finds that the first lawsuit was a quiet title action brought by the buyer,
7 Hollyvale Rental Holdings, LLC, of the Subject Property at the foreclosure sale, Clark County
8 District Court Case No. A-17-764643-C, captioned *Hollyvale Rental Holdings, LLC v. Wesley*
9 *Rusch and Oliver Longboy* (hereinafter the “Quiet Title Action”).
10

11 3. This Court finds that in the Quiet Title Action, the validity of the foreclosure of the
12 Subject Property was adjudicated and Plaintiffs’ lost their motions and arguments challenging the
13 foreclosure and the manner in which it was conducted.

14 4. This Court finds that on May 29, 2018, an Order quieting title was entered by Judge
15 Tierra Jones in favor of the buyer and against Plaintiffs in the Quiet Title Action.

16 5. This Court finds that on August 9, 2018, Judge Tierra Jones entered a subsequent
17 Order denying Plaintiffs’ post-judgment Rule 60 Motion.
18

19 6. This Court further finds that Plaintiffs did not file an appeal in the Quiet Title
20 Action, rendering both Plaintiffs’ challenge to the validity of the foreclosure of the Subject
21 Property and the judgment in favor of the buyer to be final.

22 **Second Lawsuit**

23 7. The second lawsuit was an action filed by Plaintiffs against Martin CUOA on May
24 8, 2018, almost seven months after the foreclosure had concluded, Clark County District Court
25 Case No. A-18-774190-C, captioned *Wesley Rusch and Oliver Longboy v. The Martin*
26 *Condominium Unit Owners Association* (the “2018 Action”).
27
28

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 ///

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

16 ///

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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

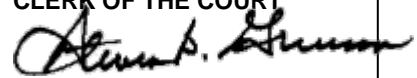
Marc.Cwik@lewisbrisbois.com

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
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 ///

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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 1st 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 1st 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

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

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 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**
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

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

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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

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

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.

PRINT DATE: 08/01/2022

Page 1 of 17

Minutes Date: February 16, 2021

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

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

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

PRESENT:	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: 08/01/2022

Page 5 of 17

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

A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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January 04, 2022	3:00 AM	Minute Order	Minute Order: BlueJeans Information
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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

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

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

PRESENT:	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

A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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March 16, 2022	9:00 AM	Motion	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
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HEARD BY: Alf, Nancy

COURTROOM: RJC Courtroom 16A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT:	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: 08/01/2022

Page 11 of 17

Minutes Date: February 16, 2021

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

April 05, 2022

A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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April 05, 2022	3:00 AM	Motion For Reconsideration
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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

A-20-826568-C	Wesley Rusch, Plaintiff(s) vs. The Martin Condominium Unit Owners' Association, Defendant(s)
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June 01, 2022	9:00 AM	Motion for Sanctions	Plaintiff's Motion for an Award of Sanctions for Fraud by Martins Counsel
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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)
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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; 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-21-840526-C
Consolidated with A-20-826568-C
Dept No: XXVII

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 1 day of August 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

