

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY RUSCH,

Appellant,

vs.

THE MARTIN CONDOMINIUM UNIT
OWNERS' ASSOCIATION,

Respondent.

No. 85821

Electronically Filed
Jan 10 2023 02:53 PM
Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENT'S MOTION TO DISMISS APPEAL

Marc S. Cwik

Nevada Bar No. 6946

Marc.Cwik@lewisbrisbois.com

LEWIS BRISBOIS BISGAARD & SMITH LLP

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

(702) 893-3383

Attorney for Respondent,

The Martin Condominium Unit Owners' Association

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The present appeal arises out of the denial of a Motion for Reconsideration by Appellant Wesley Rusch (“Rusch”) and his partner, Oliver Longboy (“Longboy”) (who is not an Appellant), after dismissal of their lawsuit against Appellee The Martin Condominium Unit Owners’ Association (“Martin CUOA”) in the District Court, Clark County, Nevada (Eighth Judicial District), Case No. A-21-840526-C, by the Honorable Judge Nancy Allf of Department 27. The subject lawsuit was the second lawsuit dismissed by Judge Allf, as she previously dismissed an identical lawsuit (Case No. A-20-826568-C) which Rusch and Longboy did not appeal.

Rusch’s present appeal is fatally flawed for multiple reasons and should be dismissed with prejudice. First, Rusch’s Notice of Appeal indicates only that it is an appeal from an August 30, 2022 order which is actually a minute order; Nevada does not permit appeal of minute orders. Second, even if Rusch’s appeal were treated as an appeal from Judge Allf’s signed and entered written order on September 7, 2022 denying reconsideration, such an order is not separately appealable as a special order after judgment. Third, the time for Rusch to have filed an appeal of the judgment which dismissed Case No. A-21-840526-C on June 30, 2022 Order has expired and the judgment has reached finality.

II.

PERTINENT PRIOR PROCEDURAL HISTORY

A. Rusch and Longboy's First Pro Per Lawsuit and Dismissal of Same.

1. The first pro per lawsuit filed by Rusch and Longboy is Clark County District Court Case No. A-20-826568-C, *Wesley Rusch and Oliver Longboy v. The Martin Condominium Unit Owners Association* (the "2020 Action").

2. The Honorable Nancy Allf of Department 27 of the District Court, Clark County, Nevada (Eighth Judicial District) granted a dismissal motion filed by Martin CUOA in the 2020 Action, which was based upon procedural grounds. *See* Notice of Entry of Order entered on November 9, 2021, **Exhibit 1**.

3. Prior to the entry of Judge Allf's Order dismissing the 2020 Action, Rusch and Longboy filed an identical second lawsuit, which is discussed below.

4. On November 29, 2021, Rusch and Longboy filed a Motion for Reconsideration in the 2020 Action, which tolled the time for them to file an appeal in the 2020 Action. *See* NRAP 4(a)(4)(C).

5. On February 15, 2022, Judge Allf entered an Order Denying Rusch and Longboy's Motion for Reconsideration. *See* Order, **Exhibit 2**.

B. Rusch and Longboy's Second Pro Per Lawsuit.

6. The second pro per lawsuit filed by Rusch and Longboy is Clark County District Court Case No. A-21-840526-C, *Wesley Rusch and Oliver Longboy*

v. The Martin Condominium Unit Owners Association (the “2021 Action”). The 2021 Action asserts the same claims as the 2020 Action and was filed before the 2020 Action reached finality.

C. Consolidation of the 2020 Action and the 2021 Action; Finality of the 2020 Action.

7. Rusch and Longboy’s 2021 Action was initially assigned to Department 8 of the District Court, Clark County, Nevada (Eighth Judicial District). Hence, on December 17, 2021, prior to the 2020 Action reaching finality, Martin CUOA filed a Notice of Related Cases and a Motion to Consolidate the 2020 Action with the 2021 Action (“Motion to Consolidate”). Pursuant to EDCR 2.50(a)(1), this motion was heard by Judge Allf.

8. On February 15, 2022, Judge Allf granted Martin CUOA’s Motion to Consolidate. *See* Notice of Entry of Order, **Exhibit 3**. Pursuant to EDCR 2.50(a)(2), both the 2020 Action and the 2021 Action were then combined into one case caption moving forward. The 2020 Action and the 2021 Action, however, otherwise retained their separateness as independent actions. *See Schnabel v. Lui*, 302 F.3d 1023, 1035 (9th Cir. 2002) (holding consolidation does not merge two suits into a single action, nor change the rights of the parties); EDCR 2.50(a)(3).

9. On March 17, 2022, which was 30 days after Judge Allf entered her Order Denying Motion for Reconsideration in the 2020 Action, the 2020 Action

became final by operation of law, since Rusch and Longboy never filed an appeal by this date, per NRAP 4(a)(4).

D. Dismissal of the 2021 Action.

10. On May 3, 2022, Martin CUOA filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (the “Dispositive Motion”) in the 2021 Action, which was the remaining active action. The Dispositive Motion was based upon substantive grounds.

11. On June 5, 2022, Rusch and Longboy filed a Reply to the Dispositive Motion and a (counter) Request for Summary Judgment.

12. On June 30, 2022, Judge Allf entered an Order granting Martin CUOA’s Dispositive Motion and denying Rusch and Longboy’s (counter) Request for Summary Judgment. Thus, Judge Allf entered summary judgment in favor of Martin CUOA and against Rusch and Longboy, and dismissed the 2021 Action in its entirety, with prejudice. *See* Notice of Entry Order, **Exhibit 4**.

E. Rusch and Longboy’s Motion for Reconsideration in the 2021 Action; Rusch’s Premature Notice of Appeal in the 2021 Action.

13. On July 12, 2022, Rusch and Longboy filed in the 2021 Action a Motion for Reconsideration (“MFR”) of Judge Allf’s June 30, 2022 Order.¹

¹ The Clerk later also filed the MFR in the 2020 Action on July 24, 2022 in compliance with EDCR 2.50(a)(2), due to case consolidation.

14. On July 18, 2022, prior to Judge Allf ruling on Rusch and Longboy's MFR, Rusch filed a Notice of Appeal. Longboy was not a party to the appeal. This Notice of Appeal was later also filed on July 24, 2022 in the 2020 Action (pursuant to EDCR 2.50(b)(2)'s filing requirements where cases have been consolidated).

15. As a result of Rusch's Notice of Appeal being filed in two different cases, the Nevada Supreme Court docketed Rusch's appeal twice: (1) Appellate Case No. 85084 (relating to the 2020 Action - District Case No. A826568); and (2) Appellate Case No. 85108 (relating to the 2021 Action - District Case No. A840526).

16. On August 8, 2022, the Nevada Supreme Court issued two orders dismissing Rusch's Appeal under NRAP 4(a)(6), one in Appellate Case No. 85084 and the other in Appellate Case No. 85108, since it lacked jurisdiction over a premature appeal. *See* Dismissal Orders, **Exhibits 5 and 6**.

17. On August 30, 2022, Judge Allf issued a Minute Order denying Rusch and Longboy's MFR filed on July 24, 2022. *See* Minute Order, **Exhibit 7**.

18. On September 7, 2022, Judge Allf executed and entered her written Order denying Rusch and Longboy's MFR. *See* Notice of Entry of Order, **Exhibit 8**.

F. Rusch's Present Appeal in the 2021 Action.

19. On September 29, 2022, Rusch filed a Notice of Appeal in the 2021 Action. Rusch's appeal expressly states that it is an appeal of Judge Allf's Order entered on August 30, 2022. This is a "Minute Order" only.

20. On December 16, 2022, Rusch's appeal was docketed by the Nevada Supreme Court. Appellate Case No. 85821 related to District Case No. A840526 (2021 Action) was opened.

21. The present Motion to Dismiss Appeal by Martin CUOA followed.

III.

ARGUMENT

A. Rusch's Appeal of Judge Allf's "Minute Order" Entered on August 30, 2022 Is Not an Appealable Order in Nevada.

Rusch's Notice of Appeal filed on September 29, 2022, indicates on page one the following: **"Notice is hereby given that Wesley Rusch Defendant hereby appeals from the order entered in the court on August 30, 2022."** (Emphasis in original.) The balance of the Notice of Appeal is followed by 12 pages of Rusch's arguments. No other orders are mentioned in the Notice of Appeal.

The subject Order from which Rusch has filed his appeal is not a formal order signed and entered by Judge Allf. Rather, it is Judge Allf's "Minute Order" entered with regard to denial of the MFR which Rusch and Longboy filed on July 12, 2022

after Judge Allf had entered on June 30, 2022 her Order entering summary judgment in favor of Martin CUOA and against Rusch and Longboy in the 2021 Action.

Nevada does not recognize an appeal from a “Minute Order.” A formal order of a judge has to first be signed and filed to be considered entered before it can become reviewable. *See Div. of Child & Family Servs. v. Eighth Judicial Dist. Ct.*, 120 Nev. 445, 451-454, 92 P.3d 1239, 1243-1245 (2004); *Rust v. Clark County Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987). This is because until a written order is signed and entered, a judge retains the power to reconsider his/her decision. *See Tener v. Babcock*, 97 Nev. 369, 370, 632 P.2d 1140 (1981). Moreover, NRAP 3(A) sets forth the determinations which are appealable in Nevada. A Minute Order is not listed. Rusch’s appeal is fatally flawed and should be dismissed.

B. Assuming, Arguendo, Rusch’s Appeal Is Treated as an Appeal from the Entry of Judge Allf’s Written and Signed Order Denying MFR, Such an Order Is Still Subject to Dismissal as it Is Not Separately Appealable as a Special Order after Judgment.

Pro per parties (a/k/a pro se parties) are subject to the same rules and requirements for following them as parties represented by counsel. *See In re J.P.D.*, 2018 Nev. Unpub. LEXIS 224, *2, 414 P.3d 810, 134 Nev. 959, 2018 WL 1448470 (2018) (“pro se parties are required to comply with the same rules as a represented party”); NRAP 46A(a); SCR 44(2). This principle applies during all phases of judicial proceedings, whether those proceedings are in the lower court or in the appellate court. NRAP 3(c)(1) specifically sets forth the requirements with regard

to a Notice of Appeal, which includes “(B) designate the judgment, order or part thereof being appealed...” Rusch is not entitled to any special interpretation of this requirement and his Notice of Appeal should be interpreted to appeal exactly the order which he stated, namely, **“the order entered in the court on August 30, 2022”** (emphasis in original), which is a Minute Order. No other dates, Orders, or Judgments are stated. A Minute Order is not an appealable order.

Assuming, *arguendo*, the Nevada Supreme Court were to interpret Rusch’s Notice of Appeal as referring to Judge Allf’s signed and entered written order which followed and was entered on September 7, 2022 (which pertains to the same MFR as her August 30, 2022 Minute Order), such order would still not be an appealable order. In particular, an order denying a motion for reconsideration, standing alone, is not separately appealable as a special order after judgment under Nevada law. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). Rusch would have had to have expressed he was appealing the underlying judgment entered on June 30, 2022 in his Notice of Appeal filed on September 29, 2022 to be able to have Judge Allf’s Order Denying MFR reviewed by the Nevada Supreme Court. *See id.* Here, Rusch did not include the underlying judgment in his appeal.

The Nevada Supreme Court holds that the fundamental rules governing the finality of judgments cannot be applied differently merely because a party not

learned in the law is acting pro se. *See Bonnell v. Lawrence*, 128 Nev. 394, 404, 282 P.3d 712, 718 (2012) (citations omitted). Having not expressed in his Notice of Appeal that he was appealing the underlying judgment, Rusch is bound by Nevada law prohibiting independent appeal of an order denying a motion for reconsideration. *See AA Primo, supra*. Rusch's appeal should be dismissed.

C. The Time for Rusch to Have Appealed from the Judgment Dismissing the 2021 Action Expired on October 7, 2022; Therefore, the Nevada Supreme Court Lacks Jurisdiction to Entertain Rusch's Appeal.

Rusch's appeal of the underlying judgment was dismissed by the Nevada Supreme Court on August 8, 2022 on prematurity grounds due to Rusch and Longboy's pending Motion for Reconsideration. Thus, after Judge Allf's Order Denying Motion for Reconsideration was entered on September 7, 2022, Rusch had 30 days in which to file a Notice of Appeal of the underlying judgment, or by October 7, 2022. *See* NRAP 4(a)(4)(C). As of the present date, since the entry of dismissals of Rusch's earlier Notices of Appeal, Rusch has only filed a Notice of Appeal of the Minute Order denying his and Longboy's MFR. The timely filing of a Notice of Appeal, once an appeal becomes ripe, is a jurisdictional requirement for the Nevada Supreme Court to entertain an appeal. *See* NRAP 4; *Whitman v. Whitman*, 108 Nev. 949, 950, 840 P.2d 1232, 1233 (1992); *Alvis v. State*, 99 Nev. 184, 185, 660 P.2d 980, 981 (1983).

At this time, it is unequivocally clear that the 2021 Action has reached finality. The prior 2020 Action, which is treated as an independent action (since consolidated cases do not lose their individuality), previously reached finality on March 17, 2022. Therefore, the Nevada Supreme Court has no jurisdiction at this time or in the future to adjudicate any appeal filed by Rusch related to the judgment which dismissed the 2021 Action, or the previous dismissal of the 2020 Action. Therefore, Rusch's appeal should also be dismissed on lack of jurisdiction grounds.

D. Dismissal of Rusch's Present Appeal Should Be with Prejudice.

Dismissal of Rusch's present appeal should be with prejudice. As demonstrated above, the Nevada Supreme Court lacks jurisdiction on multiple grounds, including the non-appealability of both Judge Allf's Minute Order and her Order Denying Rusch and Longboy's MFR (standing alone), and the fact that both the 2020 Action and the 2021 Action have reached finality. Hence, Rusch and Longboy's claims against Martin CUOA have been fully adjudicated.

///

///

///

///

///

///

CONCLUSION

DATED this 10th day of January, 2023.

By /s/ Marc S. Cwik

The Martin Condominium Unit Owners' Association

TABLE OF EXHIBITS

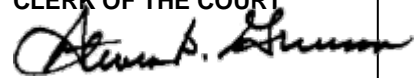
EXHIBIT	DOCUMENT TITLE	DATE	ACTION
1	Notice of Entry of Order Entered on 11-09-21 Dismissing Complaint et al.	11-10-21	2020 Action
2	Notice of Entry of Order Entered on 2-15-22 Denying Rusch and Longboy's Motion for Reconsideration	2-16-22	2020 Action
3	Notice of Entry of Order Entered on 2-15-22 Granting Motion to Consolidate	2-16-22	2020 Action; and 2021 Action
4	Notice of Entry of Order Entered on 6-30-22 Granting Martin CUOA's Dispositive Motion and Denying Rusch and Longboy's Counter Request for Summary Judgment	7-01-22	2021 Action
5	Order Dismissing Appeal No. 85084	8-08-22	2020 Action
6	Order Dismissing Appeal No. 85108	8-08-22	2021 Action
7	Minute Order Denying Rusch and Longboy's Motion for Reconsideration	8-30-22	2021 Action
8	Notice of Entry of Order Entered on 9-07-22 Denying Rusch and Longboy's Motion for Reconsideration	9-08-22	2021 Action

CERTIFICATE OF SERVICE

Pursuant to NRAP 27(a)(1), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP, and that on this 10th day of January, 2023, I did cause a true copy of the foregoing **RESPONDENTS' MOTION TO DISMISS APPEAL** to be served via the Court's electronic filing and service system to all parties on the current service list.

By /s/ Peggy Kurilla
An Employee of Lewis Brisbois Bisgaard
& Smith LLP

EXHIBIT 1



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*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

16 Plaintiffs,

17 vs.

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

22 Defendant.

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

**NOTICE OF ENTRY OF ORDER
QUASHING SERVICE OF PROCESS,
STRIKING WRIT OF EXECUTION
FILED ON MAY 15, 2021, AND
DISMISSING PLAINTIFFS' NEW
COMPLAINT FOR COMPENSATION
WITHOUT PREJUDICE**

23 NOTICE IS HEREBY GIVEN that an **ORDER QUASHING SERVICE OF PROCESS,**
24 **STRIKING WRIT OF EXECUTION FILED ON MAY 15, 2021, AND DISMISSING**
25 **PLAINTIFFS' NEW COMPLAINT FOR COMPENSATION WITHOUT PREJUDICE** was

26 ///

27 ///

28 ///

///

///

///

///

///

4878-9094-8611.1

1 entered into the above captioned matter on November 9, 2021; a true and correct copy is attached
2 hereto as **Exhibit A**.

3 DATED this 10th day of November, 2021.

4
5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 By /s/ Marc S. Cwik

7 MARC S. CWIK, ESQ.

8 Nevada Bar No. 006946

9 6385 S. Rainbow Boulevard, Suite 600

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 BISGAARD
3 & SMITH LLP and that on this 10th day of November, 2021 I did cause a true copy of the foregoing
4 **NOTICE OF ENTRY OF ORDER QUASHING SERVICE OF PROCESS, STRIKING**
5 **WRIT OF EXECUTION FILED ON MAY 15, 2021, AND DISMISSING PLAINTIFFS'**
6 **NEW COMPLAINT FOR COMPENSATION WITHOUT PREJUDICE** to be served via the
7 Court's electronic filing and service system to all parties on the current service list.

8
9 ***VIA EMAIL AND U.S. MAIL TO:***

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

15 By /s/ Susan Awe
16 an Employee of
17 LEWIS BRISBOIS BISGAARD & SMITH LLP
18
19
20
21
22
23
24
25
26
27

EXHIBIT A

EXHIBIT A

ORDR

MARC S. Cwik, ESQ.
Nevada Bar No. 006946
E-Mail: Marc.Cwik@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
702.893.3383
FAX: 702.893.3789
*Attorney for Defendant The Martin
Condominium Unit Owners' Association*

DISTRICT 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

**ORDER QUASHING SERVICE OF
PROCESS, STRIKING WRIT OF
EXECUTION FILED ON MAY 15, 2021,
AND DISMISSING PLAINTIFFS' NEW
COMPLAINT FOR COMPENSATION
WITHOUT PREJUDICE**

**DATE September 1, 2021
TIME: 9:00 a.m.**

Defendant, THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION ("Martin UOA"), filed its Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and to Dismiss Plaintiffs' New Complaint for Compensation on an Order Shortening Time (hereinafter the "Motion to Quash/Strike/Dismiss") on August 13, 2021. Plaintiffs filed their "Reply to Motion to Quash et al" on August 23, 2021; another reply-brief with no cover page or title on August 25, 2021; and a "Supplemental Reply to Motion to Quash et al"

1 on August 26, 2021.

2 Defendant's Motion to Quash/Strike/Dismiss came on for hearing before the Honorable
3 Judge Nancy L. Alff on September 1, 2021 (hereinafter the "Hearing"). Marc S. Cwik, Esq. of
4 LEWIS BRISBOIS BISGAARD & SMITH LLP, appeared on behalf Martin UOA through the
5 BlueJeans Videoconferencing Application. Plaintiff Wesley Rusch appeared Pro Se through the
6 BlueJeans Videoconferencing Application. Plaintiff Oliver Longboy did not appear.
7

8 The Court, having reviewed and considered the pleadings and papers on file herein, as well
9 as the respective counsel's oral arguments at the Hearing, and for good cause appearing, finds,
10 concludes and orders, as follows.

11 **I.**

12 **FINDINGS OF FACT**

13
14 **A. BACKGROUND CONCERNING THE PRESENT ACTION AND PLAINTIFFS'**
15 **CLAIMS.**

16 1. The present action was filed on December 16, 2020 with the filing of a New
17 Complaint for Compensation (the "Complaint") by Plaintiff Wesley Rusch ("Rusch") and Plaintiff
18 Oliver Longboy (collectively the "Plaintiffs").
19

20 2. Plaintiffs' Complaint is the third lawsuit involving Plaintiffs in the Clark County
21 District Courts related to a condominium which Plaintiffs formerly owned, located at The Martin
22 (f/k/a Panorama Towers), 4471 Dean Martin Drive, Unit 2206, Las Vegas, Nevada 89103 (the
23 "Subject Property").

24 3. The Subject Property was foreclosed upon and sold at a foreclosure sale conducted
25 by Red Rock Financial Services on behalf of Martin UOA related to Plaintiffs' being delinquent on
26 paying their monthly assessments, late fees, and other fines they were assessed as residents at The
27 Martin.
28

1 4. The first prior lawsuit was a quiet title action brought by the buyer of the Subject
2 Property at the foreclosure sale. *See Clark County District Court Case No. A-17-764643-C,*
3 *Hollyvale Rental Holdings, LLC v. Wesley Rusch and Oliver Longboy.*

4 5. The second prior lawsuit was an action filed against Martin UOA related to claims
5 challenging computation of the lien that formed the basis of the foreclosure sale. *See Clark County*
6 *District Court Case No. A-18-774190-C, Wesley Rusch and Oliver Longboy v. The Martin*
7 *Condominium Unit Owners Association.* This case was dismissed on March 27, 2019. Thereafter,
8 Judge Jacqueline Bluth entered an Order on January 12, 2021 reiterating the case was dismissed
9 and requiring Plaintiffs to seek leave of court before filing any further documents.
10

11 6. Plaintiffs did not seek leave of court from Judge Bluth before filing the present
12 action. While Plaintiffs' Complaint in the present action is pled in an inartful manner and asserts
13 the same causes of action for breach of contract, breach of the duty of good faith and fair dealing
14 and wrongful foreclosure that were dismissed on March 27, 2019, the gravamen of Plaintiffs'
15 Complaint, based upon Plaintiffs' allegations and the statements made on the record by Rusch
16 during the Hearing on the Motion to Quash/Strike/Dismiss, is a claim challenging the notice of
17 default and election to sell that was recorded against the condominium for the purpose of seeking
18 to recover possession of the Subject Property. This Court finds, however, that claims concerning
19 possession of the property have already been quieted in Case No. A-17-764643-C.
20
21

22 **B. PERTINENT PROCEDURAL HISTORY CONCERNING THE PARTIES.**

23 **The Foreclosure of the Subject Condominium.**

24 1. Plaintiffs purchased the subject condominium at The Martin in or around August
25 2014. By 2015, their unit owner account with The Martin went into delinquency.

26 2. On or about January 14, 2016, Red Rock Financial Services, on behalf The Martin,
27 sent correspondence to Plaintiff to commence foreclosure proceedings.
28

1 3. A foreclosure sale was held on August 10, 2017, and Hollyvale Rental Holdings,
2 LLC purchased the subject condominium.

3 **The Quiet Title Action – Clark County District Court Case No. A-17-764643-C.**

4 4. Immediately after purchasing the condominium, on November 14, 2017, Hollyvale
5 Rental Holdings, LLC commenced quiet title proceedings against Plaintiffs, in Clark County
6 District Court Case No. A-17-764643-C, *Hollyvale Rental Holdings, LLC v. Wesley Rusch and*
7 *Oliver Longboy*.

9 5. On May 29, 2018, title was quieted in favor of Hollyvale Rental Holdings, LLC and
10 against Plaintiffs in Case No. A-17-764643-C.

11 **The Plaintiffs' First Lawsuit Against The Martin – Clark County District Court Case No. A-18-**
12 **774190-C.**

13 6. On May 8, 2018, Plaintiffs, through their then attorney, Bryan Naddafi, filed a
14 Complaint against The Martin with regard to Plaintiffs' allegations challenging computation of the
15 lien that formed the basis of the foreclosure, in Clark County District Court Case No. A-18-
16 774190-C, *Wesley Rusch and Oliver Longboy v. The Martin Condominium Unit Owners*
17 *Association*.

18 7. On March 27, 2019, Plaintiffs' Complaint was dismissed by a judgment on the
19 pleadings, entered in Case No. A-18-774190-C, due to Plaintiffs failure to comply with the
20 requirements of NRS 38.310.

21 8. Thereafter, the parties and their attorneys unsuccessfully tried to mediate Plaintiffs'
22 lien-related claims before the Nevada Real Estate Division. Plaintiffs then began serving fugitive
23 discovery and pleadings in dismissed Case No. A-18-774190-C, which prompted Mr. Naddafi to
24 file a motion to withdraw as counsel of record and to strike Plaintiff's fugitive documents, which
25 was granted on June 17, 2020 by Judge Jacqueline M. Bluth, who also ordered the case to remain
26 dismissed.
27
28

1 9. On July 31, 2020 and again on August 14, 2020, Judge Bluth entered and filed a
2 Civil Order to Statistically Close Case in dismissed Case No. A-18-774190-C.

3 10. Plaintiffs continued, however, without leave of court, to file fugitive documents in
4 dismissed Case No. A-18-774190-C. As a result, on January 12, 2021, Judge Bluth entered
5 another order that the case remain dismissed and required Plaintiffs to seek leave of court before
6 filing any further documents. *See Exhibit 1* attached to the Motion to Quash/Strike/Dismiss.

7
8 **The Present Action and Its Procedural History.**

9 11. On December 16, 2020, Plaintiffs filed their Complaint in the present action.
10 Plaintiffs never notified Mr. Cwik of their filing. *See Exhibit 2* attached to the Motion to
11 Quash/Strike/Dismiss.

12 12. On January 25, 2021, Plaintiffs filed a document entitled “Notice of Default and
13 Request for Compensation.”

14 13. On February 2, 2021, Plaintiffs filed again a document entitled “Notice of Default
15 and Request for Compensation.”

16 14. On February 13, 2021, Plaintiffs filed a document they titled “Status Re Defendant's
17 Default and Plaintiff Request for Compensation,” which was a request that a default be entered
18 against The Martin.
19

20 15. On February 15, 2021, Plaintiffs filed a document titled “Summons.”
21

22 16. On February 18, 2021, Plaintiffs filed a document which they titled “Notice of
23 Defendants’ Default and Plaintiff Request for Compensation,” and a document which they titled
24 “Affidavit in Support of Judgment by Default.”

25 17. On February 28, 2021, Plaintiffs filed an unsigned Affidavit of Service, claiming an
26 individual named “Stephanie” served a Summons on Complaint upon The Martin on December 24,
27 2020.
28

1 18. On March 9, 2021, Plaintiffs filed another Affidavit of Service, claiming an
2 individual named “Stephanie” served a copy of a “Complaint for Compensation” upon The Martin
3 on December 24, 2020. Sometime thereafter, Plaintiffs apparently filed a Writ of Execution.

4 19. On March 25, 2021, this Court entered an Order to Strike, which struck the Writ of
5 Execution. The Order also noted “after review that a Complaint was filed on December 16, 2020,
6 but that no summons has been issued and that there has been no service on Defendant.”

7 20. On April 12, 2021, Plaintiff filed a document titled “Summons,” which was not
8 signed.

9 21. On May 6, 2021, Plaintiffs filed a document titled “Plaintiffs’ Motion to (sic) Entry
10 of Default Judgment Order.”

11 22. On May 7, 2021, the Clerk issued a Notice of Nonconforming Document regarding
12 “Plaintiffs’ Motion to Entry of Default Judgment Order,” since Plaintiffs failed to indicate whether
13 they were requesting a hearing.

14 23. On May 15, 2021, Plaintiffs again filed a document titled “Writ of Execution,”
15 seeking to execute upon The Martin’s bank account in the amount of \$6,025,442.92.

16 24. On June 3, 2021, Plaintiffs filed a document titled “Plaintiff’s Request for Order,”
17 seeking to have the court enter a Default Judgment.

18 25. On June 15, 2021, Plaintiffs filed a document entitled “Application for Default
19 Judgment.”

20 26. On June 20, 2021, Plaintiffs filed a document entitled “Application for Default
21 Judgment.”

22 27. On June 22, 2021, this court entered an Order Denying Applications for Default
23 Judgment Filed June 15, 2021 and June 20, 2021 Without Prejudice. The Order noted Plaintiffs
24 ongoing failure to follow the Nevada Rules of Civil Procedure and that Plaintiffs had not properly
25

1 completed service of process and any default entered in the case would violate due process. The
2 Order also reminded Plaintiffs of the requirement to timely serve a summons and complaint or that
3 the case may be dismissed.

4 28. On June 27, 2021, Plaintiffs filed a document entitled “Application for Default
5 Judgment.” This document, like previous Applications filed by Plaintiffs, claimed service of
6 process was completed on April 14, 2021. This time, Plaintiffs filled in an entire name (Stephanie
7 Bondoc) on an “Affidavit of Service,” and included a purported e-signature from this person (not a
8 wet, notarized signature). The “Affidavit” was backdated to April 14, 2021 by Plaintiffs. The
9 Affidavit claimed “Steven Temes director for the Martin Condominium Unit Owners Association”
10 was served by Ms. Bondoc.
11

12 29. On July 1, 2021, Plaintiffs filed a document entitled “Application for Default
13 Judgment, which was essentially a re-filing of the Application for Default Judgment filed on June
14 22, 2021.
15

16 30. On July 5, 2021, Plaintiffs filed a document entitled “Application for Default
17 Judgment, which was also essentially a re-filing of the Application for Default Judgment filed on
18 June 22, 2021.

19 31. On August 9, 2021, this Court issued an Order Setting Hearing for September 1,
20 2021.
21

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 **II.**

1 CONCLUSIONS OF LAW

2 A. LEGAL STANDARDS APPLICABLE TO MOTION TO QUASH / STRIKE /
3 DISMISS.

4 1. NRCP 12(b)(4) provides grounds for a defendant to challenge service of process of
5 a Complaint and NRCP 12(b)(5) further provides grounds to seek dismissal of a complaint under
6 the service of process rules.

7
8 2. In *Hansen v. Eighth Judicial District Court*, 116 Nev. 650, 6 P.3d 982 (Nev. 2001)
9 the Nevada Supreme Court abrogated the special appearance versus general appearance doctrine in
10 the state of Nevada, permitting a Defendant to challenge service of process without the risk of
11 making a general appearance.

12 3. NRCP 12(f) also provides that a party may seek to strike from the court record “any
13 redundant, immaterial, impertinent, or scandalous matter” related to a pleading.

14 4. NRCP 4 governs “Summons and Service” in district court actions in the State of
15 Nevada.

16
17 5. NRCP 4(b), entitled “Issuance,” requires the following: “On or after filing a
18 complaint, the plaintiff must present a summons to the clerk for issuance under signature and seal.
19 If a summons is properly presented, the clerk must issue a summons under signature and seal to the
20 plaintiff for service on the defendant. A summons — or a copy of a summons that is addressed to
21 multiple defendants — must be issued for each defendant to be served.”

22 6. NRCP 4(b)(c), entitled “Service,” requires the following, in pertinent part:

23
24 (1) **In General.** Unless a defendant voluntarily appears, the plaintiff is
25 responsible for:

26 (A) obtaining a waiver of service under Rule 4.1, if applicable; or

27 (B) having the summons and complaint served under Rule 4.2, 4.3, or 4.4
28 within the time allowed by Rule 4(e).

1 **(2) Service With a Copy of the Complaint.** A summons must be served
2 with a copy of the complaint. The plaintiff must furnish the necessary
3 copies to the person who makes service.

4 **(3) By Whom.** The summons and complaint may be served by the sheriff, or
5 a deputy sheriff, of the county where the defendant is found or by any
6 person who is at least 18 years old and not a party to the action.

7 ...

8 7. NRCP 4(e)(1) sets forth the general time limit for service of process, as follows:
9 “The summons and complaint must be served upon a defendant no later than 120 days after the
10 complaint is filed, unless the court grants an extension of time under this rule.”

11 8. NRCP 4(e)(2) provides for dismissal of a complaint if service of process is not
12 timely made, as follows: “If service of the summons and complaint is not made upon a defendant
13 before the 120-day service period — or any extension thereof — expires, the court must dismiss
14 the action, without prejudice, as to that defendant upon motion or upon the court’s own order to
15 show cause.”

16 9. NRCP 4.2(c)(1) governs “Service Within Nevada” of a summons and complaint
17 upon a Nevada non-domestic corporation. In particular, Subsection (A) of this rule requires the
18 following: “(A) An entity or association that is formed under the laws of this state, is registered to
19 do business in this state, or has appointed a registered agent in this state, may be served by
20 delivering a copy of the summons and complaint to: (i) the registered agent of the entity or
21 association; (ii) any officer or director of a corporation; (iii) any partner of a general partnership;
22 (iv) any general partner of a limited partnership; (v) any member of a member-managed limited-
23 liability company; (vi) any manager of a manager-managed limited-liability company; (vii) any
24 trustee of a business trust; (viii) any officer or director of a miscellaneous organization mentioned
25 in NRS Chapter 81; (ix) any managing or general agent of any entity or association; or (x) any
26 other agent authorized by appointment or by law to receive service of process.” Subsection (B) of
27

1 this rule further provides the following: “If an agent is one authorized by statute and the statute so
2 requires, a copy of the summons and complaint must also be mailed to the defendant entity or
3 association at its last-known address.”

4 **B. PLAINTIFFS’ CLAIMED SERVICE OF PROCESS UPON MARTIN UOA IS**
5 **QUASHED.**

6 1. This Court concludes NRCP 4.2 applies to service of process of the summons and
7 complaint under NRCP 4(c)(1), because Martin UOA is a Nevada domestic non-profit corporation
8 (i.e., an entity or association). See **Exhibit 5** attached to the Motion to Quash/Strike/Dismiss.
9

10 2. Based upon NRCP 4 and NRCP 4.2, this Court concludes Nevada law requires
11 Plaintiff to present a summons to the clerk for issuance under signature and seal, and then to have
12 the summons and complaint served together upon either Martin UOA’s registered agent, or any
13 officer or director of the corporation the Defendant, within 120 days after Plaintiffs’ Complaint
14 was filed.
15

16 3. This Court concludes that no simple service by mail upon an entity or association is
17 permitted in Nevada.

18 4. This Court concludes that since Plaintiffs filed their Complaint on December 16,
19 2020, the last day to have effected service of process upon Martin UOA was Thursday, April 15,
20 2021.
21

22 5. While NRCP 4 does permit a plaintiff to seek an extension of time for effecting
23 service of process prior to expiration of the 120-day period, good cause must exist. This Court
24 concludes that good cause does not exist in this matter, as no extension of time was ever requested
25 by Plaintiffs prior to the date of hearing of the Motion to Quash/Strike/Dismiss and no extension of
26 time was granted by this court in any of its previous orders.
27
28

1 6. This Court concludes that it has previously found in Orders entered on March 25,
2 2021 and June 22, 2021 that Plaintiffs failed to comply with the service of process requirements of
3 the Nevada Rules of Civil Procedure.

4 7. This Court concludes that the Motion to Quash/Strike/Dismiss is applicable to
5 Plaintiffs' claims of service of process asserted after this Court's Order entered on June 22, 2021.
6

7 8. This Court concludes that it is proper to quash all of Plaintiffs' claims of service of
8 process after this Court's Order dated June 22, 2021.

9 9. This Court concludes that Plaintiffs' claim to have served a Director of Martin
10 UOA is fatally flawed, as Steven Temes identified in Plaintiffs' Application for Default Judgment
11 filed on July 1, 2021 was not a Director of Martin UOA, per a Declaration Under Penalty of
12 Perjury submitted by Sharon C. Taggart, the general manager at The Martin (*see Exhibit 3*
13 attached to the Motion to Quash/Strike/Dismiss) and publicly available information with the
14 Nevada Secretary of State's office (*see Exhibit 5* attached to the Motion to Quash/Strike/Dismiss).
15

16 10. This Court concludes that Rusch's oral request at the Hearing for additional time to
17 effect service of process is untimely brought and, therefore, denied.

18 11. This Court further concludes that good cause does not exist to enlarge the time for
19 service of process for the following reasons: (1) Plaintiffs knew Martin UOA was represented by
20 counsel (Marc S. Cwik) and never alerted Mr. Cwik that they had filed a new action after dismissal
21 of Clark County Case No. A-18-774190-C and Mr. Cwik's defense of Plaintiffs' post-dismissal
22 efforts to reopen that case; (2) Plaintiffs improperly tried to obtain a Default and Default Judgment
23 against Martin UOA without notifying Mr. Cwik; (3) Rusch, according to Martindale.com, has
24 been licensed in the past as an attorney in the states of California, Wisconsin and New York (*see*
25 *Exhibit 4* attached to the Motion to Quash/Strike/Dismiss) and presumably would have the legal
26 training to determine the requirements for service of process in Nevada; and (4) pursuant to NRPC
27
28

1 3.5A, “When a lawyer knows or reasonably should know the identity of a lawyer representing an
2 opposing party, he or she should not take advantage of the lawyer by causing any default or
3 dismissal to be entered without first inquiring about the opposing lawyer’s intention to proceed.”

4 **C. PLAINTIFFS’ WRIT OF EXECUTION FILED ON MAY 15, 2021 IS STRICKEN**
5 **FROM THE COURT RECORD.**

6 1. This court is permitted under NRCP 12(f) to strike from the court record “any
7 redundant, immaterial, impertinent, or scandalous matter” related to a pleading and concludes that
8 an unlawfully filed Writ of Execution is a scandalous matter tied to a pleading filed with the court,
9 since there would first need to be a judgment entered by the court before a writ of execution could
10 ever be issued. *See* 1 Nevada Civil Practice Manual § 31.13.

12 2. Plaintiffs filed Writs of Execution on March 16, 2021 and May 15, 2021. On
13 March 25, 2021, this Court previously entered an Order striking Plaintiffs’ Writ of Execution filed
14 on March 16, 2021 and concludes that it is proper to also strike Plaintiffs’ Writ of Execution filed
15 on May 15, 2021 and so strikes it from the court record.

17 **D. THIS COURT TAKES NOTE THAT TITLE HAS ALREADY BEEN QUIETED**
18 **WITH REGARD TO THE SUBJECT PROPERTY AND, FURTHERMORE,**
19 **PLAINTIFFS’ CLAIMS AGAINST MARTIN UOA APPEAR TO BE TIME-**
BARRED UNDER NEVADA LAW.

20 1. Although, due to the procedural posture of this case, this Court concludes the
21 Motion to Quash/Strike/Dismiss is interpreted by this Court to be a procedural motion brought
22 under NRCP 12(b)(4), NRCP 12(f), NRCP 4, and NRCP 4.2, this Court still took note in response
23 to Rusch’s arguments at the Hearing that title has already been quieted with regard to the Subject
24 Property and, furthermore, Plaintiffs’ claims in the present action appear to be time-barred by
25 applicable statute of limitations, because Plaintiffs are challenging the notice of default and
26 election to sell that was recorded against the Subject Property for the purpose of Plaintiffs seeking
27

1 to recover possession of the Subject Property.

2 2. In particular, with regard to the remedies available to Plaintiffs to seek repossession
3 of the Subject Property, pursuant to NRS 116.31166(3), Plaintiffs had 60 days after the foreclosure
4 sale in which to take steps to redeem the Subject Property. Alternatively, pursuant to NRS
5 107.080(6), Plaintiffs had 90 days after the date of the sale in which to file an action to void the
6 sale. Since the foreclosure proceedings concluded in August 2017 and Plaintiffs' Complaint in the
7 present action was filed by Plaintiffs in December 2020, this Court concludes that Plaintiffs'
8 claims appear to be time-barred and so cautioned Rusch at the Hearing on behalf of Plaintiffs.
9

10 **E. PLAINTIFFS' COMPLAINT IS DISMISSED WITHOUT PREJUDICE.**
11

12 1. For the reasons noted above, this Court concludes that the 120-day time-period to
13 effectuate service of process in this present action under NRCP 4(e)(1) expired on April 15, 2021.

14 2.. This Court further concludes that since no leave of court was ever timely sought by
15 Plaintiffs or granted by this Court, NRCP 4(e)(2) requires this matter be dismissed, without
16 prejudice.
17

18 3. This Court takes note, however, consistent with the above conclusions, that any re-
19 filing of Plaintiffs' Complaint would appear to be time barred under NRS 116.31166(3) and NRS
20 107.080(6).
21

22 **F. SUMMARY.**

23 For all of the foregoing reasons, this Court concludes that Defendant Martin UOA's
24 Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and
25 to Dismiss Plaintiffs' New Complaint for Compensation on an Order Shortening Time should be
26 granted in its entirety; all service of process claims by Plaintiffs after this Court's Order dated June
27 22, 2021 should be quashed; Plaintiffs' Writ of Execution filed on May 15, 2021 should be
28

1 stricken from the court record; Plaintiffs' Complaint should be dismissed, without prejudice; and
2 based upon the record before this Court, this Court takes note and so cautions Plaintiffs that a re-
3 filing of their Complaint against Martin UOA would appear to be time-barred under NRS
4 116.31166(3) and NRS 107.080(6).

5
6 **ORDER**

7 Based upon the Findings of Fact and Conclusions of Law set forth above, and good cause
8 appearing, this Court orders, as follows:

9
10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that all service of process
11 of Plaintiffs' Complaint in the present action claimed by Plaintiffs after this Court's Order dated
12 June 22, 2021 is QUASHED;

13 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that the Writ
14 of Execution filed by Plaintiffs on May 15, 2021 is hereby STRICKEN from the court record;

15
16 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
17 Plaintiffs' Complaint filed in the present action is DISMISSED, without prejudice; and

18 **IT IS HEREBY FURTHER NOTED** by this Court that title has already been quieted
19 with regard to the Subject Property and, furthermore, Plaintiffs' claims against Martin UOA appear
20 to be time-barred under applicable Nevada statutes of limitations, and this Court has so cautioned
21 the Plaintiffs should Plaintiffs seek to re-file their Complaint.

22
23 **IT IS SO ORDERED.**

24 DATED this 9th day of November, 2021.

25
26 Dated this 9th day of November, 2021

27 Nancy L Allf

TW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Marc S. Cwik

MARC S. CWIK

Nevada Bar No. 006946

ADAM J. PERNSTEINER

Nevada Bar No. 7862

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

*Attorneys for Defendants Luis Ayon and
Ayon Law, PLLC*

LEWIS
BRISBOIS
BISGAARD & SMITH LLP

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: 11/9/2021

16 Marc Cwik

Marc.Cwik@lewisbrisbois.com

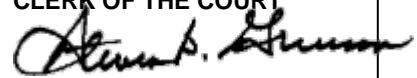
17 Susan Awe

susan.awe@lewisbrisbois.com

18 Wesley Rusch

dirofcomp@yahoo.com

EXHIBIT 2



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 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

17 Defendant.

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

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

**NOTICE OF ENTRY ORDER DENYING
PLAINTIFFS' MOTION FOR
RECONSIDERATION**

16 NOTICE IS HEREBY GIVEN that an ORDER DENYING PLAINTIFF'S MOTION FOR
17 RECONSIDERATION was entered into the above captioned matter on February 15, 2022; a true
18 and correct copies are attached hereto as **Exhibit A**.

19 DATED this 16th day of February, 2022.

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22 By /s/ Marc S. Cwik

23 MARC S. CWIK, ESQ.
24 Nevada Bar No. 006946
25 6385 S. Rainbow Boulevard, Suite 600
26 Las Vegas, Nevada 89118

27 *Attorney for Defendant The Martin Condominium*
28 *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 16th day of February, 2022 I did cause a true copy of
4 the foregoing **NOTICE OF ENTRY ORDER DENYING PLAINTIFFS' MOTION FOR**
5 **RECONSIDERATION** to be served via the Court's electronic filing and service system to all
6 parties on the current service list. This document applies to Case No. A-21-840526-C.

7
8 ***VIA EMAIL AND U.S. MAIL TO:***

9 Wesley Rusch and Oliver Longboy
10 P.O. Box 30907
11 Las Vegas, NV 89173
12 (702) 764-0001
13 dirofcomp@yahoo.com

14 By /s/ Susan Awe
15 an Employee of
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A

Heather S. Smith

CLERK OF THE COURT

1 **ODM**
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 *Attorneys for Defendant*
11 *The Martin Condominium Unit Owners'*
12 *Association*

13
14 **DISTRICT COURT**
15
16 **CLARK COUNTY, NEVADA**
17

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

20 Plaintiffs,

21 vs.

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

26 Defendant.

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

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

27 **ORDER DENYING PLAINTIFFS'**
28 **MOTION FOR RECONSIDERATION**

Plaintiffs Wesley Rusch and Oliver Longboy's ("Plaintiffs") Motion for Reconsideration ("the Motion") regarding this Court's Order entered on November 9, 2021 granting in entirety Defendant The Martin Condominium Unit Owners' Association's ("Martin CUOA") 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, came on for hearing before Department 27 of the Eighth Judicial District Court (Honorable Judge Nancy Allf) on January 6, 2022, at 9:30 a.m.; Plaintiff Wesley Rusch appeared in person; Plaintiff Oliver Longboy did not appear; Marc S. Cwik of Lewis Brisbois Bisgaard & Smith LLP, counsel for Defendant Martin CUOA, appeared via the Bluejeans conferencing service on behalf of Defendant Martin CUOA; and based upon the

1 pleadings and papers on file herein, the oral argument taken, and good cause appearing, the Court
2 finds/concludes and orders as follows:

3 **PROCEDURAL HISTORY**

4 1. On November 9, 2021, this Court entered an Order granting in entirety Defendant
5 Martin CUOA's Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on
6 May 15, 2021, and to Dismiss Plaintiff's New Complaint for Compensation.
7

8 2. On November 29, 2021, Plaintiffs filed a Motion for Reconsideration of such
9 Order, pursuant to EDCR 2.24.

10 **LEGAL STANDARD**

11 1. "Only in very rare instances in which new issues of fact or law are raised
12 supporting a ruling contrary to the ruling already reached should a motion for rehearing be
13 granted." *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (emphasis
14 added). *See also Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997)
15 (reconsideration is appropriate only where "substantially different evidence is subsequently
16 introduced or the decision is clearly erroneous").
17

18 2. A motion for reconsideration should not be granted, absent highly unusual
19 circumstances, unless the district court is presented with newly discovered evidence, committed
20 clear error, or if there is an intervening change in the controlling law. *See Wallace v. Romney*,
21 2017 WL 1078631, at *2 (D. Nev. March 21, 2017) (citing *Marlyn Nutraceuticals, Inc. v. Mucos*
22 *Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)).
23

24 3. Pursuant to EDCR 2.24(a), "[n]o motions once heard and disposed of may be
25 renewed in the same cause, nor may the same matters therein embraced be reheard, unless by
26 leave of the court granted upon motion therefor, after notice of such motion to the adverse
27 parties."
28

1 **FINDINGS/CONCLUSIONS**

2 1. After review of the motion papers on file herein by the parties and the arguments
3 presented at the hearing, this Court finds that Plaintiffs have failed to demonstrate that there is
4 either (1) newly discovered evidence or issues to support Plaintiffs' position, (2) clear error
5 committed by the Court with regard to its ruling requiring action, or (3) an intervening change in
6 the controlling law, which would affect this Court's ruling entered on November 9, 2021. All of
7 Plaintiffs' arguments were previously raised by Plaintiffs and previously rejected by this Court.

9 2. This Court, therefore, concludes there is no basis to reconsider its Order Granting
10 Martin UOA's Quash/Strike/Dismiss Motion and that Plaintiffs' Motion for Reconsideration
11 should be denied.

12 **ORDER**

13 In light of the forgoing procedural history, legal standard, findings/conclusions, and good
14 cause appearing:

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for
16 Reconsideration is DENIED.

17 DATED this 15th day of February, 2022.

18 Dated this 15th day of February, 2022

19 By:

20 Nancy L Alf

21 TW

22 Respectfully Submitted by:

23 B0B 502 A6C3 2B36
Nancy Alf
District Court Judge

24 LEWIS BRISBOIS BISGAARD & SMITH LLP

25 /s/ Marc S. Cwik

26 MARC S. CWIK

27 Nevada Bar No. 006946

28 6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Attorneys for Defendant The Martin

Condominium Unit Owners' Association

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 Denying 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: 2/15/2022

16 Marc Cwik

Marc.Cwik@lewisbrisbois.com

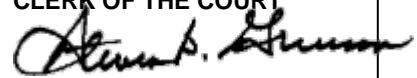
17 Susan Awe

susan.awe@lewisbrisbois.com

18 Wesley Rusch

dirofcomp@yahoo.com

EXHIBIT 3



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 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

17 Defendant.

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

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

**NOTICE OF ENTRY ORDER GRANTING
DEFENDANT'S MOTION TO
CONSOLIDATE CASE NO. A-20-826568-C
WITH CASE NO. A-21-840526-C**

18 NOTICE IS HEREBY GIVEN that ORDER GRANTING DEFENDANT'S MOTION TO
19 CONSOLIDATE CASE NO. A-20-826568-C WITH CASE NO. A-21-840526-C was entered into the
20 above captioned matter on February 15, 2022; a true and correct copies are attached hereto as **Exhibit A**.

21 DATED this 16th day of February, 2022.

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23 By /s/ Marc S. Cwik

24 MARC S. CWIK, ESQ.
25 Nevada Bar No. 006946
26 6385 S. Rainbow Boulevard, Suite 600
27 Las Vegas, Nevada 89118

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LEWIS BRISBOIS BISGAARD
3 & SMITH LLP and that on this 16th day of February, 2022 I did cause a true copy of the foregoing
4 **ORDER GRANTING DEFENDANT'S MOTION TO CONSOLIDATE CASE NO. A-20-**
5 **826568-C WITH CASE NO. A-21-840526-C** to be served via the Court's electronic filing and service
6 system to all parties on the current service list. This document applies to Case No. A-21-840526-C.

7
8 ***VIA EMAIL AND U.S. MAIL TO:***

9 Wesley Rusch and Oliver Longboy
10 P.O. Box 30907
11 Las Vegas, NV 89173
12 (702) 764-0001
13 dirocomp@yahoo.com

14 By /s/ Susan Awe
15 an Employee of
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
17
18
19
20
21
22
23
24
25
26
27
28

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 *Attorneys for Defendant*
11 *The Martin Condominium Unit Owners'*
12 *Association*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT 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

**ORDER GRANTING DEFENDANT'S
MOTION TO CONSOLIDATE CASE NO.
A-20-826568-C WITH A-21-840526-C**

Defendant The Martin Condominium Unit Owners' Association's ("Martin CUOA")
Motion to Consolidate came on for hearing before Department 27 of the Eighth Judicial District
Court (Honorable Judge Nancy Alf) on January 6, 2022, at 9:30 a.m.; Marc S. Cwik of Lewis
Brisbois Bisgaard & Smith LLP, counsel for Defendant Martin CUOA, appeared via the Bluejeans
conferencing service on behalf of Defendant Martin CUOA; Plaintiff Wesley Rusch appeared in
person; Plaintiff Oliver Longboy did not appear; and based upon the pleadings and papers on file
herein, the oral argument taken, and good cause appearing, the Court finds/concludes and orders
as follows:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4

6
7
8

9
10
11
12

12

15
16
17
18

19
20
21

23

24

25

26

27

1 **FINDINGS/CONCLUSIONS**

2 1. After review of the motion papers on file herein by the parties and the arguments
3 presented at the hearing, this Court finds that consolidation of the 2020 Action and the 2021
4 Action is appropriate.

5 2. This Court further finds the parties to both the 2020 Action and the 2021 Action are
6 the same; counsel for Martin CUOA is the same; there is a commonality of Plaintiffs' allegations
7 in the 2020 Action and the 2021 Action; and both cases involve common questions of law and
8 fact.
9

10 3. This Court further finds Department 27 is already familiar with Plaintiffs'
11 allegations and causes of action, and Martin UOA's defenses, and judicial economy will be
12 promoted if the two cases are consolidated.
13

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

In light of the forgoing procedural history, legal standard, findings/conclusions, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant The Martin Condominium Unit Owners' Association's Motion to Consolidate is GRANTED; and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Eighth Judicial District Court Case Nos. A-20-826568-C and A-21-840526-C are consolidated and, pursuant to EDCR 2.50(a)(1), all further district court proceedings concerning these two cases shall occur in Department 27.

DATED this 15th day of February, 2022.

Dated this 15th day of February, 2022

By:

Nancy L Alf

TW

27A B6D E27C D5F8
Nancy Alf
District Court Judge

Respectfully Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Marc S. Cwik

MARC S. CWIK
Nevada Bar No. 006946
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
*Attorneys for Defendant The Martin
Condominium Unit Owners' Association*

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: 2/15/2022

16 Marc Cwik

Marc.Cwik@lewisbrisbois.com

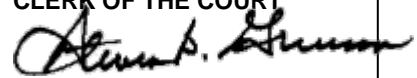
17 Susan Awe

susan.awe@lewisbrisbois.com

18 Wesley Rusch

dirofcomp@yahoo.com

EXHIBIT 4



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 ///

27 ///

28 4859-3425-6935.1

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

3 DATED this 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
19
20
21
22
23
24
25
26
27

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 ("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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14
15 4. Third, this Court concludes that since Plaintiffs’ filed for bankruptcy to extinguish
16 the debt owed to Martin CUOA, they could never sustain a wrongful foreclosure claim against
17 Martin CUOA. The elements of a wrongful foreclosure claim in Nevada are (1) the defendant
18 exercised a power of sale or foreclosed on plaintiff’s property; and (2) no breach of condition or
19 failure of performance existed on the mortgagor’s or trustor’s part which would have authorized
20 the foreclosure or exercise of the power of sale. *See Collins v. Union Fed. S&L Ass’n*, 99 Nev.
21 284, 304 (1983). The Court’s conclusion, therefore, follows from the Court’s determination that it
22 is an impossibility for Plaintiffs to ever establish the second element of a wrongful foreclosure
23 claim because by operation of law, Plaintiffs’ bankruptcy to extinguish the debt owed to Martin
24 CUOA operates as a party admission that they cannot establish they were not in breach of their
25 obligations to pay assessments at The Martin at the time the foreclosure was conducted.
26
27

28 ///

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

5 **ORDER**

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

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

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

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

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY RUSCH, AN INDIVIDUAL,
Appellant,

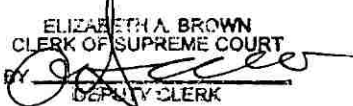
vs.

THE MARTIN CONDOMINIUM UNIT
OWNERS' ASSOCIATION, A
DOMESTIC NON-PROFIT,
Respondent.

No. 85084

FILED

AUG 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from an order granting respondent's motion to dismiss, or in the alternative, motion for summary judgment and possibly from an order "Granting In Part, And Denying In Part, The Martin Condominium Unit Owners Association's Motion For (1) Pre-Filing Order Against Plaintiffs Pursuant To Nevada's Vexatious Litigant Standard And (2) An Award Of Attorney's Fees And Costs Resulting From Plaintiffs' Ongoing Vexatious Conduct." Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Review of the documents submitted to this court pursuant to NRAP 3(g) reveals a jurisdictional defect. Specifically, the notice of appeal was filed after the timely filing of a tolling motion under NRAP 4(a)(4) and before the tolling motion was formally resolved. A timely tolling motion terminates the 30-day appeal period, and a notice of appeal is of no effect if it is filed after such a tolling motion is filed, and before the district court enters a written order finally resolving the motion. See NRAP 4(a)(4).

Accordingly the notice of appeal was prematurely filed; this court lacks jurisdiction, and

ORDERS this appeal DISMISSED.

, J.
Silver

, J.
Cadish

, J.
Pickering

cc: Hon. Nancy L. Allf, District Judge
Wesley Rusch
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

EXHIBIT 6

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY RUSCH, AN INDIVIDUAL,
Appellant,
vs.
THE MARTIN CONDOMINIUM UNIT
OWNERS' ASSOCIATION, DOMESTIC
NON-PROFIT,
Respondent.

No. 85108

FILED

AUG 08 2022

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

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order dismissing a complaint. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Review of the notice of appeal and documents before this court reveals a jurisdictional defect. The notice of appeal was prematurely filed in the district court after the filing of a timely tolling motion for reconsideration but before that motion was resolved by the district court in a written order. See NRAP 4(a)(4) (regarding tolling motions); *AA Primo Builders LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (describing when a post-judgment motion carries tolling effect). To date, it appears that motion remains pending in the district court. This court lack jurisdiction over a premature notice of appeal. NRAP 4(a)(6). Accordingly, this court

ORDERS this appeal DISMISSED.

Silver, J.
Silver

Cadish, J.
Cadish

Pickering, J.
Pickering

cc: Hon. Nancy L. Allf, District Judge
Wesley Rusch
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

EXHIBIT 7

A-20-826568-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Real Property

COURT MINUTES

August 30, 2022

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

August 30, 2022	3:00 AM	Motion For Reconsideration
------------------------	----------------	---------------------------------------

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on July 24, 2022, a Motion for Reconsideration of Motion for Consolidation and Fraud (Motion for Reconsideration) was filed.

COURT FURTHER FINDS after review that on July 26, 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 August 30, 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.

PRINT DATE: 09/01/2022

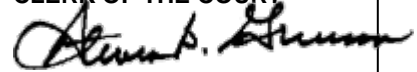
Page 1 of 2

Minutes Date: August 30, 2022

THEREFORE COURT ORDERS for good cause appearing and after review the Motion for Reconsideration is hereby DENIED and the matter scheduled on August 30, 2022, on Chamber Calendar is hereby VACATED. Defendant s Counsel 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 9/1/2022

EXHIBIT 8



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
DENYING PLAINTIFFS' MOTION FOR
RECONSIDERATION REGARDING
COURT ORDERS ENTERED ON JUNE
30, 2022**

19 NOTICE IS HEREBY GIVEN that an **ORDER DENYING PLAINTIFFS' MOTION**
20 **FOR RECONSIDERATION REGARDING COURT ORDERS ENTERED ON JUNE 30,**

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 2022 was entered into the above captioned matter on September 7, 2022; a true and correct copy is
2 attached hereto as **Exhibit A**.

3 DATED this 8th day of September, 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

Las Vegas, Nevada 89118

9 *Attorney for Defendant The Martin Condominium*
10 *Unit Owners' Association*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 8th day of September, 2022, I did cause a true copy of
4 the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS' MOTION FOR**
5 **RECONSIDERATION REGARDING COURT ORDERS ENTERED ON JUNE 30, 2022** to
6 be served via the Court's electronic filing and service system to all parties on the current service
7 list. This document applies to Case No. A-21-840526-C.

8
9 ***VIA EMAIL AND U.S. MAIL TO:***

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

15 By /s/ Susan Awe
16 an Employee of
17 LEWIS BRISBOIS BISGAARD & SMITH LLP
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A

1 **ODM**
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 *Attorneys for Defendant*
11 *The Martin Condominium Unit Owners'*
12 *Association*

13
14 **DISTRICT COURT**
15
16 **CLARK COUNTY, NEVADA**
17

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

20 Plaintiffs,

21 vs.

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

26 Defendant.

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

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

27 **ORDER DENYING PLAINTIFFS'**
28 **MOTION FOR RECONSIDERATION**
REGARDING COURT ORDERS
ENTERED ON JUNE 30, 2022

Plaintiffs Wesley Rusch and Oliver Longboy ("Plaintiffs") filed a Motion for Reconsideration, once on July 12, 2022 in Case No. A-21-840526-C and a second time on July 24, 2022 in Case No. A-20-826568-C (due to the cases being consolidated) (hereinafter the "Motion for Reconsideration"); the Motion for Reconsideration relates to two Orders entered on June 30, 2022 in favor of Defendant The Martin Condominium Unit Owners' Association ("Martin CUOA") and against Plaintiffs.

Plaintiffs' Motion for Reconsideration came on for hearing before Department 27 of the Eighth Judicial District Court (Honorable Judge Nancy Allf) on August 30, 2022 in Chambers; Defendant The Martin Condominium Unit Owners' Association ("Martin CUOA") filed an Opposition to Plaintiffs' Motion for Reconsideration on July 26, 2022; Plaintiffs filed two separate Reply briefs on August 18, 2022.

1 Based upon the Court's review of the pleadings and papers on file herein, and good cause
2 appearing, the Court finds/concludes and orders as follows:

3 **I.**

4 **PERTINENT PROCEDURAL HISTORY**

5 1. On November 9, 2021, this Court entered an Order which dismissed the 2020
6 Action in its entirety.

7 2. On February 15, 2022, this Court entered an Order consolidating Case No. A-20-
8 826568-C ("2020 Action") and Case No. A-21-840526-C ("2021 Action"), as well as an Order
9 denying Plaintiffs' Motion for Reconsideration concerning dismissal of the 2020 Action.

10 3. On June 30, 2022, this Court entered an Order granting Defendant The Martin
11 Condominium Unit Owners' Association's ("Martin CUOA") Motion to Dismiss, or in the
12 Alternative, Motion for Summary Judgment, which entered summary judgment in favor of Martin
13 CUOA and against Plaintiffs and dismissed the 2021 Action in its entirety, with prejudice.

14 4. In addition, on June 30, 2022, this Court entered an Order granting in part, and
15 denying in part, Martin CUOA's Motion For (1) Pre-Filing Order Against Plaintiffs Pursuant To
16 Nevada's Vexatious Litigant Standard And (2) An Award Of Attorney's Fees And Costs Resulting
17 From Plaintiffs' Ongoing Vexatious Conduct. This Order requires Plaintiffs to first obtain leave of
18 Court before filing any additional pleadings, motions, or other papers against Martin CUOA in
19 Case No. A-18-774190-C, the consolidated 2020 Action and 2021 Action noted in the case caption
20 above, and/or in Case No. A-17-764643-C, but denied (at that time) an award of attorney's fees
21 and costs to Martin CUOA.

22 **II.**

23 **LEGAL STANDARD**

24 1. "Only in very rare instances in which new issues of fact or law are raised
25 supporting a ruling contrary to the ruling already reached should a motion for rehearing be
26 granted." *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (emphasis
27 added). *See also Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997)

(reconsideration is appropriate only where “substantially different evidence is subsequently introduced or the decision is clearly erroneous”).

2. A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law. *See Wallace v. Romney*, 2017 WL 1078631, at *2 (D. Nev. March 21, 2017) (citing *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)).

3. Pursuant to EDCR 2.24(a), “[n]o 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 the court granted upon motion therefor, after notice of such motion to the adverse parties.”

III.

FINDINGS/CONCLUSIONS

After review of the motion papers on file herein by the parties and the arguments presented therein, this Court finds and concludes as follows:

1. Pursuant to Nevada's legal standard for reconsideration, Plaintiffs have failed to demonstrate that there is either (1) newly discovered evidence or issues to support Plaintiffs' position regarding this Court's rulings, (2) clear error committed by the Court with regard to its rulings requiring action, or (3) an intervening change in the controlling law, which would affect this Court's rulings. All of Plaintiffs' arguments were previously raised by Plaintiffs and/or previously rejected by this Court.

2. This Court concludes that under Nevada law, there is no basis to reconsider either of its Orders entered on June 30, 2022 against Plaintiffs and in favor of Martin CUOA, which include (1) the Order Granting Martin CUOA's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, and (2) the Order granting in part, and denying in part, Martin CUOA's

1 Motion For Pre-Filing Order Against Plaintiffs Pursuant to Nevada's Vexatious Litigant Standard
2 and an Award of Attorney's Fees and Costs Resulting From Plaintiffs' Ongoing Vexatious
3 Conduct.

4 3. This Court, therefore, concludes that under Nevada law, Plaintiffs' Motion for
5 Reconsideration should be denied in its entirety.
6

7 **ORDER**

8 Based upon the forgoing procedural history, legal standard, findings/conclusions, and good
9 cause appearing:

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for
11 Reconsideration is hereby DENIED in its entirety and the matter scheduled on this Court's
12 Chambers Calendar on August 30, 2022 is hereby VACATED.

13 DATED this _____ day of _____, 2022.

14 Dated this 7th day of September, 2022

15 By:

16 Nancy L. Alf
DISTRICT COURT JUDGE

17 **0EA ACF 16DB F89A**
18 **Nancy Alf**
19 **District Court Judge**

20 Respectfully Submitted By:

APPROVED/DISAPPROVED

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22 *FAILED TO RESPOND*

23
24 By: /s/ Marc S. Cwik

25 MARC S. CWIK, ESQ.
26 Nevada Bar No. 06946
27 6385 S. Rainbow Boulevard, Suite 600
28 Las Vegas, Nevada 89118
*Attorneys for The Martin Condominium Unit
Owners' Association*

By: _____

WESLEY RUSCH
OLIVER LONGBOY
P.O. Box 30907
Las Vegas, NV 89173
(702) 764-0001
Plaintiffs Pro Per

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
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 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: 9/7/2022

16 Marc Cwik

Marc.Cwik@lewisbrisbois.com

17 Susan Awe

susan.awe@lewisbrisbois.com

18 Wesley Rusch

dirofcomp@yahoo.com