

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY RUSCH,
Appellant(s),

vs.

THE MARTIN CONDOMINIUM UNIT
OWNERS' ASSOCIATION,
Respondent(s),

Electronically Filed
Jan 26 2023 09:25 AM
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-840526-C
Consolidated with A-20-826568-C
Docket No: 85821

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
WESLEY RUSCH, PROPER PERSON
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LAS VEGAS, NV 89173

ATTORNEY FOR RESPONDENT
MARC S. CWIK, ESQ.
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LAS VEGAS, NV 89118

A-21-840526-C Wesley Rusch, Plaintiff(s) vs. Martin Condominium Unit Owners Association, Defendant(s)

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A-21-840526-C

Wesley Rusch, Plaintiff(s)

vs.

Martin Condominium Unit Owners Association,
Defendant(s)

I N D E X

On August 17 2017 Mark A. Karnes Jr. ("hereinafter "Mark") of the OLYMPIA LAW, P.C. Telephoned Plaintiffs and informed them that their home has been sold that day. Plaintiffs Informed Mark that they had not received any notice of a proposed sale of their home. Mark had a Notary Public come over and have Plaintiffs sign a contingency fee agreement wherein it stated that attorney would represent client in all legal matters. Attorney will pursue legal recourse against parties causing wrongful foreclosure, Attorney will represent plaintiffs in the matter of UD eviction protection.

EVICTIION

Plaintiffs were wrongfully evicted from their home on January 3, 2018, which Bryan said would never happen. Plaintiffs have been homeless ever since; moving from hotel to hotel and eating at restaurants in stead of a home cooked meal. And more importantly not able to stay at home during this pandemic.

FIRST CLAIM FOR RELIEF

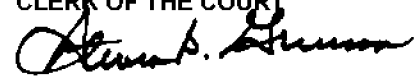
(Breach of Contract)

Plaintiffs should be awarded compensation for the flood and the wrongful sale of their home and Martin's attorneys should be sanctioned for their frivolous motions

Respectfully Submitted

/S/ Wesley Rusch

Wesley Rusch



Wesley Rusch

Dirofcomp@yahoo.com

Box 30907
Las Vegas, NV 89173

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

Plaintiffs,

Case No. A-21-840526-C

Dept 8

vs

RUSCH COUNTER REPLY
re Martin Argument

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

In compliance with rule NRCP 56 (c)(1)(A) Plaintiff provided a concise statement of facts

Plaintiff included more than allegations from the complaint.

Plaintiffs were never given notice of the August 10th sale date which is required under Nevada Law.

Plaintiff did not merely cite portions of the complaint. Plaintiff also asserted actual facts.

The sale of Plaintiff's condo was in violation of Nevada Law. Red Rock was required to comply with Nevada Law.

The **Martin HOA did not comply with NRS22.116** et seq when it sold the property,

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

Plaintiff did not receive any written or oral notice of a proposed sale of his property on August 10, 2017. Plaintiff first learned of the sale by a call from an attorney's office. Therefore the sale was illegal and Plaintiffs must be compensated for their damages.

Therefore Plaintiff should be awarded summary judgment as there is no dispute that the Martin did not give notice of August 10, 2017 sale date.

The Statute of Limitations is Six years on Plaintiff's claim

NRS 11.190 Periods of limitation. may only be commenced as follows:

1. Within 6 years:

(b) An action upon a contract, obligation or liability founded upon an instrument in writing,

The Martin breached the MARTIN's CCRs when it sold the property without notice as required by the CCRs. See Section 17.2

DECLARATION OF WESLEY A. RUSCH

Declarant has personal knowledge of the following and being deposed and sworn states, under penalty of perjury of the laws of the state of Nevada, as follows:

I am over the age of eighteen;

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

That our real property was sold at auction on August 10, 2017;

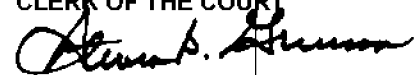
That neither myself nor Oliver B. Longboy received any notice of the impending HOA sale of our real property or a demand letter stating the amount was due so that sale would not go forward.

June 10 2022

FURTHER DECLARANT SAYETH NAUGHT

/S/ Wesley Rusch

WESLEY A. RUSCH



CNND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Wesley Rusch, Plaintiff(s)

A-21-840526-C

vs.

Department 27

Martin Condominium Unit Owners
Association, Defendant(s)

CLERK'S NOTICE OF NONCONFORMING DOCUMENT

Pursuant to Rule 8(b)(2) of the Nevada Electronic Filing and Conversion Rules, notice is hereby provided that the following electronically filed document does not conform to the applicable filing requirements:

Title of Nonconforming Document:	Rusch Reply and Request for Summary Judgment
Party Submitting Document for Filing:	Plaintiff
Date and Time Submitted for Electronic Filing:	06/05/2022 at 2:47 PM

Reason for Nonconformity Determination:

- ☐ The document filed to commence an action is not a complaint, petition, application, or other document that initiates a civil action. *See* Rule 3 of the Nevada Rules of Civil Procedure. In accordance with Administrative Order 19-5, the submitted document is stricken from the record, this case has been closed and designated as filed in error, and any submitted filing fee has been returned to the filing party.

☐ The document initiated a new civil action and a cover sheet was not submitted as required by NRS 3.275.

☐ The document was not signed by the submitting party or counsel for said party.

☒ The document filed included a court order that did not contain the signature of a judicial officer. In accordance with Administrative Order 19-5, the submitted order has been furnished to the department to which this case is assigned.

☐ Motion does not have a hearing designation per Rule 2.20(b). Motions must include designation "Hearing Requested" or "Hearing Not Requested" in the caption of the first page directly below the Case and Department Number.

Pursuant to Rule 8(b)(2) of the Nevada Electronic Filing and Conversion Rules, a nonconforming document may be cured by submitting a conforming document. All documents submitted for this purpose must use filing code "**Conforming Filing – CONFILE.**" Court filing fees will not be assessed for submitting the conforming document. Processing and convenience fees may still apply.

Dated this: 17th day of June, 2022

By: /s/ Chaunte Pleasant

Deputy District Court Clerk

1 **CERTIFICATE OF SERVICE**

2

3 I hereby certify that on June 17, 2022, I concurrently filed and served a copy of the

4 foregoing Clerk's Notice of Nonconforming Document, on the party that submitted the

5 nonconforming document, via the Eighth Judicial District Court's Electronic Filing and Service

6 System.

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10 By: /s/ Chaunte Pleasant

11 Deputy District Court Clerk

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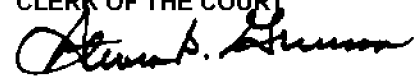
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Wesley Rusch

Dirofcomp@yahoo.com

Box 30907
Las Vegas, NV 89173

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

Plaintiffs,

Case No.A-21-840526-C

Dept 27

vs

**Plaintiffs Objections to
Martin Orders**

REQUEST FOR HEARING

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

The court ordered the following

Mr. Cwik to prepare both of the Orders and submit to Mr. Rusch
for review of form. Court instructed that if any objections relative
to form arise, said objection must be filed.

The following was received from the Martin

Awc, Susan <susan.awc@lewisbrisbois.com>
To:DC27Inbox
Cc:Cwik, Marc,dirofcomp@yahoo.com
Wed, Jun 29 at 3:16 PM
Good afternoon:

See attached. Please let me know if you require a word version.

This is my reply to the Martin

wes _____ <dirofcomp@yahoo.com>

To: Awe, Susan

Wed, Jun 29 at 9:59 PM

please send word version of each

thanks

This is the Martins response with a copy of the orders signed by the court. So as a consequence Plaintiffs did not have a chance to review the proposed order before it was signed

Awe, Susan <susan.awe@lewisbrisbois.com>

To: wes _____

Cc: Cwik, Marc

Thu, Jun 30 at 9:21 AM

Mr. Rusch:

The email was directed to the Department in accordance with the requirements of the court advising a word version would be sent to them upon their request and you were cc'd on the email.

Awe, Susan <susan.awe@lewisbrisbois.com>

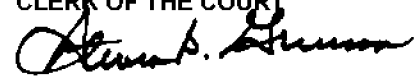
To: dirofcomp@yahoo.com

Cc: Cwik, Marc

Fri, Jul 1 at 10:20 AM

Mr. Rusch and Mr. Longboy:

On behalf of Marc. S. Cwik please see the attached in the above referenced matter. If you have any difficulty opening this attachment, please let me know



Wesley Rusch

Dirofcomp@yahoo.com

Box 30907
Las Vegas, NV 89173

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

Plaintiffs,

Case No. A-21-840526-C

Dept 27

vs

**Plaintiffs Objections to
Martin Orders**

REQUEST FOR HEARING

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

Plaintiffs hereby request relief to file these motions and objections

The court ordered the following

Mr. Cwik to prepare both of the Orders and submit to Mr. Rusch
for review of form. Court instructed that if any objections relative
to form arise, said objection must be filed.

The following was received from the Martin

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To:wes _____

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Thu, Jun 30 at 9:21 AM

Mr. Rusch:

The email was directed to the Department in accordance with the requirements of the court advising a word version would be sent to them upon their request and you were cc'd on the email.

Awe, Susan <susan.awe@lewisbrisbois.com>

To:dirofcomp@yahoo.com

Cc:Cwik, Marc

Fri, Jul 1 at 10:20 AM

Mr. Rusch and Mr. Longboy:

On behalf of Marc. S. Cwik please see the attached in the above referenced matter. If you have any difficulty opening this attachment, please let me know

PLAINTIFFS HEREBY OBJECT TO THE MARTIN ORDERS

Revised by Wesley Rusch
MARC S. CWIK, ESQ.
Nevada Bar No. 006946
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Attorneys for Defendant
The Martin Condominium Unit Owners'
Association

Electronically Filed
7/12/2022 12:56 PM
Steven D. Grierson
CLERK OF THE COURT



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 PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff's motion entitled "Motion For Summary Judgment came on for hearing before Department 27 of the Eighth Judicial District Court (Honorable Judge Nancy Allf) on June 15, 2022. Based upon the pleadings and papers on file herein, and good cause appearing, the Court finds/concludes and orders as follows:

PROCEDURAL HISTORY

1. On December 16, 2020, Plaintiff filed a Complaint in Case No. A-20-826568-C, entitled *Wesley Rusch; Oliver Longboy v. The Martin Condominium Unit Owners' Association* (the "2020 Action"). The 2020 Action was randomly assigned to Department 27.

2. On September 2, 2021, Plaintiffs filed a Complaint in Case No. A-21-840526-C, entitled *Wesley Rusch; Oliver Longboy v. The Martin Condominium Unit Owners' Association* (“2021 Action”). The 2021 Action was randomly assigned to Department 8.

3. The Complaints filed by Plaintiffs in the 2020 Action and the 2021 Action share a commonality of alleged facts and claims, and relate to the foreclosure of a condominium located at The Martin (f/k/a Panorama Towers), 4471 Dean Martin Drive, Unit 2206, Las Vegas, Nevada 89103.

4. On December 17, 2021, Defendant The Martin Condominium Unit Owners’ Association (“Martin CUOA”) filed a Notice of Related Cases and Motion to Consolidate the 2020 Action and the 2021 Action.

5. On February 15, 2022, this Court (Department 27) entered an Order granting Martin CUOA’s Motion to Consolidate, thereby consolidating the 2020 Action and the 2021 Action.

6. On February 28, 2022, Plaintiffs filed a motion for summary judgment.

7. The Defendants did not oppose the motion for summary judgment

8. The Martin has admitted they were at fault for the flood that caused Plaintiffs to vacate their condo for over three months so that Nigro could repair the condo.

9. The Martin has admitted that Red Rock sold Plaintiff's Condo in violation of Nevada Law

10. The **Martin did not comply with NRS22.116** et seq when it sold the property, There was no notice nor demand letter; a clear violation of the constitutional right to due process of law.

LEGAL STANDARD

Nev. R. Civ. P. 56

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. **(a) Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense-or the part of each claim or defense-on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

FINDINGS/CONCLUSIONS

Therefore Plaintiffs must be awarded judgment against the Martin as follows:

It is hereby ORDERED that the Plaintiffs Rusch and Longboy have a judgment against the Defendants the Martin in the sum of \$8,543.57.02 with statutory interest from the date of judgment.

1. This Court finds that after review of the motion papers and pleadings on file herein,

//

///

///

ORDER

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment is granted;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Martin shall pay Plaintiffs \$8,543.57.02 for the damages they sustained thereof

DATED this ____ day of _____, 2022.

By: _____
DISTRICT COURT JUDGE

Respectfully Submitted By:

APPROVED/DISAPPROVED

LEWIS BRISBOIS
BISGAARD & SMITH
LLP

FAILED TO RESPOND

By: /s/ Marc S. Cwik

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6385 S. Rainbow
Boulevard, Suite 600
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



Revised by Wesley Rusch Plaintiff
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Nevada Bar No. 006946
E-Mail: Marc.Cwik@lewisbrisbois.com
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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**

OBJECTION

**REQUEST FOR
HEARING**

LEWIS
S
BRISBO
IS
BISGAA
RD &
SMITH LLP
ATTORNEYS AT
LAW

21 NOTICE IS HEREBY GIVEN that an **ORDER GRANTING IN PART, AND**
22 **DENYING IN PART, THE MARTIN CONDOMINIUM UNIT**
OWNERS'
23 **ASSOCIATION'S MOTION FOR (1) PRE-FILING ORDER AGAINST**
PLAINTIFFS
24 **PURSUANT TO NEVADA'S VEXATIOUS LITIGANT STANDARD AND (2) AN**
AWARD
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1 **OF ATTORNEY’S FEES AND COSTS RESULTING FROM PLAINTIFFS’ ONGOING**
2 **VEXATIOUS CONDUCT** was entered into the above captioned matter on June 30, 2022; a true
3 and correct copy is attached hereto as **Exhibit**

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP and that on this 1st day of July, 2022, I did cause a true copy of the
foregoing **NOTICE OF NO ENTRY OF VEXATIOUS LITIGANT AND PRE-FILING
ORDER**
AGAINST PLAINTIFFS to be served via the Court's electronic filing and service system to all
parties on the current service list. This document applies to Case No. A-21-840526-C.

VIA EMAIL AND U.S. MAIL TO:

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

EXHIBIT A

EXHIBIT A

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Martin CUOA's Pre-Filing Motion came on for hearing before the Honorable Judge Nancy

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Martin CUOA's Pre-Filing Motion came on for hearing before the Honorable Judge Nancy L. Alff on June 15, 2022; Marc S. Cwik, Esq. of LEWIS BRISBOIS BISGAARD & SMITH LLP

appeared on behalf Martin CUOA through the BlueJeans video conferencing service; Plaintiff

Wesley Rusch appeared Pro Se and in person; and Plaintiff Oliver Longboy, who is Pro Se, did

not appear.

The Court, having reviewed and considered the pleadings and papers on file herein, as well as

the oral arguments by Mr. Cwik and Mr. Rusch at the hearing, and for good cause appearing,

finds, concludes and orders, as follows:

IV.

LEGAL STANDARD FOR ENTRY OF A PRE-FILING

ORDER 12

1.

It has long been held in Nevada that a district court has inherent power to take such

steps and make such orders as may be necessary to the dispatch of its business, and the disposition

of causes pending on its docket, and to control its own calendar. *See State ex rel. Jurich v.*

McFadden, 43 Nev. 140, 143, 182 P. 745, 746 (1919) (citations omitted); and *Maheu v. Eighth*

Jud. Dist. Ct., 89 Nev. 214, 217, 510 P.2d 627, 629 (1973). *See, also, Stern v. United States*, 563

F. Supp. 484, 489 (D. Nev. 1983) (holding that every court has the inherent power to control its

docket with a view to avoiding duplicative litigation, inconsistent results, and waste of time and

effort by itself, the litigants and counsel).

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NRS 3.220 also provides that "each judge may direct and control the business in

or her own district and shall see that it is properly performed."

3.

Nevada's courts are constitutionally authorized to issue all writs "proper and

necessary to the complete exercise of their jurisdiction." *See Nev. Const. Art. 6, § 6(1).*

//4. NRCP 11 permits a district court *sua sponte* to impose appropriate deterrent

sanctions on a party who violates that rule by signing court documents that are frivolous or

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4 iate deterrent
2 sanctions on a party who violates that rule by signing court documents that are frivolous or
N presented for an improper purpose.
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5. In Nevada, a “vexatious litigant” has been defined as one “who
repeatedly files
15 frivolous lawsuits.” *See Peck v. Crouser*, 129 Nev. 120, 122, 295 P.3d 586, 587 (2013) (citing
e6 Black’s Law Dictionary 952 (8th ed. 2004)).
7

8 6. In order to deter such conduct, the Nevada Supreme Court has approved of the
t use
s
a9 of sanctions, including limiting by order a vexatious litigant’s right to access the courts. *Id.* (citing
i0 *Jordan v. State, Dep’t of Motor Vehicles*, 121 Nev. 44, 58-60, 110 P.3d 30, 41-42 (2005),
t
11 abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6,
t2 181 P.3d 670, 672 n.6 (2008)). Restrictions imposed by vexatious litigant orders may include
13 prohibiting the litigant from filing future actions against a particular party or barring the litigant
14 from filing any new action without first demonstrating to the court that the proposed case is not
15 frivolous. *Id.* This type of restriction is commonly referred to as a “pre-filing order.”
16

17 7. In issuing a pre-filing order, four criteria must be met: (1) this Court must
s provide
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18 Plaintiffs with reasonable notice and an opportunity to oppose a restrictive order’s issuance; (2)
n
19 this Court must create an adequate record for review, including a list of all the cases and
e
20 documents, or an explanation of the reasons, that led it to conclude that a restrictive order was
o
21 needed to curb repetitive or abusive activities; (3) **this Court must make substantive findings as to**
22
23 **the frivolous or harassing nature of the litigant’s actions; and (4) the pre-filing order must**
s **be**
e
24 **narrowly drawn to address the specific problem encountered.** *See Jordan*, 121 Nev. at 61-
p 62;
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25 *Jones v. Eighth Judicial Dist. Court*, 130 Nev. 493, 496, 330 P.3d 475, 477 (Nev. 2014) (citing
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26 *Jordan*)).
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Plaintiff Wesley Rusch ("Rusch") and Plaintiff Oliver Longboy ("Longboy"),

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

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

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

4. The Subject Property was foreclosed upon by Martin CUOA and sold at a foreclosure sale conducted by RRFS *Without the legally required notice* on behalf of Martin CUOA related to Plaintiffs' being delinquent on paying their monthly assessments, late fees, and other fines they were assessed as residents at The Martin. Per publicly-available records, the foreclosure sale took place on August 10, 2017 and the Foreclosure Deed was recorded on October 17, 2017.

B. Lawsuits Involving Plaintiffs Concerning the Subject Property: Validity of the Foreclosure of the Property Having NOT Already Been Adjudicated.

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

///First Lawsuit

2. This Court finds that the first lawsuit was a quiet title action brought by the buyer,

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1 quiet title action brought by the buyer,

2
3 Hollyvale Rental Holdings, LLC, of the Subject Property at the foreclosure sale, Clark County
4 District Court Case No. A-17-764643-C, captioned *Hollyvale Rental Holdings, LLC v. Wesley*
5 *Rusch and Oliver Longboy* (hereinafter the "Quiet Title Action").

6
7 3. This Court finds that in the Quiet Title Action, the validity of the foreclosure of
the
8 Subject Property was **NEVER** adjudicated and Plaintiffs' ~~their~~ motions and arguments challenging
the

9 foreclosure and the manner in which it was conducted **were never heard** and on May 29, 2018,
an Order quieting

10 title was entered by Judge Tierra Jones in favor of the buyer and against Plaintiffs in the Quiet
11 Title Action.

12
13 4. This Court finds that on August 9, 2018, Judge Tierra Jones entered a
subsequent

14 Order denying Plaintiffs' post-judgment Rule 60 Motion. This Order also required Plaintiffs to
15 first seek permission and leave from the court prior to filing any further pleadings or papers in the
16 Quiet Title Action.

17 5. This Court finds that on September 25, 2018, Judge Tierra Jones issued a
18 subsequent Minute Order reiterating that the Quiet Title Action was closed and ordered "there will
19 be no more motions filed in this case, because this case is closed."

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

24 **Second Lawsuit**

25 7. The second lawsuit was an action filed by Plaintiffs against Martin CUOA on
26 May

27 8, 2018, almost seven months after the foreclosure had concluded, Clark County District Court
Case No. A-18-774190-C, captioned *Wesley Rusch and Oliver Longboy v. The Martin*

tion”).

8. This Court finds the 2018 Action was mandatorily dismissed on March 27, 2019,

since Plaintiffs failed to comply with NRS 38.310 *Mediation* and, thereafter, Judge Jacqueline Bluth repeatedly denied attempts by Plaintiffs to reopen the 2018 Action *after the mediation failed miserably* and it remained dismissed *without prejudice*.

Third Lawsuit

9. The third lawsuit was an action filed by Plaintiffs against Martin CUOA 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”).

10. On November 9, 2021, this Court entered an order dismissing the 2020 Action,

without prejudice, due to Plaintiffs’ repeated failures to comply with the Nevada Rules of Civil Procedure Failure to serve the Martin for which the Martin was actually served.

11. ~~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 116.311(6)(3) and NRS 107.080(6).~~

Fourth Lawsuit

12. 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”).

13. On March 31, 2022, this Court entered an Order denying Plaintiffs’ Request to

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that Order, this Court entered findings/conclusions that Plaintiffs no longer have any rights to the

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to pursue the claims set forth in their Complaints against

~~3—~~ Martin CUOA filed in the 2020 Action and the 2021 Action.

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Plaintiffs must seek such relief in the court that handled the Unlawful Detainer Action

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

5
19.C.1. This Court previously found that Plaintiffs' 2020 Action and 2021 Action against
6
7 Martin CUOA were substantially similar and warranted consolidation under NRCP 42(a) and
8 EDCR 2.50(a)(1), due to the number of lawsuits Plaintiffs have filed against Martin CUOA.

9
2. Therefore, on February 15, 2022, this Court entered an order consolidating
the
10 2021 Action with the 2020 Action to promote judicial economy.

11 **D. Plaintiffs' Continual Filing of Unauthorized or Fugitive Documents Across Their**
12 **Lawsuits.**

13 Pursuant to the requirements of *Jordan, supra*, and *Jones, supra*, this Court enters the
14 following findings concerning Plaintiffs' serial lawsuits against Martin CUOA and Plaintiffs'
15 continual filing of unauthorized or fugitive documents in such lawsuits, as well as in the Quiet
16
17 Title Action:

18 **Unauthorized or Fugitive Filings in the Quiet Title Action**

19
1. This Court finds that on December 5, 2018, Plaintiffs filed in the Quiet Title
Action

20 a fugitive "Motion for Possession and Motion to Quash Temporary Writ of Possession on the
21 Gruonds (sic) of Fraud." This Court finds that Judge Tierra Jones **did not address** Plaintiffs'
22 filing, presumably since the Quiet Title Action was closed and Plaintiffs did not comply with her
23 pre-filing order.

24
25 2. This Court finds that on May 20, 2020, and in violation of Judge Tierra Jones'
pre-
26 filing order, Plaintiffs filed in the Quiet Title Action a fugitive document entitled "Rusch to
27 Nullify Sale Based on Violation of Constitutional Right of Due Process and Restore Possession of

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ndo to Its Rights Owners Rusch and Longboy.” This Court finds that Judge Tierra Jones **did not address** Plaintiffs’ filing, presumably since the Quiet Title Action was closed and Plaintiffs did not comply with her pre-filing order.

3. This Court finds that on June 7, 2020, in violation of Judge Tierra Jones’ pre-filing order, Rusch filed in the Quiet Title Action a fugitive document entitled “Rusch Objection to Plaintiffs Motion for Judgment on the Grounds (sic) that the Court Has No Jurisdiction as to the Puirpoerted (sic) Sale to Plaintiffs is Null and Void as Red Rock Did Not Comply With Nevada Law and Violated the Constitutional Right of Due Process.” This Court finds that Judge Tierra Jones **did not address** Plaintiffs’ filing, presumably since the Quiet Title Action was closed and Plaintiffs did not comply with her pre-filing order.

4. This Court finds that on June 13, 2021, in violation of Judge Tierra Jones’ pre-filing order, Plaintiffs filed in the Quiet Title Action a Request for Hearing on Order Nullifying Sale. This Court finds that Judge Tierra Jones **did not address** Plaintiffs’ filing, presumably since the Quiet Title Action was closed and Plaintiffs did not comply with her pre-filing order.

5. This Court finds that on March 20, 2022, in violation of Judge Tierra Jones’ pre-filing order, Plaintiffs filed in the Quiet Title Action a motion entitled “Rusch Request to Nullify Sale Based on Violation of Nevada Law and Constitutional Right of Due Process and Restore Possession of the Condo to its Rightful Owners Rusch and Longboy.” This motion was denied by newly assigned judge Monica Trujillo *as their were no new facts for a motion for reconsideration. The Judge was mistaken as the court never previously ruled on the issue and therefor plainittfs have appealed her order who reserved her right to sanction Plaintiffs in the event* ~~Plaintiffs file any further documents in the future in the Quiet Title Action.~~

6. This Court finds that Plaintiffs’ aforementioned filings in the Quiet Title Action

25 appeal was filed by Plaintiffs, ~~constitutes frivolous and~~ was a valid effort to have the court rule on the lawful sale of their home. and

~~27harassive conduct by Plaintiffs which attempted to usurp Martin CUOA's rights.~~

Was a continuing action by Plainittfs to recover damages from the Martins illegal sale of their condominium forcing to be homeless living in hotels

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written discovery and served an Amended Complaint on Martin CUOA in the name of their attorney, Bryan Naddafi, prompting Mr. Naddafi to file a Motion to Withdraw as Counsel of Record along with a Request for Order to Show Cause (to strike ~~fugitive~~ discovery and documents).

8. This Court finds that on June 16, 2020, in the 2018 Action, Martin CUOA filed a

Partial Joinder to Mr. Naddafi's Motion to Withdraw as Counsel of Record and for Order to Show Cause, and also requested its own Order to Show Cause (to prohibit further filings).

9. This Court finds that on July 16, 2020, in the 2018 Action, Judge Jacqueline M.

Bluth entered an Order granting Mr. Naddafi's Motion to Withdraw as Counsel of Record and striking Plaintiffs' fugitive discovery and filings. *The court refused to accept Rusch's opposition to Naddafi's withdrawal as Naddafi was hired to obtain damages from the Martins wrongful and illegal sale of his home. Rusch never intended to represent himself in this action but forced to when Naddafi withdrew in violation of the contingency fee agreement.*

10. This Court finds that on June 23, 2020, in the 2018 Action, Plaintiffs filed a

fugitive document entitled "Affidavit in Support of Judgement (sic) by Default."

11. This Court finds that on June 23, 2020, in the 2018 Action, Plaintiffs filed a

fugitive document entitled "Reamended (sic) Complaint Revised."

12. This Court finds that on July 21, 2020, in the 2018 Action, Plaintiffs filed a fugitive

document entitled "Reply in Support of Default Motion."

13. This Court finds that on July 28, 2020, in the 2018 Action, Plaintiffs filed a fugitive

document entitled "Ex Parte Application to Amend Complaint."

14. This Court finds that on July 31, 2020, in the 2018 Action, Judge Jacqueline M.

Bluth filed a Civil Order to Statistically Close Case.

15. This Court finds that on August 4, 2020, in the 2018 Action, Plaintiffs filed a

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fugitive document entitled “Ex Parte Application to Reconsider Order.”

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This Court finds that on August 6, 2020, in the 2018 Action, Plaintiffs filed a

fugitive document entitled “Ex Parte Application for Order Reopening Case and Accept Amended Complaint.”

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This Court finds that on August 15, 2020, in the 2018 Action, Plaintiffs filed

fugitive document entitled “Request to Reactivate Case and Request for Hearing on Open Matters.”

18.

a

This Court finds that on August 22, 2020, in the 2018 Action, Plaintiffs filed

fugitive document entitled “Ex Parte Application to Amend Complaint Revised.”

19.

Jacqueline M.

This Court finds that on August 24, 2020, in the 2018 Action, Judge

Bluth filed another Civil Order to Statistically Close Case.

20.

filed a

This Court finds that on September 2, 2020, in the 2018 Action, Plaintiffs

fugitive document entitled “Complaint Revised.”

21.

filed a

This Court finds that on September 10, 2020, in the 2018 Action, Plaintiffs

fugitive document entitled “Application for Summary Judgment.”

22.

Plaintiffs filed a

This Court finds that on September 15, 2020, in the 2018 Action,

fugitive document entitled “Addendum to Application for Summary Judgment Including Proposed Orders.”

23.

filed a

This Court finds that on September 28, 2020, in the 2018 Action, Plaintiffs

fugitive document entitled “Ex Parte Application for Order to Reinstate Case and Accept Amended Complaint.”

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30. This Court finds that on December 28, 2020, Plaintiffs filed a ~~fugitive~~ document

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1 Further Documents or Motion Papers in This Dismissed Case.
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number 28, 2020, Plaintiffs filed a fugitive document entitled "Request for (sic) to File Objection and Motions."

31. This Court finds that Judge Bluth's Order in the 2018 Action entered on January 12, 2021 admonished Rusch for engaging in the unauthorized practice of law by filing documents on behalf of himself and Longboy. The Order also required that Plaintiffs first obtain leave of court before filing any additional file any additional pleadings, motion papers or other documents.

32. This Court finds that on January 12, 2021, Martin CUOA filed its Opposition to Plaintiffs' "Request for (sic) to File Objection and Motions."

33. This Court finds that on January 20, 2021, Plaintiffs in the 2018 Action filed a fugitive document entitled "Reply in Support of Request for to (sic) File Objections and Motions."

34. This Court finds that when taking into account the collective filings of Plaintiffs in the 2018 Action which were unauthorized or frivolous, Plaintiffs have engaged in frivolous and harassing conduct toward Martin CUOA. **Attempted to reopen the original case to no avail.**

• Attempted to reopen the original case to no avail.

Filings in the 2020 Action

35. This Court finds that on January 25, 2021, in the 2020 Action, ~~without~~ ever having served Martin CUOA, Plaintiffs filed a document entitled "Notice of Default and Request for Compensation."

36. This Court finds that on February 2, 2021, in the 2020 Action, ~~without~~ having filed any-valid Proof of Service, Plaintiffs filed a document entitled "Notice of Default and Request for Compensation."

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filed any valid Proof of Service, Plaintiffs filed a document entitled "Status Re Defendant's
**Default and Plaintiff Request for Compensation," which was a request that a
 default be entered**
 against The Martin.

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ourt finds that on February 18, 2021, in the 2020 Action, ~~without~~ having
 filed ~~any~~ valid Proof of Service, Plaintiffs filed a document which they titled "Notice of
 Defendants' Default and Plaintiff Request for Compensation," and a document which they titled
 "Affidavit in Support of Judgment by Default."
 39. This Court finds that on February 28, 2021, in the 2020 Action, Plaintiffs filed
 an
 unsigned Affidavit of Service, claiming an individual named "Stephanie" served a Summons on
 Complaint upon The Martin on December 24, 2020.
 40. This Court finds that on March 9, 2021, in the 2020 Action, Plaintiffs filed
 another
 Affidavit of Service, claiming an individual named "Stephanie" served a copy of a "Complaint for
 Compensation" upon The Martin on December 24, 2020.
 41. This Court finds that on March 25, 2021, in the 2020 Action, this Court entered
 an
 Order to Strike, which struck a Writ of Execution that had been filed by Plaintiffs. The Order also
 noted "after review that a Complaint was filed on December 16, 2020, but that no summons has
 been issued and that there has been no service on Defendant."
 42. This Court finds that on April 12, 2021, in the 2020 Action, Plaintiff filed
 a
 document titled "Summons," which was ~~not~~-signed.
 43. This Court finds that on May 6, 2021, in the 2020 Action, ~~without~~ having filed
 any
 valid Proof of Service, Plaintiffs filed a document titled "Plaintiffs' Motion to (sic) Entry of
 Default Judgment Order."
 44. This Court finds that on June 3, 2021, in the 2020 Action, ~~without~~ having filed
 any
 valid Proof of Service, Plaintiffs filed a document titled "Plaintiff's Request for Order," seeking to
 have the court enter a Default Judgment.
 45. This Court finds that on June 15, 2021, in the 2020 Action, ~~without~~ having filed

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1 ha n the 2020 Action, without having filed
ve 3 any valid Proof of Service, Plaintiffs filed a document entitled “Application for Default
the 4 Judgment.”
co 5
urt 46. This Court finds that on June 20, 2021, in the 2020 Action, ~~without~~
ent having filed
er a 6
a De 7 any valid Proof of Service, Plaintiffs filed a document entitled “Application for Default
fa 8 Judgment.”
u 9
lt Ju 47. This Court finds that on June 22, 2021, in the 2020 Action, this court entered
dg an
me
nt.

2 10 Order Denying Applications for Default Judgment Filed June 15, 2021 and June 20, 2021 Without
5
11 Prejudice, noting Plaintiffs’ ongoing failure to follow the Nevada Rules of Civil Procedure.
12
h 48. This Court finds that on June 27, 2021, in the 2020 Action, ~~without~~
13 having filed
14 any valid Proof of Service, Plaintiffs filed a document entitled “Application for Default
C Judgment.”
15
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16 49. This Court finds that on July 1, 2021, in the 2020 Action, ~~without~~ having filed
t any
f
17 valid Proof of Service, Plaintiffs filed a document entitled “Application for Default Judgment.”
18
s 50. This Court finds that on July 5, 2021, in the 2020 Action, ~~without~~ having filed
t any
19
a valid Proof of Service, Plaintiffs filed a document entitled “Application for Default Judgment.”
20
o 51. This Court finds that on August 9, 2021, in the 2020 Action, this
n Court set a
21
22 hearing for September 1, 2021 to address Plaintiffs’ ongoing filings seeking a default against
n
23 Martin CUOA.
1
24 52. This Court finds that on August 13, 2021, in the 2020 Action, Martin CUOA
, filed a
2
25 Motion to Quash Alleged Service of Process, Strike Writ of Execution Filed on May 15, 2021, and
2
26 to Dismiss Plaintiffs’ New Complaint for Compensation on Order Shortening Time, which came
, one for hearing on September 1, 2021, where this Court granted the relief
i sought by Martin

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BISGAARD & SMITH LLP

1 on November 9, 2021.

2 e for he ari ng on Se pte mb er 1, 20 21, wh ere thi s Co urt gra nte d the reli ef so ug ht by Ma rti n

3 53. This Court finds that when taking into account the collective filings of Plaintiffs in

4 the 2020 Action ~~which were unauthorized or frivolous~~, Plaintiffs have engaged in ~~frivolous and~~

5 ~~harassive conduct toward Martin CUOA.~~

6 **conduct in an attempt to collected damages from the Martin for their wrongful and illegal sale of their home**

7 •

8 **Unauthorized or Evasive Filings in the 2021 Action**

9 54. This Court finds that on January 11, 2022, in the 2021 Action, Plaintiffs filed an

10 Application for Default Judgment, even though Plaintiffs ~~never~~ filed any Proof of Service, ~~nor~~ had

11 a Default ever been entered by the Clerk.

12 55. This Court finds that on February 10, 2022, in the 2021 Action, ~~without~~ having

13 filed any Proof of Service, Plaintiffs filed a document entitled “Rusch Request to Nullify Sale

14 Based on Violation of Constitutional Right of Due Process and Nevada Law and Restore

15 Possession of the Condo to its Rightful Owners Rusch & Longboy.” The matter was set

16 for hearing by this Court on March 16, 2022 and was denied since the court handling the Unlawful Detainer should rule on the motion

17 56. This Court finds that on March 29, 2022 in the 20Action, having ~~never~~ served

18 Martin CUOA or filed any Proof of Service, Plaintiffs proceeded to file a document from the 2018

19 Action entitled “Default (The Martin Condominium Unit)” dated June 18, 2018 to give the

20 appearance that Martin CUOA is in default in the 2021 Action. This Court further finds that while

21 the aforementioned document is irrelevant to the 2021 Action, Plaintiffs failed to point out that the

22 Default entered in the 2018 Action was set aside by stipulation of counsel on August 6, 2018.

23

24 57. This Court finds that on April 6, 2022 in the 2021 Action, Plaintiffs proceeded to

25 file an ~~un~~authorized Writ of Execution against Martin CUOA. This Court further finds that this is

26 the same conduct that Plaintiffs committed in the 2020 Action, resulting in this Court striking

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document entitled "Notice of Execution of Judgment," claiming that a Judgment was entered against Martin CUOA on February 18, 2022, ~~which is a false statement which Plaintiffs submitted~~ per NRS 53.045.

~~the 2021 Action which were unauthorized or frivolous, Plaintiffs have engaged in frivolous and~~
~~harassive conduct toward Martin CUOA.~~

•

•

CONCLUSIONS OF LAW

conclusions of law:

lawsuits, and that such pre-filing order shall apply only to Plaintiffs' lawsuits and claims against

2. is **NOT** satisfied This Court concludes that Nevada’s definition of a “vexatious litigant”

with regard to Plaintiffs' conduct toward Martin CUOA and that Plaintiffs should be deemed **NOT** to be vexatious litigants.

3. This Court concludes that the first requirement for issuance of a pre-filing order is

NOT met, as Plaintiffs were given reasonable notice of Martin CUOA's Pre-Filing Motion and an

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4. This Court concludes that the second requirement for issuance of a pre-filing order is **NOT** met, as this Court has created an adequate and detailed record above of Plaintiffs' serial filing of
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DISCARE & SMITH LLP

3 provided Plaintiffs with an opportunity to respond to Martin CUOA's Pre-Filing Motion both in
6
7 legal briefing and at the hearing held on June 15, 2022.

8 5. This Court concludes that the third requirement for issuance of a pre-filing order
is

9 **NOT** met, as this Court has **NOT** entered substantive findings above as to the frivolous or harassing
nature of

10 Plaintiffs' actions toward Martin CUOA. But rather **Plaintiff is merely attempting to receive
compensation from the Martin for their wrongful sale of their home.**

11 6. This Court concludes that the fourth requirement for issuance of a pre-filing
order

12 is NOT met, as this Court's granting of Martin CUOA's Pre-Filing Motion is not narrowly drawn in
that

13 shall apply only to the lawsuits and claims filed by Plaintiffs against Martin CUOA and not to
14

15 Plaintiffs' claims against any other person or entity having no relation to Martin CUOA, such as

16 their currently pending legal malpractice lawsuit against their former attorney in Clark County

17 District Court Case No. A-21-845881-C.

18 7. This Court also concludes that an award of attorney's fees and costs to
Martin

19 CUOA will be denied at this time, without prejudice, but that it will consider entering such an

20 award in the future should Plaintiffs continue to engage in their conduct of serially filing lawsuits

21 against Martin CUOA and the filing of unauthorized or fugitive documents in such lawsuits

22 against Martin CUOA, which this Court concludes to be vexatious and harassing toward Martin

23 CUOA.

24

25 **PRE-FILING ORDER**

1 Based upon the above Findings of Facts and Conclusions of Law, and good cause

2 appearing, this Court **DOES NOT** order a Pre-Filing Order, as follows:

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BISGAARD & SMITH LLP

1 nclusions of Law, and good cause
3 appearing, this Court orders a Pre-Filing Order, as follows:

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs are deemed
5 NOT to be vexatious litigants under Nevada law and this Court's intervention is NOT
6 necessary to preclude
7 further vexatious conduct by Plaintiffs against Martin CUOA.

8 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Martin
9 CUOA's Pre-Filing Motion is **NOT GRANTED IN PART**, and **DENIED IN PART**, and a Pre-
Filing

2 10 Order is NOT entered, as follows:

11 (a) Martin CUOA's Pre-Filing Motion is **NOT GRANTED** with regard to Martin

12 CUOA's request that Plaintiffs be required to first seek leave of this Court
13 before filing any additional pleadings, motions, or other papers in the 2018
14 Action, the consolidated 2020 Action and 2021 Action, or the Quiet Title
15 Action, against Martin CUOA;

16 (b) Martin CUOA's Pre-Filing Motion is **NOT GRANTED** with regard to Martin

17 CUOA's request that Plaintiffs be required to first seek leave of this Court
18 before filing any new lawsuit against Martin CUOA related in any way to
19 the foreclosure of the Subject Condominium;

20 (c) Martin CUOA's Pre-Filing Motion is **DENIED** with regard to Martin

21 CUOA's request for an award of attorney's fees and costs to Martin CUOA
22 as a sanction against Plaintiffs for their frivolous and harassing conduct
23 against Martin CUOA.

24 ///

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that in accordance with SCR 9.5, the Clerk shall NOT submit a copy of this Order to the administrative office of the courts to include Plaintiffs on the State of Nevada's list of vexatious litigants.

By: _____
DISTRICT COURT JUDGE

APPROVED AS REVISED

/S/ Wesley Rusch

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2 **CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

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5 CASE NO: A-20-826568-C

6 DEPT. NO. Department 27
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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: 6/30/2022

16 Marc Cwik Marc.Cwik@lewisbrisbois.com

17 Susan Awe susan.awe@lewisbrisbois.com

18 Wesley Rusch dirofcomp@yahoo.com
19
20
21
22
23
24
25
26
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28



Revised by Wesley Rusch Plaintiff

MARC S. CWIK, ESQ.

1 Nevada Bar No. 006946

E-Mail: Marc.Cwik@lewisbrisbois.com

2 LEWIS BRISBOIS BISGAARD & SMITH LLP

6385 S. Rainbow Boulevard, Suite 600

3 Las Vegas,

Nevada 89118

702.893.3383

5 FAX: 702.893.3789

Attorney for Defendant The Martin

6 *Condominium Unit Owners' Association*

7

**DISTRICT
COURT**

8

**CLARK COUNTY,
NEVADA**

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10

OBJECTION

**REQUEST FOR
HEARING**

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NOTICE IS HEREBY GIVEN that an **ORDER GRANTING DENYING**
DEFENDANT THE
NOTICE IS HEREBY GIVEN that an **ORDER GRANTING DENYING**
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 ///

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

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

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

9

VIA EMAIL AND U.S. MAIL TO:

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

14

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EXHIBIT A

EXHIBIT A

OGM

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MARC S. CWIK, ESQ.

1 Nevada Bar No. 006946

c.Cwik@lewisbris
BRISBOIS BISGA

2 6385 S. Rainbow Boulevard, Suite 600 Las Vegas, Nevada 89118

5 702.893.3383

FAX: 702.893.3789

6 *Attorney for Defendant,*

7 *The Martin Condominium Unit Owners' Association*

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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Defendant, THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION

21

("Martin CUOA"), filed its Motion to Dismiss, or in the Alternative, Motion for Summary

22

Judgment and supporting Appendix (hereinafter the "Dispositive Motion") on May 3, 2022;

23

Plaintiffs filed their Reply and a separately filed Reply and Request for Summary Judgment on

24

June 5, 2022; and Martin CUOA filed its Reply in Support of Its Motion to Dismiss, or in the

25

Alternative, Motion for Summary Judgment on June 8, 2022.

26
27

1 Martin CUOA's Dispositive-Motion came on for hearing before the Honorable Judge
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:

I.

10 **FINDINGS OF FACT**

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

12 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 **WITHOUT NOTICE AND IN VIOLATION OF MARTINS CCRs AND
NEVADA LAW** 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 10,
2017 and the Foreclosure Deed was recorded on October 17, 2017.

28 5. This Court finds that prior to the foreclosure, RRFS provided various required
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notices to Plaintiffs, including but not limited to, the amount of Plaintiffs' delinquency, Martin CUOA's lien, Martin CUOA's intent to proceed with foreclosure of the lien, and notice of the foreclosure sale. **HOWEVER RRFS DID NOT PROVIDE THE LEGALLY REQUIRED NOTICE FOR THE AUGUST 10 SALE**

6. This Court finds that prior to the foreclosure being completed, both Plaintiffs filed voluntary petitions for bankruptcy and received discharges of the debt owing to Martin CUOA. **HOWEVER THE MARTIN TOOK MORE MONEY THAN THEY WERE ENTITLED TO AS THOSE DEBTS TO THE MARTIN WERE DISCHARGED IN BANKRUPTCY**

7. This Court finds that Plaintiffs **PRESENTED** credible evidence that RRFS failed to give proper notice or otherwise failed to properly conduct the foreclosure on behalf of Martin CUOA. **THERE WAS NO NOTICE AND NO COMPLAINE WITH MARTINS CCRs AND NEVADA LAW.**

8. This Court finds that on February 22, 2018, Plaintiffs DID NOT receive the excess proceeds from the foreclosure sale. **AS THE MARTIN WITHOUT AUTHORIZATION GAVE THE CHECK TO BRYAN NADDAFI'S OFFICE WHO WITHOUT AUTHORIZATION CASHED THE CHECK.**

9. This Court finds that on February 22, 2018, prior to NOT receiving the excess proceeds, Plaintiffs executed a Disbursement and Indemnification Agreement prepared by RRFS which noted the foreclosure resulted from Plaintiffs' failure to pay Martin CUOA's assessments, fees and costs, including related collection fees and costs, and indemnified and released RRFS with regard to all claims related to distribution of the Excess Funds and claims arising out of or in connection with the sale of the Subject Condominium. **THIS RELEASE IS NULL and VOID AS THE MARTIN NEVER GAVE THE PROCEEDS TO PLAINTIFF AND THE RELEASE IS A FORM OF EXTORTION AS THE FUNDS RIGHTLY BELONGED TO PLAINTIFF**

10. This Court further finds that when executing the Disbursement and Indemnification Agreement, Plaintiffs **DID NOT** sent a letter to their attorney, Bryan Naddafi, which stated the following: "Bryan, Please acknowledge receipt and give Red Rock Koch & Scow OK to distribute funds to me today. Wes." **THIS STATEMENT IS FALSE AND THE MARTIN DID NOT DISTRIBUTE THE PROCEEDS TO RUSCH AS INSTRUCTED**

11. This Court further finds that when Plaintiffs accepted the excess proceeds of the

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11. This Court further finds that when Plaintiffs never accepted the excess proceeds of the foreclosure sale from RRFS, they did so without any condition of protest.

B. Lawsuits Involving Plaintiffs Concerning the Subject Property: Validity of the Foreclosure of the Property Having Already NEVER Been Adjudicated.

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

Having Already Been Adjudicated.

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

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

First Lawsuit

2. This Court finds that the first lawsuit was a quiet title action brought by the buyer, Hollyvale Rental Holdings, LLC, of the Subject Property at the foreclosure sale, Clark County District Court Case No. A-17-764643-C, captioned *Hollyvale Rental Holdings, LLC v. Wesley Rusch and Oliver Longboy* (hereinafter the "Quiet Title Action"). This Bryan Naddafi's response when give a copy of the complaint:

This Complaint is perplexing and serves no real purpose. I will be getting into contact with the attorney and see just what they are trying to accomplish with this specific lawsuit. "

3. This Court finds that in the Quiet Title Action, the validity of the foreclosure of the Subject Property was **NEVER** adjudicated and Plaintiffs' ~~lost their~~ motions and arguments challenging the foreclosure and the manner in which it was conducted **WERE NEVER LITIGATED**

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

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

6. This Court further finds that Plaintiffs **did file** an appeal in the Quiet Title Action, ~~rendering~~ both Plaintiffs' challengING to the validity of the foreclosure of the Subject Property and the judgment in favor of the buyer to be final.

Second Lawsuit

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8, 2018, almost seven months after the foreclosure had concluded, Clark County District Court

Case No. A-18-774190-C, captioned *Wesley Rusch and Oliver Longboy v. The Martin Condominium Unit Owners Association* (the “2018 Action”).

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

9. Thereafter, Judge Jacqueline Bluth repeatedly denied attempts by Plaintiffs to

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T4 failed to comply with NRS 38.310.

9. Thereafter, Judge Jacqueline Bluth repeatedly denied attempts by Plaintiffs to

6 8 ion was mandatorily dismissed on March 27, 2019, since Plaintiffs
 6 8. The 2018 Action was mandatorily dismissed on March 27, 2019, since Plaintiffs
 T7 failed to comply with NRS 38.310. **MEDIATION**
 h
 e8 Thereafter the case was suppose to continue accoring to Bryan Naddafi
 29 However Brian Naddafi refused to continued to work on the case.
 010
 ! Bryan Naddafi
 8 wes _____
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 Wes:
 I do not represent you. Please stop contacting me regarding this issue.
 Best,
 Bryan Naddafi, Esq.
 Wes:
 I am not representing you in your new lawsuit against the HOA. Stop contacting me with this information.
 Regards,
 Bryan Naddafi, Esq.
 Bryan Naddafi
 wes rusch
 Wes this my final response to you. As I told you repeatedly, I do not represent you nor does my law firm Avalon Legal
 Group represent you or Oliver. I am not filing a new complaint.
 -Bryan Naddafi, Esq.
 Sent from my iPhone
 Bryan Naddafi
 wes _____
 Contact Olympia Law. Your retainer is with them.
 -Bryan
 Bryan Naddafi
 wes rusch
 Wes:
 I am not your attorney on this matter and neither is Avalon Legal Group LLC.
 Bryan Naddafi, Esq.
 Bryan Naddafi
 wes rusch
 Luz Garcia

Wes, that is an Olympia Law PC retainer. My firm is Avalon Legal Group LLC. If you do not wish to pay on the retainer you and Oliver executed with Avalon last week, then I will not be able to commence representation, as per the language in Avalon's retainer. I am not going to go back and forth on this any longer. If you wish for me and Avalon to represent you and Oliver in this matter, please make the full payment agreed upon in the retainer by the 27th of March 2020 (this Friday). If you want Olympia to represent you, then contact them.

Best,

Bryan Naddafi, Esq.

Bryan Naddafi

wes _____

As we discussed, I do not work with Olympia. My law firm is Avalon Legal Group LLC, it is a completely separate law firm. Olympia Law PC's contact info is: info@olympialawpc.com

Best,

Bryan Naddafi, Esq.

Bryan Naddafi

wes _____

As we discussed, I do not work with Olympia. My law firm is Avalon Legal Group LLC, it is a completely separate law firm. Olympia Law PC's contact info is: info@olympialawpc.com

Best,

Bryan Naddafi, Esq.

Bryan Naddafi

wes _____

Good afternoon Wes. My office forwarded the retainer to conduct the lawsuit to you for your signature along with Oliver's signature. Without an executed retainer from both of you, I cannot commence representation on the damages case. If you would like, we can have a call next week when I am back in the office to discuss.

Best,

Bryan Naddafi, Esq.

Bryan Naddafi

wes rusch

Morning Wes. I will forward the retainer tomorrow when I am back from jury duty. Can you forward me an email for Oliver? I need to add him to mycase so he can create a login and electronically sign.

Best,

Bryan

n Apr 21, 2020, at 9:07 AM, wes _____ <dirofcomp@yahoo.com> wrote:

have you done so

is steve going to work on our case

Sent from my iPhone

On Apr 18, 2020, at 10:28 AM, wes rusch <dirofcomp@yahoo.com> wrote:

Steve replied to me as follow

Dear Mr. Rusch:

After reviewing your file, and Bryan's e-mail, your case is done and finished. Once again you contacted us over a year after your case was dismissed

Please tell Steve that the case was dismissed without prejudice so that we could mediate once the mediation failed we can file a new or amended complaint and get the case moving along again

wes

Bryan Naddafi

wes rusch

Wes this my final response to you. As I told you repeatedly, I do not represent you nor does my law firm Avalon Legal Group represent you or Oliver. I am not filing a new complaint.

-Bryan Naddafi, Esq.

Sent from my iPhone

AVALON LEGAL GROUP LLC

www.avalonlegalgroup.com

9480 S. Eastern Ave., Suite #257
Las Vegas, NV 89123

Tel: (702) 522-6450

Fax: (702) 848-5420

Naddafi

Br wes rusch

ya Luz Garcia

n

Wes, that is an Olympia Law PC retainer. My firm is Avalon Legal Group LLC. If you do not wish to pay on the retainer you and Oliver executed with Avalon last week, then I will not be able to commence representation, as per the language in Avalon's retainer. I am not going to go back and forth on this any longer. If you wish for me and Avalon to represent you and Oliver in this matter, please make the full payment agreed upon in the retainer by the 27th of March 2020 (this Friday). If you want Olympia to represent you, then contact them.

Best,

Bryan Naddafi, Esq.

Sent from my iPhone

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9480 S. Eastern Ave., Suite #257
Las Vegas, NV 89123

Tel: (702) 522-6450

Fax: (702) 848-5420

Naddafi

Br wes rusch

ya Luz Garcia, Kurt Naddafi

n

Thank you received. Luz will contact you for payment of the retainer fee.

Best,

Bryan Naddafi, Esq.

Sent from my iPhone

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Las Vegas, NV 89123

Tel: (702) 522-6450
Fax: (702) 848-5420

Bryan Naddafi

wes _____

As we discussed, I do not work with Olympia. My law firm is Avalon Legal Group LLC, it is a completely separate law firm. Olympia Law PC's contact info is: info@olympialawpc.com

Best,

Bryan Naddafi, Esq.

Sent from my iPhone

AVALON LEGAL GROUP LLC

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Las Vegas, NV 89123

Tel: (702) 522-6450
Fax: (702) 848-5420

Email: bryan@avalonlg.com

n Naddafi

Br wes _____

ya

I am not sending a contingency retainer. This is an hourly matter. We can have a call to discuss when I am back in the office.

Best,

Bryan Naddafi, Esq.

Sent from my iPhone

AVALON LEGAL GROUP LLC

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Bryan Naddafi

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1 Fax: (702) 848-5420

Since Bryan Naddafi refused to continue to represent Plaintiffs in violation of their contingency agreement, Rusch was force to step in.

2 9. Thereafter, Judge Jacqueline Bluth repeatedly denied attempts by Plaintiffs to
reopen the 2018 Action and it remained dismissed. **WITHOUT PREJUDICE**

5
6 **Third Lawsuit**

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

11 11. On November 9, 2021, this Court entered an order dismissing the 2020 Action,
12 without prejudice FOR FAILURE TO SERVE THE MARTIN EVEN THOUGH PLAINTIFF HAD
FILED PROOF OF SERVICE ON THE MARTIN

13
14 12. ~~This Court concluded in its Order entered on November 9, 2021 that any re-~~
15 ~~filing of Plaintiffs’ Complaint in the 2020 Action would appear to be time barred under NRS~~
16 ~~46.31166(3) and NRS 107.080(6). THIS DICTA WAS INVALID~~

Fourth Lawsuit

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

24 Nullify Sale and Restore Possession of Condo, which Plaintiffs had filed on February 10, 2022. In
25 that Order, this Court entered findings/conclusions that Plaintiffs no longer have any rights to the
26 Subject Property and, therefore, no rights to pursue the claims set forth in their Complaints against
27 Martin CUOA filed in the 2020 Action and the 2021 Action. **MUST**

FILE HIS MOTION WITH THE COURT THAT HANDLED

THE UNLAWFUL DETAINER

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Consolidation of Plaintiffs' 2020 Action and 2021 Action.

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

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

1 1. This Court previously found that Plaintiffs' 2020 Action and 2021 Action against
2 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.

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

8 1. This Court previously found in an Order entered on November 9, 2021 in the 2020
9 Action that the gravamen of Plaintiffs' Complaint in the 2020 Action, based upon Plaintiffs'
10 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 **AND**
14 **DAMAGES FOR THE WRONGFUL SALE** of the Subject
15 Property.

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 **AND DAMAGES FOR THE**
19 **WRONGFUL SALE** of the Subject Property. This
20 Court's finding is premised upon the following facts: (a) pages 6 through 9 of Plaintiffs'
21 Complaint in the 2021 Action includes allegations seeking restoration of the Subject Property; (b)
22 the filings of the Plaintiffs, both in the 2020 Action and the 2021 Action, have repeatedly
23 requested this Court to set aside the sale and restore possession of the condominium to the
24 Plaintiffs; and (3) most noteworthy is the fact that on February 10, 2022, before Martin CUOA
25 filed its Dispositive Motion, Plaintiffs filed a dispositive motion, requesting this Court to nullify
26 the foreclosure sale and restore possession of the Subject Property to Plaintiffs, which this Court
27 denied in its Order entered on March 31, 2022 AS THE
COURT

THAT HANDLED THE UNLAWFUL DETAINER SHOULD RULE ON THE MOTION

THE COMPLAINT STATES AS FOLLOWS

Flood Damages

7. That on or about June 29, 2015, a sprinkler or water pipe busted on the floor where the Subject Property was located.

8. As a result of the water pipe busting, water ran throughout the entire floor where the Subject Property was located.

9. Upon information and belief the Martin was informed of the water pipe busting shortly after it happened

10. Upon information and belief the **Martin failed to either turn off the water escaping from the busted water pipe or failed to irrigate the water to another location to prevent damage to the Subject Property and its neighboring units.**

11. That as a result, the Subject Property suffered extensive damage including damage to its floors and Plaintiffs personal property.

12. Furthermore, **the damage was so extensive that Plaintiffs were required to vacate the Subject Property and incur large expenses on their part.**

13. Plaintiffs informed the Martin HIOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate the Subject Property **far exceeded any monthly assessments**

15. Plaintiffs, as the owners of the Subject Property, enter into an agreement with the Martin in the form of a documents entitled Covenants, Conditions and Restrictions ("CC&Rs").

(Breach of Contract)

That on or about June 29, 2015, a sprinkler or water pipe busted on the floor where the Subject Property was located.

15. Plaintiffs, as the owners of the Subject Property, enter into an agreement with the Martin in the form of a documents entitled Covenants, Conditions and

from the flood.

19. Due to Martins breach of their obligations under the CC&Rs described herein.

Plaintiffs have been damaged in an amount of \$25,552.92

THIRD CLAIM FOR RELIEF

(Breach of contract - Violation of NRS 116 CCR 17.2)

28. Defendant's non-judicial foreclosure of the Subject Property included disallowed items and Martin took monies discharged in bankruptcy.

29. The sale of Rusch's condo was in violation of Nevada Law. Red Rock Martin' **agent was required to comply with Nevada Law.**

30. The **Martin HOA did not comply with NRS 116.31162 et seq** and CCR 17.2 when it sold the property,

Notice of Delinquent Assessments

Before starting the foreclosure, the **HOA must mail a notice of delinquent assessment to the homeowner**, which states:

- ~~12~~ the **amount of the assessments and other sums that are due**
- ~~13~~ a description of the unit against which the lien is imposed, and
- ~~14~~ the name of the record owner of the unit. (Nev. Rev. Stat. § 116.31162).

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

14 **Except as otherwise provided in subsection 4, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the ddeclaration provides that a lien may be foreclosed under**

inclusive, the **association may foreclose its lien by sale after all of the following**

occur:

15 (a) **The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor (a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due** *The Martin Failed to do this.* in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

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

17 (1) Describe the deficiency in payment.

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

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

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

- 20 (or her successor in interest has failed to pay the amount of the lien, including costs,
c fees and expenses incident to its enforcement, for 90 days following the recording of
) the notice of default and election to sell.
- 21 2. The notice of default and election to sell must be signed by the person designated in the
T declaration or by the association for that purpose or, if no one is designated, by the
h president of the association.
- 22 3. The period of 90 days begins on the first day following:
23 (a) The date on which the notice of default is recorded; or
24 (b) The date on which a copy of the notice of default is mailed by certified or registered mail,
n return receipt requested, to the unit's owner or his or her successor in interest at his or
i her address, if known, and at the address of the unit,
25 whichever date occurs later.
- 26 4. The association may not foreclose a lien by sale based on a fine or penalty for a violation
s of the governing documents of the association unless:
27 (a) The violation poses an imminent threat of causing a substantial adverse effect on the
o health, safety or welfare of the units' owners or residents of the common-interest
w community; or
28 (b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS
e 116.310305.

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

o

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1. **No Notice of the August 10 Sale as required by Nevada Law Rusch did not
receive any written or oral notice of a proposed sale of his property .
Rusch first learned of the sale by a call from an attorney's office.**

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2. R d also be compensated for the time they have been homeless and forced to
u stay in hotels since their wrongful eviction.

s

That as a direct and proximate result of the Defendant's actions, Plaintiffs have
been damaged in the amount of \$ Four Million Dollars each for a total of \$
EIGHT Million Dollars.

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MARTIN TAKES MORE

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ENTITLED TO

The Martin Sold Plaintiffs

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WHEREFORE, Plaintiffs prays for judgment against the Defendant as follow

7 F s prays for judgment against the Defendant as follow

o 8 Monetary damages as a result of Defendant's breach of contract, in an
r amount of \$25,442.92

m 9 For monetary damages as a result of Defendant's breach of contract in an
o amount of \$ Four Million Dollars each for a total of \$ Eight Million Dollars.

W 10 For costs; and

H For such other and further relief as the Court may deem just and
proper

R :

1 CONCLUSIONS OF LAW

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

O 1. Under NRCP 12(b)(5), dismissal of a
R Complaint is permitted when it fails to state a
E

II.
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 Brelant 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 federal counterpart to NRCP 12(b)(5)).

6. When a motion is made pursuant to NRCP 12(b)(5) and matters outside 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 7. A court can dismiss a complaint for failure to state a claim upon which relief can be
8 granted if the action is barred by the statute of limitations. *See Bemis v. Estate of Bemis*, 114 Nev.
9 1021, 967 P.2d 437 (1998); *Shupe & Yost, Inc. v. Fallon Nat'l Bank*, 109 Nev. 99, 100, 100-102, 10
847 P.2d 720, 720-721 (1993).

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

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

21
22 10. This Court further concludes that Martin CUOA's Dispositive Motion is **DENIED** in
23 its entirety, and Plaintiffs' Request for Summary Judgment in their favor is **GRANTED AS THE**
MARTIN SOLD PLAINITFFS HOME WITHOUT LEGALLY
REQUIRED NOTICE.

24

B. Plaintiffs' Complaint in the 2021 Action DOE NOT Require Dismissal. With prejudice.
Under Principles of Collateral Estoppel.

25 1. This Court concludes that Plaintiffs' challenge to the validity of the foreclosure and
26 title to the Subject Property has **NEVER** been adjudicated in the Quiet Title Action, such
adjudication is **NOT** final, and therefore, under principles of collateral estoppel, ~~Plaintiffs~~
~~have~~

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*,
8 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (discussing doctrines of issue preclusion and claim
9 preclusion); *State Eng’r v. Sustacha*, 108 Nev. 223, 226, 826 P.2d 959, 961 (1992) (recognizing
10 that “one district generally cannot set aside another district court’s order”); *Truesdell v. State*, 129
11 Nev. 194, 198, 304 P.3d 396, 399 (2013) (holding that litigant could not collaterally attack the
12 validity of a TPO in a subsequent court proceeding).

13 **C. Plaintiffs’ Complaint in the 2021 Action Also Requires Dismissal With Prejudice**
14 **Because If It Were Not Subject to Dismissal Under Collateral Estoppel Principles, It**
15 **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 **NOT** 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 2. Application of this Court’s finding that the gravamen of Plaintiffs’ Complaint in the
21 2021 Action is a claim challenging the notice of default and election to sell that was recorded
22 against the condominium for the purpose of seeking to recover possession of the Subject Property,
23 NRS 116.31166(3), which applies to foreclosures performed by community associations, would
24 have required Plaintiffs to file their Complaint within 60 days of the date the Foreclosure Deed
25 was recorded **.TO REDEEM THE PROPTERY** ~~Since Plaintiffs’ Complaint in the 2021 Action~~
26 ~~was filed years later, this Court~~
27 ~~concludes Plaintiffs’ Complaint in the 2021 Action is time-barred. S~~

SINCE THE MARTIN VIOLATED ITS CCRS WHEN IT SOLD THE
PROPERTY IN VIOLATION OF NEVADA LAW THERE IS A

LEWIS

S A SIX YEAR STATUTE OF LIMITATIONS.

**This Court's conclusion that Plaintiffs' Complaint in the 2021 Action is
NOT time-barred**

**3. This Court's conclusion that Plaintiffs' Complaint in the 2021
Action is NOT time-barred**

1 3. This Court's conclusion that Plaintiffs' Complaint in the 2021 Action is NOT 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 **NOT** 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 **NOT** time-barred.
13

14 5. This Court's alternate conclusion follows from the premise that under Nevada law,
15 claims based upon a **CONTRACT** created by statute are subject to a **SIX** year statute of limitations
and Plaintiffs' did not file their Complaint in the 2021 Action until more than three years after the
16 Foreclosure Deed was recorded, even taking into account the period of tolling of all statutes of
17 limitations in 2020 under the Nevada Governor's Declaration of Emergency Directive 009
18 (Revised) (beginning tolling on April 1, 2020) and Declaration of Emergency Directive No. 026
19 (ending tolling on July 31, 2020). *See* NRS 11.190(3)(a); *Las Vegas Rental Homes Corp v. Bank*
20 *of N.Y. Mellon*, 2020 Nev. Dist. LEXIS 14, *12 (Eighth Judicial District Court of Nevada, Clark
21 County, Case No. A-19-791976-C, Jan. 9, 2020).
22
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 11.190.7.~~

Based upon all of the above findings and conclusions, this Court concludes

that

e 2021 Action is **NOT** time-barred in its entirety and ~~must be dismissed, with~~

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1 7. Based upon all of the above findings and conclusions, this Court concludes that
2 Plaintiffs' Complaint in the 2021 Action is NOT time-barred in its entirety and must NOT be
dismissed, with

3 ~~prejudice.~~ **PLAINTIFFS MUST BE AWARDED SUMMARY JUDGMENT**

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
in the 2021 Action is subject to dismissal, with prejudice, under both collateral estoppel principles
10 and application of Nevada's statutes of limitations, Plaintiffs' Complaint in the 2021
Action is

11 further subject to dismissal with prejudice under various substantive legal principles.

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

20

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 property until the foreclosure"); *Farrey v. Sanderfoot*, 500 U.S. 291, 297 (1991) ("Ordinarily, liens
28

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

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 MARTIN FAILED TO COMPLY WITH NEVADA LAW AND WHEN IT**
22 **WRONGFULLY SOLD PLAINTIFFS HOME.**
23 ~~The Court’s conclusion, therefore, follows from the Court’s determination that it~~
24 ~~is an impossibility for Plaintiffs to ever establish the second element of a wrongful foreclosure~~
25 ~~claim because by operation of law, Plaintiffs’ bankruptcy to extinguish the debt owed to Martin~~
26 ~~CUOA operates as a party admission that they cannot establish they were not in breach of their~~
27 ~~obligations to pay assessments at The Martin at the time the foreclosure was conducted.~~5-

28—

29—

30—

31—

32— must be dismissed, with prejudice. In addition, Plaintiffs' Request
 33— 38 5. Based upon these above three conclusions, this Court concludes that Plaintiffs'
 34— 39 Complaint in the 2021 Action **IS NOT** dismissed, with prejudice. In addition, Plaintiffs' Request
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 36 Based 28
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1 5. Based upon these above three conclusions, this Court concludes that Plaintiffs'
2 Complaint in the 2021 Action must be **NOT** dismissed, ~~with prejudice~~. In addition, Plaintiffs'
Request

3 for Summary Judgment in their favor must be **GRANTED**

4

ORDER

5

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 **DENIED** in its entirety and summary judgment is entered in favor of
10 Martin CUOA and against Plaintiffs, ~~WITH PREJUDICE~~;

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that

11

Plaintiffs' Request for Summary Judgment in their favor is **GRANTED** ~~DENIED, WITH~~
~~PREJUDICE~~;

12

13 ~~**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that~~

14 ~~Plaintiffs' Complaint in the 2021 Action is DISMISSED, WITH PREJUDICE; and~~

15 ~~///~~

16 ~~///~~

17 ~~///~~

18 ~~///IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Writ~~
19 ~~of Execution filed by Plaintiffs on April 6, 2022 in the 2021 Action (A 21 840526 C) is hereby~~

20 ~~///~~

21 ~~///~~

22 ~~///~~

23 ~~///~~

24 ~~///~~

25 ~~///~~

26 ~~///~~

27 ~~///~~

28 ~~///~~

Y FURTHER ORDERED, ADJUDGED, AND DECREED that the Writ

~~1 of Execution filed by Plaintiffs on April 6, 2022 in the 2021 Action (A-21-840526-C) is hereby~~
~~2 STRICKEN.~~

4 DATED this 29th June , 2022.

6 Dated this 30th day of June, 2022

By:

DIS

Nancy L Allf

8 3DA 7BF 8917 4B08
9 Nancy Allf
District Court Judge

10 Respectfully Submitted By:

APPROVED AS MODIFIED

11 LEWIS BRISBOIS BISGAARD & SMITH LLP

16 *FAILED TO RESPOND*

17 By: /s/ Marc S. Cwiuk

18 MARC S. CWIK,

/s/ Wesley Rusch

19 ESQ./s Nevada Bar No. 06946
20 6385 S. Rainbow Boulevard, Suit

PO Box 30907
Las Vegas NV 89173e

21 Las Vegas, Nevada 89118
22 Attorneys for The Martin Condominium Unit
23 Owners' Association

plaintiffs

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 CASE NO: A-20-826568-C

7 DEPT. NO. Department 27
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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting Motion was served via the court's electronic cFile
14 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
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Plaintiffs

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Dept 27

Plaintiffs,

vs.

$$\left. \begin{array}{l}) \\) \\) \\) \\) \end{array} \right\} \quad) \quad) \quad) \quad)$$

Plaintiffs are tired of moving from hotel to hotel and eating out for every meal. It is about time for the court to compensate Plaintiffs for the wrongful action of the Martin selling their home without notice in violation of Nevada Law and their Constitutional Right of Due Process of Law.

POINTS AND AUTHORITIES

Motion to reconsider

A motion for reconsideration typically asks the deciding court to reconsider its decision due to the court's failure to review specific legal arguments.

Motion to reconsider

A motion for reconsideration typically asks the deciding court to reconsider its decision due to the court's failure to review specific legal arguments. Alternatively, perhaps the court misconstrued the argument presented. Filing a motion for reconsideration allows the moving party to clarify the legal arguments and possibly change the outcome of the case.

Rule 2.24. Rehearing of motions.

(a) 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 the court granted upon motion therefor, after notice of such motion to the adverse parties.

(c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Motions for reconsideration are essential litigation tools. Practitioners need not feel overly pessimistic about the odds for success if they have reasonable grounds for the motion.

True, you should avoid motions for reconsideration that do not raise overlooked grounds and do not pointedly and specifically indicate how the court has erred. This is not a second bite at the same motion practice, but an opportunity to **advance the correct adjudication of a matter**.

Where a mistake has truly occurred or you feel the court missed a critical point, seize the opportunity to get your case back on track. **Judicial economy favors correction of mistakes** as early as possible, before costly and time-consuming appeals begin. Trial

courts are interested in avoiding or correcting mistakes. A thoughtfully presented motion for reconsideration could be just the ticket.

Be sure to cite the specific "causes" on which you are relying. There are eight, plus a catch-all;

- (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion, by which such party was prevented from having a fair trial;
- (2) Misconduct of the prevailing party or jury;
- (3) Accident or surprise which ordinary prudence could not have guarded against;
- (4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;
- (5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;
- (6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;
- (7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;
- (8) Error in law occurring at the trial and objected to at the time by the party making the application; and
- (9) That substantial justice has not been done.

.

If you have new evidence and a justifiable reason for not having discovered it earlier, you have strong grounds for reconsideration under CR 59(a)(4). Your motion also should demonstrate that the evidence was material and potentially determinative, and is not merely cumulative or impeaching evidence.

The more frequent scenario, however, may be that you discover the new evidence more than 10 days after the decision. In that case, CR 59 is not your rule and you must rely on the counterpart in CR 60(b)(3) regarding relief from judgments. In that case, you have a reasonable time to bring your motion within one year.

CASES SHOULD BE DECIDED ON THEIR MERITS

What does on the Merits Mean by Dale Marshall

Last Modified Date: October 20, 2020

“On the merits” is a term that has its roots in the law: a judge, having reviewed the materials relevant to a lawsuit, may render a verdict based not on issues of procedure or other technicalities, but strictly on the facts introduced into evidence and the law as it applies to those facts. A judge who decides a case on the merits considers that any technical or procedural issues that have been raised are either dealt with or irrelevant. The purpose of deciding cases in this way is to ensure that justice is done, rather than reward or punish one of the parties unfairly because of adherence to, or failure to follow, procedural requirements.

Wesley Rusch and Oliver Longboy Plaintiffs “hereinafter Plaintiffs” object to Order on the grounds that it contains false and misleading statements. It is apparent that the court never read the order before signing it otherwise they would have had seen the blatant errors therein

It is obvious from the order that Defendant's are confused regarding the nature of this case.

There are really two causes of action causing significant damages to Plaintiffs.

Furthermore the complaint request compensation for damages. Possession of the condo will be resolved in the UD action which has been appealed. The appeals will finally look at the actual sale and discover that the sale did not comply with Nevada Law and reverse the sale

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

Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act. it is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.

Because of the technical nature of the Act and the courts' apparent deference to err in favor of due process protections for HOA owners (not too dissimilar from the protections typically afforded to California tenants in unlawful detainer proceedings), the Act is fertile ground for mistakes. **These recent cases make clear that even minor or technical violations**

can invalidate the lien and foreclosure process, and add delay and additional expense to the collection process.

Sale of Rusch condo is void

Plaintiff is seeking **damages** from the following events

First Cause the Flooding

That on or about June 29, 2015, a sprinkler or water pipe busted on the floor where the Subject Property was located. As a result of the water pipe busting, water ran throughout the entire floor where the Subject Property was located. the Martin was informed of the water pipe busting shortly after it happened. **The Martin failed to either turn off the water escaping from the busted water pipe or failed to irrigate the water to another location to prevent damage to the Subject Property and its neighboring units.**

That as a result, the Subject Property suffered extensive damage including damage to its floors and Plaintiffs personal property. Furthermore, **the damage was so extensive that Plaintiffs were required to vacate the Subject Property and incur large expenses on their part.** Plaintiffs informed the Martin HOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate the Subject Property **far exceeded any monthly assessments**

Second Claim for illegal sale of home in violation of Nevada Law and

The Subject Property was foreclosed upon and sold at a foreclosure sale conducted by Red Rock Financial Services on behalf of the Martin UOA **without notice to Plaintiffs in violation of Nevada Law. NRS 116.31162 et seq and CCR 17.2**

The complaint seeks damages

For monetary damages as a result of the Flood, in an amount of \$25,442.92.

For monetary damages as a result of Defendant's illegal sale of their home causing the wrongful eviction in an amount of \$Four Million Dollars each for a total of \$Eight Million Dollars.

The following amount is due and owing on Plaintiff's claim as of this date. Eight Million Twenty Five Thousand Four Hundred and Forty Four Dollars and Ninety Two Cents on the Complaint

Total Attorney Fees \$ \$43,577.02. Amount Bryan Naddafi wrongful took from proceeds

Total \$8,069,019.94

Therefore Defendant's motions and orders must be stricken and judgment entered in favor of Plaintiff

/S/ Wesley Rusch /S/ Oliver Longboy'

Wesley Rusch
Oliver Longboy



Wesley Rusch

Dirofcomp@yahoo.com

Box 30907

Las Vegas, NV 89173

702 764 0001

CLARK COUNTY, NEVADA

WESLEY RUSCH, an individual, and OLIVER
LONGBY, an individual,

Plaintiffs,

vs.

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

Defendant.

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

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

NOTICE OF APPEAL

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

BY /S/ Wesley Rusch
WESLEY RUSCH
Defendant

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

POINTS AND AUTHORITIES

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

Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act. it is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.

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

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

Please note the following court case:

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

SECOND DIVISION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sale of Rusch condo is void

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

Reasons a Foreclosure Sale May Be Set Aside

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

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

Irregularity in the Foreclosure Process

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

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

Notice of Delinquent Assessments

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

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

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

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

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

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

(1) Describe the deficiency in payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Declaration of Wesley A Rusch

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

I am over the age of Eighteen.

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

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

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

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

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

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

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

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

March 1, 2022

FURTHER DECLARANT SAVETH NAUGHT

/S/ Wesley Rusch

WESLEY A RUSCH

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

Respectfully Submitted

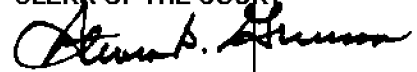
/s/ Wesley Rusch

Wesley Rusch

Respectfully Submitted

Wesley Rusch

/S/ Wesley Rusch



ASTA

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK**

WESLEY RUSCH; OLIVER LONGBOY,

Plaintiff(s),

vs.

THE MARTIN CONDOMINIUM UNIT OWNERS'
ASSOCIATION,

Defendant(s),

Case No: A-21-840526-C

Consolidated with A-20-826568-C

Dept No: XXVII

CASE APPEAL STATEMENT

1. Appellant(s): Wesley Rusch

2. Judge: Nancy Allf

3. Appellant(s): Wesley Rusch

Counsel:

Wesley Rusch
Box 30907
Las Vegas, NV 89173

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

Counsel:

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

Las Vegas, NV 89118

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, 05/20/2022
**Expires 1 year from date filed (From A826568)

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

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

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

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 85084

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 1 day of August 2022.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Wesley Rusch

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.

Supreme Court No. 85108
District Court Case No. A840526

FILED

SEP - 6 2022

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDERS this appeal DISMISSED."

Judgment, as quoted above, entered this 8th day of August, 2022.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
September 02, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

A-21-840526-C
CCJD
NV Supreme Court Clerks Certificate/Judge
5004964



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. Alf, District Judge
Wesley Rusch
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

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.

Supreme Court No. 85108
District Court Case No. A840526

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: September 02, 2022

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. Nancy L. Alf, District Judge

Wesley Rusch

Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on SEP - 6 2022

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS
SEP - 6 2022

CLERK OF THE COURT



Wesley Rusch

Dirofcomp@yahoo.com

Box 30907

Las Vegas, NV 89173

702 764 0001

NOTICE OF APPEAL

HOLLYVALE RENTAL HOLDINGS LLC

Case No **A-17-764643-C**

PLAINTIFF

DEPARTMENT 10

V,

WESLEY RUSCH ET AL.

DEFENDANT

**Notice is hereby given that Wesley Rusch Defendant hereby appeals
from the order entered in the court on August 30, 2022**

BY /S/ Wesley Rusch
WESLEY RUSCH
Defendant

**Out Home was sold by Red Rock on behalf of the Martin Condominium
Unit Owners Association in VIOLATION OF NEVADA LAW and
Constitutional Right of Due Process of Law and therefore the SALE IS
NULL AND VOID. Therefore the Unlawful Detainer Action ("UD") is**

also void as there was not a valid sale of our home. The UD must be reversed as it is null and void.

Rusch and Longboy ("Rusch") hereby request the return of their Martin Condominium that was illegally sold by Red Rock on behalf of the Martin Condominium Unit Owners Association in violation of Nevada constitutional due right of process of law.

POINTS AND AUTHORITIES

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

Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada

HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act. it is implicit that,

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

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

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

Please note the following court case:

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

SECOND DIVISION

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

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

When the deed of sale in favor of respondent was purportedly executed by the parties thereto and notarized on June 6, 2006, it is perfectly obvious that the signatures of the vendors therein, Macario and Felicidad, were forged.

They could not have signed the same, because both were by then long deceased: Macario died on February 22, 1981, while Felicidad passed away on September 14, 1997. This makes the June 6, 2006 **deed of sale null and void**; being so, it is "**equivalent to nothing**"; it produces no civil effect; and it does not create, modify or extinguish a juridical relation."

And while it is true that respondent has in her favor a Torrens title over the subject property, she nonetheless **acquired no right or title in her favor by virtue of the null and void June 6, 2006 deed.** "Verily, when the instrument presented is forged, even if accompanied by the owner's duplicate

certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property."³⁵

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

As has been held in the past:

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

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

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

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

The sale was made by one not authorized to make it, and cannot be upheld. It is simply void, and no one gains any rights under it. A purchaser must know that the sale is made by the proper person. The deed of trust shows who could make the sale. A

trustee can no doubt employ an auctioneer to act for him in crying off the property; but the trustee must be present and superintend the sale. The trustee in the present instance says that he does not think he was present at the sale.

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

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

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

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

Sale of Rusch condo is void

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

Reasons a Foreclosure Sale May Be Set Aside

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

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

Irregularity in the Foreclosure Process

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

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

Notice of Delinquent Assessments

Before starting the foreclosure, the **HOA must mail a notice of delinquent assessment to the homeowner**, which states:

the **amount of the assessments and other sums that are due**

a description of the unit against which the lien is imposed, and the name of the record owner of the unit. (Nev. Rev. Stat. § 116.31162).

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

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

(a) **The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address,** if known, and at the address of the unit, **a notice of delinquent assessment which states the amount of the assessments and other sums which are due** *The Martin Failed to do this.* in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

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

- (1) Describe the deficiency in payment.
- (2) State the name and address of the person authorized by the association to enforce the lien by sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

Declaration of Wesley A Rusch

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

I am over the age of Eighteen.

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

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

Hollyvale Rental Holdings, LLC is based on information and belief an entity that speculates in real estate. They are not a real person and do no need a place to live.

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

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

Our real property was sold at auction purportedly for delinquent HOA fees on August 10, 2017. When in fact the Martin owed Rusch more than the HOA fees. On on about June 29 a sprinkler pipe broke in the unit at the end of the 22nd floor causing water to flow down the hallway and into Rusch's unit.. According to Nigro there was water in Rusch's walls that had to be replaced. The Martin failed to mitigate the damage by not opening the sliding glass door to allow the water to flow down the side of the building instead of down the hall. The Martin also let the water flow for several hours before turning of the water. Had the Martin done either of the foregoing Rusch's Condo would not have suffered damage. As a consequence, Rusch was required to

relocate for nearly four months while Nigro repaired his unit. Nigro did not even complete the job and Rusch had to hire his own contractor to complete the job. Rusch incurred expenses in excess of \$25,000 as a result thereof. Rusch therefore claims that amount as a an offset to his HOA fess and therefore does not own the Martin any money and in fact the Martin owes Rusch money.

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

March 1, 2022

FURTHER DECLARANT SAVETH NAUGHT

/S/ Wesley Rusch

WESLEY A RUSCH

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

Respectfully Submitted

/s/ Wesley Rusch

Wesley Rusch

It should be noted the defects in the UD Action

Minutes

05/29/2018 9:30 AM

Court noted on April 23, 2018, Deft. filed motion to proceed in forma pauperis and motion setting aside was returned to Deft. Rusch. Deft. Rusch stated Pltf. not real property in interest and argued property has been transferred. Mr. Nelson stated he received Justice Court pleadings, have communicated with Deft's counsel, Brian Nadafi, since January on this matter. Mr. Nadafi filed another case against HOA. Further, **Mr. Nadafi has not confirmed as counsel in this matter and advised they have stipulated to default.**

As Bryan Nadafi was not counsel in this case he could not stipulate to default. This is a fraud on the court.

Please note paragraphs 15 where as it states that the Martin on or about July 19 2017 recorded notice of trustee sale. The following is the notice

Assessor Parcel Number: 162-20-213-163
File Number: R825267
Property Address: 4471 Dean Martin Dr #2206
Las Vegas NV 89103

Inst #: 20160719-0001870
Fees: \$18.00
N/C Fee: \$0.00
07/19/2016 12:32:32 PM
Receipt #: 2821613
Requestor:
RED ROCK FINANCIAL SERVICES
Recorded By: DROY Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF FORECLOSURE SALE
UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL RED ROCK FINANCIAL SERVICES AT (702) 932-6887. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT (877) 829-9907 IMMEDIATELY.

Red Rock Financial Services officially assigned as agent by the The Martin Condominium Unit Owners Association under the Lien for Delinquent Assessments. **YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS**, recorded on 12/04/2015 in Book Number 20151204 as Instrument Number 0000797 reflecting WESLEY RUSCH, OLIVER LONGBOY as the owner(s) of record. **UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE.** If you need an explanation of the nature of the proceedings against you, you should contact an attorney.

The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on 02/24/2016 in Book Number 20160224 as Instrument Number 0002832 of the Official Records in the Office of the Recorder.

NOTICE IS HEREBY GIVEN: That on 08/11/2016, at 10:00 a.m. at the front entrance of the Nevada Legal News located at 930 South Fourth Street, Las Vegas, Nevada 89101, that the property commonly known as 4471 Dean Martin Dr #2206, Las Vegas, NV 89103 and land legally described as PANORAMA TOWER PHASE III PLAT BOOK 140 PAGE 21 UNIT 2206 of the Official Records in the Office of the County Recorder of Clark County, Nevada, will sell at public auction to the highest bidder, for cash payable at the time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, state

Not it has a sale date of August 11, 2016 which is 364 dates prior to actual sale date

**However on Paragrpaph 16 it states the Martin sold the property at public auction
on August 10, 2018**

**The foregoing proves that the Martin did not provide legal notice when they sold
Rusch's home.**

Therefore the UD action must be reversed and condo restore to Rusch and Longboy

Respecfully Submitted

Wesley Rusch

/S/ Wesley Rusch

12. Upon information and belief, the Property was part of The Martin Condominium Unit Owners Association ("the HOA") and subject to a monthly assessment fee.
13. Upon information and belief, there was a default as to the HOA payments and a lien was recorded with the Clark County Recorder against property by the HOA on or about December 04, 2015, as Instrument No. 2015120400797.
14. Thereafter, on or February 24, 2016, the HOA recorded a Notice of Default ("NOD") against the Property as Instrument No. 20160202832 in the Office of the Clark County Recorder.
15. On or about July 19, 2016, the HOA recorded a Notice of Trustee's Sale ("Notice of Sale") against the Property as Instrument No. 2016071901870 in the Office of the Clark County Recorder.
16. On or about August 10, 2017, the HOA sold the Property at public auction pursuant to the Notice of Sale and NRS 116 *et seq.* ("HOA Foreclosure Sale").
17. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity paid the full amount of the Default as described in the NOD.
18. Plaintiff, as an independent purchaser for value, was the highest bidder at the HOA Foreclosure Sale, and paid \$324,000.00 to purchase the Property.
19. Upon information and belief, in Nevada and at the time of the HOA Foreclosure Sale, every sale made under the provisions of NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner subject to the right of redemption that may be exercised by the unit's owner within sixty (60) days of the sale, as provided under NRS 116.31166(3).
20. Upon information and belief, no party exercised a right of redemption of the Property.



Wesley Rusch

Dirofcomp@yahoo.com

Box 30907

Las Vegas, NV 89173

702 764 0001

CLARK COUNTY, NEVADA

WESLEY RUSCH, an individual, and OLIVER
LONGBODY, an individual,

Plaintiffs,

vs.

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

Defendant.

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

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

NOTICE OF APPEAL

**Notice is hereby given that Wesley Rusch Defendant hereby appeals
from the order entered in the court on August 30, 2022**

BY /S/ Wesley Rusch
WESLEY RUSCH
Defendant

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

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

Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act. it is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.

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

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

Please note the following court case:

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SECOND DIVISION

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

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

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

And while it is true that respondent has in her favor a Torrens title over the subject property, she nonetheless **acquired no right or title in her favor by virtue of the null and void** June 6, 2006 **deed**. "Verily, when the instrument presented is forged, even if accompanied by the owner's

duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property."³⁵

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

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

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

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

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

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

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

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

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

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

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

Sale of Rusch condo is void

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

Reasons a Foreclosure Sale May Be Set Aside

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

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

Irregularity in the Foreclosure Process

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

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

Notice of Delinquent Assessments

Before starting the foreclosure, the **HOA must mail a notice of delinquent assessment to the homeowner**, which states:

the **amount of the assessments and other sums that are due**

a description of the unit against which the lien is imposed, and

the name of the record owner of the unit. (Nev. Rev. Stat. § 116.31162).

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

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

(a) **The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due** *The Martin Failed to do this.* in accordance with subsection

1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

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

(1) Describe the deficiency in payment.

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

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

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

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its

enforcement, for 90 days following the recording of the notice of default and election to sell.

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

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

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

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

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

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

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

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

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

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

Declaration of Wesley A Rusch

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

I am over the age of Eighteen.

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

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

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

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

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

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

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

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

March 1, 2022

FURTHER DECLARANT SAVETH NAUGHT

/S/ Wesley Rusch

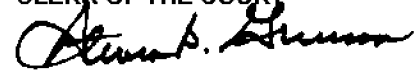
WESLEY A RUSCH

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

Respectfully Submitted

/s/ Wesley Rusch

Wesley Rusch



Wesley Rusch

Dirofcomp@yahoo.com

Box 30907
Las Vegas, NV 89173

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

Case No. A-20-826568-C
Case No. A-21-840526-C

Dept 27

COUNTER REPLY IN SUPPORT OF
MOTION AND OBJECTION

vs

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

Plaintiffs hereby request relief to file this PAPER

Plaintiff seeks reconsideration based on decision being clearly erroneous.

THE MARTIN DOES NOT DENY THIS

PLAINTIFFS SEEK COMPENSATION *NOT POSSESSION*

THE MARTIN DOES NOT DENY THIS

Plaintiffs hereby moves that this court to decide this case based on the **TRUE FACTS and LAW** and
not on the **FALSE and MISLEADING STATEMENTS** being constantly made by the MARTIN

including their orders which also contain **FALSE AND MISLEADING STATEMENTS.**

This case is about Recovery for Damages Plaintiffs have suffered as a result of the MARTIN's actions and inactions.

**THE MARTIN DOES NOT DENY THAT THE COURT ORDER IS
INCORRECT REGARDING THE REQUIREMENTS FOR A MOTION FOR
RECONSIDERATION.**

LEGAL STANDARD

A Motion for Reconsideration Standard.

The Nevada Supreme Court has explained that “[o]nly in very rare instances in which **new issues of fact or law are raised supporting a ruling contrary to the ruling already reached** should a motion for rehearing be granted.” *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (emphasis 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**”).

The motion must request a substantive alteration of a judgment, not merely a correction of a clerical error or relief of a type wholly collateral to a judgment. *Id.* at 582. The grounds for filing a motion under NRCP 59(e) include **correcting manifest errors of law or fact**, newly discovered or previously unavailable evidence, **the need to prevent a manifest injustice**, *See Allstate Insurance Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (discussing *FRCP 59*, the federal counterpart to NRCP 59)

.THE MARTIN DOES NOT DENY THIS

The Martin states the following in their papers:

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).

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).

Plaintiff’s Complaint have set forth a valid claim against the Martin of which the Martin has offered no defense as it has NO DEFENSE.

THE MARTIN DOES NOT DENY THIS

The Martin has admitted they were at fault for the flood damage that caused Plaintiffs to vacate their condo for over three months so that Nigro could repair the condo. THE MARTIN DOES NOT DENY THIS

The Martin has admitted that Red Rock sold Plaintiff's Condo in violation of Nevada Law

THE MARTIN DOES NOT DENY THIS

The Martin did not comply with the Martin CCRs NRS22.116 et seq when it sold the property, There was no notice nor demand letter; a clear violation of the constitutional right to due process of law. The Martin has produced no notice as there was no notice to produce. **THE**

MARTIN DOES NOT DENY THIS

It is obvious from that Defendant's arguments that they are confused regarding the nature of this case. **THE MARTIN DOES NOT DENY THIS**

There are really two causes of action causing significant damages to Plaintiffs.

Furthermore the complaint requests **compensation for damages**. Possession of the condo will be resolved in the UD action which has been appealed. The Appeals Court will finally look at the actual sale and discover that the sale did not comply with Nevada Law and reverse the sale. **THE**

MARTIN DOES NOT DENY THIS

THE MARTIN FAILED TO COMPLY WITH NEVADA LAW

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

Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act. it is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.

Because of the technical nature of the Act and the courts' apparent deference to err in favor of due process protections for HOA owners (not too dissimilar from the protections typically afforded to California tenants in unlawful detainer proceedings), the Act is fertile ground for mistakes. **These recent cases make clear that even minor or technical violations can invalidate the lien and foreclosure process**, and add delay and additional expense to the collection process.

Sale of Rusch condo is was in violation of the Martins CCRs and Nevada Law

Plaintiff is seeking **damages** from the following events

First Cause the Flooding

That on or about June 29, a sprinkler or water pipe busted on the floor where the Subject Property was located. As a result of the water pipe busting, water ran throughout the entire floor

where the Subject Property was located. The Martin was informed of the water pipe busting shortly after it happened. **The Martin failed to either turn off the water escaping from the busted water pipe or failed to irrigate the water to another location to prevent damage to the Subject Property and its neighboring units.** That as a result, the Subject Property suffered extensive damage including damage to its floors and Plaintiffs' personal property. Furthermore, **the damage was so extensive that Plaintiffs were required to vacate the Subject Property and incur large expenses on their part.** Plaintiffs informed the Martin HOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate the Subject Property **far exceeded any monthly assessments**.

THE MARTIN DOES NOT DENY THIS

Second Claim for illegal sale of home in violation of Nevada Law and CCR 17.2

The Subject Property was foreclosed upon and sold at a foreclosure sale conducted by Red Rock Financial Services on behalf of the Martin UOA **without notice to Plaintiffs in violation of Nevada Law. NRS 116.31162 and CCR 17.2** **THE MARTIN DOES NOT DENY THIS**

The complaint seeks damages

For monetary damages as a result of the Flood, in an amount of \$25,442.92.

*For monetary damages as a result of Defendant's illegal sale of their home causing the wrongful eviction in an amount of **\$Four Million Dollars each for a total of \$Eight Million Dollars.***

The following amount is due and owing on Plaintiff's claim as of this date. Eight Million Twenty Five Thousand Four Hundred and Forty Four Dollars and Ninety Two Cents on the Complaint

*Total Attorney Fees \$ **\$43,577.02.** Amount Bryan Naddafi wrongful took from proceeds*

Total \$8,069,019.94

THE COURT SHOULD GRANT PLAINTIFF'S SUMMARY JUDGMENT

NRCP 56 provides the following: "The court shall grant summary judgment if the movant shows that there is **no genuine dispute as to any material fact** and the movant is entitled to **judgment as a matter of law.** The court should state on the record the reasons for granting or denying the motion." **There is no genuine dispute as to the Flood Damages and the Wrongful Sale of Plaintiff's Condo therefore Summary Judgment must be awarded to Plaintiffs. THE MARTIN DOES NOT DENY THIS**

The Martin states that This Court finds that Plaintiffs failed to present any credible evidence that RRFS failed to give proper notice or otherwise failed to properly conduct the foreclosure on

behalf of Martin CUOA. **THIS ARGUMENT MAKES NO SENSE. HOW DO YOU PROVE A NEGATIVE. THE MARTIN DID NOT GIVE NOTICE!! LET THE MARTIN PROVE THAT RRFs COMPLIED WITH THE LAW. THEY HAVE NOT DONE SO BECAUSE THEY ARE UNABLE TO DO SO CAUSE THE MARTIN KNOWS RRFs SOLD THE CONDO IN VIOLATION OF NEVADA LAW. THE MARTIN DOES NOT DENY THIS**

Furthermore the Martin provides no Declaration to support any of their purported "Facts" THE MARTIN DOES NOT DENY THIS

Plaintiffs are tired of moving from hotel to hotel and eating out for every meal. It is about time for the court to compensate Plaintiffs for the wrongful actions of the Martin selling their home without notice in violation of Nevada Law and their Constitutional Right of Due Process of Law.

POINTS AND AUTHORITIES

Motion to reconsider

A motion for reconsideration typically asks the deciding court to reconsider its decision due to the court's failure to review specific legal arguments.

The Martin does not deny that Plaintiffs have file a valid Motion to Reconsider

A motion for reconsideration typically asks the deciding court to reconsider its decision due to the **court's failure to review specific legal arguments**. Alternatively, perhaps the **court misconstrued the argument presented**. Filing a motion for reconsideration allows the moving party to clarify the legal arguments and possibly change the outcome of the case.

Rule 2.24. Rehearing of motions.

(a) 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 the court granted upon motion therefor, after notice of such motion to the adverse parties.

(c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Motions for reconsideration are essential litigation tools. Practitioners need not feel overly pessimistic about the odds for success if they have reasonable grounds for the motion.

Motions for reconsideration are an opportunity to **advance the correct adjudication of a matter**.

Where a **mistake has truly occurred** or you feel the **court missed a critical point**, seize the opportunity to get your case back on track. **Judicial economy favors correction of mistakes** as early as possible, before costly and time-consuming appeals begin. Trial courts are interested in avoiding or correcting mistakes. A thoughtfully presented motion for reconsideration could be just the ticket.

Be sure to cite the specific "causes" on which you are relying.

That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is **contrary to law**;

That **substantial justice has not been done**.

The Martin does not deny that CASES SHOULD BE DECIDED ON THEIR MERITS

What does on the Merits Mean by Dale Marshall

Last Modified Date: October 20, 2020

“On the merits” is a term that has its roots in the law: a judge, having reviewed the materials relevant to a lawsuit, may render a verdict based not on issues of procedure or other technicalities, but strictly on the facts introduced into evidence and the law as it applies to those facts. A judge who decides a case on the merits considers that any technical or procedural issues that have been raised are either dealt with or irrelevant. The purpose of deciding cases in this way is to ensure that justice is done, rather than reward or punish one of the parties unfairly because of adherence to, or failure to follow, procedural requirements.

THE FOLLOWING ARE NEW FACTS SUBSEQUENT TO THE HEARING!

Wesley Rusch and Oliver Longboy Plaintiffs “hereinafter Plaintiffs” object to the

Courts Orders on the grounds that they contains FALSE and MISSING STATEMENTS. It is apparent that the court never read the orders before signing them otherwise they would have had seen the blatant errors therein. The Martin does not deny the false and misleading statements container therein.

It is obvious from the order that Defendant's are confused regarding the nature of this case.

The Martin does not deny the following

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

Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act. it is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.

Because of the technical nature of the Act and the courts' apparent deference to err in favor of due process protections for HOA owners (not too dissimilar from the protections typically afforded to California tenants in unlawful detainer proceedings), the Act is fertile ground for mistakes. **These recent cases make clear that even minor or technical violations can invalidate the lien and foreclosure process,** and add delay and additional expense to the collection process.

The Martin does not deny that the Sale of Plaintiffs' condo is void

Plaintiff is seeking **damages** from the following events

First Cause the Flooding

That on or about June 29, 2015, a sprinkler or water pipe busted on the floor where the Subject Property was located. As a result of the water pipe busting, water ran ythroughout the entire floor where the Subject Property was located. the Martin was informed of the water pipe busting shortly after it happened. **The Martin failed to either tum off the water escaping from the busted water pipe or failed to irrigate the water to another location to prevent damage to the Subject Property and its neighboring units.** That as a result, the Subject Property suffered extensive damage including damage to its floors and Plaintiffs' personal property. Furthermore, **the damage was so extensive that Plaintiffs were required to vacate the Subject Property and incur large expenses on their part.** Plaintiffs informed the Martin HOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate the Subject Property **far exceeded any monthly assessments**

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violation of Nevada Law. NRS 116.31162 et seq and CCR 17.2

Notice of Delinquent Assessments

Before starting the foreclosure, the **HOA must mail a notice of delinquent assessment to the homeowner**, which states:

the amount of the assessments and other sums that are due
a description of the unit against which the lien is imposed, and
the name of the record owner of the unit. (Nev. Rev. Stat. § 116.31162).

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

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

(a) **The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due** *The Martin Failed to do this.* in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) **Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and**

caused to be recorded, with the county recorder of the county *The Martin failed to do this* in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

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

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

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

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

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

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

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

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

whichever date occurs later.

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

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

or

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

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

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*For monetary damages as a result of the Flood, in an amount of **\$25,442.92.***

*For monetary damages as a result of Defendant's illegal sale of their home causing the wrongful eviction in an amount of **\$Four Million Dollars each for a total of \$Eight Million Dollars.***

The following amount is due and owing on Plaintiff's claim as of this date. Eight Million Twenty Five Thousand Four Hundred and Forty Four Dollars and Ninety Two Cents on the Complaint

*Total Attorney Fees \$ **\$43,577.02.** Amount Bryan Naddafi wrongful took from proceeds*

Total \$8,069,019.94

Therefore Defendant's motions and orders must be stricken and judgment entered in favor of Plaintiffs

It is about time for the court to conclude this action and award Plaintiffs the compensation they deserve for the wrongful actions of the Martinl

Respectully submitted

/S/ Wesley Rusch

Wesley Rusch

**THE COURT HAS FAILED TO ADDRESS THE ISSUES THAT PLAINTIFFS
RAISED LISTING THE FALSE AND MISLEADING STATEMENTS PLACED
IN THEIR ORDER WHICH PLAINTIFFS WERE NOT ALLOWED TO
REVIEW BEFORE THE MARTIN SUBMITTED SUCH ORDERS TO THE
COURT**

**THE MARTIN DOES NOT DENY THAT ITS ORDER CONTAINED FALSE
AND MISLEADING STATEMENTS**

4. The Subject Property was foreclosed upon by Martin CUOA and sold at a foreclosure sale **WITHOUT NOTICE AND IN VIOLATION OF MARTIN'S CCRs AND NEVADA LAW** conducted by RRFS on behalf of Martin CUOA related to Plaintiffs' being delinquent on paying their monthly assessments, late fees, and their fines they were assessed as residents at The Martin. Per publicly-available records, the foreclosure sale took place on August 10, 2017 and the Foreclosure Deed was recorded on October 17, 2017.

5. This Court finds that prior to the foreclosure, RRFS provided various required notices to Plaintiffs, including but not limited to, the amount of Plaintiffs' delinquency, Martin CUOA's lien, Martin CUOA's intent to proceed with foreclosure of the lien, and notice of the foreclosure sale. **HOWEVER RRFS DID NOT PROVIDE THE LEGALLY REQUIRED NOTICE FOR THE AUGUST 10 SALE**

6. This Court finds that prior to the foreclosure being completed, both Plaintiffs filed

voluntary petitions for bankruptcy and received discharges of the debt owing to Martin CUOA. **HOWEVER THE MARTIN TOOK MORE MONEY THAN THEY WERE ENTITLED TO AS THOSE DEBTS TO THE MARTIN WERE DISCHARGED IN BANKRUPTCY**

7. This Court finds that Plaintiffs **PRESENTED** credible evidence that RRFS failed to give proper notice or otherwise failed to properly conduct the foreclosure on behalf of Martin CUOA. **THERE WAS NO NOTICE AND NO COMPLAINE WITH MARTINS CCRs AND NEVADA LAW.**

8. This Court finds that on February 22, 2018, Plaintiffs DID NOT receive the excess proceeds from the foreclosure sale. **AS THE MARTIN WITHOUT AUTHORIZATION GAVE THE CHECK TO BRYAN NADDAFT'S OFFICE WHO WITHOUT AUTHORIZATION CASHED THE CHECK.**

9. This Court finds that on February 22, 2018, prior to NOT receiving the excess proceeds, Plaintiffs executed a Disbursement and Indemnification Agreement prepared by RRFS which noted the foreclosure resulted from Plaintiffs' failure to pay Martin CUOA's assessments, fees and costs, including related collection fees and costs, and indemnified and released RRFS with regard to all claims related to distribution of the Excess Funds and claims arising out of or in connection with the sale of the Subject Condominium. **THIS RELEASE IS NULL and VOID AS THE MARTIN NEVER GAVE THE PROCEEDS TO PLAINTIFF AND THE RELEASE IS A FORM OF EXTORTION AS THE FUNDS RIGHTLY BELONGED TO PLAINTIFF**

10. This Court further finds that when executing the Disbursement and Indemnification Agreement, Plaintiffs **DID NOT** sent a letter to their attorney, Bryan Naddafi, which stated the following: "Bryan, Please acknowledge receipt and give Red Rock Koch & Scow OK to distribute funds to me today. Wes." **THIS STATEMENT IS FALSE AND THE MARTIN DID NOT DISTRIBUTE THE PROCEEDS TO RUSCH AS INSTRUCTED**
11. This Court further finds that when Plaintiffs **DID NOT DISTRIBUTE THE PROCEEDS TO RUSCH AS INSTRUCTED**

**This Court further finds that when Plaintiffs never accepted the excess
proceeds of the foreclosure sale from RRFS,**

**FUTHERMORE THE MARTINS PROPOSED ORDER WERE
IMPROPERLY SUBMITTED TO THE COURT WITHOUT
PLAINITFFS REVIEW AS REQUIRED BY THE COURT**

The Martin failed to respond to the improper filing of their orders without Plaintiffs review.
The court ordered the following

Mr. Cwik to prepare both of the Orders and submit to Mr. Rusch for review of form. Court instructed that if any objections relative to form arise, said objection must be filed.

The following was received from the Martin

Awe, Susan <susan.awe@lewisbrisbois.com>
To:DC27Inbox

Cc:Cwik, Marc,dirofcomp@yahoo.com

Wed, Jun 29 at 3:16 PM

Good afternoon:

See attached. Please let me know if you require a word version.

This is my reply to the Martin

wes _____ <dirofcomp@yahoo.com>

To:Awe, Susan

Wed, Jun 29 at 9:59 PM

please send word version of each

thanks

This is the Martins response with a copy of the orders signed by the court. So as a consequence Plaintiffs did not have a chance to review the proposed order before it was signed and Plaintiffs objects to the orders as contain false statements

Awe, Susan <susan.awe@lewisbrisbois.com>

To:wes _____

Cc:Cwik, Marc

Thu, Jun 30 at 9:21 AM

Mr. Rusch:

The email was directed to the Department in accordance with the requirements of the court advising a word version would be sent to them upon their request and you were cc'd on the email.

Awe, Susan <susan.awe@lewisbrisbois.com>

To:dirofcomp@yahoo.com

Cc:Cwik, Marc

Fri, Jul 1 at 10:20 AM

Mr. Rusch and Mr. Longboy:

On behalf of Marc. S. Cwik please see the attached in the above referenced matter. If you have any difficulty opening this attachment, please let me know

PLAINTIFFS HEREBY OBJECT TO THE MARTIN ORDERS

Declaration of Wesley A Rusch

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

1. I am over the age of Eighteen.
2. That myself and Oliber B Longboy, are the two individuals who purchased the real property commonly known as 4471 Dean Martin, Apt 2206, Las Vegas NV 89103.
3. We own no other property and have no other place to live.
4. Hollyvale Rental Holdings, LLC is based on information and belief an entity that speculates in real estate. They are not a real person and do not need a place to live.
5. On the other hand Rusch and Longboy are two individuals who are two real people who need a place to live.
6. Neither Rusch or Longboy received any notice of any proposed or ported auction of their property for August 10, 2017. Redrock as agent for the Martin violated Nevada law by selling their property without complying with Nevada law.
7. Our real property was sold at auction purportedly for delinquent HOA fees on August 10, 2017. When in fact the Martin owed Rusch more than the HOA fees. On about June 29 a sprinkler pipe broke in the unit at the end of the 22nd floor causing water to flow down the hallway and into Rusch's unit.. According to Nigro

there was water in Rusch's walls that had to be replaced. The Martin failed to mitigate the damage by not opening the sliding glass door to allow the water to flow down the side of the building instead of down the hall. The Martin also let the water flow for several hours before turning off the water. Had the Martin done either of the foregoing Rusch's Condo would not have suffered damage. As a consequence, Rusch was required to relocate for nearly four months while Nigro repaired his unit. Nigro did not even complete the job and Rusch had to hire his own contractor to complete the job. Rusch incurred expenses in excess of \$25,000 as a result thereof. Rusch therefore claims that amount as a an offset to his HOA fess and therefore does not own the Martin any money and in fact the Martin owes Rusch money.

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

September 1 2022
FURTHER DECLARANT SAVETH NAUGHT
/S/ Wesley Rusch
WESLEY A RUSCH

There is no basis to award The Martin Summary Judgment Rather Plaintiffs should be awarded summary judgment as to the valid claims have filed against the Martin for which they have offered no defense

WESLEY RUSCH IS NOT A VEXATIOUS LITIGANT

In Nevada, a "vexatious litigant" has been defined as one "who repeatedly files

frivolous lawsuits.” See *Peck v. Crouser*, 129 Nev. 120, 122, 295 P.3d 586, 587 (2013) (citing Black’s Law Dictionary 952 (8th ed. 2004)).

The Subject Property was foreclosed upon by Martin CUOA and sold at a foreclosure sale conducted by RRFS *Without the legally required notice* on behalf of Martin CUOA.

Plaintiff has file a complaint with the following causes of actions which is not frivolous

Sale of Rusch condo is was in violation of the Martins CCRs and Nevada Law

Plaintiff is seeking **damages** from the following events

First Cause the Flooding

That on or about June 29, a sprinkler or water pipe busted on the floor where the Subject Property was located. As a result of the water pipe busting, water ran throughout the entire floor where the Subject Property was located. the Martin was informed of the water pipe busting shortly after it happened. The **Martin failed to either tum off the water escaping from the busted water pipe or failed to irrigate the water to another location to prevent damage to the Subject Property and its neighboring units.** That as a result, the Subject Property suffered extensive damage including damage to its floors and Plaintiffs personal property. Furthermore, **the damage was so extensive that Plaintiffs were required to vacate the Subject Property and incur large expenses on their part.** Plaintiffs informed the Martin HHOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate

the Subject Property **far exceeded any monthly assessments**

**Second Claim for illegal sale of home in violation of Nevada Law and
CCR 17.2**

The Subject Property was foreclosed upon and sold at a foreclosure sale conducted
by Red Rock Financial Services on behalf of the Martin UOA **without notice to Plaintiffs in
violation of Nevada Law. NRS 116.31162 et seq and CCR 17.2**

The complaint seeks damages

For monetary damages as a result of the Flood, in an amount of \$25,442.92.

*For monetary damages as a result of Defendant's illegal sale of their home causing the
wrongful eviction in an amount of \$Four Million Dollars each for a total of \$Eight
Million Dollars.*

*The following amount is due and owing on Plaintiff's claim as of this date. Eight Million
Twenty Five Thousand Four Hundred and Forty Four Dollars and Ninety Two Cents on
the Complaint*

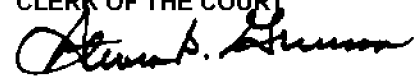
Total Attorney Fees \$ \$43,577.02. Amount Bryan Naddafi wrongful took from proceeds

Total \$8,069,019.94

It is about time to resolve the case in Plaintiff's favor as the Martin has no defense to any of their claims listed in the complaint and therefore PLAINTIFF MUST BE AWARDED JUDGMENT

Respectfully Submitted

/S/ Wesley Rusch
Wesley Rusch



Wesley Rusch

Dirofcomp@yahoo.com

Box 30907
Las Vegas, NV 89173

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

Case No. A-20-826568-C
Case No. A-21-840526-C

Dept 27

**AFFIDAVIT OF SERVICE
HEARING OR JUDGMENT REQUESTED**

VS

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

Plaintiffs hereby request relief to file this PAPER

Plaintiff seeks reconsideration based on decision being clearly erroneous.

**THE COURT STATED THAT THEIR WAS NO
AFFIDAVIT OF SERVICE ON THE MARTIN.**

THAT STATEMENT IS FALSE.

THE MARTIN WAS SERVED BY SERVING THEIR

**AGENT FOR SERVICE OF PROCESS FIRST
RESIDENTIAL**

**THE AFFIDAVIT WAS FILED AND ATTACHED WITH
THE APPLICATION FOR DEFAULT JUDGMENT
FILED ON JANUARY 11, 2022**

THE FOLLOWING IS THE AFFIDAVIT

Your Name: Wesley Rusch and Oliver Longboy
Address: PO Box 30907 _____
City, State, Zip Las Vegas NV 89173
Telephone: 7027640001
Email Address: Dirofcomp@yahoo.com
Self-Represented

DISTRICT COURT CLARK COUNTY, NEVADA Case No. A-21-840526 - C
CLARK COUNTY, NEVADA Case No. A-21-840526 - C
Dept 8

AFFIDAVIT OF SERVICE

(this form is to be completed by the person who serves the document)

I, (name of person who served the documents) J Jones Clark County Sheriffs Deptatment, declare
(complete EVERYSECTION below):

I am not a party to or interested in this action and I am over 18 years of age.

9. ***What Documents You Served.*** I served a copy of the
Complaintfor Compensation and Court Issued Summons

10. ***Who You Served.*** I served the Defendant Martin Condominium Unit Owners Association by
serving First Residential Financial

11. ***When You Served.*** I personally served the documents on 12:00 hour of
(time)(day) December 7, 2021

12. ***Where You Served.*** I personally delivered and left the documents with

The Party to the Case. I served the documents on the party at the location below.

(complete the details below)

Name of Person M Mendo First Residential Financial Services

Address Where Served 8290 Arville Street Las Vegas, NV 89139

I am not required to be licensed under Chapter 648 of the Nevada Revised Statutes or another provision of law because I am not engaged in the business of serving legal process within the state of Nevada.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

DATED (month) December (day) 7, 20 21.

Server's Signature: ▶ /S/ J Jones Clark County Sheriffs Department

County Sheriffs Department

Server's Phone Number (702) 455-5400

PLAINTIFFS SEEK COMPENSATION *NOT POSSESSION*

THE MARTIN DOES NOT DENY THIS

Plaintiffs hereby moves that this court to decide this case based on the **TRUE FACTS and LAW** and not on the **FALSE and MISLEADING STATEMENTS** being constantly made by the MARTIN including their orders which also contain **FALSE AND MISLEADING STATEMENTS**.

This case is about Recovery for Damages Plaintiffs have suffered as a result of the MARTIN's actions and inactions.

THE MARTIN DOES NOT DENY THAT THE COURT ORDER IS INCORRECT REGARDING THE REQUIREMENTS FOR A MOTION FOR RECONSIDERATION.

LEGAL STANDARD

A Motion for Reconsideration Standard.

The Nevada Supreme Court has explained that “[o]nly in very rare instances in which **new issues of fact or law are raised supporting a ruling contrary to the ruling already reached** should a motion for rehearing be granted.” *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (emphasis 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**”).

The motion must request a substantive alteration of a judgment, not merely a correction of a clerical error or relief of a type wholly collateral to a judgment. *Id.* at 582. The grounds for filing a motion under NRCP 59(e) include **correcting manifest errors of law or fact**, newly discovered or previously unavailable evidence, **the need to prevent a manifest injustice**, *See Allstate Insurance Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (discussing *FRCP 59*, the federal counterpart to NRCP 59)

.THE MARTIN DOES NOT DENY THIS

The Martin states the following in their papers:

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).

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).

Plaintiff’s Complaint have set forth a valid claim against the Martin of which the Martin has offered no defense as it has NO DEFENSE.

THE MARTIN DOES NOT DENY THIS

The Martin has admitted they were at fault for the flood damage that caused Plaintiffs to vacate their condo for over three months so that Nigro could repair the condo. THE MARTIN DOES NOT DENY THIS

The Martin has admitted that Red Rock sold Plaintiff's Condo in violation of Nevada Law

THE MARTIN DOES NOT DENY THIS

The Martin did not comply with the Martin CCRs NRS22.116 et seq when it sold the property, There was no notice nor demand letter; a clear violation of the constitutional right to due process of law. The Martin has produced no notice as there was no notice to produce. **THE**

MARTIN DOES NOT DENY THIS

It is obvious from that Defendant's arguments that they are confused regarding the nature of this case. **THE MARTIN DOES NOT DENY THIS**

There are really two causes of action causing significant damages to Plaintiffs.

Furthermore the complaint requests **compensation for damages**. Possession of the condo will be resolved in the UD action which has been appealed. The Appeals Court will finally look at the actual sale and discover that the sale did not comply with Nevada Law and reverse the sale. **THE**

MARTIN DOES NOT DENY THIS

THE MARTIN FAILED TO COMPLY WITH NEVADA LAW

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

Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act. it is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.

Because of the technical nature of the Act and the courts' apparent deference to err in favor of due process protections for HOA owners (not too dissimilar from the protections typically afforded to California tenants in unlawful detainer proceedings), the Act is fertile ground for mistakes. **These recent cases make clear that even minor or technical violations can invalidate the lien and foreclosure process**, and add delay and additional expense to the collection process.

Sale of Rusch condo is was in violation of the Martins CCRs and Nevada Law

Plaintiff is seeking **damages** from the following events

First Cause the Flooding

That on or about June 29, a sprinkler or water pipe busted on the floor where the Subject Property was located. As a result of the water pipe busting, water ran throughout the entire floor

where the Subject Property was located. The Martin was informed of the water pipe busting shortly after it happened. **The Martin failed to either turn off the water escaping from the busted water pipe or failed to irrigate the water to another location to prevent damage to the Subject Property and its neighboring units.** That as a result, the Subject Property suffered extensive damage including damage to its floors and Plaintiffs' personal property. Furthermore, **the damage was so extensive that Plaintiffs were required to vacate the Subject Property and incur large expenses on their part.** Plaintiffs informed the Martin HOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate the Subject Property **far exceeded any monthly assessments**

THE MARTIN DOES NOT DENY THIS

Second Claim for illegal sale of home in violation of Nevada Law and CCR 17.2

The Subject Property was foreclosed upon and sold at a foreclosure sale conducted by Red Rock Financial Services on behalf of the Martin UOA **without notice to Plaintiffs in violation of Nevada Law. NRS 116.31162 and CCR 17.2** **THE MARTIN DOES NOT DENY THIS**

The complaint seeks damages

For monetary damages as a result of the Flood, in an amount of \$25,442.92.

*For monetary damages as a result of Defendant's illegal sale of their home causing the wrongful eviction in an amount of **\$Four Million Dollars each for a total of \$Eight Million Dollars.***

The following amount is due and owing on Plaintiff's claim as of this date. Eight Million Twenty Five Thousand Four Hundred and Forty Four Dollars and Ninety Two Cents on the Complaint

*Total Attorney Fees \$ **\$43,577.02.** Amount Bryan Naddafi wrongful took from proceeds*

Total \$8,069,019.94

THE COURT SHOULD GRANT PLAINTIFF'S SUMMARY JUDGMENT

NRCP 56 provides the following: "The court shall grant summary judgment if the movant shows that there is **no genuine dispute as to any material fact** and the movant is entitled to **judgment as a matter of law.** The court should state on the record the reasons for granting or denying the motion." **There is no genuine dispute as to the Flood Damages and the Wrongful Sale of Plaintiff's Condo therefore Summary Judgment must be awarded to Plaintiffs. THE MARTIN DOES NOT DENY THIS**

The Martin states that This Court finds that Plaintiffs failed to present any credible evidence that RRFS failed to give proper notice or otherwise failed to properly conduct the foreclosure on

behalf of Martin CUOA. **THIS ARGUMENT MAKES NO SENSE. HOW DO YOU PROVE A NEGATIVE. THE MARTIN DID NOT GIVE NOTICE!! LET THE MARTIN PROVE THAT RRFs COMPLIED WITH THE LAW. THEY HAVE NOT DONE SO BECAUSE THEY ARE UNABLE TO DO SO CAUSE THE MARTIN KNOWS RRFs SOLD THE CONDO IN VIOLATION OF NEVADA LAW. THE MARTIN DOES NOT DENY THIS**

Furthermore the Martin provides no Declaration to support any of their purported "Facts" THE MARTIN DOES NOT DENY THIS

Plaintiffs are tired of moving from hotel to hotel and eating out for every meal. It is about time for the court to compensate Plaintiffs for the wrongful actions of the Martin selling their home without notice in violation of Nevada Law and their Constitutional Right of Due Process of Law.

POINTS AND AUTHORITIES

Motion to reconsider

A motion for reconsideration typically asks the deciding court to reconsider its decision due to the court's failure to review specific legal arguments.

The Martin does not deny that Plaintiffs have file a valid Motion to Reconsider

A motion for reconsideration typically asks the deciding court to reconsider its decision due to the **court's failure to review specific legal arguments**. Alternatively, perhaps the **court misconstrued the argument presented**. Filing a motion for reconsideration allows the moving party to clarify the legal arguments and possibly change the outcome of the case.

Rule 2.24. Rehearing of motions.

(a) 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 the court granted upon motion therefor, after notice of such motion to the adverse parties.

(c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Motions for reconsideration are essential litigation tools. Practitioners need not feel overly pessimistic about the odds for success if they have reasonable grounds for the motion.

Motions for reconsideration are an opportunity to **advance the correct adjudication of a matter**.

Where a **mistake has truly occurred** or you feel the **court missed a critical point**, seize the opportunity to get your case back on track. **Judicial economy favors correction of mistakes** as early as possible, before costly and time-consuming appeals begin. Trial courts are interested in avoiding or correcting mistakes. A thoughtfully presented motion for reconsideration could be just the ticket.

Be sure to cite the specific "causes" on which you are relying.

That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is **contrary to law**;

That **substantial justice has not been done**.

The Martin does not deny that CASES SHOULD BE DECIDED ON THEIR MERITS

What does on the Merits Mean by Dale Marshall

Last Modified Date: October 20, 2020

“On the merits” is a term that has its roots in the law: a judge, having reviewed the materials relevant to a lawsuit, may render a verdict based not on issues of procedure or other technicalities, but strictly on the facts introduced into evidence and the law as it applies to those facts. A judge who decides a case on the merits considers that any technical or procedural issues that have been raised are either dealt with or irrelevant. The purpose of deciding cases in this way is to ensure that justice is done, rather than reward or punish one of the parties unfairly because of adherence to, or failure to follow, procedural requirements.

THE FOLLOWING ARE NEW FACTS SUBSEQUENT TO THE HEARING!

Wesley Rusch and Oliver Longboy Plaintiffs “hereinafter Plaintiffs” object to the

Courts Orders on the grounds that they contains FALSE and MISSING STATEMENTS. It is apparent that the court never read the orders before signing them otherwise they would have had seen the blatant errors therein. The Martin does not deny the false and misleading statements container therein.

It is obvious from the order that Defendant's are confused regarding the nature of this case.

The Martin does not deny the following

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

Collecting assessments is a vital function to fund the HOA's activities. It is unfair for some owners to avoid paying their fair share, and to have the other owners shoulder their burden. Recognizing this, the Legislature has granted Nevada HOAs the powerful tools to lien and foreclose under the Act. However, with those powerful tools comes the obligation to closely comply with each and every requirement of the Act. it is implicit that HOAs must also closely follow their own governing documents (CC&Rs, Bylaws, rules and policies), including adopting and following collection policies, in pursuing collection activities authorized under the Act.

Because of the technical nature of the Act and the courts' apparent deference to err in favor of due process protections for HOA owners (not too dissimilar from the protections typically afforded to California tenants in unlawful detainer proceedings), the Act is fertile ground for mistakes. **These recent cases make clear that even minor or technical violations can invalidate the lien and foreclosure process,** and add delay and additional expense to the collection process.

The Martin does not deny that the Sale of Plaintiffs' condo is void

Plaintiff is seeking **damages** from the following events

First Cause the Flooding

That on or about June 29, 2015, a sprinkler or water pipe busted on the floor where the Subject Property was located. As a result of the water pipe busting, water ran ythroughout the entire floor where the Subject Property was located. the Martin was informed of the water pipe busting shortly after it happened. **The Martin failed to either tum off the water escaping from the busted water pipe or failed to irrigate the water to another location to prevent damage to the Subject Property and its neighboring units.** That as a result, the Subject Property suffered extensive damage including damage to its floors and Plaintiffs' personal property. Furthermore, **the damage was so extensive that Plaintiffs were required to vacate the Subject Property and incur large expenses on their part.** Plaintiffs informed the Martin HOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate the Subject Property **far exceeded any monthly assessments**

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The Subject Property was foreclosed upon and sold at a foreclosure sale conducted by Red Rock Financial Services on behalf of the Martin UOA **without notice to Plaintiffs in**

**PLEADING
CONTINUES
IN NEXT
VOLUME**