

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY RUSCH,
Appellant(s),

vs.

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

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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 4

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ATTORNEY FOR RESPONDENT
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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

**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 ARE AWARDED JUDGMENT IN THE
AMOUNT OF \$8,069,019.94**

Judges Signature

Respectfully Submitted

/S/ Wesley Rusch
Wesley Rusch

Your Name: Wesley Rusch and Oliver
Longboy

Address: PO Box 30907 _____ City, State, Zip Las Vegas

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 Department ,
declare (**complete EVERY SECTION 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
Complaint for 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

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 are 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 Plaintiff’s 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 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

The current award of Sanctions violates Nevada Law and hereby is vacated.

Nevada Law is as follows

Rule 11 - Signing Pleadings, Motions, and Other Papers; Representations to the Court;

Sanctions

a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name-or by a party personally if the party is unrepresented. The paper must state the signer's address, email address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper-whether by signing, filing, submitting, or later advocating it-an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any **improper purpose**, such as to **harass**, cause unnecessary delay, or needlessly increase the cost of litigation;(the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(2) the **factual contentions have evidentiary support** or, if specifically so identified, will likely have

evidentiary support after a reasonable opportunity for further investigation or discovery; and

(3) the **denials of factual contentions are warranted** on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

NVCP 11c **Sanctions.**

(1) **In General.** If, after notice and a reasonable opportunity to respond, the court determines that **Rule 11(b) has been violated**, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) **Motion for Sanctions.** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney fees, incurred for presenting or opposing the motion.

(3) **On the Court's Initiative.** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) **Nature of a Sanction.** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation.

(5) **Limitations on Monetary Sanctions.** The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, **unless it issued the show-cause order under Rule 11(c)(3)** before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) **Requirements for an Order.** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

Wesley Rusch has not made any false representations to the court whereas The Martin's Attorney throughout this litigation has made numerous false and misleading statements especially in its proposed orders. Such orders are not factually correct.

Consequently the Martin should be sanctioned

The following is from the transcript of the Hearing held on January 6 2022

The following comments shows the knowingly False Statements made by the Martin

Obviously, we went through a whole process. We argued for quite a while back in September 1 in this case.

NOT TRUE And, so, I know the Court is very familiar with the plaintiffs' claims,**NOT TRUE** the issues that exist in this case, **NOT TRUE** the defenses of my client.**NOT TRUE**

N O A N S W E R F I L E D

This Court, before I even filed
that Motion that you had granted back in September 1, you
had filed three prior Orders, actually, addressing these
issues. **NOT TRUE** So, there's been actually four
Orders entered by you, **NOT TRUE** Your Honor, related to the
-- what I call the 2020
action, which is the one pending in Department 27.

You know, you did bring up, at the last hearing in
this case, you know, that there are statute of limitations
concerns with plaintiffs' claims. **T H E R E I S N O**
S T A T U E O F L I M I T I A T I O N S A S
T H I S H A S B E E N A C O N T I N I N G
C A S E F O R B R A C H O F A W R I T T E N
C O N T R A C T . It was something that you pointed out to Mr. Rusch, something that
was also put

into the Order that was entered back on November 9 of 2021,
AN ORDER THAT PLAINTIFF OBJECTED TO AS NOT BEING
ACCURATE

It just seems that's the best way to try to bring this all
to a place to where it can, hopefully, get to a resolution,
because to just keep starting over and over again is just
not -- it's not sensible. It doesn't make any sense. **SO THE COURT SHOULD SIMPLY**
ENTER THE DEFAULT JUDGMENT AND ISSUE THE WRIT OF EXECUTION

**AS THE MARTIN IS CLEARLY LIABLE FOR SELLING THE CONDO
WITHOUT THE REQUIRED LEGAL NOTICE**

In this case, The Martin violated **NRS 116.31162** not NRS 22.116.

They provided no notice when they sold my home. Because of The Martin's action, I am now living in a hotel rather than at my home. They sold my condo without notice, violation of Nevada law, in violation of the CCRs of The Martin, and the constitutional right of due process. And, so, I deserve compensation for them having me forcibly evicted from my home, forced to live in a hotel during a pandemic. And that's what this case is all about. And The Martin has no defense to that action because there was no notice and plaintiff deserves compensation. And, therefore, these -- that's all I will say at this point dealing with the consolidation Motion.

So, frankly, honestly, most of the filings of this been very unintelligible. **T H E C O M P L A I N T S A R E I N I N P L A I N E N G L I S H T H E M A R T I N S O L D T H E C O N D O W I T H O U T N O T I C E A S R E Q U I R E D B Y N E V A D A L A W .**

**T h e p e r t i n e n t p o r t i o n s o f t h e
c o m p l a i n t a r e a s f o l l o w s :**

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 HOA that the damage caused to Plaintiffs' Subject and the expenses incurred to vacate the Subject Property **far exceeded any monthly assessments**

The sales 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:

- 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.

1. 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.

•
The court should award sanctions against The Martin in an amount of \$8,069,019.94

J

Judges Signature

Respectfully Submitted

/S/ Wesley Rusch

Wesley A Rusch

Proof of service

Wesley Rusch being duly sworn and deposed and say that at all times herein affiant was and is a citizen of the United States and over 18 years of age

On January 2 2023 I served the attached document to the following address

MARC S. CWIK, ESQ.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

/S/ Wesley Rusch
Wesley Rusch



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

**AMENDED
NOTICE OF APPEAL**

**Notice is hereby given that Wesley Rusch Defendant hereby appeals
from the order entered in the court on August 30, 2022 and
September 7 2022 re June 30 2022 order**

BY /S/ Wesley Rusch
WESLEY RUSCH
Defendant

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

POINTS AND AUTHORITIES

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

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

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

Please note the following court case:

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

SECOND DIVISION

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

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

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

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

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

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

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

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

respondent thus has no right to exclude them from this right through an action for ejectment.

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

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

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

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

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

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

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

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

Sale of Rusch condo is void

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

Reasons a Foreclosure Sale May Be Set Aside

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

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

Irregularity in the Foreclosure Process

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

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

Notice of Delinquent Assessments

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

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

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

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

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

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

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

description of the unit against which the lien is imposed and the name of the record owner of the unit.

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

(1) Describe the deficiency in payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Declaration of Wesley A Rusch

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

I am over the age of Eighteen.

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

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

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

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

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

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

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

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

March 1, 2022

FURTHER DECLARANT SAVETH NAUGHT

/S/ Wesley Rusch

WESLEY A RUSCH

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

Respectfully Submitted

/s/ Wesley Rusch

Wesley Rusch



IN THE SUPREME COURT OF THE STATE
OF NEVADA

Supreme Court No.85821

District Court Case No. A-21-840526-C

OBJECTION AND OPPOSITION
TO MARTINS MOTION TO
DISMISS

Plaintiffs Wesley Rusch and Oliver Longboy (hereinafter “Plaintiffs”) file this objection and opposition to the Martin Condominium Unit Owners Association (hereinafter “the Martin”) motion on the grounds that the Martin has **NO STANDING** as the Martin has failed to answer the complaint and therefore are in **DEFAULT**. The court should have and still should enter a **DEFAULT JUDGMENT AGAINST THE MARTIN**

The Martin even cites the following rule which proves that Plaintiffs Appeal was proper and timely

RULE 3A. CIVIL ACTIONS: **STANDING TO APPEAL; APPEALABLE DETERMINATIONS**

(a) Standing to Appeal. A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial.

Plaintiff has filed an amended Notice of Appeal to reflect the correct dates.

The Martin cites the following:

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).**

Just look at the Plaintiffs complaint

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

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 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 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.

Furthermore the Martin provides no Declaration to support any of their purported “Facts”

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.

AA Primo Builders, LLC v. Washington, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) does not support the Martins statement that order with respect to a motion for reconsideration can not be appealed.

The Martin is in default as they have been served

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 Department, declare
(complete EVERY SECTION 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
Complaint for 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, 2021.

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

County Sheriffs Department

Server's Phone Number (702) 455-5400

Plaintiffs have been homeless ever since they were wrongfully and illegally evicted from their condo. Red Rock Financial, the Martins agent failed to comply with the Martins CCRs, Nevada Law and the Consitutional Right of Due Process when they sold Plaintiff's home..

Plaintiffs home should be restored to them and they should be compensated for the time they have been forced to live in hotels and eat out with no home cooked meals.

DATED this 15th day of December, 2022.

Signature /S/ Wesley Rusch

Print Name Wesley Rusch

Address PO Box 30907

City/State/Zip Las Vegas NV 89173

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated January 20, 2023, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises four volumes with pages numbered 1 through 764.

WESLEY RUSCH; OLIVER LONGBOY ,

Plaintiff(s),

vs.

THE MARTIN CONDOMINIUM UNIT
OWNERS' ASSOCIATION,

Defendant(s),

Case No: A-21-840526-C
Consolidated with A-20-826568-C
Dept. No: XXVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 26 day of January 2023.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk