IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY RUSCH,

Appellant,

vs.

THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION,

Respondent.

No. 85821

MOTION TO STRIKE JOINDER TO APPEAL BY OLIVER LONGBOY

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff-Appellant Wesley Rusch (hereinafter, "Rusch") filed a Notice of Appeal on September 29, 2022, in Clark County District Court Case No. A-21-850526-C, which was a Minute Order entered by the Honorable Nancy Allf of the Clark County District Court denying a Motion for Reconsideration of her Order entering summary judgment in favor of Defendant-Respondent The Martin Condominium Unit Owners' Association (hereinafter, "Martin CUOA"). In an Order entered by the Nevada Supreme Court on January 20, 2023, denying Martin CUOA's Motion to Dismiss Appeal, the Nevada Supreme Court ruled it interprets Rusch's Notice of Appeal as an appeal of Judge Allf's Order granting summary judgment in favor of Martin CUOA. *See* Order, January 20, 2023, **Exhibit 1**; Rusch's Notice of Appeal, **Exhibit 2**. Rusch filed an Informal [Opening] Brief on April 3, 2023, and later filed an Amended Informal [Opening] Brief on April 14, 2023. Martin CUOA filed its Answering Brief on May 30, 2023. On July 5, 2023, Rusch filed his Reply Brief.

Also filed on July 5, 2023 was a document entitled "Oliver Longboy Joinder."[1] Oliver Longboy (hereinafter, "Longboy") is Rusch's partner, who was a co-plaintiff in Clark County District Court Case No. A-21-850526-C. The "Oliver Longboy Joinder" is not hand-signed and merely includes a purported e-signature bearing the name "Oliver Longboy." Based upon the history of document filings by Rusch in the various lawsuits he has filed against Martin CUOA, this document appears to be yet another one of Rusch's improper filings on behalf of Longboy. Rusch has been admonished in the past for filing documents on behalf of Longboy. *See* Record on Appeal, Volume 9, at p. 2067. In any event, Longboy did not file a Notice of Appeal of any Order entered by Judge Allf in favor of Martin CUOA and he is not listed as a party or signatory on the operative Notice of Appeal. *See* **Exhibit 2**. Likewise, Longboy is not a party or signatory to Rusch's Informal [Opening] Brief filed on April 3, 2023, nor is Longboy a party or signatory to Rusch's Informal [Opening] Brief filed on April 14, 2023.

As will be demonstrated below, Longboy's Joinder is both untimely and improper. Martin CUOA, therefore, moves to strike Longboy's improper and untimely Joinder.

[1] On July 5, 2023, the Clerk of the Nevada Supreme Court issued a Notice to Provide Proof of Service directed to Rusch, further demonstrating that the appellate record does not reflect Longboy to be an Appellant in the present appeal.

II.

ARGUMENT

A. The Nevada Rules of Appellate Procedure Governing the Timeliness of an Appeal Do Not Allow Longboy to Join Rusch's Appeal at this Stage of the Appellate Proceedings.

After Judge Allf's Order Denying Motion for Reconsideration was entered on September 7, 2022, both Rusch and Longboy had 30 days in which to file a Notice of Appeal of the underlying judgment, or by October 7, 2022. *See* NRAP 4(a)(4)(C). On September 29, 2022, only Rusch filed a Notice of Appeal. *See* **Exhibit 2**. The Nevada Supreme Court has interpreted this Notice of Appeal to be an appeal by Rusch of the Order granting summary judgment in favor of Martin CUOA. *See* Order, January 20, 2023. The Nevada Supreme Court did not extend Rusch's Notice of Appeal to Longboy. *Id.* Thus, Longboy may not join Rusch's appeal at this stage of the appellate proceedings.

B. The Nevada Rules of Appellate Procedure Make No Provision for a Person Who Was a Party in a District Court Action to Join Another Party's Appeal at the Conclusion of Appellate Briefing.

Longboy's Joinder to Rusch's appeal was filed on July 5, 2023, the same day that Rusch filed his Reply Brief. Thus, Longboy's Joinder was submitted at the conclusion of legal briefing on appeal. NRAP 28 contemplates only an Opening Brief, Answering Brief, and optional Reply Brief, after which briefing is concluded, unless a party obtains leave to file a supplemental brief. *See* NRAP 28(a) through

(c). Hence, a party filing a Joinder to an appeal for the first time at the conclusion of appellate briefing of the existing parties to the appeal is procedurally improper.

If more than one party in a district court action wishes to be a party on appeal, NRAP 3(b) provides the following:

> (b) **Joint or Consolidated Appeals.**
>
> (1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.
>
> (2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party.

As can be seen, in order for two parties to be joined in an appeal, they are required to have either filed a joint notice of appeal, or to have timely filed separate notices of appeal. This obviously flows from the fact that the timely filing of a Notice of Appeal, once an appeal becomes ripe, is a jurisdictional requirement for the Nevada Supreme Court to entertain an appeal. *See* NRAP 4; *Whitman v. Whitman*, 108 Nev. 949, 950, 840 P.2d 1232, 1233 (1992); *Alvis v. State*, 99 Nev. 184, 185, 660 P.2d 980, 981 (1983). As neither of the conditions set forth in NRAP 3(b) for joinder exist in the present appeal, it is clear that Longboy has no standing at this time to be joined as an appellant with Rusch in the present appeal. As a result, Longboy's Joinder filed on July 5, 2023, should be stricken. *See*, *e.g.*, *In re Frontier Airlines,*

Inc., 108 B.R. 277 (D. Colo. Bankr. 1989) (striking an untimely pro se joinder to an appeal).

III.

CONCLUSION

As demonstrated above, Longboy's Joinder to Rusch's appeal filed on July 5, 2023 is both untimely under NRAP 4(a)(4)(C) and procedurally improper under NRAP 3(b). Therefore, Longboy may not join Rusch's present appeal.

WHEREFORE, Defendant-Appellee Martin CUOA respectfully requests that Longboy's Joinder be stricken.

DATED this 12th day of July, 2023.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ *Marc S. Cwik*

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Attorney for Respondent,
The Martin Condominium Unit Owners' Association

CERTIFICATE OF SERVICE

Pursuant to NRAP 27(a)(1), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP, and that on this 12th day of July, 2023, I did cause a true copy of the foregoing **MOTION TO STRIKE JOINDER TO APPEAL BY OLIVER LONGBOY** to be served via the Court's electronic filing and service system to all parties on the current service list.

I further certify that I did cause a true copy of the Motion to be served via email and U.S. Mail (first class) to:

Wesley Rusch and Oliver Longboy
P.O. Box 30907
Las Vegas, NV 89173
dirofcomp@yahoo.com

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

Exhibit 1
Order Denying Respondent's Motion to Dismiss Appeal (1-20-23)

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY RUSCH,
Appellant,
vs.
THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION,
Respondent.

No. 85821

FILED

JAN 20 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING MOTION TO DISMISS, REGARDING TRANSCRIPTS, AND DIRECTING TRANSMISSION OF RECORD

This is a pro se appeal. Respondent has filed a motion to dismiss this appeal for lack of jurisdiction.

Respondent argues that appellant improperly identified a minute order in his notice of appeal, improperly appeals from an order denying reconsideration, and that the time to appeal from the underlying judgment has passed. Having reviewed respondent's motion and the documents on file in this appeal, the motion is denied.

This court infers that appellant's notice of appeal intended to challenge the district court's June 30, 2022, order granting respondent's motion to dismiss, or in the alternative, motion for summary judgment. The notice of appeal is timely filed after service of notice of entry of the district court's order denying reconsideration. *See Forman v. Eagle Thrifty Drugs & Markets, Inc.*, 89 Nev. 533, 536, 516 P.2d 1234, 1236 (1973) ("A defective notice of appeal should not warrant dismissal for want of jurisdiction where the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice and where the defect has not materially misled the appellee."), *overruled on other grounds by Garvin v. Ninth Judicial Dist. Court*, 118 Nev. 749, 59 P.3d 1180 (2002); *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). Here, it is reasonable to make this inference from the notice of appeal, and it does not appear that the notice of appeal has materially mislead respondent. Accordingly, this appeal may proceed.

Appellant, who is proceeding in forma pauperis, has filed a transcript request form pursuant to NRAP 9(b). At this stage of the proceedings, this court is unable to determine which transcripts, if any, are necessary for this court's review on appeal, *see* NRAP 9(b)(1)(C), and therefore, the court declines to order the preparation of the requested transcripts at this time. However, as this appeal proceeds, the court will consider the necessity of transcripts and may order their preparation at a later date.

This court concludes that review of the complete record is warranted. NRAP 10(a)(1). Accordingly, within 30 days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the trial court record in consolidated District Court Case Nos. A-21-840526-C and A-20-826568-C. *See* NRAP 11(a)(2) (providing that the complete "record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court," as well as "any previously prepared transcripts of the proceedings in the district court"). The record shall not include any exhibits filed in the district court. NRAP 11(a)(1).

It is so ORDERED.

Stiglich, C.J.

cc: Wesley Rusch
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

Exhibit 2
Rusch's Notice of Appeal (9-29-22)

Wesley Rusch

Dirofcomp@Yahoo.com

Box 3O9O7

Las Vegas, NV 89173

702 764 0001

CLARK COUNTY, NEVADA

WESLEY RUSCH, an individual, and OLIVER LONGBOY, an individual, Plaintiffs, vs. THE MARTIN CONDOMINIUM UNIT OWNERS' ASSOCIATION, domestic non-profit; DOE Individuals I through X; and ROE Corporations and Organizations I through X, Defendant.	CASE NO. A-20-826568-C Dept. No.: 27 Consolidated with: Case No. A-21-840526-C **NOTICE OF APPEAL**

Notice is hereby given that Wesley Rusch Defendant hereby appeals from the order entered in the court on 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 Constitional 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 *dejure*; 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 notdo. 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 partv.
>
> The sale was made bv one not authorized to make it. and cannot be upheld. It is simply void. and no one gains am 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 cout ruling that a nonjudicial foreclosure sale for delinquent assessments owed to a condominium association was void wherethe sale was conducted by the association's attorney because "[tJhe record reveal[ed] that, thoughits attorney may have qualified as a trustee under the Trust Deed Act, the Association failed to appoint its attorney as such." McOueen v. Jordan Pines Townhomes Owners Ass'n, Inc., 2013 UT App 53, J§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