

FILED

JAN 10 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa J. Gales*
DEPUTY CLERK

1. Wesley Rusch in Pro Se
2. BOX 30907
3. Las Vegas NV 89173
4. Email dirofcomp@yahoo.com
5. 702 764 0001
6.

7.

8.
9. **Appellant**

10.

11. **IN THE COURT OF APPEALS OF THE STATE OF NEVADA**
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15.

Case No. 85821-COA

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17. Clark County District Court
18. Case No. A-21-850526-C
19. (consolidated with A-20-826568-C)

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

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vs.

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Plaintiffs,
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35. APPLICATION AND

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37. MOTION FOR SUMMARY
JUDGMENT

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39. RESPONSE

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48. THE MARTIN CONDOMINIUM
UNIT

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50. OWNERS' ASSOCIATION, a domestic
51. non-profit corporation; DOE Individuals I
52. through X; and ROE Corporations and

53.

54.

55.

56.

Organizations I through X,
Defendants.

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

24-01092

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62. Appellant Wesley Rusch (hereafter "Rusch") has filed a civil action against The Martin Condominium Unit Owners Association (hereafter The Martin") for breach of written contract for damages as the result of their wrongful and illegal actions.

63.

64. Once again the Martin has failed to address the facts and issues raised in Rusch's pleading. By their failure to respond they have admitted they are at fault.

65.

66. Rusch is tired of moving from hotel to hotel and wants to live in a house which he will purchase from the proceeds of the judgment from the proceeds of the damages he has sustained out of the wrongful conduct of the Martin.

67.

68. The Martin has provided no defense to Rusch's claims.

69.

70. **THE CLAIM**

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72. Plaintiff is seeking **damages** from the following events as set forth in Rusch's complaint

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78. First Cause the Flooding

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FI

FIRST CLAIM FOR RELIEF

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**(Breach of
Contract)**

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15. Plaintiffs, as the owners of the Subject Property, enter into an agreement with the

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Martin in the form of a documents entitled Covenants, Conditions and

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Restrictions ("CC&Rs).

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16. Pursuant to the CC&Rs, Martin was under an obligation maintain the common

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areas surrounding the Subject Property.,

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17. Plaintiffs performed their obligations under the CC&Rs.

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18. Martin materially breached its CC&Rs as it failed to address the issues stemming

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from the flood.

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108.

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

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

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114.

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22. "It is well settled in Nevada that 'every contract imposes upon the contracting

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parties the duty of good faith and fair dealing." *State v. Sutton*, 120 Nev. 972, 989

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120.

(2004).

121.

122.

23. By entering into a valid agreement with Plaintiffs, Defendant has a duty to act in a

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manner consistent with good faith and fair dealing

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127. 24. That upon information and belief, Defendant has breached the covenant of good
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129.
130. faith and fair dealing implied in every contract which was multiplied by Martin's
131.
132. non-feasance when the flood occurred in addition to pursuing non-judicial
133.
134. foreclosure during the pendency of Rusch's bankruptcy.
135.

138. 136.
137. 25. That as a direct and proximate result of the Defendant's actions, **Plaintiffs have been**
139.
140.

141. **damaged in the amount of \$27,443.92.**
142.

143. 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

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145.

146. **Third Claim for illegal sale of home in violation of Nevada Law and**

147. **CCR 17.2**

148. **THIRD CLAIM FOR RELIEF**

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150. **(Breach of contract - Violation of NRS 116 CCR 17.2)**

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154. 28. Defendant's non-judicial foreclosure of the Subject Property included

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156. disallowed items and Martin took monies discharged in bankruptcy/.

157.

29. The sales of Rusch's condo was in violation of Nevada Law.

ck Martin'

159. agent was required to comply with Nevada Law

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161.

162.

163. 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

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

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

166. 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).

167.

168. 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:**

169. (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.

170. (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:

171. (1) Describe the deficiency in payment.

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

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

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

175. (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.

176. 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.

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

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

179. (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,

180. whichever date occurs later.

181. 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:

182. (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

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

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

185.

186. ANALYSIS OF THE CLAIM

187. No excuse for letting water run for over three hours forcing Rusch to relocate for over the months while repairs for made.

188.

189. No Notice of the August 10 Sale as required by Nevada Law resulting in Rusch's wrongful evition forced to live in a hotel for years.

190.

191.

192. 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.

193.

194. The sale 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 invalid 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

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196.

197.

198. Rusch and Longboy should be compensated for the time they have been homeless and forced to stay in hotels since their wrongful eviction.

199.

200.

201. The Subject Property was foreclosed upon and sold at a foreclosure sale conducted

202. 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

203. The complaint seeks damages

204.

**205. THE COMPLAINT IS PRIMARILY FOR COMPENSATION FOR THE
MARTINS WRONGFUL AND ILLEGAL SALE OF HIS HOME.**

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209. Issues raised in Martin's Reply

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**211. Rusch is permitted to file motions contrary to the
Martin**

212. Nevada Appellate Rules Rule 27 – Motions

213. a) In General

**214. (1) Application for Relief. application for an order
or other relief is made by motion unless these Rules prescribe**

another form. A motion must be in writing and be accompanied by proof of service.

215. (2) Contents of a Motion. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion. If a motion is supported by affidavits or other papers, they shall be served and filed with the motion

216. (3) Response.(A) Time to File. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 7 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8 or 41 may be acted upon after reasonable notice to the parties that the court intends to act sooner. The court may review the action of a single justice or judge.

217. (3 Clerk's Orders.(A) Procedural Motions. The chief justice or judge may delegate to the clerk authority to decide motions that are subject to disposition by a single justice or judge. An order issued by the clerk under this Rule shall be subject to reconsideration by a single justice or judge pursuant to motion filed within 14 days after entry of the clerk's order.

218.

Motions are permitted Nevada Appellate Rules

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220. The **vexatious litigant ruling is bogus** and not consistent with the law as a vexatious litigant is one who files multiple frivolous lawsuits. That is not the case here. The Martin states that Rusch filed meritless documents and motions. Rusch did no such thing, Filings do not make one a vexatious litigant. Rusch has been trying to seek compensation for the damages the Martin has caused him. Rusch is tired of living in a hotel and wants to move into a house.

221.

222.

223. The Martin cites cases which do not stand for the propositions they say they do. The Stephans case deals with US Savings Bonds and the right of the United States to intervene in the action.

224. The District Court never seriously considered Ruschs' Motion for Summary Judgment.

225.

226. STRICT SCRUTINY IS REQUIRED

Nevada Courts Require Strict Statutory Compliance to Lien and Foreclosure

227. 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.

228. 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.**

229.

**THEREFORE SINCE THE MARTIN HAS NO DEFENSE TO CLAIMS
STATED IN RUSCH'S COMPLAINT THE COURT IS REQUIRED TO
AWARD RUSCH SUMMARY JUDGMENT**

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231.

232. Respectfully Submitted

233.

234. s Wesley Rusch

235.

Wesley Rusch

236.

237. Proof of service

238. Proof of Service

239. 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

240.

241. On December 30,, 2023 I served attached document to the following address

242.

243. MARC S. CWIK, ESQ.

244. LEWIS BRISBOIS BISGAARD & SMITH LLP

245. 6385 S. Rainbow Boulevard, Suite 600

246. Las Vegas, Nevada 89118

247.

248. /S/ Wesley Rusch

249. Wesley Rusch

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