

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANN STREET TRUST,  
Appellant,  
vs.  
ELSINORE HOMEOWNERS  
ASSOCIATION, A NEVADA NON-  
PROFIT CORPORATION,  
Respondent.

No. 78531

**FILED**

JUN 24 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting a motion to dismiss in a contract action. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.<sup>1</sup>

Having considered the parties' arguments and the record, we conclude that the district court properly dismissed appellant's complaint. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (reviewing de novo a district court's NRCP 12(b)(5) dismissal and recognizing that dismissal is appropriate when "it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief"). In particular, dismissal of appellant's breach-of-contract claim was appropriate because appellant's complaint failed to allege the existence of a contract between appellant and respondent.<sup>2</sup> Dismissal of appellant's NRS 116.1113 claim was also

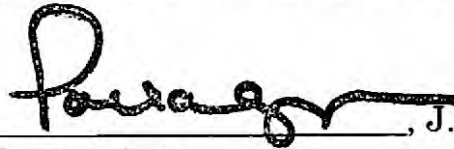
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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

<sup>2</sup>We are not persuaded that the foreclosure deed constituted a contract. Although appellant relies on NRS 111.707's definition of "contract," this definition pertains to the "Nonprobate Transfer of Property Upon Death" statutory subchapter, which is inapplicable here. In any

appropriate because respondent did not have a duty to proactively disclose whether a superpriority tender had been made. Compare NRS 116.31162(1)(b)(3)(II) (2017) (requiring an HOA to disclose if tender of the superpriority portion of the lien has been made), with NRS 116.31162 (2005)<sup>3</sup> (not requiring any such disclosure). And since those two claims fail, appellant's civil conspiracy claim necessarily fails. See *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (providing that a civil conspiracy requires, among other things, a "concerted action, intend[ed] to accomplish an unlawful objective for the purpose of harming another"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre

  
Hardesty

  
Cadish

cc: Hon. Mary Kay Holthus, District Judge  
Janet Trost, Settlement Judge  
Kerry P. Faughnan  
Leach Kern Gruchow Anderson Song/Las Vegas  
Eighth District Court Clerk

event, the foreclosure deed's recitals did not rule out the possibility that a superpriority tender had been made.

<sup>3</sup>This was the version of the statute in place at the time of the foreclosure sale.