

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 6408  
HILLSIDE BROOK, A NEVADA  
LIMITED LIABILITY COMPANY,  
Appellant,

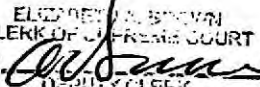
vs.

MOUNTAIN GATE HOMEOWNERS'  
ASSOCIATION, A NEVADA NON-  
PROFIT CORPORATION,  
Respondent.

No. 80134

FILED

OCT 15 2020

ELIZABETH A. STEVENSON  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting a motion to dismiss in a tort action. Eighth Judicial District Court, Clark County; Timothy C. Williams, 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, appellant's claims for misrepresentation and breach of NRS 116.1113 fail because respondent had no duty to proactively disclose whether a superpriority tender had been made.<sup>2</sup> *Compare* NRS 116.31162(1)(b)(3)(II) (2017) (requiring an HOA to

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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>Although appellant frames the issue as whether respondent had a duty to disclose "after reasonable inquiry," appellant's complaint contains

disclose if tender of the superpriority portion of the lien has been made), *with* NRS 116.31162 (2013)<sup>3</sup> (not requiring any such disclosure); *see Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (providing the elements for a negligent misrepresentation claim, one of which is “supply[ing] false information” (internal quotation marks omitted)); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) (providing the elements for an intentional misrepresentation claim, one of which is making “a false representation”).

Similarly, and assuming without deciding that NRS Chapter 113 applies to NRS Chapter 116 sales, NRS 113.130 requires a seller to disclose “defect[s],” not superpriority tenders.<sup>4</sup> NRS 113.100 defines “Defect” as “a condition that materially affects the value or use of residential property in an adverse manner.” To the extent that a deed of trust could conceivably constitute a “condition,” we note that the subject property technically has the same “value” regardless of whether it is encumbered by the deed of trust.<sup>5</sup>

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no allegations that such an inquiry was made in this case. Relatedly, although appellant contends that it relied upon the recitals in the foreclosure deed, the recitals made no representation one way or the other whether 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.

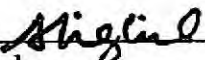
<sup>4</sup>We agree with respondent’s arguments that applying NRS Chapter 113 to NRS Chapter 116 sales seems nonsensical, but we also recognize appellant’s competing arguments that NRS Chapter 113 does not exclude NRS Chapter 116 sales and that NRS 113.100(5)’s definition of “Seller” is expansive.

<sup>5</sup>Nor are we persuaded that the Seller’s Real Property Disclosure Form would require disclosure of a superpriority tender.

Finally, because respondent did not do anything unlawful, 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.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Timothy C. Williams, District Judge  
William C. Turner, Settlement Judge  
Roger P. Croteau & Associates, Ltd.  
Leach Kern Gruchow Anderson Song/Las Vegas  
Eighth District Court Clerk