

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 9157  
DESIRABLE, A/K/A SATICOY BAY,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

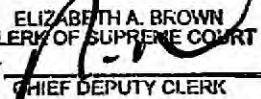
TAPESTRY AT TOWN CENTER  
HOMEOWNERS ASSOCIATION, A  
DOMESTIC NON-PROFIT  
CORPORATION; AND TERRA WEST  
COLLECTIONS GROUP, LLC, D/B/A  
ASSESSMENT MANAGEMENT  
SERVICES, A NEVADA LIMITED  
LIABILITY COMPANY,

Respondents.

No. 80969

**FILED**

FEB 16 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF 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; Nancy L. Allf, 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"); *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that

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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.

this court may affirm the district court on any ground supported by the record, even if not relied upon by the district court). In particular, appellant's claims for misrepresentation and breach of NRS 116.1113 fail because respondents had no statutory duty to disclose whether a superpriority tender had been made.<sup>2</sup> Compare NRS 116.31162(1)(b)(3)(II) (2017) and NRS 116.31164(2) (2017) (requiring an HOA to 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. NRS 113.100(1) 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

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<sup>2</sup>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.


the deed of trust. Nor are we persuaded that the Seller's Real Property Disclosure Form would require disclosure of a superpriority tender.

Finally, because respondents 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.  
Cadish

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Herndon

cc: Hon. Nancy L. Allf, District Judge  
Michael H. Singer, Settlement Judge  
Roger P. Croteau & Associates, Ltd.  
McDonald Carano LLP/Las Vegas  
Leach Kern Gruchow Anderson Song/Las Vegas  
Eighth District Court Clerk