IN THE COURT OF APPEALS OF THE STATE OF NEVADA

8680 FLORISSE CT TRUST, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
AVIARA HOMEOWNERS ASSOCIATION,
Respondent.

No. 81197-COA

ORDER OF AFFIRMANCE

8680 Florisse Ct Trust (Florisse) appeals from a district court order dismissing a complaint in a tort action. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Florisse purchased real property from respondent Aviara Homeowners Association (the HOA) at a foreclosure sale conducted pursuant to NRS Chapter 116. After Florisse learned that the beneficiary of the first deed of trust on the property had tendered the superpriority amount of the HOA's lien to its foreclosure agent prior to the sale—and that the agent rejected the tender—Florisse filed the underlying action against the HOA asserting claims of intentional or negligent misrepresentation, breach of the duty of good faith set forth in NRS 116.1113, conspiracy, and breach of NRS Chapter 113. In relevant part, Florisse alleged that the HOA had a duty to disclose the tender, that it breached that duty, and that Florisse incurred damages as a result. The HOA filed a motion to dismiss Florisse's complaint, which the district court granted, concluding that Florisse's claims were time-barred and that the complaint failed to state a claim upon which relief could be granted. This appeal followed.

Reviewing the district court's order granting the HOA's motion to dismiss de novo, *see Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008), we affirm. Florisse's claims for misrepresentation and breach of NRS 116.1113 fail as a matter of law because, under the statutes in effect at the time of the foreclosure sale, the HOA had no duty to proactively disclose whether a superpriority tender had been made.[1] *Compare* NRS 116.31162(1)(b)(3)(II) (2015) (requiring an HOA to disclose if tender of the superpriority portion of the lien has been made), *with* NRS 116.31162 (2005) (not requiring any such disclosure); *see Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (setting forth the elements of negligent misrepresentation, 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) (setting forth the elements of intentional misrepresentation, one of which is making "a false representation").

Similarly, and assuming without deciding that NRS Chapter 113 applies to NRS Chapter 116 foreclosure sales, NRS 113.130 requires a seller to disclose "defect[s]," not superpriority tenders. NRS 113.100 defines "[d]efect" as "a condition that materially affects the value or use of

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[1]Although Florisse frames the issue as whether the HOA had a duty to disclose "upon reasonable inquiry," Florisse's complaint contains no allegations that it actually made such an inquiry with respect to the subject property, that the HOA withheld information in response to an inquiry, or that the HOA otherwise represented that no superpriority tender had been made; instead, Florisse merely alleged that it had a pattern and practice of so inquiring at foreclosure sales at the time in question and that it would not have purchased a property if it discovered that a tender had been made. Relatedly, although Florisse contends that it relied upon the recitals in the foreclosure deed, the recitals made no representation as to whether a superpriority tender had been made.

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.[2]

Finally, because the HOA did not do anything unlawful, appellant's 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.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

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[2]Likewise, we are not persuaded that the Seller's Real Property Disclosure Form would require disclosure of a superpriority tender.

[3]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Adriana Escobar, District Judge
Roger P. Croteau & Associates, Ltd.
Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk