IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAISY TRUST, A NEVADA TRUST,
Appellant,
vs.
GREEN VALLEY SOUTH OWNERS ASSOCIATION NO. 1, A NEVADA NON-PROFIT CORPORATION; AND NEVADA ASSOCIATION SERVICES, INC., A DOMESTIC CORPORATION,
Respondents.

No. 82611-COA

ORDER OF AFFIRMANCE

Daisy Trust (Daisy) appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Daisy purchased real property from respondent Green Valley South Owners Association No. 1 (the HOA) at a foreclosure sale conducted pursuant to NRS Chapter 116. After Daisy 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, respondent Nevada Association Services, Inc. (NAS), prior to the sale—and that NAS rejected the tender—Daisy filed the underlying action against the HOA and NAS 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, Daisy alleged that the HOA and NAS had a duty to disclose the tender, that they breached that duty, and that Daisy incurred damages as a result. The HOA ultimately filed a motion to dismiss Daisy's complaint or, in the alternative, for summary judgment, which NAS joined. Construing the motion as one for summary judgment, the district

court granted it over Daisy's opposition, concluding that all of Daisy's claims failed as a matter of law. This appeal followed.

Reviewing the district court's summary judgment de novo, *see Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we affirm. Daisy'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, neither the HOA nor NAS had a duty to proactively disclose whether a superpriority tender had been made.[1] *Compare* NRS 116.31162(1)(b)(3)(II) (2015) (requiring disclosure of a superpriority tender before the HOA may proceed to foreclose), *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 Daisy frames the issue as whether the HOA and NAS had a duty to disclose "upon reasonable inquiry," the record does not reflect that Daisy actually made such an inquiry with respect to the subject property, that the HOA or NAS withheld information in response to an inquiry, or that the HOA or NAS otherwise represented that no superpriority tender had been made. Instead, Daisy 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 Daisy 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 neither the HOA nor NAS did anything unlawful, Daisy'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, the district court appropriately granted summary judgment in favor of the HOA and NAS, *see Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) ("Where an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper." (alteration and internal quotation marks omitted)), and 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. Jasmin D. Lilly-Spells, District Judge
Roger P. Croteau & Associates, Ltd.
Brandon E. Wood
Lipson Neilson P.C.
Eighth District Court Clerk