IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OLIVER SAGEBRUSH DRIVE TRUST, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
NEVADA ASSOCIATION SERVICES, INC., A NEVADA CORPORATION; AND SUNRISE RIDGE MASTER HOMEOWNERS ASSOCIATION, A DOMESTIC NON-PROFIT COOPERATIVE CORPORATION,
Respondents.

No. 83238-COA

FILED

MAY 27 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Oliver Sagebrush Drive Trust (OSDT) appeals from a final judgment in a tort action. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

OSDT purchased real property from respondent Sunrise Ridge Master Homeowners Association (the HOA) at a foreclosure sale conducted pursuant to NRS Chapter 116. After OSDT 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—OSDT 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, and conspiracy. In relevant part, OSDT alleged that the HOA and NAS had a duty to disclose the tender, that they breached that duty, and that OSDT incurred damages as a result. The HOA ultimately filed a motion to dismiss, which the district

court granted, concluding OSDT's claims were time-barred. Thereafter, NAS filed a motion to dismiss or, in the alternative, for summary judgment, which the district court also granted, construing the motion as one for summary judgment and concluding both that OSDT's claims failed as a matter of law and that they were time-barred. This appeal followed.

Reviewing both the district court's order of dismissal and its subsequent summary judgment de novo, *see Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we affirm. OSDT'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 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.

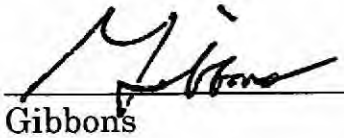
---

[1]Although OSDT frames the issue as whether the HOA and NAS had a duty to disclose "upon reasonable inquiry," the record does not reflect that OSDT 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, OSDT 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 OSDT 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.

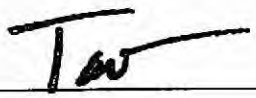
217, 225, 163 P.3d 420, 426 (2007) (setting forth the elements of intentional misrepresentation, one of which is making "a false representation").

Moreover, because neither the HOA nor NAS did anything unlawful, OSDT'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 ruled 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 therefore

ORDER the judgment of the district court AFFIRMED.[2]



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

[2]In light of our disposition, we need not address the parties' arguments concerning whether OSDT's claims were time-barred.

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Janet Trost, Settlement Judge
Roger P. Croteau & Associates, Ltd.
Brandon E. Wood
Hong & Hong
Eighth District Court Clerk