

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAISY TRUST, A NEVADA TRUST,  
Appellant,

vs.

EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION, A  
DOMESTIC NEVADA NON-PROFIT  
CORPORATION,

Respondent.

No. 83404-COA

**FILED**

JUL 21 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

EL CAPITAN RANCH LANDSCAPE  
MAINTENANCE ASSOCIATION, A  
DOMESTIC NEVADA NON-PROFIT  
CORPORATION,

Appellant,

vs.

DAISY TRUST, A NEVADA TRUST,  
Respondent.

No. 84037-COA

*ORDER OF AFFIRMANCE (DOCKET NO. 83404-COA), ORDER OF  
REVERSAL AND REMAND (DOCKET NO. 84037-COA)*

In these consolidated appeals, Daisy Trust challenges a district court order granting summary judgment, and El Capitan Ranch Landscape Maintenance Association (the HOA) challenges a post-judgment order denying a motion for attorney fees and costs. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Daisy Trust purchased real property at a foreclosure sale conducted pursuant to NRS Chapter 116 by Alessi & Koenig, LLC (Alessi), as foreclosure agent on behalf of the HOA. After Daisy Trust learned that

the beneficiary of the first deed of trust on the property had tendered the superpriority amount of the HOA's lien to Alessi prior to the sale—and that Alessi rejected the tender—Daisy Trust 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, and conspiracy. In relevant part, Daisy Trust alleged that the HOA and Alessi had a duty to disclose the tender, that they breached that duty, and that Daisy Trust incurred damages as a result.

The HOA ultimately filed a motion for summary judgment, which the district court granted, concluding Daisy Trust's claims failed as a matter of law, as neither the HOA nor Alessi had any duty to disclose the tender. The HOA subsequently filed a motion for attorney fees and costs, arguing that such an award was warranted under NRS 116.4117(6), which provides for a discretionary award of attorney fees to prevailing parties in certain types of cases. The district court denied the motion, concluding the HOA was legally ineligible for such an award under the statute. Daisy Trust now appeals from the summary judgment (Docket No. 83404-COA), and the HOA appeals from the post-judgment order denying its motion for attorney fees and costs (Docket No. 84037-COA). We address each in turn.

*Docket No. 83404-COA*

Reviewing the district court's summary judgment in favor of the HOA de novo, see *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we affirm. Daisy Trust'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 Alessi had a duty to proactively disclose whether a superpriority tender had been

made. *See Saticoy Bay, LLC, Series 34 Innisbrook v. Thornburg Mortg. Sec. Tr. 2007-3*, 138 Nev., Adv. Op. 35, 510 P.3d 139, 144-45 (2022) (rejecting the appellant’s materially similar misrepresentation claim on grounds that, prior to 2015, HOAs had no statutory duty to disclose whether a superpriority tender had been made);<sup>1</sup> *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 “suppl[ying] 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”).

Moreover, because Daisy Trust has failed to show that the HOA or Alessi did anything unlawful, its conspiracy claim necessarily fails. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311,

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<sup>1</sup>Although Daisy Trust frames the issue as whether the HOA and Alessi had a duty to disclose the tender “upon reasonable inquiry” as to whether anyone had paid anything toward the HOA’s account, the record does not reflect that Daisy Trust actually made such an inquiry with respect to the subject property, that the HOA or Alessi withheld information in response to an inquiry, or that the HOA or Alessi otherwise represented that no tender had been made; instead, Daisy Trust 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. *See Innisbrook*, 138 Nev., Adv. Op. 35, 510 P.3d at 143-44 (rejecting the appellant’s misrepresentation claim where it failed to affirmatively allege that it inquired about tendered amounts or that the HOA or its agent represented that a tender had not been made). Relatedly, although Daisy Trust 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.

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” (internal quotation marks omitted)). Accordingly, Daisy Trust fails to demonstrate any error in the district court’s summary judgment in favor of the HOA, and we therefore affirm that judgment.

*Docket No. 84037-COA*

Turning to the district court’s order denying the HOA’s post-judgment request for attorney fees, we note that “Nevada adheres to the American Rule of attorney fees—attorney fees may not be awarded unless there is a statute, rule, or contract providing for such an award.” *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 174, 444 P.3d 423, 424 (2019). Although we generally review a district court’s decision concerning attorney fees for a manifest abuse of discretion, our review is de novo when we interpret the text of a statute to determine whether a party is legally eligible for an award of attorney fees under that statute. *In re Execution of Search Warrants*, 134 Nev. 799, 801, 435 P.3d 672, 675 (Ct. App. 2018).

NRS 116.4117(1) provides that,

[s]ubject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions . . . , any person . . . suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

In turn, subsection 2 provides that such an action “may be brought . . . [b]y a unit’s owner against . . . [t]he association.” NRS 116.4117(2)(b). And NRS

116.4117(6) provides that “[t]he court may award reasonable attorney’s fees to the prevailing party.”

In arguing that the district court correctly determined that the HOA was ineligible for an award of fees under NRS 116.4117, Daisy Trust confusingly contends that the underlying action did not concern a violation of any provision of NRS Chapter 116, despite basing the action predominantly on the HOA’s supposed violation of NRS 116.1113 and devoting the majority of its argument against the district court’s summary judgment to that point on appeal.<sup>2</sup> Because we agree with the HOA that the underlying case plainly fell within the class of actions in which a district court may award attorney fees pursuant to NRS 116.4117 and that the district court erred in determining otherwise, we reverse the district court’s order denying the HOA’s motion for attorney fees and costs, and we remand this matter for further consideration of that motion.<sup>3</sup>

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<sup>2</sup>Daisy Trust points to our supreme court’s unpublished disposition in *REEC Enterprises, LLC v. Savannah Falls Homeowners’ Association*, Nos. 79593, 80312, 2021 WL 931239 (Nev. Mar. 10, 2021) (Order Affirming (Docket No. 79593) and Affirming in Part and Vacating in Part (Docket No. 80312)), in support of the notion that the HOA was ineligible for fees in this case. But the *REEC* case is readily distinguishable, as the action in that matter was not predicated on a supposed violation of NRS 116.1113. *See id.* at \*1-2.

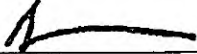
<sup>3</sup>We note that, although NRS 116.4117 does not address costs and instead only provides for an award of attorney fees, neither the parties nor the district court separately addressed the request for costs or any legal basis therefor below, and the parties again fail to separately address that request on appeal. Because both the parties and the district court conflated the requests for attorney fees and costs in addressing these issues below,

In short, we affirm the district court's order granting summary judgment in favor of the HOA appealed from in Docket No. 83404-COA, but we reverse the district court's order denying the HOA's post-judgment motion for attorney fees and costs appealed from in Docket No. 84037-COA, and we remand for further proceedings concerning that motion consistent with our disposition.

It is so ORDERED.<sup>4</sup>

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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

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and because we “will not address issues that the district court did not directly resolve,” *9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020), we reverse the district court's denial of the HOA's motion for attorney fees and costs in its entirety, and we leave the costs issue for the district court to address on remand.

<sup>4</sup>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.