IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 10250 SUN DUSK LN, Appellant, vs. SUNSET MESA COMMUNITY ASSOCIATION, A NEVADA NON-PROFIT CORPORATION, Respondent.	No. 83142
SATICOY BAY LLC SERIES 10250 SUN DUSK LN, A NEVADA LIMITED LIABILITY COMPANY, Appellant, vs. SUNSET MESA COMMUNITY ASSOCIATION, A NEVADA NONPROFIT CORPORATION, Respondent.	No. 84211

FILED

APR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court judgment and an order awarding damages, costs, and attorney fees, and granting injunctive relief in a real property action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.[1]

The underlying dispute arises from appellant Saticoy Bay LLC Series 10250 Sun Dusk Lane's rental of the property at issue, located within respondent Sunset Mesa Community Association's neighborhood, in violation of Sunset Mesa's CC&Rs. Sunset Mesa filed a complaint, asserting breach of contract and related claims, seeking damages and declaratory and injunctive relief, and requesting attorney fees and costs.

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

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Following a two-day bench trial, the district court found in favor of Sunset Mesa. Thereafter, the district court entered a final judgment and permanent injunction, awarding Sunset Mesa damages in the form of unpaid fines, and attorney fees and costs. Saticoy Bay now appeals.

First, Saticoy Bay argues the district court erred by finding that NRS 116.31031, governing HOA penalties, does not cap penalties at $1000. Reviewing de novo, we disagree. *See Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass'n*, 137 Nev. 516, 518, 495 P.3d 492, 495 (2021) (reviewing de novo issues involving statutory interpretation). At the relevant time, the statute's plain language provided that fines—whether individually or cumulatively—are capped at $1000.[2] *See* NRS 116.31031(1)(b)(2) (2014) (providing that "the amount of [a] fine must not exceed $100 for each violation or a total amount of $1,000, whichever is less"). However, the statute further provided that if a "violation is not cured within 14 days, . . . it shall be deemed a continuing violation," and in such circumstances homeowners' associations like Sunset Mesa may "impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured." NRS 116.31031(7). This language plainly provides that the fine for a continuing violation is not subject to the $1000 cap. To hold otherwise would improperly render subsection 7 nugatory, given that every continuing violation, no matter how small, would eventually surpass the cap if the unit owner failed to comply. *See S. Nev. Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) ("When interpreting a statute, this court must give its terms their plain meaning, considering its provisions as a whole so as to read them

[2]Unless otherwise stated, this disposition addresses the version of the statute in place at the time of the underlying events.

'in a way that would not render words or phrases superfluous or make a provision nugatory.'" (quoting *Charlie Brown Constr. Co. v. Boulder City,* 106 Nev. 497, 502, 797 P.2d 946, 949 (1990), *overruled on other grounds by Calloway v. City of Reno,* 116 Nev. 250, 993 P.2d 1259 (2000))). For similar reasons, such an interpretation would lead to absurd results, as a homeowners' association would be limited to a $1000 fine, despite a unit owner's continued refusal to bring the unit into compliance.[3] *See City of Henderson v. Wolfgram*, 137 Nev. Adv. Op. 79, 501 P.3d 422, 424 (2021) (holding that in interpreting statutes, "we will avoid construction that would lead to an absurd result").

Next, Saticoy Bay argues that the fines were invalid because Sunset Mesa breached its duty of good faith and fair dealing. It argues that Sunset Mesa breached this duty by misrepresenting in its initial letter (violation letter) that no exceptions were available to the rental cap when the CC&Rs provided a hardship exception; by failing to correct this misrepresentation in subsequent correspondence; by failing to properly investigate and consider the merits of Saticoy Bay's hardship application; and/or by failing to notice or hold a hearing on Saticoy Bay's application, in violation of Sunset Mesa's own CC&Rs.

We disagree with Saticoy Bay's contentions. While Sunset Mesa's violation letter erroneously states that there were no exceptions to the rental cap restriction, Saticoy Bay's owner—Eddie Haddad, a

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[3]To the extent NRS 116.31031 is ambiguous on this issue, the Legislature's recent amendment to NRS 116.31031(7)(b) clarified that continuing violations are not subject to the $1000-fine limitation outlined in NRS 116.31031(1). *See* 2021 Nev. Stat., ch. 157, § 2, at 713; *Sheriff, Washoe Cty. v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975) (observing that amendments that clarify previous versions of a statute can be "persuasive evidence" of what the Legislature originally intended).

sophisticated investor—testified that he was aware of the rental cap restriction before bidding on the property at the foreclosure sale; Sunset Mesa's CC&Rs, a publicly recorded document, provided that there was a "hardship exemption" to the rental cap restriction; and NRS 116.335(6) provides for an exemption for "economic hardship." Thus, Saticoy Bay had actual and/or constructive notice of the rental cap exemption. *See* NRS 111.320 (providing that the recording of a document constructively "impart[s] notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice"); *7912 Limbwood Court Tr. v. Wells Fargo Bank, N.A.*, 979 F. Supp. 2d 1142, 1152 (D. Nev. 2013) (holding that a recorded document serves to advise all persons of the contents of the document); *see also Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 513 (1915) ("Every one is presumed to know the law and this presumption is not even rebuttable.").

As for Saticoy Bay's other arguments supporting the alleged breach of the duty of good faith and fair dealing, Sunset Mesa's CC&Rs do not mandate a notice or hearing for hardship exemption applications; instead, its language is permissive:

> Notwithstanding anything in this Agreement to the contrary, any Owner of a Unit may apply to the Board of Directors for an exemption from the [rental cap restriction] . . . , upon a showing of hardship. A hearing before the Board on this matter shall be consistent with the Board's standards for providing notice and an opportunity to be heard, as set forth in the Governing Documents, as may be amended, and consistent with Nevada Revised Statutes 116.3102(1)(k), as may be amended.

At most, the provision requires a hearing consistent with the Board's standards *if* the Board holds such a hearing.[4] And because the language also does not require any affirmative investigation upon an application, Saticoy Bay's related argument lacks merit.

Thus, Saticoy Bay demonstrates only one possible basis for Sunset Mesa's alleged breach of its duty of good faith and fair dealing. But to the extent Sunset Mesa breached its duty of good faith and fair dealing by erroneously stating in its violation letter that there were no exceptions to the rental cap restriction, we conclude that reversal is not warranted. *See K Mart Corp. v. Ponsock*, 103 Nev. 39, 49, 732 P.2d 1364, 1370-71 (1987) (holding that liability for breach of the good faith covenant is warranted "only in rare and exceptional cases," and where "the party in the superior or entrusted position" has engaged in "grievous and perfidious misconduct"), *abrogated on other grounds by Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990); *see also* Restatement (Second) of Contracts § 205 (1981) (explaining that "[t]he appropriate remedy for a breach of the duty of good faith . . . varies with the circumstances"). Sunset Mesa was not in such a superior position to warrant relief, as Saticoy Bay had constructive and/or actual knowledge of the rental cap restriction, and of the exemptions permitted by statute and the CC&Rs. *See K Mart Corp.* 103 Nev. at 49, 732 P.2d at 1371. For this same reason, and because Saticoy Bay did not provide evidence that Sunset Mesa included the language in the violation letter with the intent to deceive, we further conclude that Saticoy Bay fails to

[4]Because we ultimately agree with Sunset Mesa that the language of the CC&Rs does not require hearings on applications for a hardship exemption, we need not address the apparent inconsistency in the HOA manager's testimony regarding his personal understanding of whether the HOA was required to hold such hearings.

demonstrate that Sunset Mesa engaged in "grievous and perfidious misconduct." *Id.*[5]

Finally, Saticoy Bay argues that the district court abused its discretion by awarding Sunset Mesa attorney fees as a prevailing party under NRS 116.4117.[6] Reviewing for a manifest abuse of discretion, we disagree. *See Frantz v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351, 361 (2000) ("A district court's award of attorney fees will not be disturbed on appeal absent a manifest abuse of discretion."). NRS 116.4117(2) authorizes an association to bring "a civil action [against a unit's owner] for damages or other appropriate relief for a failure or refusal to comply with any provision of [NRS Chapter 116] or the governing documents of [the community]." NRS 116.4117(6) further provides that the "court may award reasonable [attorney] fees to the prevailing party." In relevant part, Sunset Mesa's CC&Rs provide for a rental cap restriction, and the district court found that Saticoy Bay refused to comply with that restriction. As Sunset

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[5]Saticoy Bay failed to provide evidence in support of its contention that the Sunset Mesa Board "singled" it out in denying its economic hardship application because its owner was a professional investor, in violation of NRS 116.31065 (providing that the rules adopted by an association must be uniformly enforced against unit owners). Additionally, Sunset Mesa's HOA manager testified that the HOA Board would generally not grant a hardship exemption where the requesting party was currently violating the CC&Rs.

[6]While Sunset also requested attorney fees under its CC&Rs, the district court ultimately granted attorney fees under NRS 116.4117. We further note that Saticoy Bay does not challenge a specific attorney fee amount, or the district court's award of costs.

Mesa thus prevailed on its claims under NRS Chapter 116, the district court did not abuse its discretion by awarding attorney fees.[7]

Having considered the issues presented and concluded that they do not warrant relief, we

ORDER the judgment and order of the district court AFFIRMED.

_____, C.J.
Stiglich

_____, J.
Lee

_____, J.
Bell

cc: Chief Judge, Eighth Judicial District Court
Department 29, Eighth Judicial District Court
William C. Turner, Settlement Judge
Roger P. Croteau & Associates, Ltd.
Law Offices of Bruce I. Flammey
Eighth District Court Clerk

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[7]Saticoy Bay argues that the district court must wait to award attorney fees until a pending appeal from the final judgment is resolved. We need not consider that argument because Saticoy Bay failed to cite any supporting authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that we need not consider claims not supported by relevant authority).