IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY, LLC, SERIES 8320 BERMUDA BEACH,
Appellant,
vs.
TERRA WEST COLLECTIONS GROUP, LLC, D/B/A ASSESSMENT MANAGEMENT SERVICES,
Respondent.

No. 80914-COA

FILED

JUL 28 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Saticoy Bay, LLC, Series 8320 Bermuda Beach (Saticoy Bay) appeals from a post-judgment district court order awarding attorney fees in a tort action. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

In the underlying action, Saticoy Bay alleged that it purchased real property at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116 by respondent Terra West Collections Group, LLC, d/b/a Assessment Management Services (AMS), acting as an agent of South Shores Community Association (SSCA). Saticoy Bay further alleged that AMS had rejected a presale tender from the beneficiary of the first deed of trust on the property in the amount of the superpriority portion of SSCA's delinquent-assessment lien, and that it failed to disclose this information to the bidders at the sale. Based on those allegations, Saticoy Bay asserted claims against both SSCA and AMS for intentional or negligent misrepresentation, breach of the duty of good faith set forth in NRS 116.1113, conspiracy, and violation of NRS Chapter 113,

contending that they had a duty to disclose the tender, that they breached that duty, and that Saticoy Bay incurred damages as a result.

SSCA filed a motion to dismiss Saticoy Bay's complaint, which AMS joined and the district court granted.[1] AMS then filed a motion seeking an award of attorney fees in the amount of $7,830.50 pursuant to NRS 18.010(2)(b) and EDCR 7.60(b), contending that Saticoy Bay brought its claims without reasonable ground. SSCA joined that motion and sought an award of fees in the amount of $4,895.83, arguing that fees were additionally warranted under NRS 116.4117(6), which provides that a court may award attorney fees to the prevailing party in a civil action brought under that statute in connection with a failure to comply with NRS Chapter 116. Following a hearing, the district court issued a written order awarding SSCA the full amount of its requested fees and AMS a reduced amount of $5,005.03. The court considered all of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), for determining a reasonable amount of fees, and it identified NRS 116.4117(6) as the legal basis for the awards to both SSCA and AMS. The court did not address the applicability of either NRS 18.010(2)(b) or EDCR 7.60(b). This appeal followed.

Before the supreme court transferred the appeal to this court, Saticoy Bay stipulated with SSCA to dismiss the appeal as to that respondent only. *See Saticoy Bay, LLC, Series 8320 Bermuda Beach v.*

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[1]Our supreme court later affirmed the dismissal. *Saticoy Bay, LLC, Series 8320 Bermuda Beach v. S. Shores Cmty. Ass'n*, Docket No. 80165 (Order of Affirmance, October 16, 2020).

Terra West Collections Grp., LLC, Docket No. 80914 (Order Dismissing Appeal in Part and Granting Motion, July 28, 2020). Accordingly, only the district court's award of fees to AMS remains at issue.

On appeal, Saticoy Bay contends that NRS 116.4117 does not allow for an award of attorney fees to an HOA's collection agent and that the district court therefore erred in making such an award. Specifically, Saticoy Bay argues that the statute does not authorize suits against such parties and that the subsection allowing for awards of attorney fees to prevailing parties in suits brought under the statute therefore does not apply. Saticoy Bay additionally argues that it was not a "unit's owner" at the time of the omissions set forth in the complaint such that its claims do not implicate NRS 116.4117, and also that it did not actually bring any of its claims under the statute. Finally, Saticoy Bay argues that even if AMS was legally eligible for an award of attorney fees under the statute, the district court abused its discretion by awarding an excessive amount.

"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). When an award is so authorized, we review the district court's decision concerning attorney fees for a manifest abuse of discretion. *See In re Execution of Search Warrants*, 134 Nev. 799, 801, 435 P.3d 672, 675 (Ct. App. 2018). But 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. *Id.*

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—and in relevant part—subsection 2 provides that such an action "may be brought . . . [b]y a unit's owner against: (1) [t]he association; (2) [a] declarant; or (3) [a]nother unit's owner of the 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."

Saticoy Bay contends that subsection 2 of NRS 116.4117 specifically limits the extent to which certain parties may file suit under the statute against certain other parties in connection with a failure to comply with NRS Chapter 116, and on this point, we agree. *See Bank of N.Y. Mellon v. Log Cabin Manor Homeowners Ass'n*, 362 F. Supp. 3d 930, 939 (D. Nev. 2019) ("NRS § 116.4117(2) limits who may bring a civil action for failure to comply with Chapter 116 . . . ."). By expressly subjecting its broad language in subsection 1—authorizing "any person . . . suffering actual damages from the failure to comply" to sue "any . . . person subject to [NRS Chapter 116]"—to the more specific requirements set forth in subsection 2, NRS 116.4117 evinces an intent on the part of the Legislature to limit the class of parties against whom certain other parties, including a unit's owner, are granted a private right of action. *See Neville v. Eighth Judicial Dist. Court*, 133 Nev. 777, 783, 406 P.3d 499, 504 (2017) ("The determinative factor [concerning whether a statute creates a private right of action] is always

whether the Legislature intended to create a private judicial remedy."); *Williams v. State, Dep't of Corr.*, 133 Nev. 594, 601, 402 P.3d 1260, 1265 (2017) (providing that specific statutory provisions take precedence and are construed as exceptions to more general provisions); *see also Anderson v. Sw. Sav. & Loan Ass'n*, 571 P.2d 1042, 1044 (Ariz. Ct. App. 1977) ("The words 'subject to,' used in their ordinary sense, mean 'subordinate to,' 'subservient to' or 'limited by.'" (quoting *Englestein v. Mintz*, 177 N.E. 746, 752 (Ill. 1931))); *Black's Law Dictionary*, *Subject* (11th ed. 2019) (defining "subject" in its adjective form as "[d]ependent on").

Thus, the plain text of NRS 116.4117 only grants private rights of action to a unit's owner against "[t]he association," "[a] declarant," or "[a]nother unit's owner of the association." NRS 116.4117(2)(b)(1)-(3). From there, Saticoy Bay reasons that, because AMS is none of those things and is instead an HOA's collection agent, NRS 116.4117 does not provide a unit's owner a private right of action against it, and the statute is therefore inapplicable to this case and cannot support an award of fees. On this point, AMS contends that Saticoy Bay is essentially admitting that it had no right to file an action against AMS, at least insofar as it asserted a claim for breach of the duty of good faith set forth in NRS 116.1113, which AMS contends warrants affirmance on grounds that Saticoy Bay brought the claim without reasonable ground. In reply, Saticoy Bay takes issue with AMS's framing of its argument, contending that it is not admitting that it brought the NRS 116.1113 claim without reasonable ground, as it did not actually bring the claim under NRS 116.4117; instead, Saticoy Bay contends that it merely referenced NRS 116.1113 to establish the duty owed by AMS.

Saticoy Bay's counterargument is puzzling, as it fails to explain what legal basis there is for a claim asserting breach of the duty of good faith owed under NRS 116.1113 outside of the private rights of action provided in NRS 116.4117. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority). Instead, Saticoy Bay contends that it could not have asserted a claim under NRS 116.4117, as it was not a "unit's owner" under NRS 116.4117(2)(b) at the time of the omissions giving rise to its complaint, and the statute therefore does not apply to the underlying action. But we are not persuaded by this argument, as nothing in the statute indicates that the conduct giving rise to a suit must have occurred when the injured party was already a unit's owner; rather, the statute simply indicates that a "unit's owner" is a party that is entitled to bring an action under the statute for damages resulting from a violation of NRS Chapter 116, *see* NRS 116.4117(1), (2)(b), and Saticoy Bay concedes that it was such a party at the time it filed its complaint. Moreover, even assuming Saticoy Bay is correct that, in order to implicate the statute, its claims must have arisen when it was in fact a unit's owner, its complained-of damages—i.e., the harm it allegedly suffered in purchasing the property without being informed of the presale tender—occurred at the time it purchased the property and thereby became its owner.[2] Accordingly, because Saticoy Bay's NRS 116.1113 claim

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[2]Saticoy Bay alludes to the differing statutory definitions in NRS Chapter 116 of a "[p]urchaser" on the one hand, and a "[u]nit's owner" on

alleged a violation of NRS Chapter 116 and therefore plainly fell within the subject matter set forth in NRS 116.4117(1), we conclude that Saticoy Bay did indeed bring the claim under NRS 116.4117, even though it did not reference the statute in its complaint. *See Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308, 468 P.3d 862, 878 (Ct. App. 2020) (noting that Nevada's pleading standard "does not require the legal theory relied upon to be correctly identified" (internal quotation marks omitted)).

Turning back to Saticoy Bay's primary argument that NRS 116.4117 does not provide a unit's owner a private right of action against a collection agent like AMS, it argues that this court must strictly construe the attorney-fees provision in NRS 116.4117(6), as statutes providing for an award of attorney fees are in derogation of the common law. Saticoy Bay contends that if this court strictly construes the statute, it must conclude that NRS 116.4117(6) only allows for awards of attorney fees in cases where the suit is fully authorized under the statute.

But we ultimately need not decide whether to strictly construe any part of NRS 116.4117, as Saticoy Bay's construction of the statute fails upon a review of the clear and unambiguous language of its relevant text. *See Search Warrants*, 134 Nev. at 801, 435 P.3d at 675 ("As always, the proper place to begin is with the plain text of the relevant statute, and if those words are unambiguous, that is where our analysis ends as well."); *see also Local Gov't Emp.-Mgmt. Relations Bd. v. Educ. Support Emps.*

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the other, *see* NRS 116.079, .095, and seemingly implies that these terms cannot overlap, but it fails to cogently argue the point. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Ass'n, 134 Nev. 716, 721, 429 P.3d 658, 663 (2018) ("[W]here the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction." (internal quotation marks omitted)).

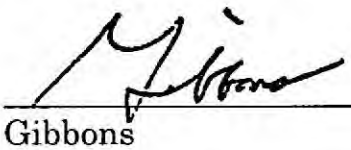
Assuming without deciding that Saticoy Bay is correct that NRS 116.4117 does not grant a unit's owner a private right of action against an HOA's collection agent for violation of NRS Chapter 116, the attorney-fees provision of NRS 116.4117(6) nevertheless authorizes an award of fees to a defendant in a suit brought under the statute, even if the suit was unauthorized. Nothing in the text of the statute provides that attorney fees may be awarded only when the suit was authorized; rather, it simply provides that "[t]he court may award reasonable attorney's fees to the prevailing party." NRS 116.4117(6). And one may readily imagine a scenario in which a court dismisses a claim brought under NRS 116.4117 on grounds that the statute did not actually provide the plaintiff with a private right of action. In such a case, the defendant would be a prevailing party under the statute, *see 145 E. Harmon II Tr. v. Residences at MGM Grand — Tower A Owners' Ass'n*, 136 Nev. 115, 119-20, 460 P.3d 455, 458-59 (2020) (compiling authorities acknowledging that a dismissal with prejudice, even if not based upon the merits of the underlying claims, nevertheless constitutes an adjudication on the merits sufficient to confer prevailing-party status); *see also CRST Van Expedited, Inc. v. EEOC*, 136 S. Ct. 1642, 1651 (2016) ("[A] defendant need not [even] obtain a favorable judgment on the merits in order to be a 'prevailing party.'"), and would therefore be eligible for an award of fees.

Here, where the district court dismissed Saticoy Bay's claim for breach of the duty of good faith under NRS 116.1113—a claim brought under NRS 116.4117—on its merits, AMS is plainly a prevailing party of the sort eligible for a discretionary award of attorney fees under NRS 116.4117(6), even assuming that Saticoy Bay was not authorized to bring the claim. Accordingly, AMS was legally eligible for an award of fees, and we turn now to Saticoy Bay's alternative argument that the district court abused its discretion in awarding the specific amount of fees that it did.

As noted above, because AMS was legally eligible for an award of attorney fees, we review the district court's decision to award them for a manifest abuse of discretion. *See Search Warrants*, 134 Nev. at 801, 435 P.3d at 675. Saticoy Bay's only argument on this point is that the district court abused its discretion by awarding an excessive amount of fees, and it provides various examples of what it believes to be overbilling on the part of AMS's counsel. However, because the district court appropriately considered all of the *Brunzell* factors, reviewed billing records from AMS's counsel, properly applied the lodestar method, and reduced the fee award to an amount less than AMS requested, we discern no abuse of discretion in its decision. *See Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005) (noting that "the method upon which a reasonable fee is determined is subject to the discretion of the court" and that, "whichever method the court ultimately uses, the result will prove reasonable as long as the court provides sufficient reasoning and findings in support of its ultimate determination" in accordance with *Brunzell*); *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 557-58, 429 P.3d 664, 670-71 (Ct. App. 2018) (acknowledging that, although a district court need

not consider billing records or hourly statements in determining a reasonable amount of fees, such consideration may nevertheless contribute to a reasonable method); *see also 145 E. Harmon II Tr.*, 136 Nev. at 122, 460 P.3d at 460 (noting that the district court's reduction of the fee award to an amount less than what was requested "shows the district court carefully considered the third [*Brunzell*] factor [concerning the actual work performed by the lawyer] in determining a reasonable amount of fees"). We therefore decline to disturb the district court's decision, and we affirm the award of attorney fees to AMS.

It is so ORDERED.



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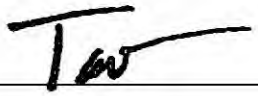

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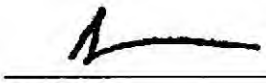

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cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 19
Roger P. Croteau & Associates, Ltd.
McDonald Carano LLP/Las Vegas
Eighth District Court Clerk