

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 6387
HAMILTON GROVE, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
SUNRISE RIDGE MASTER
HOMEOWNERS ASSOCIATION, A
NEVADA NON-PROFIT
CORPORATION; AND NEVADA
ASSOCIATION SERVICES, INC., A
NEVADA CORPORATION,
Respondents.

No. 83669-COA

FILED

JUL 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Saticoy Bay LLC Series 6387 Hamilton Grove (Saticoy Bay) appeals from a district court order of dismissal in a civil action. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Saticoy Bay purchased real property at a foreclosure sale conducted pursuant to NRS Chapter 116 by respondent Nevada Association Services, Inc. (NAS), on behalf of respondent Sunrise Ridge Master Homeowners Association (the HOA). After Saticoy Bay learned that the beneficiary of the first deed of trust on the property had tendered the superpriority amount of the HOA's lien to NAS prior to the sale—and that NAS rejected the tender—Saticoy Bay 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, violation of NRS Chapter 113, and unjust enrichment. In relevant part, Saticoy Bay alleged in the operative complaint that the HOA and NAS had a duty to disclose the tender, that they breached that duty, and that Saticoy Bay incurred damages as a result. The HOA

ultimately filed a motion to dismiss, which NAS joined and the district court granted, concluding Saticoy Bay's claims failed as a matter of law, as neither the HOA nor NAS had any duty to disclose the tender. This appeal followed.

Reviewing the district court's order of dismissal de novo, see *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008), we affirm. Saticoy Bay'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. 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);¹ *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

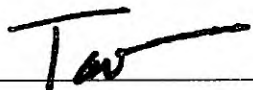
¹Although Saticoy Bay frames the issue as whether the HOA and NAS had a duty to disclose the tender "upon reasonable inquiry" as to whether anyone had paid anything toward the HOA's account, the record does not reflect that Saticoy Bay actually made such an inquiry with respect to the subject property, that the HOA or NAS withheld information in response to an inquiry, or that the HOA or NAS otherwise represented that no tender had been made; instead, Saticoy Bay 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 Saticoy Bay 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.

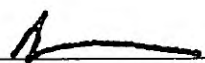
information” (internal quotation marks omitted)); *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) (setting forth the elements of intentional misrepresentation, one of which is making “a false representation”).

Moreover, because Saticoy Bay has failed to show that the HOA or NAS did anything unlawful, its 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”). And because Saticoy Bay fails to challenge the district court’s dismissal of its claims for violation of NRS Chapter 113 and unjust enrichment, those issues are waived. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Accordingly, Saticoy Bay fails to demonstrate any error in the district court’s order of dismissal, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Insofar 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. Jacqueline M. Bluth, District Judge
William C. Turner, Settlement Judge
Roger P. Croteau & Associates, Ltd.
Brandon E. Wood
Lipson Neilson P.C.
Eighth District Court Clerk