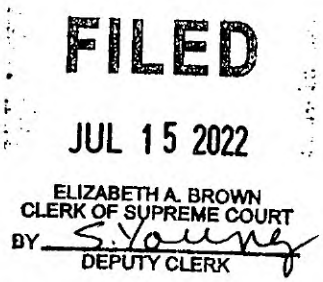
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RIVER GLIDER AVENUE TRUST,
Appellant,
vs.
HARBOR COVE HOMEOWNERS ASSOCIATION; AND NEVADA ASSOCIATION SERVICES, INC.,
Respondents.

No. 83689-COA



ORDER OF AFFIRMANCE

River Glider Avenue Trust (RGAT) appeals from a district court order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

RGAT purchased real property at a foreclosure sale conducted pursuant to NRS Chapter 116 by respondent Nevada Association Services, Inc. (NAS), on behalf of respondent Harbor Cove Homeowners Association (the HOA). After RGAT learned that the former owner of the property had tendered an amount exceeding the superpriority portion of the HOA's lien to NAS prior to the sale, RGAT 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, and violation of NRS Chapter 113. In relevant part, RGAT alleged that the HOA and NAS had a duty to disclose the tender, that they breached that duty, and that RGAT incurred damages as a result. The HOA ultimately filed a

motion for summary judgment, which NAS joined and the district court granted. In the order, the district court noted that it had previously dismissed RGAT's conspiracy and NRS Chapter 113 claims, and it concluded that RGAT's remaining claims failed, as neither the HOA nor NAS had any duty to disclose the tender. This appeal followed.

Reviewing the district court's grant of summary judgment de novo, *see Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005), we affirm. RGAT'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.*

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[1]Although RGAT 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 RGAT 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, RGAT 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

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

Similarly, and assuming without deciding that NRS Chapter 113 applies to NRS Chapter 116 foreclosure sales, NRS 113.130 requires a seller to disclose "defect[s]," not superpriority tenders. NRS 113.100 defines "[d]efect" as "a condition that materially affects the value or use of residential property in an adverse manner." To the extent that a deed of trust could conceivably constitute a "condition," we note that the subject property technically has the same "value" regardless of whether it is encumbered by the deed of trust. And RGAT fails to offer any argument or explanation as to how a deed of trust could materially affect the "use" of the subject property.[2] *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317,

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that it inquired about tendered amounts or that the HOA or its agent represented that a tender had not been made). And while RGAT stated in response to an interrogatory that it "would have" made such an inquiry to NAS either on the date of the sale or the day before, such speculation is insufficient to defeat summary judgment. *See Wood*, 121 Nev. at 732, 121 P.3d at 1031. Relatedly, although RGAT 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.

[2]Likewise, we are not persuaded that the Seller's Real Property Disclosure Form would require disclosure of a superpriority tender.

330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument).

Finally, because RGAT 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"). Accordingly, RGAT fails to demonstrate that reversal is warranted, and we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[3]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.

cc: Hon. Eric Johnson, District Judge
James A. Kohl, Settlement Judge
Roger P. Croteau & Associates, Ltd.
Brandon E. Wood
Lipson Neilson P.C.
Eighth District Court Clerk