

1 **ORDR**

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4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
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7 **MICHAEL KOSOR, JR.**

8 **Plaintiff**

CASE NO: A-18-778387-C

9 **v.**
10 **NEVADA REAL ESTATE DIVISION**

DEPT. NO.: XXIX

11 **Defendant**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER ON NEVADA
REAL ESTATE DIVISION'S MOTION
TO DISMISS**

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DAVID M. JONES
DISTRICT COURT JUDGE
DEPARTMENT XXIX

Defendant Nevada Real Estate Division (the "Division") filed a motion to dismiss ("Motion") on November 29, 2018. Plaintiff Michael Kosor, Jr. ("Plaintiff") filed an opposition on December 18, 2018, and the Division filed a reply on January 9, 2019. Argument on the Motion was heard by this Court on January 16, 2019. After considering the papers and pleadings on file, as well as counsels' oral arguments, the Court hereby GRANTS the Division's Motion. Any Findings of Fact that are more appropriately Conclusions of Law, and vice versa, shall be deemed as such.

FINDINGS OF FACT

1. On September 27, 2005, the Third Amendment to Master Declaration ("Third Amendment") was executed for Southern Highlands, a planned community in Las Vegas. The Third Amendment increased the number of units within the planned community from 9,000 units to

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10,400 units.

2. In 2012, Plaintiff purchased a home in and became a resident of the Southern Highlands community.
3. On November 20, 2014, Southern Highlands ratified its budget for the 2015 year ("2015 Budget").
4. Based on the 2015 Budget, Plaintiff believed that Southern Highlands was in violation of NRS 116.2122 due to the Third Amendment's increase of units.
5. In April, 2016, Plaintiff filed an affidavit with the Division complaining of the alleged violation ("First Complaint"). The Division dismissed the First Complaint.
6. In 2017, Plaintiff filed a second complaint ("Second Complaint") with the Division, making substantially identical claims. The Division dismissed the Second Complaint.
7. On July 25, 2018, Plaintiff filed this suit against the Division seeking declaratory relief in the form of a court order requiring the Division to investigate Plaintiff's complaints.

CONCLUSIONS OF LAW

1. NRCP 12(b)(5) authorizes a court to dismiss an action for "failure to state a claim upon which relief can be granted."
2. Dismissal is proper "if it appears beyond a doubt that [Plaintiff] could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008).
3. A court recognizes all factual allegations in a plaintiff's complaint as true and will draw all inferences in its favor. *Id.* at 227.
4. NRS 116.2117(2) states that "[n]o action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the

1 amendment is recorded.”

- 2 5. NRS 116.760(1) states that “[e]xcept as otherwise provided in this section, a person who is
3 aggrieved by an alleged violation may, not later than 1 year after the person discovers or
4 reasonably should have discovered the alleged violation, file with the Division a written
5 affidavit that sets forth the facts constituting the alleged violation.”
- 6 6. “An agency’s interpretation of a statute that it is authorized to execute is entitled to deference
7 unless it conflicts with the constitution or other statutes, exceeds the agency’s powers, or is
8 otherwise arbitrary and capricious.” *Nuleaf CLV Dispensary, LLC v. State Dep’t of Health*
9 *and Human Servs., Div. of Pub. & Behavioral Health*, 414 P.3d 305, 308 (2018). the
10 Division is an agency and its interpretation of NRS 116 in this case is entitled to the Court’s
11 deference.
- 12 7. Here, the Division dismissed the Second Complaint as untimely, pursuant to NRS
13 116.2117(2). The Court agrees with the Division’s interpretation of the statute. Plaintiff did
14 not acquire his property in Southern Highlands until seven years after the Third Amendment
15 was recorded, and did not submit the Second Complaint until twelve years after it was
16 recorded. Thus, the Division’s decision to dismiss the Second Complaint did not exceed its
17 powers, nor was it arbitrary and capricious.
- 18 8. the Division’s dismissal of the First Complaint, though a year earlier, was also proper based
19 on the reasoning in the above paragraph.
- 20 9. This Court also finds that Plaintiff’s First and Second Complaints were time barred pursuant
21 to NRS 116.760(1). Plaintiff stated that the 2015 Budget was the document that alerted him
22 to the alleged violation of NRS 116. The 2015 Budget was available to Plaintiff on
23 November 20, 2014, or shortly thereafter. Even allowing Plaintiff a reasonable amount of
24 time to obtain and review the 2015 Budget, the First Complaint, filed in April 2016, was
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filed later than 1 year after Plaintiff reasonably should have discovered the alleged violation.

10. Thus, this Court finds that the Division's decision to dismiss the First and Second

Complaints were proper under the relevant sections of NRS 116 as they were time barred.

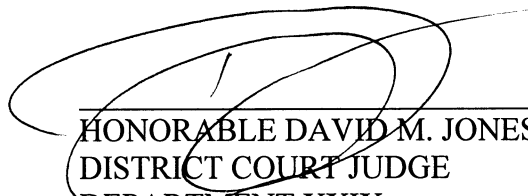
JUDGMENT

Wherefore, based upon the foregoing Findings of Fact and Conclusions of Law, this Court hereby orders as follows:

IT IS ORDERED that the Division's Motion is GRANTED.

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IT IS SO ORDERED this 5th day of March, 2019.



HONORABLE DAVID M. JONES
DISTRICT COURT JUDGE
DEPARTMENT XXIX

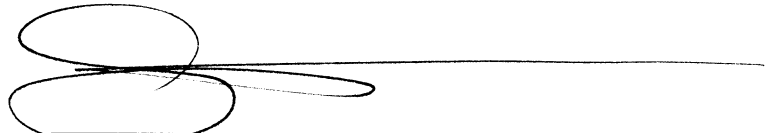
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Order was electronically filed and served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

Peter K. Keegan Attorney for Defendant

Joseph R. Meservy Attorney for Plaintiff


Susan M. Linn
Judicial Executive Assistant
Department XXIX