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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
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9 SOMERSETT OWNERS ASSOCIATION, a  
10 Nevada non-profit corporation,

Case No. CV20-00872

Dept. No. 6

11 Plaintiff,

12 vs.

13 SOMERSETT COUNTRY CLUB, INC., a  
14 Nevada non-profit corporation dba  
15 SOMERSETT GOLF AND COUNTRY CLUB;  
16 JOHN DOES I-X, inclusive; and ROE  
CORPORATIONS I-X, inclusive;

17 Defendant.  
18 \_\_\_\_\_/

19 **ORDER DENYING MOTION TO DISMISS;**  
20 **ORDER GRANTING MOTION FOR A MORE DEFINITE STATEMENT**

21 Before this Court is *Plaintiff/Counterdefendant Somerset Owners Association's*  
22 *Motion for a More Definite Statement, and to Dismiss ("Motion")* filed by Plaintiff  
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24 SOMERSETT OWNERS ASSOCIATION ("The Association"), by and through its counsel of  
25 record Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP. Defendant SOMERSETT  
26 COUNTRY CLUB, INC., a Nevada non-profit corporation dba SOMERSETT GOLF AND  
27 COUNTRY CLUB ("SCC") filed the *Defendant/Counterclaimant's Opposition to Motion for a*  
28 *More Definite Statement, and to Dismiss ("Opposition")*, by and through its counsel of

1 record, John F. Kirsch, Esq. The Association filed the *Plaintiff/Counterdefendant Somerset*  
2 *Owners Association's Reply in Support of its motion for a More Definite Statement, and to*  
3 *Dismiss ("Reply")*. The matter was thereafter submitted for the Court's consideration.

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5 **I. FACTUAL AND PROCEDURAL HISTORY**

6 This case arises due to alleged property damage caused by a collapsed wall on land  
7 owned by the Association and leased to SCC and the obligations under the lease as well as  
8 obligations under a Water Facilities Agreement ("WFA") . See *Complaint*, generally. The  
9 Association claims SCC is responsible for maintenance and repair of the Property the  
10 Association leased to SCC in 2015. *Complaint*, ¶15-16.

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12 Allegations. On August 18, 2014, the Association entered into a Real Property  
13 Purchase Agreement ("Purchase Agreement") for 220 acres of golf course/green space  
14 ("the Property"), with SCC as the seller and the Association as the buyer. *Complaint*, ¶¶ 10-  
15 11. SCC agreed to warranty the Property and its condition for four (4) years and agreed to  
16 promptly and diligently repair damage of the Property. *Complaint*, ¶ 12. On February 25,  
17 2015, the Association entered into a Commercial Lease ("Lease") to lease back the Property  
18 to SCC for a term of fifty (50) years, with the Association as landlord and SCC as tenant.  
19 *Complaint*, ¶¶ 14-15. SCC again agreed to maintain and repair damage of the Property and  
20 broad indemnity of the Association was included in the Lease. *Complaint*, ¶¶ 14-19.

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23 In 2017, a rockery wall suffered damages and partially collapsed ("Damaged Area").  
24 *Complaint*, ¶ 20. The Damaged Area is located on part of the Property bought by the  
25 Association and leased to SCC. *Complaint*, ¶ 21. The Association requested SCC repair  
26 the Damaged Area and, on multiple occasions, gave written notice and opportunity for SCC  
27 to make the repairs. *Complaint*, ¶¶ 22-26. The Association hired Kane  
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1 Geotechnical/Construction Material Engineers, Inc. (“CME”) to assess the Damaged Area  
2 and notified SCC representatives CME’s findings would be published in a report (“CME  
3 Report”). *Complaint*, ¶¶ 29-31. The Association eventually repaired the Damaged Area and  
4 incurred costs in excess of fifteen thousand dollars (\$15,000). *Complaint*, ¶¶ 35-37.

6 Pursuant to a Water Facilities Agreement entered into contemporaneously with the  
7 Lease, SCC is also responsible for all maintenance, compliance, repair, restoration, or  
8 replacement work with value, quality, and use of the water facilities on the Property.

9 *Complaint*, ¶¶ 44-46. In 2017, SCC replaced a 228 HP VFD pump with capability to pump  
10 in excess of 400 gallons per minute (“gpm”) of water in the well. SCC replaced the 228 HP  
11 VFD pump with a 60 HP pump only capable of pumping 120 gpm in the well. *Complaint*, ¶¶  
12 47-50. Despite notice and opportunity to do so, SCC allegedly did not cure the default.

14 *Complaint*, ¶ 52.

15 As a result of the above, on June 5, 2020, the Association filed its *Complaint*, alleging  
16 the following causes of action:  
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- 18 (1) Breach of Contract;
- 19 (2) Breach of Implied Covenant of Good Faith and Fair Dealing;
- 20 (3) Breach of Express Warranty;
- 21 (4) Unjust Enrichment;
- 22 (5) Equitable Relief / Specific Performance;
- 23 (6) Declaratory Relief; and,
- 24 (7) Equitable Relief / Specific Performance for Termination and Turnover of  
25 Premises.

26 *Complaint*, generally.  
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1 On July 10, 2020, SCC filed its *Answer and Counterclaim*, including affirmative and  
2 other defenses along with the following causes of action in its *Counterclaim*:

- 3 (1) Premises Liability/Negligence;
- 4 (2) Misrepresentation – Lease Agreement;
- 5 (3) Breach of Implied Covenant – Lease Agreement;
- 6 (4) Breach of Tolling Agreement; and,
- 7 (5) Quantum Meruit.

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9 *Answer and Counterclaim*, generally. The claims are the subject of the *Motion*.

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11 In the *Motion*, the Association argues SCC’s first cause of action for Premises  
12 Liability, as alleged, is too vague for the Association to effectively answer because the  
13 Property is “enormous” and geographically diverse, thus the Association cannot be sure  
14 what area of the Property SCC is referencing. *Motion*, p. 4. The Association contends  
15 SCC’s second cause of action for Misrepresentation is not plead with sufficient particularity,  
16 fails to allege a duty on the part of the Association, and does not provide fair notice of the  
17 claim. *Motion*, pp. 5-7. The Association states SCC’s third cause of action for Breach of the  
18 Implied Covenant is too vague because it only references “problems associated with  
19 residences or Common Area.” *Motion*, p. 8. The Association maintains SCC’s Quantum  
20 Meruit cause of action is likewise too ambiguous because it states the Association has  
21 become indebted to SCC “within the last four years” which is not clear enough to elicit a  
22 response because the Association cannot ascertain the source of indebtedness. *Motion*,  
23 pp. 8-9.

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26 In the *Opposition*, SCC contends the *Preliminary Failure Investigation Report* (CME  
27 Report) commissioned by the Association and the *Wood Rodgers Report* (“Rodgers  
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1 Report”) adequately describe the Damaged Area. *Opposition*, p. 2. SCC denies it “failed” to  
2 repair the Damaged Area, but rather argues it did not warranty the entire Damaged Area  
3 and therefore could not have failed to repair it. *Opposition*, pp. 2-3. SCC states the  
4 Association adequately described the Damaged Area in its *Complaint*, to which the *Answer*  
5 *and Counterclaim* refers. *Opposition*, p. 4. Based on the reports commissioned and the  
6 correspondence between the Association and SCC over approximately three (3) years, SCC  
7 argues the Association’s *Motion* is disingenuous. *Opposition*, p. 5. SCC contends it has  
8 met the pleading standard for fraud because the Association’s pleading makes clear the  
9 time, place, and identity of the parties. *Opposition*, p. 7. SCC also requests the Court adopt  
10 the relaxed pleading standard for fraud because the information it needs to make its  
11 pleading sufficient is in the Association’s possession. *Opposition*, p. 8; citing Rocker v.  
12 KPMG LLP, 122 Nev. 1185, 1192-93, 148 P.3d 703, 708 (2006). SCC argues the  
13 *Complaint* is incorporated into the *Answer and Counterclaim*, therefore satisfying the notice  
14 pleading standard. *Opposition*, p. 9.

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18 The Association’s *Reply* argues SCC attempts to impermissibly fill the gaps of the  
19 *Answer and Counterclaim* with its *Opposition*. *Reply*, p. 2. The Association notes SCC’s  
20 argument is essentially “you knew what we meant,” which is not legally sufficient. *Id.* The  
21 Association argues SCC cannot claim the parties communicated frequently while also failing  
22 to sufficiently plead fraud, as the positions are contradictory. *Reply*, p. 4. The Association  
23 contends SCC cannot use claims pled in one cause of action to substitute for missing claims  
24 in other causes of action, for example, the Implied Covenant of Good Faith and Fair Dealing  
25 cannot furnish the necessary duty element in the Fraud claim, as SCC suggests. *Reply*, p.  
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1 **II. APPLICABLE LAW AND ANALYSIS.**

2 Failure to State a Claim. A complaint should be dismissed under Rule 12(b)(5) of the  
3 Nevada Rules of Civil Procedure “only if it appears beyond a doubt” that the plaintiff (or  
4 counterdefendant) is entitled to no relief under any set of facts that could be proved in  
5 support of the claim. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181  
6 P.3d 670, 672 (2008); Blackjack Bonding v. City of Las Vegas Mun. Court, 116 Nev. 1213,  
7 1217, 14 P.3d 1275, 1278 (2000). In analyzing the merits of a 12(b)(5) motion to dismiss,  
8 the court recognizes **all** the factual allegations in the plaintiff’s complaint as true and draws  
9 **all** inferences in favor of the non-moving party. Id Dismissal is appropriate “where the  
10 allegations are insufficient to establish the elements of a claim for relief.” Stockmeier v.  
11 Nevada Dept. of Corr. Psychological Review Panel, 124 Nev. 313, 316, 183 P.3d 133, 135  
12 (2008); see also Torres v. Nev. Direct Ins. Co., 131 Nev. 531, 533, 353 P.3d 1203, 1210  
13 (2015) (same). Nevada is a notice-pleading jurisdiction, therefore, “[t]he test for determining  
14 whether the allegations of a cause of action are sufficient to assert a claim for relief is  
15 whether the allegations give fair notice of the nature and basis of the claim and the relief  
16 requested.” NRCP 8; Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984);  
17 W. States Const., Inc. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992).

18 Motion for More Definite Statement. If a pleading “is so vague or ambiguous that the  
19 party cannot reasonably prepare a response,” the party may move for a more definite  
20 statement before filing its response. NRCP 12(e). A motion for a more definite statement is  
21 not a tool for discovery but “is to be used only when a pleading is too general.” Haghkerdar  
22 v. Husson Coll., 226 F.R.D. 12, 14 (D. Me. 2005) (interpreting Nevada’s equivalent, FRCP  
23 12(e)). Its purpose is to clear up ambiguities in the complaint “to permit [the] defendant to  
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1 intelligently frame a responsive pleading." Kellogg v. Great Am. Indem. Co., 11 F.R.D. 168,  
2 169 (W.D. La. 1951).

3 Applying the foregoing standards, the Court examines and addresses each of the  
4 causes of action in the *Answer and Counterclaim* in turn.

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6 **A. First Claim - Premises Liability/Negligence**

7 As alleged, SCC's first cause of action for Premises Liability is impermissibly vague.  
8 The SCC's cause of action for Premises Liability – Negligence states the Association "is in  
9 control of, and responsible for the care, maintenance, and management within certain areas  
10 within the Somersett community, otherwise known as Common Areas." *Answer and*  
11 *Counterclaim*, p. 6, ¶ 4. SCC does not specify what is considered the Common Area or how  
12 the Common Area is somehow different from the Damaged Area, nor is the Common Area  
13 defined elsewhere in the *Answer and Counterclaim*. Id. Even if the Association described  
14 the areas affected adequately in the *Complaint*, SCC still needs to state the area in its claim.  
15 The Court reasons this way, hypothetically, if the *Complaint* was dismissed for some  
16 reason, the *Counterclaim* must stand on its own.

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19 **B. Second Claim - Misrepresentation – Lease Agreement**

20 Rule 9(b) of the Nevada Rules of Civil Procedure requires, "in alleging fraud or  
21 mistake, a party must state with particularity the circumstances constituting fraud or mistake.  
22 Malice, intent, knowledge, and other conditions of a person's mind may be alleged  
23 generally." NRCP 9(b). "[T]he circumstances that must be detailed include averments to  
24 the time, the place, the identity of the parties involved, and the nature of the fraud or  
25 mistake." Brown v. Kellar, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981).  
26 The elements necessary to state a claim for fraud are: 1) defendant made a false  
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1 representation or misrepresentation as to a past or existing fact; 2) with knowledge or belief  
2 the representation is false or that defendant lacked sufficient information to make the  
3 representation; 3) defendant intended to induce plaintiff to act in reliance on the  
4 representation; 4) justifiable reliance upon the representation; 5) causation and damages to  
5 plaintiff as a result of reliance on the misrepresentation; and 6) must be proved by clear  
6 and convincing evidence and pled with specificity. NRCP 9(b); Hardy v. Chromy, 126 Nev.  
7 718, 367 P.3d 777 (2010); Childs v. Selznick, 281 P.3d 1161 (Nev. 2009); Jordan v. State  
8 ex rel. Dep't of Motor Vehicles & Pub. Safety, 121 Nev.44, 75, 110 P.3d 30, 51 (2005);  
9 Barmettler v. Reno Air, Inc., 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998). Under  
10 Nevada law, the elements of intentional misrepresentation claim are as follows: (1) a false  
11 representation that is made with either knowledge or belief that it is false or without a  
12 sufficient foundation, (2) an intent to induce another's reliance, and (3) damages that result  
13 from this reliance. Nelson v. Heer, 123 Nev. 217, 225–26, 163 P.3d 420, 426 (2007) (citing  
14 Collins v. Burns, 103 Nev. 394, 397, 741 P.2d 819, 821 (1987)).

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18 With respect to the false representation element, the suppression or omission “of a  
19 material fact which a party is bound in good faith to disclose is equivalent to a false  
20 representation, since it constitutes an indirect representation that such fact does not exist.”  
21 Id. (citing Midwest Supply, Inc. v. Waters, 89 Nev. 210, 212–13, 510 P.2d 876, 878 (1973)).

22  
23 SCC’s second cause of action suffers the same infirmity as the first; SCC does not  
24 explain which area of the Property on which it is basing its claim. Regarding the “false  
25 representation” element of the claim, SCC does not identify which material fact or facts the  
26 Association has allegedly misrepresented. This precludes the Association from fashioning a  
27 response.  
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1           Additionally, SCC does not meet the heightened pleading standard discussed in  
2 Kellar, *supra*, because SCC specifies neither the time nor the place the misrepresentation  
3 took place. SCC argues the Court should apply a lesser pleading standard because the  
4 information required to plead fraud with particularity is in the Association’s possession. This  
5 assertion is belied by SCC’s own arguments in which SCC states the parties have  
6 exchanged Reports and have been in contact frequently regarding this matter over the past  
7 three (3) years. *Opposition*, p. 5. The Court declines to adopt a lesser pleading standard  
8 for fraud.  
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11           **C.     Third Claim - Breach of the Implied Covenant of  
12                    Good Faith and Fair Dealing.**

13           Every contract imposes upon the contracting parties a duty of good faith and fair  
14 dealing. The elements of a claim for breach of the implied covenant of good faith and fair  
15 dealing are: (1) the parties were parties to a contract; (2) the defendant (counterdefendant)  
16 owed a duty of good faith to the claimant; (3) defendant (counterdefendant) breached that  
17 duty by performing in a manner that was unfaithful to the purpose of the contract; and (4)  
18 claimant’s justified expectations were thus denied. Perry v. Jordan, 111 Nev. 943, 948, 900  
19 P.2d 335, 338 (1995) (citing Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 234,  
20 808 P.2d 919, 923 (1991)). SCC does not identify how the Association was unfaithful to the  
21 Lease along with skirting other allegations. Although SCC attempts to incorporate the  
22 implied duty, SCC has failed to allege the claim. However, the Court deems it appropriate  
23 to allow SCC to refine its pleading by a more definite statement.  
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26           **D.     Fourth Claim - Quantum Meruit.**

27           “To recover in quantum meruit, a party must establish legal liability on either an  
28 implied-in-fact contract or unjust enrichment basis.” Certified Fire Prot. Inc. v. Precision

1 Constr., 128 Nev. 371, 374, 283 P.3d 250, 253 (2012). SCC's fifth cause of action,  
2 Quantum Meruit, states, "[w]ithin the last four years, the Association has become indebted  
3 to SCC for materials and labor expended as a result of damage to its Property caused by  
4 the work performed by the Association." *Answer and Counterclaim* ¶ 29. This statement  
5 does not assert legal liability, or the basis therefore, and does not place the Association on  
6 notice of any amount the Association has become indebted and the nature of the  
7 indebtedness. Accordingly, the claim is vague.

9 **III. CONCLUSION AND ORDER.**

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11 The first, second, third, and fourth causes of action in the *Counterclaim* are not  
12 sufficiently pled in a manner that will allow the Association to meaningfully and intelligently  
13 answer. Although the parties may have had correspondence, negotiations, and Reports  
14 commissioned, the Court is not privy to these communications and it is not sufficient to  
15 shore up the *Counterclaim*. As such, pursuant to NRCP 12(3) and Association's request for  
16 a more definite statement, the Court shall permit SCC to file an amended *Answer and*  
17 *Counterclaim*.

18  
19 Accordingly, and good cause appearing, therefor,

20 **IT IS HEREBY ORDERED:**

- 21  
22 1. The Association's *Motion to Dismiss* is DENIED without prejudice;  
23 2. The Association's *Motion for a More Definite Statement* on SCC's first,  
24 second, third, and fourth causes of action is GRANTED;  
25 3. The filing of an amended *Answer and Counterclaim* may serve as the more  
26 definite statement;  
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- 4. SCC shall have fourteen (14) days from the entry of this *Order* to file an amended *Answer and Counterclaim*;
- 5. The Association shall have twenty-one (21) days from service to answer or otherwise respond;

DATED this 5th day of November, 2020.

  
DISTRICT JUDGE

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 6th day of November, 2020, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

JOHN KIRSCH, ESQ.  
BRADLEY SCHRAGER, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

*Heidi Boe*

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