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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL EDWARD HATCH, an
individual; and ALISHA SUZANNE
HATCH, an individual,

Supreme Court No.: 83692
(District Court Case No. CV21-00246)

Appellants/Cross-Respondents,
vs.

KARI ANNE JOHNSON, an
individual,

Respondent/Cross-Appellant.

RESPONDENT/CROSS-APPELLANT'S
SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS

<u>Document</u>	Date Filed or Admitted	Vol. No.	Page No.
Transcript of July 8, 2021 Hearing	7/22/2021	1	SA000001-39

SUPPLEMENTAL APPENDIX – ALPHABETICAL TABLE OF CONTENTS

<u>Document</u>	Date Filed or Admitted	Vol. No.	Page No.
Transcript of July 8, 2021 Hearing	7/22/2021	1	SA000001-39

Respectfully submitted this 18th day of April, 2022.

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/s/ Hannah E. Winston
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6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

10 --oOo--
11 KARI A. JOHNSON,)
12 Plaintiff,)
13 vs.) Case No. CV21-00246
14 MICHAEL EDWARD HATCH and) Department 7
15 ALISHA SUZANNE HATCH,)
16 Defendants.)
17 _____

18 TRANSCRIPT OF PROCEEDINGS
19 HEARING
20 July 8, 2021
21 1:30 p.m.
22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

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5 Reno, Nevada

6 For the Defendant:

7 ROBISON SHARP SULLIVAN & BRUST
8 By: HANNAH WINSTON, ESQ.
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1 RENO, NEVADA, July 8, 2021, 1:30 p.m.

2

3 --oOo--

4 THE COURT: Good afternoon, folks. My name is
5 Egan Walker. I have the privilege of serving in Department
6 Seven of the Second Judicial District Court. This is
7 CV21-00246, generally entitled Johnson versus Hatch. Today's
8 hearing is taking place on July 8th, 2021, at 1:30 p.m. and
9 is being held remotely because of continuing concerns because
10 of the COVID-19 emergency.

11 The Court and all the participants are appearing
12 through simultaneous audio/visual means. I'm physically
13 located in Washoe County, Nevada, which is the site of
14 today's court session. I'm joined by Jenifer Encallado, the
15 court clerk, from Washoe County, Nevada; Ms. Whitney Jones,
16 my law clerk, from Washoe County, Nevada; and Ms. Stephanie
17 Koetting, the court reporter, from Washoe County, Nevada.

18 This session of Court is open to the public for
19 viewing and listening through a simultaneous audio/visual
20 link found at the washoecourts.us website.

21 Folks, at the time you make an appearance here
22 today, I ask that you state your full name and the county and
23 state from which you are appearing. If at that time or at
24 any time during the hearing, you can't see or hear all of the

1 other participants, please let me know immediately and we'll
2 work through the simultaneous audio/visual issues. Counsel,
3 in particular, at the time I acknowledge you and you make
4 your first appearance, please confirm that you've received
5 notice of the audio/visual nature of this hearing and
6 indicate whether or not you have any objection to proceeding
7 in this manner. Let me go around the room in the order you
8 appear on my screen. Ms. Winston, good afternoon.

9 MS. WINSTON: Good afternoon, your Honor. Hannah
10 Winston on behalf of plaintiff. We did receive notice. We
11 have no objection. And I'm appearing from Washoe County.

12 THE COURT: Ms. Sharp, good afternoon.

13 MS. SHARP: Good afternoon, your Honor. Stefanie
14 Sharp appearing on behalf of the plaintiff. We did receive
15 notice. I have no objection. I'm appearing from Washoe
16 County, Nevada.

17 THE COURT: Thank you. Mr. Brust, good afternoon,
18 sir.

19 MR. BRUST: Good afternoon, your Honor. Yes, we
20 received notice, I'm appearing on behalf of the plaintiff,
21 and I do not have any objection.

22 THE COURT: Thank you, Mr. Simons. Good
23 afternoon.

24 MR. SIMONS: Good afternoon, your Honor. Mark

1 Simons on behalf of the defendants, the Hatches. I'm in
2 Washoe County. I did receive notice, no objection.

3 THE COURT: Thank you, all. This is the time and
4 date set for a hearing on a motion for leave to file a second
5 amended complaint and a motion to dismiss the first amended
6 complaint. It seems to me that's the order in which we
7 should take up the issues. Unless anybody has any objection,
8 then, I'm going to turn to the plaintiffs related to their
9 motion for leave to file a second amended complaint. Who
10 would like to argue the motion?

11 MR. SIMONS: Your Honor, may I request the --
12 since the first amended complaint is the complaint that is of
13 record, which is subject to a motion to dismiss, from our
14 perspective, it would be premature to address the ability to
15 file a second motion without resolution of the first. I just
16 want that on the record. You can dictate the order, but I
17 just want to clarify our position.

18 THE COURT: Thank you. Who is going to argue the
19 motion for leave to file the second amended complaint,
20 please?

21 MS. WINSTON: I am, your Honor.

22 THE COURT: Thank you, Ms. Winston. I'll give you
23 an opportunity to argue, but here's part of the reason why I
24 want to begin in this order. The plaintiffs consistently

1 aver in their various pleadings, both in support of the
2 motion to amend, in opposition to the motion to dismiss and
3 then in opposition to the opposition to motion to amend that
4 the tolling period, if you will, should be the period at
5 which your clients discovered, quote, unquote, the fraud they
6 allege or the fact that their name was not on the deed or
7 title to the property.

8 Here's what's problematic about that for me and at
9 the heart, I think, of the fact that there is no factual
10 dispute in this case. I recognize that I acknowledged that
11 there perhaps was a factual dispute pursuant to Millspa in a
12 previous hearing, but as I re scrutinize the documents and I
13 consider the pleadings of the parties, here's really what I'm
14 stuck on:

15 If you look at the first amended complaint, at
16 paragraph 16 of the first amended complaint, the plaintiffs
17 aver and confirm and I, of course, should accept as true
18 their factual allegations that soon after execution of
19 certain documents back in 2015, they asked for a copy of the
20 deed. And so they had to know, didn't they, that there was a
21 deed, that they needed a copy of the deed and that they had
22 constructive notice to request and examine the deed. Your
23 thoughts, please.

24 MS. WINSTON: Thank you, your Honor. I appreciate

1 you sharing your thoughts and I know you had the same
2 sentiments at the hearing on the lis pendens.

3 I just want to take a step back for just a second.
4 We're here on a motion to dismiss and motion for relief to
5 amend. No discovery has been conducted and all the
6 plaintiffs' allegations are accepted as true at this stage.
7 So I think more -- the bigger issue here is a legal issue.
8 Does constructive notice run the statute of limitations, or
9 is it inquiry notice?

10 What we know Allen v. Webb, Bemis versus Estate of
11 Bemis, Millspa v. Millspa is the inquiry notice for the
12 statute of limitations.

13 The Supreme Court has held time again that whether
14 a plaintiff is on inquiry notice and under a duty to
15 investigate the facts of her claim is a question of fact.

16 THE COURT: And therein lies my point. I
17 apologize for interrupting. She actually inquired.

18 MS. WINSTON: And I understand that point, your
19 Honor, but she trusted the defendants. They were her close
20 family friends. They told her that the landscaping company
21 had the deed at that time. And I'll just remind the Court
22 that this was a new construction. So this wasn't the guy
23 mowing the lawn has the deed, these are the people
24 determining the metes and bounds and constructing the

1 landscaping for this home.

2 So really, then, the issue is: Does that fact
3 alone make a reasonable person on -- put them on inquiry
4 notice that they should go investigate fraud?

5 THE COURT: Isn't that a rhetorical question? I'm
6 not trying to be argumentative, but where when dealing with
7 real property, your client claims that the property was to be
8 security for the loan and there is a document in the record,
9 which evidences her agreement or assent, if it's true, that
10 she would not be on title, there was an actual deed recorded
11 and she asked for a copy of it, she actually inquired, isn't
12 that the end of the hunt?

13 MS. WINSTON: I don't think so, your Honor. The
14 Supreme Court says it's a question of fact as to whether a
15 plaintiff acted reasonably to discover her claims. And can
16 we say at this point in time that as a matter of law, simply
17 asking for a copy of the deed is enough to put a plaintiff on
18 notice of her claims?

19 And I would like to direct the Court to Allen v.
20 Webb. In that case, the Allens actually got a copy of the
21 unrecorded deed and noticed that it was not recorded, so they
22 took it to get recorded. At that time, they didn't search
23 the property records to see if another deed had been
24 recorded, and if they had done so, they would have learned

1 that a third party had recorded a deed just 19 days before
2 the Allens recorded their deed.

3 And in that case, the Court said, can we say as a
4 matter of law that that third party deed should have put the
5 Allens on notice to investigate title and investigate their
6 claims? And the Court said, no, we cannot say that as a
7 matter of law.

8 THE COURT: Well, but isn't that a world away?
9 What I mean by that is in Allen it was in fact a third party
10 deed. It wasn't a deed about which the Allens would have any
11 reasonable notice absent a search of the record. I
12 emphasize, again, in this case, the plaintiff's contention
13 is, my life long friend asked me to help her and her husband
14 buy a house. I agreed to loan them three-quarters of a
15 million dollars, not quite, \$700,000, and I -- the
16 plaintiff's claim is -- I expected to be on title and would
17 not have agreed to it if I was not on title.

18 Documents were executed, a deed was recorded, I
19 actually asked for the deed and never got it. Five years
20 later, or almost six, I then filed lawsuit. How is that not
21 possibly inquiry notice?

22 MS. WINSTON: Because, your Honor, as alleged in
23 the first amended complaint, the plaintiff trusted her
24 friends. It was the end of the transaction, purchase

1 contract and receipt had been signed. She signed all
2 documents under the representation that everything was being
3 signed to just close the deal as the parties had agreed. She
4 trusted her friend to follow through with that
5 representation, to follow through with their agreement. She
6 didn't have a reason at the end of the transaction to go and
7 confirm that this friend that she trusted that made these
8 representations to her acted truthfully.

9 And I'll remind the Court that afterwards, the
10 defendants began paying on the note just as agreed. So there
11 was no reason to go and check the property deed after that to
12 make sure that it confirmed the agreement that the parties
13 all understood was occurring.

14 THE COURT: I think you're asking me to speculate
15 on the motivations of your client.

16 MS. WINSTON: I'm asking --

17 THE COURT: Hang on. Let me finish my thought,
18 please. I promise I'll let you finish your argument. But I
19 can find, I believe, based on the bare facts of the
20 pleadings, that your client actually inquired about the
21 status of the deed. Not that she should have or could have
22 or might have, but she actually inquired about the status of
23 the deed. And I find no reasonable factual or -- no
24 reasonable legal argument to invade about those facts that

1 doesn't ignore the fact that she actually inquired. Please
2 go ahead.

3 MS. WINSTON: Just to clarify, your Honor, I'm not
4 asking you to speculate. I'm asking you to accept the facts
5 in the first amended complaint as true and to draw all
6 inferences in favor of the plaintiff. And I know the Court
7 finds that Allen v. Webb case distinguishable on the facts,
8 but I just want to point out a couple of facts in that case
9 that I think are actually very instructive and similar to the
10 facts of this case.

11 The first being that the Allens sued their escrow
12 agent for negligence for failing to record the deed. And in
13 Allen v. Webb, the Court noticed, took notice of the fact
14 that the Allens in 1956 saw that the deed was not recorded
15 and went and got it recorded. So the very basis for the
16 lawsuit filed 13 years -- 12 years later was based on this
17 failure to record.

18 And the Court said, can we say as a matter of law
19 that the Allens did not act diligently in pursuing their
20 claims? No. Because, yes, they were on constructive notice
21 that the deed, the third party deed had been recorded, but
22 constructive notice does not apply to people that are in the
23 position of the Allens or at the end of a transaction to send
24 off the deed for recording and believe it's done so under

1 their direction.

2 Constructive notice applies to potential
3 purchasers of property who are at the beginning of a
4 transaction who are under an obligation to ascertain title to
5 property and to undertake that investigation.

6 The situation the Allens were in is very similar
7 to the situation of the plaintiff in this case. And another
8 important factor that the Court discussed in Allen v. Webb
9 is, yes, there are competing inferences that can be drawn
10 from the facts. It's easy to say that the Allens should have
11 known that the deed wasn't recorded and that their claim
12 against the escrow officers should have been pursued.

13 But on a motion to dismiss, the inferences are
14 drawn in favor of the plaintiff. And so we can't say as a
15 matter of law that the Allens must have conducted this
16 investigation at the end of the transaction.

17 The same is true for plaintiff in this case. And
18 I think it would set a very poor public policy to say that
19 homeowners or property owners are under this obligation to
20 consistently investigate title to their property after they
21 already own it.

22 I'll remind the Court that plaintiff signed the
23 purchase contract and receipt as a purchaser of the real
24 property and that was the deal between the parties. And so

1 at the end of the deal, just before closing, when Alisha
2 Hatch says, hey, sign these documents, let's just close the
3 deal, let's wrap up and our client trusts her friend and
4 signs a document that actually completely changes the deal
5 that the parties were proceeding under then she trusted her
6 friend and those are the allegations that have to be taken as
7 true.

8 And I think one issue that I would address is
9 inquiry notice is whether an ordinary person has received
10 facts that would cause her to investigate her claims. So
11 knowing that deeds are recorded in general is one thing,
12 knowing to investigate the facts of fraud or
13 misrepresentation is much different.

14 So in November 2020 when the plaintiff and
15 defendants relationship deteriorated, plaintiff then had a
16 reason to go check and make sure, is everything right under
17 this deal? When plaintiff -- when the defendants quit paying
18 on the note as they promised, then plaintiff was under
19 inquiry notice. She had a duty to go investigate those facts
20 and she did and she discovered the fraud.

21 THE COURT: Well, respectfully, I'll simply say,
22 this seems to be, if you survive a motion to dismiss, it will
23 be by the barest of margins. Because I can't see a
24 circumstance where after the deposition of your client,

1 perhaps she would answer to the contrary, I could logically
2 conclude anything else than she knew she should inquire and
3 that's why she did. Else why would she ask the question?

4 MS. WINSTON: She knew that she should ask for a
5 copy of the deed maybe just to close-out her records. She
6 didn't know she had to go investigate title to confirm that
7 the plaintiffs did not fraud her.

8 THE COURT: When you say to close our her records,
9 that infers some knowledge on her part of real estate
10 transactions, the fact that a deed is a seminal document in
11 the sequence of documents and events that occur. I don't
12 mean to be argumentative. I want you to finish your
13 argument.

14 I'm just trying to point out, even if you survive
15 the motion to dismiss at this juncture, this is a bad set of
16 facts. The statute of frauds clearly applies in this case.
17 There are clearly some of the complaints -- counts that I
18 think are going to be subject to a statute of limitations
19 bar, even if they survive a motion to dismiss after summary
20 judgment, and I wonder what we're accomplishing on such a bad
21 set of facts.

22 Taken at its bare minimum, my reading of the
23 documents does not seem to establish colorable claims in
24 favor of your client. Please go ahead and finish the balance

1 of your argument.

2 MS. WINSTON: I understand the Court's position.
3 Just for the record, I'd also like to point to the case of
4 Millspa v. Millspa. In that case, the plaintiff was a mother
5 who asked her son to get together a deed that would transfer
6 her interests in the real property to her son and daughter at
7 her death.

8 Contrary to her direction, her son drafted a deed
9 that immediately conveyed the mother's interest in the
10 property to him and his sister. The plaintiff took that
11 deed, signed it and recorded it herself. In that case, the
12 Court said that it was an issue of fact whether the plaintiff
13 had acted with due diligence to discover her claim. And in
14 that case, the plaintiff reviewed the deed, signed it and
15 recorded it herself.

16 So I understand the Court's position on maybe the
17 reasonableness of the inferences that we're asking the Court
18 to accept as true and the facts that we are accepting -- or
19 asking the Court to accept as true, but at this stage, I
20 don't think it's appropriate to draw inferences against the
21 plaintiff.

22 THE COURT: Well, what the Millspa court said in
23 particular detail is: This, meaning what happened related to
24 the deed and whether that particular participant was on

1 notice to inquire and exercise proper diligence, so this
2 question of fact is to be determined by the jury or trial
3 court after a full hearing. This is that hearing, I would
4 suggest.

5 MS. WINSTON: I believe the Court would be
6 referring to an evidentiary hearing on the facts of the case
7 after discovery. I don't believe that it would be
8 appropriate to have a full hearing on the merits of that
9 issue prior to discovery on a Rule 12(b)(5) motion to
10 dismiss.

11 THE COURT: I know you disagree with my suggestion
12 that it's a rhetorical question when, again, your client
13 actually inquired. The facts are not disputed. They are in
14 your complaint. She actually asked and to my eye that makes
15 it materially different. Let's move away from this topic,
16 however, please, to the balance of your arguments.

17 MS. WINSTON: Well, to address the motion for
18 leave to amend, it is early in the case. The plaintiff moves
19 for leave to amend in good faith. There are allegations of
20 bad faith, which I don't believe have any merit and are not
21 grounded in any real basis. It's early in the case. There
22 won't be a delay.

23 I understand the Court's position, perhaps, on
24 statute of limitations, which would affect the motion for

1 leave to amend. So plaintiff incorporates those arguments
2 made in opposing the motion to dismiss as plaintiff does not
3 believe that as a matter of law it can be said at this point
4 that amendment would be futile or that the statute of
5 limitation applies.

6 THE COURT: All right. Any additional argument
7 you wanted to offer?

8 MS. WINSTON: No, your Honor. That is it.

9 THE COURT: I do have one question and that is why
10 the necessary jurisdictional allegations are absent from both
11 the first amended complaint and the second amended complaint
12 for which you seek leave?

13 MS. WINSTON: I apologize, your Honor. That was
14 an oversight in our drafting. We believe the Court has
15 jurisdiction. Obviously, combining the plaintiff's claims
16 for relief, she asserts the damages in excess of \$15,000.
17 She also asserts a claim for injunctive relief, which this
18 Court has jurisdiction over, even if the jurisdictional limit
19 were not met, which here it would be.

20 THE COURT: I'm not trying to pick on you or
21 anybody else. I have certainly omitted necessary elements
22 from pleadings, I'm embarrassed to say, on more than one
23 occasion. You would agree with me, however, that the statute
24 is mandatory. There must be an allegation of jurisdiction.

1 It's not permissive. It doesn't invite the Court to infer
2 from other facts that jurisdiction actually exists.

3 MS. WINSTON: Yes, your Honor, I do agree with the
4 Court and we did put a note in our opposition or in our reply
5 brief in support in of the motion for leave to amend that,
6 obviously, we will include that jurisdictional statement in
7 the second amended complaint if permitted leave to file it.

8 THE COURT: I find the first amended complaint is
9 deficient. The question now is whether or not I'll allow an
10 amended complaint. In other words, I would dismiss the first
11 amended complaint, because it fails to comply with the
12 statute for that narrow reason alone.

13 Mr. Simons, now we turn to the heart of the
14 argument and should I allow a second amended complaint to be
15 lodged. I recognize that you argue it's futile. It is still
16 the plaintiff's motion, Ms. Winston. Is there any additional
17 argument you want to offer?

18 MS. WINSTON: I would just offer if you're
19 dismissing based on a lack of a jurisdictional statement,
20 that's certainly a defect that we can remedy and that we will
21 remedy with the second amended complaint.

22 I don't want to reargue statute of limitations
23 issues, because I think the Court understands my position.
24 But, you know, we seek leave early before discovery. There

1 won't be delay. So we think that it should be granted as
2 Nevada Supreme Court precedent says leave to amend should be
3 freely given.

4 THE COURT: Unless futile, of course. All right.
5 Any other argument before I turn to Mr. Simons?

6 MS. WINSTON: No, your Honor.

7 THE COURT: Thank you. Mr. Simons.

8 MR. SIMONS: Thank you, your Honor. And I always
9 appreciate how prepared you are to address this. I
10 understand my initial comments and objections might not have
11 necessarily been taken appropriately given what you just
12 said. So I'm going to focus on what you want to focus on,
13 which is the ability to amend the complaint and whether it
14 would be futile or not.

15 I want to step back before I get into that to let
16 you know what my clients have been undergone. They have been
17 sued, accused of fraud and malfeasance and had their home
18 encumbered by a lis pendens that we had to incur substantial
19 attorney's fees to remove, their home. We have a plaintiff
20 that is extremely wealthy that is abusing this litigation
21 process and I will backup that statement.

22 There was the original complaint. I moved to
23 dismiss that. Immediately, what did they do? They filed --
24 amended it to avoid that. Filed the motion to dismiss the

1 first amended complaint, they jump and try to avoid the
2 arguments and the legal deficiencies and file the second
3 amended complaint or at least the motion to amend.

4 Repeatedly hammering my clients with litigation.

5 Now, let's step back and what really is the
6 dispute? What do we have that is undisputed as you've
7 pointed out. We have a note, which the plaintiff have said
8 is a true and accurate representation of the note. They
9 attached it as Exhibit 2.

10 There's a deed recorded, undisputed, recorded on
11 August 6th, 2015, and does not include the name of the
12 plaintiff who contends she was part of that transaction.
13 Remember that word transaction, because I'm going to come
14 back to it.

15 We also have what you've pointed out, the actual
16 inquiry, paragraph 16, asked for a copy. What does that tell
17 us? That assuming, which we have to do, the plaintiff asked
18 for the deed, she was aware of the deed and what it would
19 purport to represent.

20 We now know that the plaintiff's lis pendens and
21 this action was filed, because what did the plaintiffs want?
22 Security for their unsecured installment note. The
23 installment note that was as of the date of the filing of the
24 original complaint was alleged to be owed under \$5,300. It

1 does not satisfy the jurisdictional -- subject matter
2 jurisdiction of this Court pursuant to NRS 4.370, article
3 six, section six of the Nevada Constitution. How do they
4 shoehorn this case into this court?

5 They come in with all these claims and slap a lis
6 pendens and try to manufacture claims that existed, if they
7 existed, were years ago and have been terminated by the
8 expiration of the statute of limitations.

9 So when faced with that situation, the plaintiffs
10 come in and say the discovery rule applies and there's a
11 fraud exception to constructive notice. Now, I'm not going
12 to use just my words. I'm going to use the words from a
13 court in California who addressed this identical issue. It's
14 in page 19 of my opposition to motion to amend. This is the
15 Parsons versus Ticker case.

16 Now, this case and this citation of law was not
17 responded to in the reply. I'm going to say that again, this
18 statement of law has not been responded to or opposed. And
19 in that Parsons case, a plaintiff came in and said they
20 wanted, based on their claim of fraud, they wanted a tolling
21 of the constructive notice rule of law, saying we didn't
22 know.

23 So the what Court said is under this rule,
24 constructive and presumed notice or knowledge are equivalent

1 to knowledge. Constructive notice is as a matter of law
2 actual notice. So when a plaintiff has notice information of
3 circumstances to put a reasonable person on inquiry or the
4 use of the disjunctive or, has the opportunity to obtain
5 knowledge from sources open to her investigation such as
6 public records, the statute begins to run.

7 So we're talking about two components. My entire
8 approach in this case has been constructive notice is a
9 bright line rule. It is deemed as a matter of law actual
10 notice for the application. And why? Because the -- it's a
11 subspecies that doesn't apply to the date of discovery.
12 Because the law says, we don't care when you actually
13 discover or didn't discover it. You are treated under the
14 law as discovering on the date of the recordation of the
15 deed.

16 Now, does that make sense? Absolutely. Because
17 recordation of a deed is noticing the entire world, as the
18 United States Supreme Court says. It is actual knowledge to
19 the world. Nothing is being concealed. Everyone has access
20 to public records. They're recorded.

21 And not only does that in Nevada say in NRS
22 111.320, we're going to impose -- we're going to actually
23 codify this rule of constructive notice in our recordation
24 statutes so that anybody -- this deed, a recordation of a

1 deed, and even in Idlesman, it says recordation of a deed of
2 trust, it says, look, this is constructive notice.

3 So my argument and I will then address the
4 plaintiff's contention of inquiry notice, but I think it's
5 entirely two different analytical endeavors. Because what
6 Bemis says is, a public recording constitute constructive
7 notice of the transaction, the transaction.

8 The plaintiff claims she was part of this
9 transaction. She knew of the transaction. She actually
10 said, I'm aware of this transaction. There's a deed that is
11 going to exist. And so she's on constructive notice. She
12 fits squarely within the constructive notice framework of
13 Nevada law.

14 Now, if the Court is going to say, look, I
15 appreciate that, Mr. Simons, but I want to talk a little bit
16 more about should she have been on inquiry notice as well?
17 Of course she should have been. She acknowledges she was
18 part of a transaction. She admits today, which is entirely
19 contradictory to what they put in their complaint, that she
20 signed it.

21 And as we know, these were verified complaints,
22 every single one of them. And what did the plaintiff say at
23 paragraph 14? I signed them. And then tried to obviate and
24 say, oh, well, you know what, I really don't want to be bound

1 by my admissions and concessions of signing the document, so
2 I will -- I don't recall it and I don't believe it's mine.

3 THE COURT: Well, the operative, I'm so sorry,
4 just so it's underscored in the record, what is alleged as a
5 proposed second amended complaint in paragraph 14 is, quote,
6 Kari Anne Collin discovered that defendants had manipulated
7 Kari into signing documents. It is an express if not an
8 implicit admission that it is her signature on the exhibit
9 removing her or agreeing that she would not exist on title.
10 Go ahead.

11 MR. SIMONS: Just how I have to look at it,
12 because the plaintiff signed the original complaint, verified
13 it under oath, she signed the first amended and verified it
14 under oath, that she is bound by those statements.

15 Now, it says, defendants did manipulate Kari into
16 signing documents which is in the second amended. So she's
17 now admitted. So clearly it's not a forgery. So now she's
18 part of a transaction and she admits she was part of it.

19 So moving to the concept of inquiry notice, I'm
20 not going to -- unless you have any questions of me, I'm not
21 going to deal with it, because you've already said what I
22 would say. She had actual notice. She knew of it. She
23 inquired about it. In conjunction with the overlay of the
24 law of constructive notice, which I think are two different

1 applications, that the statute of limitation applies as of
2 August 6th, 2015.

3 Now, in conjunction with this, we submitted
4 numerous requests for judicial admission -- excuse me --
5 judicial notice and put it in framework that of all the
6 public records, and I'm going to touch on this briefly, but
7 the most one was in the judicial admissions of the deeds.

8 Ms. Johnson bought her home and her deed recorded
9 on August 15th, which was nine days later, right around the
10 corner. She then quitclaimed her own house into her LLC on
11 September 14th, 2015. So we have a lady, a plaintiff,
12 knowing that there's deeds that exist, that documents the
13 transaction, inquires about the deeds, and concurrently at
14 that same very point in time is recording and obtaining the
15 recordation of her own deeds which related to her property
16 five or six houses away and that's judicial notice of those
17 recorded deeds.

18 So that brings us back to why are we here?
19 Because there was a note and it was an installment note. And
20 under the law it's clear, installment notes only -- the debt
21 only runs on each installment that is not paid. In fact, the
22 original complaint says \$5,614 is what's owed.

23 When they were faced with the first motion to
24 dismiss, they amended their complaint and slapped in at that

1 same provision, no, now we have \$588,000, because there's an
2 anticipatory repudiation, which all that is a facial attempt
3 to keep this case satisfying the subject matter jurisdiction
4 of the Court.

5 Now, what we do know is Nevada does not recognize
6 an anticipatory repudiation case or concept, which was relied
7 upon from a Connecticut case that actually says, we disagree
8 and we won't reapply the restatement of contracts that Nevada
9 does, section 234, where it said, you can't an anticipatory
10 repudiated an installment contract so you can accelerate the
11 debt. The complaint actually admits that there is no
12 acceleration at paragraph 20.

13 So the only claim that really has any potential
14 traction is a claim for a breach of the note, which doesn't
15 satisfy this Court subject matter jurisdiction as a matter of
16 law. All the other claims are barred by the application of
17 the statute of limitations except the new PSA claim.

18 And you want me to talk about that? I'm willing
19 to have you interrupt me anywhere.

20 THE COURT: I appreciate that. Go ahead.

21 MR. SIMONS: The PSA, which is the purchase and
22 sales agreement. Now, I essentially baited the plaintiffs
23 into making the allegation when I filed the original motion
24 to dismiss showing that none of their claims could survive a

1 four-year limitation, statute of limitation. So they brought
2 in a claim on the PSA, which under Nevada law, it's an
3 invalid claim. Because they claim an ownership right under a
4 PSA and a PSA under Nevada law clearly says, this was the
5 Emick case, I'll read a quote --

6 THE COURT: You don't need to. I'm very familiar
7 with Emick having been a Family Division judge.

8 MR. SIMONS: Excellent. You do know that. Just
9 signing a document doesn't give you an ownership interest.
10 There has to be other things. You have to rely on other
11 things.

12 So what we know that is the PSA doesn't provide
13 any ownership rights to which they can claim an interest.
14 Now, that's the most obvious. Now, the less obvious are
15 under the PSA, there is no contractual obligation owed
16 between my client and the plaintiff, none, so there can't be
17 a breach.

18 Statute of frauds, the parol evidence rule, they
19 can't come in and manipulate it or the note. The note is
20 unsecured. It's un-collateralized. Let's say it that way.
21 The promissory note itself is what was evidence of the
22 obligation at the time.

23 So at this point in time, what I believe is the
24 Court should dismiss or the Court has already said dismissed

1 or denied. I'm not sure what you actually said. The first
2 amended complaint no longer is in effect. The motion to
3 amend is subject to consideration, which I believe the Court
4 should deny based upon two grounds. Actually, it should be
5 three grounds.

6 One is the constructive notice rule, bright line
7 rule, bars all the claims. The only claim that would survive
8 or potentially survive is a claim on the note which doesn't
9 trigger the Court's subject matter jurisdiction and the case
10 is dismissed.

11 THE COURT: I understand your position.

12 MR. SIMONS: I would love to answer any questions,
13 but if you have none, I'll just sit tight.

14 THE COURT: I appreciate that. I don't have any
15 questions at this time. Your response, please, Ms. Winston.

16 MS. WINSTON: Thank you, your Honor. I just want
17 to respond to a couple points that the defendants have
18 raised. First, Mr. Simons said that plaintiff failed to
19 respond to his argument on the Parsons case in their
20 opposition.

21 On page 13 of plaintiff's opposition, we did
22 address the Parsons case and incorporated the arguments in
23 the opposition to the motion to dismiss into our reply in
24 support of a motion for leave to amend rather than copy and

1 paste all the same arguments again.

2 And in addressing Parsons, plaintiff specifically
3 noted that the Parsons court stated that the existence of
4 such public records may be relevant to whether the victim's
5 reliance was justifiable, but it is not by itself conclusive.

6 The Court further explained that constructive
7 notice is no defense to fraud. That's a direct quote.

8 THE COURT: You haven't alleged a cause of action
9 of fraud. You've alleged factual fraud, but there is no
10 cause of action of fraud, correct?

11 MS. WINSTON: Well, in our proposed second amended
12 complaint, we include a fraud and rescission claim regarding
13 the endorsement to agreement of sale.

14 THE COURT: Right. I think that's problematic for
15 the reasons Mr. Simons highlighted and I highlighted in his
16 argument. I don't know how she can say, I signed them, but
17 it also is fraudulent. Irrespective, I did not see a
18 specific allegation of fraud and I apologize. Please go
19 ahead.

20 MS. WINSTON: I misspoke, your Honor, because our
21 fifth claim for relief in the first amended complaint is
22 fraud and the inducement.

23 THE COURT: I'm focusing on the second amended
24 complaint, I apologize, or the proposed second amended

1 complaint.

2 MS. WINSTON: Right. So we included the same
3 fraud in the inducement claim in the first proposed second
4 amended complaint and additionally added the rescission request
5 for remedy.

6 THE COURT: All right. Thank you.

7 MS. WINSTON: So we did address the Parsons claim.
8 I disagree with the defendants' characterization of
9 California law. I think California law is in accord with
10 Nevada law that constructive notice is not an automatic
11 defense where fraud is alleged.

12 The second issue I wanted to address is that the
13 defendants filed two requests for judicial notice almost
14 three months after the motion to dismiss was fully briefed
15 and submitted to the Court. And I doubt the Court has even
16 had time to review it, it is substantial and we just opposed
17 it yesterday.

18 But the defendants have used some of those
19 documents that they attached to the request for judicial
20 notice in their argument today. So I just want to make it
21 clear for the record that plaintiff completely objects to
22 consideration of anything having to do with request for
23 judicial notice.

24 It was untimely filed. It's basically a

1 supplement to the motion to dismiss. It brings in over a
2 hundred documents. Both requests for judicial notice bring
3 in over a hundred documents that primarily are public record,
4 not all of them.

5 And while the Court can take judicial notice of
6 things like a deed being filed, it's improper to take
7 judicial notice of the inferences drawn from those documents.
8 So here defendants say, plaintiff bought a house at the same
9 time and recorded a deed at the same time, that shows
10 knowledge, that shows that she should have known. And those
11 inferences are improper.

12 Judicial notice really is only for facts that are
13 easily determined and generally known, not for inferences or
14 facts that are established by documents that are otherwise
15 susceptible to judicial notice. So, for the record,
16 plaintiff would object to consideration of either request for
17 judicial notice or the documents attached thereto.

18 THE COURT: And the basis for that, as I
19 understand it, is the timing.

20 MS. WINSTON: Not only the timing, but it's also
21 that defendants are asking the Court to take judicial notice
22 of the inferences that defendants draw from the documents.

23 THE COURT: I'm sorry. I didn't mean to
24 interrupt. I don't mean to parse. What I'm hearing you say

1 is we can fashion no legal objection to the request for
2 judicial notice other than that it's late. What we object to
3 is how that judicial notice is used. Those are two different
4 things. And that's all I want to be clear about.

5 I think I can and should -- you know, Mack versus
6 the Estate of Mack, you all know was my case and Kent's case
7 and I think I can and should take judicial notice of certain
8 facts even in the context of a motion to dismiss.

9 But I do think there's some traction to your
10 point, yes, but the inferences you draw, judge, are matters
11 of fact and you are not a factfinder at the junction of a
12 motion to dismiss. I understand that argument
13 intellectually. Go ahead.

14 MS. WINSTON: That's exactly the point I was
15 trying to make, your Honor.

16 The next thing I wanted to point out is that this
17 issue of whether the endorsement to agreement of sale was
18 signed by our client. And the allegations in the first
19 amended complaint, which are still included in the proposed
20 second amended complaint, are that documents were handed to
21 our client by Alisha Hatch with the instruction to sign them
22 to close the deal.

23 And our client has alleged in both the first
24 amended complaint and proposed second amended complaint that

1 she signed what she was told to sign. She doesn't remember
2 looking, saying this is an endorsement to agreement of sale,
3 therefore, I'm giving up my rights to the property. She
4 trusted that anything she signed was at the direction of
5 Alisha Hatch and was signed as a part of the deal. So I just
6 wanted to make that clear.

7 THE COURT: I understand that. I just want to
8 emphasize, you recognize, of course, that in asserting that
9 as an officer of the court and her attorney, it is an
10 admission that it's actually her signature.

11 MS. WINSTON: Well, in the first amended complaint
12 and in the proposed second amended complaint, she also
13 alleges that she doesn't remember and it could be a forgery.

14 THE COURT: You can't have it both ways and that's
15 the problem. If you make an admission on behalf of a client,
16 it is an admission. And I wouldn't walk it back and then
17 say, well, just because she forgot it, there's now somehow a
18 question about it.

19 This is perhaps an issue without meaning at this
20 juncture. I'm just offering you the caution that you can't
21 have it both ways. You can't say, yes, she signed what she
22 was asked to sign, including this document, but she doesn't
23 remember doing it. I'm not sure that is of any moment. I
24 recognize the fraud theory that she was induced to do it

1 fraudulently. Fair enough.

2 That only emphasizes, then, my question, well, why
3 inquire? If you are arguing that you were induced
4 fraudulently to put your signature on a stack of documents
5 and you trusted your friend who said everything was
6 Honkey-Dory, why did you ask for a copy of the deed? Anyway,
7 go ahead.

8 MS. WINSTON: Well, and sort of just as a general
9 response to all that, your Honor, obviously, we hope we can
10 proceed to discovery so that these issues can be fleshed out.
11 So that we can ask Alisha Hatch, why did you prepare this
12 document? Did you disclose to your friend Kari Anne that you
13 were removing her as an owner of the property? You know, did
14 you disclose your intention in doing so? Did the landscaper
15 really have the deed when she asked? Why didn't you give her
16 the other documents? Things like that. So I hope that
17 obviously we'll be able to get there with discovery.

18 THE COURT: All right. I'm prepared to rule and I
19 suspect my ruling is going to make nobody happy. Perhaps
20 that's the sign of a good ruling. I don't know. Is there
21 any other argument you wanted to offer before I do that,
22 Ms. Winston?

23 MS. WINSTON: The last thing I was just going to
24 say is that the defendant has cited the family law case

1 about, you know, just signing the PSA does not make you an
2 owner of the property or give you an ownership right. And I
3 just wanted to point out that in this case, the plaintiff
4 bought the property. She paid all of the closing costs for
5 the property and she paid the purchase price of it and was a
6 party to the purchase contract and receipt. And on that, I
7 will submit our argument.

8 THE COURT: I'm smiling and I'm joshing with you,
9 Ms. Winston, because one thing I want you all to do is become
10 is little more lighthearted. It almost sounded like,
11 Ms. Winston, like you were saying, well, that's just a family
12 law case. And the PTSD of my life is that people claim I'm
13 just a family law judge. So just be careful. I'm smiling
14 when I say it. You know I'm not serious.

15 MS. WINSTON: Well, I also practice family law,
16 your Honor. So I've gotten the same remarks that I'm just a
17 family law attorney and I'm not.

18 THE COURT: No. A judge is a judge is a judge and
19 a lawyer is a lawyer is a lawyer and the law is the law is
20 the law whether it's out of the family division or not.

21 Here's where I'm at: First, I want to offer a
22 cautionary tale to all of you. So the tenor and level of
23 litigation in this case I fear reflects hard feelings on two
24 levels.

1 First, I am aware from the allegations of the
2 various pleadings that the plaintiff and defendants were
3 former friends and I suspect are no longer because money has
4 come between them. That's a recipe for disaster probably in
5 any relationship.

6 The attorneys involved were former law partners or
7 law associates. The tenor of the pleadings has been
8 hard-edged and full of sharp elbows. I invite you all to
9 take a step back from that.

10 Parties who are already polarized don't need their
11 polarization magnified by the polarization of the attorneys.
12 The pleadings in this case have come fast and furious.

13 I dismiss the first amended complaint. It is
14 jurisdictionally defective, because it fails to allege the
15 jurisdiction of the Court specifically.

16 In the reply, the plaintiffs offer that they'll
17 amend, again, the proposed second amended complaint to
18 contain the jurisdictional assertion necessary. Technically,
19 a reply is not supposed to include new averments or
20 allegations not contained in the motion and the motion did
21 not contain a suggestion that the complaint would be
22 corrected. I decline to find the amendment futile for that
23 reason.

24 I grant lenity at the beginning of this case

1 before discovery has occurred for the plaintiffs to amend
2 their complaint. I leave to the plaintiffs a determination
3 of the causes of action they intend to include in light of my
4 comments.

5 Here is a warning, however. I expunged the lien
6 in this case, because I believed there was no legal basis or
7 factual basis for it. I am very deeply concerned all but one
8 of the plaintiff's proposed claims are precluded by the
9 statute of limitations and that all of their claims are
10 precluded by the jurisdiction of the Court.

11 If in fact there is a motion to dismiss in the
12 future, as I know there will be, and it is granted, as I fear
13 it may be, the fees that will accrue to the plaintiff may
14 likely be very substantial, because I likely would be in the
15 position of finding that pursuant to Rule 11 there was no
16 good faith basis for the claims factually. That is not a
17 statement about the lawyers involved. It is instead a
18 statement about the factual allegations of the client.

19 This case needs a settlement. I'm willing to
20 undertake that. If the parties are at all concerned with me
21 being the settlement officer, I'll find you another judge.
22 Before the bleeding continues and before bad facts lead to
23 bad law among broken hearted friends, I implore you all to
24 seek to resolve this matter.

1 The plaintiff's motion to amend is granted. The
2 defendants have leave to renew their motions to dismiss after
3 that complaint is filed. It's the cleanest way in this
4 record in my opinion to address the legal issues. Any
5 question for clarification of that order, Ms. Winston, that
6 I'm going to ask you to craft?

7 MS. WINSTON: No, your Honor.

8 THE COURT: I am at your call if I can be of use
9 to you all in settlement or to find you a settlement officer.
10 Please consult with your clients to take me up on that. Is
11 there anything else anyone wants to place into the record?

12 MS. WINSTON: No, your Honor.

13 THE COURT: Thank you all very much for your time.
14 You appear healthy to me. I hope you all are. I hope your
15 families are likewise healthy. Please stay that way.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on July 8, 2021, at the hour of 1:30
8 p.m., and took verbatim stenotype notes of the proceedings
9 had upon the hearing in the matter of KARI A. JOHNSON,
10 Plaintiff, vs. MICHAEL EDWARD HATCH and ALISHA SUZANNE HATCH,
11 Defendant, Case No. CV21-00246, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 39, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 22nd day of July 2021.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I certify that I am an employee of ROBISON, SHARP,
3 SULLIVAN & BRUST, and that on this date I caused to be served a true copy of
4 **RESPONDENT/CROSS-APPELLANT'S SUPPLEMENTAL APPENDIX** on
5 all parties to this action by the method(s) indicated below:

6 _____ by placing true copy thereof in a sealed envelope, with
7 sufficient postage affixed thereto, in the United States mail at
8 Reno, Nevada, addressed to:

9 x by using the Court's CM/ECF Electronic Notification System addressed to:

10 Mark G. Simons, Esq.
11 Anthony L. Hall, Esq.
12 SIMONS HALL JOHNSTON PC
13 Email: MSimons@SHJNevada.com
14 AHall@SHJNevada.com
Attorneys for Appellants/Cross-Respondents

15 _____ by personal delivery/hand delivery addressed to:

16 _____ by facsimile (fax) addressed to:

17 _____ by Federal Express/UPS or other overnight delivery addressed to:

18 DATED: This 18th day of April, 2022.
19
20

21 /s/ Christine O'Brien
22 Christine O'Brien
23 Employee of Robison, Sharp, Sullivan & Brust
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