

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA

Petitioner

v.

THE EIGHTH JUDICIAL
DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK, THE
HONORABLE ADRIANA
ESCOBAR,

Respondents,

EUSTACHIUS C. BURSEY and
PRECISION ASSETS and
ACRY DEVELOPMENT LLC and
LILLIAN MEDINA and
WFG NATIONAL TITLE
INSURANCE COMPANY

Real Parties in Interest

Supreme Court No.

District Court No. A-19-794335-C

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Elizabeth A. Brown

Clerk of Supreme Court

PETITION FOR WRIT
OF MANDAMUS

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NRAP 26.1 DISCLOSURE

The undersigned certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court of before an administrative agency) or are expected to appear in this court: Relief Lawyersm LLC; Wright, Finlay & Zak, LLP; The Ball Law Group; the Law Offices of John Benedict; Hansen & Hansen, LLC; Benjamin B. Childs, Esq.

3. If litigant is using a pseudonym, the litigant's true name: n/a

DATED this December 18, 2021

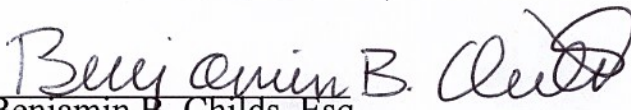

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Andrew Allan Higgin, *The Rule of Law Case Against
Inconsistency and in Favor of Mandatory Civil Legal Process*
39 Oxford J. Legal Studies 725 (Dec. 2019):

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I RELIEF SOUGHT

Petitioner seeks a Writ of Mandamus [Petition] requiring the district court to vacate the Order Granting Defendant's Motion for Summary Judgment, Motion to Expunge Lis Pendens and Motion to Expunge Deed of Trust [the Order] filed October 22, 2021, [Petitioner's Appendix (PA herein) Vol 5, 1269 - 1280] in the case of Dattala v. Bursey et al, Nevada Eighth Judicial District Court Case No. A-19-794335-C. The Order was entered following a hearing on September 28, 2021 and awarded Precision Assets (real party in interest herein, referred to herein as Precision) exclusive ownership rights to properties identified as 50 Sacramento Drive and 59 Sacramento Drive, both in Las Vegas, 89110 [the Subject Properties], against Plaintiff John Dattala [Dattala], the Petitioner herein.

The Petition is based upon the grounds that the Order is without legal or factual basis and is in contradiction of clear Nevada law. Respondent

manifestly abused her discretion by entering the Order, and then subsequently refusing to reconsider the Order when facts contained in FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT AGAINST EUSTACHIUS C. BURSEY AND LILLIAN MEDINA IN FAVOR OF JOHN DATTALA filed October 15, 2021 [referred to herein as the FFCL] were presented and argued evidencing that the Order is clearly erroneous. At the November 16, 2021 hearing on the Motion for Reconsideration, it was explained that the appeal time for the FFCL had expired without being appealed, making the findings in the FFCL final. [PA Vol 5, 1377:5-17, 1378:2-7]

The Order being interlocutory and not certified under NRCP 54(b), Petitioner does not have a plain, speedy and adequate remedy in the ordinary course of law. Marquis & Aurbach v. Eighth Judicial District Court, 122 Nev. 1147, 1154, 146 P.3d 1130, 1135 (2006). Dattala has no

involvement in the portions of the case that remain, which are solely

Precision's case against WFG for insurance bad faith.

II ROUTING STATEMENT

The case is presumptively assigned to Court of Appeals pursuant to NRAP 17(b)(12) as it concerns a challenge of a grant of injunctive relief.

The case involves a declaratory relief judgment involving title to real property. Alternatively NRAP 17(b)(5) may apply as this is a judgment of less than \$250,000 in a tort case.

III ISSUES PRESENTED

1. Writ of Mandamus standard.
2. The Respondent cannot grant summary judgment in favor of a subsequent purchaser, Precision, in contravention of factual findings

that Precision's seller obtained his ownership interests to the Subject Properties by fraud.

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

A writ of mandamus or prohibition is an extraordinary remedy that may be issued to compel an act that the law requires Cote H. v. Eighth Judicial District Court, 124 Nev. 36, 175 P.3d 906 (2008). A writ of mandamus may also issue to control or correct a manifest abuse of discretion. Id. A writ shall issue when there is no plain, speedy and adequate remedy in the ordinary course of law pursuant to NRS 34.170; see, also, Sims v. Eighth Judicial District Court, 125 Nev. 126, 206 P.3d 980 (2009). This Court has complete discretion to determine whether a writ will be considered. Halverson v. Miller, 124 Nev. 484, 186 P.3d 893 (2008). ("the determination of whether to consider a petition is solely within this

court's discretion."); Sims, 206 P.3d at 982 ("it is within the discretion of this court to determine whether these petitions will be considered.").

Specific to the facts of this case, extraordinary writs are a proper to challenge an interlocutory order.

"A writ of mandamus will issue to control a court's arbitrary or capricious exercise of discretion." Marshall v. District Court, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992)

Even where there is an available legal remedy, the Court may exercise its discretion to entertain a petition for mandamus relief where the circumstances reveal urgency and strong necessity. Ashokan v. State, 109 Nev. 662, 667, 856 P.2d 244, 247 (1993) A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office trust or station. NRS 34.160.

Dixon v. Thatcher, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987)

holds that "real property and its attributes are considered unique".

A writ should issue mandating the reversal of the Order to the extent that Precision owns the Subject Properties free and clear of the rights of Dattala, and that the lis pendens recorded by Dattala are expunged. The FFCL stated that during April and May, 2019, Bursey obtained his purported ownership interest by fraud and illegal activity, [PA Vol 4, 1220:12-26, 1221:21 - 1222:6, 1222:12-26, 1223:2-3, 1224:15-21, and 1225:6-15] and then immediately sold to Precision [PA Vol 4, 1224:15 - 21]. Thus, the transfer to Precision is void pursuant to NRS 111.025, 111.175 and Bank of Am., N.A. v. SFR Invs. Pool 1, LLC, 134 Nev. 604, 427 P.3d 113 (2018).

The Court stating there are no factual issues preventing entry of summary judgment in favor of Precision is directly contrary to the law; in fact there are no factual issues preventing entry of summary judgment in favor of Dattala.

DISCUSSION

This petition presents a serious case of both actual and potential inconsistent judgments by the Respondent. The inconsistencies are sharp, clear and irreconcilable. This petition pits a judgment in favor of the Petitioner against some of the defendants but the findings of fact in the FFCL are so clear and inescapable that the remaining defendants can no longer assert defenses against Petitioner.

Inconsistent judgments or verdicts in the same case undermine the very integrity and veracity of the legal system. See Andrew Allan Higgins *The Rule of Law Case Against Inconsistency and in Favor of Mandatory Civil Legal Process*, 39 Oxford J. Legal Studies 725 (Dec. 2019):

There are different types of inconsistent legal decisions, but all undermine the rule of law. It is almost universally accepted that inconsistent legal orders are incompatible with the rule of law because it becomes impossible for people to comply with the law. It is also widely accepted that inconsistent legal standards undermine the rule of law where compliance with one legal standard can constitute breach of the other. A distinguished group of legal and moral philosophers, including Hayek, Fuller, Raz and Gardner, can

be cited in support of the proposition that the basic idea of the rule of law is that the law must be capable of guiding its subjects, and that to do that, the law must be clear and people must be able to rely on the law to fairly predict how the state's coercive powers will be applied by those administering the legal system. Simply put, the rule of law requires the law to be clear and to be correctly applied in the right circumstances. Inconsistent judgments that purport to create or apply legal standards breach both requirements, but judgments that involve irreconcilable factual findings only breach the latter requirement. Moreover, all inconsistent decisions, whatever the nature of the inconsistency, violate the notion of system fairness, which is a basic precept of the rule of law. Gardner has observed that system fairness is inherent to legality: judges must endeavour to decide cases by correctly applying rules that are generally applicable to other cases. An adjudicative system that abandons these constraints is not necessarily unjust, but it is no longer legal.

Here is the Reader's Digest summary of the essential facts. All statements are derived from the court judgments and pertinent exhibits.

They are referenced to the documents in the Appendix.

In 2016, John Datalla owned three parcels of real estate in Clark County: (1) 50 Sacramento Drive, Las Vegas, Nevada 89110 (his residence); (2) 59 Sacramento Drive, Las Vegas, Nevada 89110; and (3) 4029 Colusa Circle, Las Vegas, Nevada 89110. [PA Vol 4, 1218:20 -

1219:2]

In 2017, Dattala met Eustachius Bursey in Las Vegas. Bursey was from Detroit. Bursey approached Dattala and suggested that he (Dattala) consider selling his three (3) parcels to Bursey. [PA Vol 4, 1219:12] In the latter part of 2018, Bursey represented to Dattala that: (1) Bursey's father had died; (2) Bursey expected an inheritance from his father's estate; and (3) Bursey wanted to buy Dattala's three properties and would pay him when he received his inheritance. [PA Vol 4, 1219:31 - 1220:8]

Bursey's representations were false and were made to induce Dattala to enter into sales agreements. [PA Vol 4, 1220:19-26] In March, 2019, Bursey also told Dattala that he (Bursey) had a child on the way in September. [PA Vol 4, 1220:9-11] This was also false.

Base on Bursey's prior misrepresentations Dattala signed a Quit Claim Deed to Bursey for the Colusa property. It was recorded on April 22,

2019. [PA Vol 4, 1222:29]

On April 29, 2019, Bursey forged Dattala's signature on a document entitled "Affidavit of Grantor" purportedly to make factual representations regarding the Colusa property. [PA Vol 4, 1222:13-17]

Bursey presented a purchase agreement to Dattala on June 3, 2018 for the purchase of 50 Sacramento Drive. The proposal required him to pay \$5,000.00 and the transfer would be by "Warranty Deed or Deed of Trust." [PA Vol 4, 1219:14-17]

A Deed of Trust for \$150,000.00 was recorded on August 2, 2018 encumbering title to 50 Sacramento Street. [PA Vol 4, 1219:17-19] The Deed of Trust referenced a Promissory Note but none was ever produced or provided to Dattala. [PA Vol 4, 1219:24-26]

Bursey paid \$1,443.00 per month for ten months from August, 2018 through May, 2019. In the latter part of 2018, Bursey had represented to

Dattala that his (Bursey) father had died, that he expected an inheritance from his father's estate; and that he planned to pay Dattala in full when he received his inheritance. [PA Vol 4, 1219:31 - 1220:8] These representations were false and Bursey knew that. [PA Vol, 1220:13-17] In March, 2019, Bursey told Dattala that he (Bursey) needed to fix up the 50 Sacramento Street property to bring it up to code and get insurance on the property. [PA Vol 4, 1220:9-11]

Bursey also made representations that he had a child "on the way in September". [PA Vol 4, 1220:17] That was also false. He used these representations to induce Dattala to sell all three properties to him. [PA Vol 4, 1220:19-16]

In April, 2019, Bursey presented Dattala with a Deed of Trust in the amount of \$220,000.00; a Zillow print out; and an amortization schedule at 8% interest per annum. [PA Vol 4, 1220:27-30] Bursey paid \$10,000.00 to

Dattala as an earnest money deposit on April 19, 2019 for the purchase of 59 Sacramento Street. [PA Vol 4, 1220:30-1221:1]

Burseley did not intend to complete the purchase arrangements with Dattala. [PA Vol 4, 1221:2-8]

Here is how he defrauded Dattala out of the three properties.

Some time between April 1st and April 19th, 2019, Bursey stated he needed to have a property management company come out and clean up 59 Sacramento Street. He had Dattala sign two documents "being represented as a Warranty Deed and a Deed of Trust". Dattala signed the documents before Bonita Spencer, a Nevada notary on April 5, 2019. [PA Vol 4, 1221:21 - 25] Without Dattala's knowledge or consent, Bursey took the notarized signature page from one of the documents and attached it to a Quit Claim Deed to obtain record title to 50 Sacramento. Bursey recorded that deed. [PA Vol 4, 1221:27-30]

Without Dattala's knowledge or consent, Bursey also attached another signature page from one of the documents that Dattala signed to a Deed of Reconveyance. He recorded the reconveyance of the Deed of Trust that he had signed and was recorded on August 2, 2018. [PA Vol 4, 1221:31 - 1222:6]

With these two forged documents, Bursey now "owned" 50 Sacramento free of any encumbrances. In an attempt to justify the fake sale of the Subject Properties for \$10,000, Bursey forged Dattala's name on a document called Notice of Purchase and dated it as of April 1, 2019. [PA Vol 4, 1222:7-12]

Soon after completing his fraud scheme, Bursey transferred title to 50 Sacramento to Precision via a Grant, Bargain and Sale Deed which was recorded on April 15, 2019. The sales price was \$95,000.00. [PA Vol 4, 1223:24-26] Bursey also transferred title to 59 Sacramento to

Precision via a Grant, Bargain and Sale Deed recorded on May 2, 2019 for \$130,000.00. [PA Vol 4, 1223:27 - 1224:2]

Dattala became aware of these fraudulent transfers soon after they happened. He hired his attorney one week later and filed his civil suit alleging various causes of action on May 7, 2019. [PA Vol 1, 1-13] The law suit named Bursey, the complicit notary public, Lillian Medina, Precision as the "buyers" of the two Subject Properties, Acry Development LLC as the lender on the 50 Sacramento house, WFG National Title Insurance Company, the company that issued title insurance on the two transactions and had facilitated the transaction between Bursey and Precision, and Bonita Spencer.

A Notice of Pendency of Action was immediately recorded with the Clark County Recorder. [PA Vol 3, 711 and 713] All parties were served with the summons and complaint. All parties filed Answers. [PA Vol 1, 14-

33, 53-62, 63-72, 73-77, 78-93, and 94-104] Discovery was commenced.

Dattala filed a Motion for Summary Judgment and it was heard on September 3, 2020 and it was not opposed by Bursey. Also present were the counsel for the other main parties. They requested that the judgment apply only to the Colusa property.

The Respondent Judge prepared the Findings of Fact, Conclusion of Law and Judgment and filed it on October 15, 2020. The Judgment declared that there was fraud by Bursey in obtaining title to the Colusa Circle property, set aside the transfer deed, and, imposed a money judgment against Bursey.

All other claims affecting the other two properties were deferred for further proceedings. Trial was set and did commence on October 13, 2021, with all parties present. [PA Vol 4,1199]

Both Bursey and Lillian Medina, the notary public defendant, had not

participated in the case for several months. Since they had not participated in the case, had not filed pretrial memorandums, did not appear at calendar call and did not appear for jury selection, the court entered their default and trial proceeded with Dattala obtaining a Default Judgment against them. [PA Vol 4, 1217 - 1237] This is permitted by EDCR 2.69. The prove-up of the default judgment was done that day pursuant to EDCR 2.70. Dattala provided several exhibits to the court to justify the judgment.

What is also important about the October 13, 2021 start of trial is that counsel for other defendants were present in court. [PA Vol 4, 1237] All counsel were fully aware that a default judgment was being entered against Bursey and Medina relating to the two Subject Properties. All parties were aware of the prove-up of the default judgment and that they did not object or challenge the prove-up in any way.

Dattala stated in the prove-up hearing and in his court papers that he had no relationship with Bursey other than the properties listed above. He also noted that he is semi-literate and not capable of drafting legal documents. [PA Vol 4, 1219:4-10]

Lillian Medina is a notary public and was used by Defendant WFG National Title Company as their agent for notary purposes. [PA Vol 4, 1226:20-25] She notarized various documents that Bursey prepared and conspired to further Bursey's fraudulent scheme. [PA Vol 4, 1226:26-30] Her notary log book did not have any signatures of either Dattala or Bursey. [PA Vol 4, 1228:1-3]

After the October 13, 2021 trial, counsel for Dattala prepared the Findings of Fact and Conclusions of Law. The Findings of Fact filed in this case conclude that Lillian Medina acted within the scope of her agency work for WFG by notarizing documents at their request. [PA Vol 4,

1226:21-25] The court awarded judgment in favor of Dattala against Bursey and Medina for \$355,553.00 and treble damages for \$1,066,599.00. [PA Vol 4, 1237:6-11]

This judgment was certified as a final judgment pursuant to NRCP 54(b). [PA Vol 4,1237:14] Notice of Entry of Judgment was filed and served on October 15, 2021. [PA Vol 4, 1215 - 1239] No party appealed.

A CLASH OF STATUTES AND INCONSISTENT DECISIONS

This case sets up a titanic clash of statutes. On one hand, Dattala asserts that the titles to 50 and 59 Sacramento Drive were forged and are therefore void pursuant to NRS 111.025 and NRS 111.175:

NRS 111.025 Conveyances void against purchasers are void against their heirs or assigns. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this chapter, as against purchasers, shall be equally void as against the heirs, successors, personal representatives or assigns of such purchaser

NRS 111.175 Conveyances made to defraud prior or subsequent

purchasers are void. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

In the other corner of this title fight is the alleged purchaser, Precision, who received title to the two houses and WFG, the title company that insured the titles on both houses. They claim Precision is a bona fide purchasers pursuant to NRS 111.180:

NRS 111.180 Bona fide purchaser: Conveyance not deemed fraudulent in favor of bona fide purchaser unless subsequent purchaser had actual knowledge, constructive notice or reasonable cause to know of fraud.

1. Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser.
2. No conveyance of an estate or interest in real property, or charge upon real property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears that the subsequent purchaser in such conveyance, or person to be benefited by such charge, had actual knowledge, constructive notice or reasonable cause to know of the fraud intended.

This statute has been on the statute books since 1861. Ironically, the Nevada Supreme Court has never addressed the actual conflicts between

the competing statutes. The difference in this case is that Dattala now has a formal judgment in his favor that states positively that the deeds to Precision's seller were forged and/or obtained by fraud.

The Respondent Judge created inconsistent decisions which are irreconcilable. She has simultaneously made a factual finding that Bursey's deeds to the two properties were forged or obtained by fraud, but that Precision is nevertheless a bona fide purchaser and has clear title.

This is a clear cut case of an irreconcilable internal inconsistency in the court rulings. This came about because of major legal errors.

The court can also take judicial notice pursuant to NRS 47.130 of the fact that Bursey was convicted of other fraud crimes in the Eighth Judicial District Court in State v. Bursey, Case No. C-21-354236-1. The Information and the Judgment of Conviction are not in the court record because (1) he never testified and so could not be impeached and (2) the

judgment of conviction was not entered until November 29, 2021.

What Nevada law there is regarding a void sale centers around foreclosure sales by homeowner associations versus the mortgage lender.

In Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc., 132

Nev. 49, 64 - 65, 366 P.3d 1105 (2016) this court said:

A subsequent purchaser is bona fide under common-law principles if it takes the property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); see also Moore v. De Bernardi, 47 Nev. 46, 54, 220 P. 544, 547 (1923) ("The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive."). Although, as mentioned, NYCB might believe that Gogo Way purchased the property for an amount lower than the property's actual worth, that Gogo Way paid "valuable consideration" cannot be contested. Fair v. Howard, 6 Nev. 305, 308 (1871) ("The question is not whether the consideration is adequate, but whether it is valuable."); see also Poole v. Watts, 139 Wash. App. 1018 (2007) (unpublished disposition) (stating that the fact that the foreclosure sale purchaser purchased the property for a "low price" did not in itself put the purchaser on notice that anything was amiss with the sale).

This holding was limited just two years later in Bank of America v.

SFR Investments Pool 1 LLC, 134 Nev. 604, 427 P.3d 113 (2018), another

HOA v. bank foreclosure fight. The bank had paid the superpriority portion of the HOA lien but the HOA sold the house anyway to SFR. The case went all the way to the Supreme Court.

This court reversed a judgment in favor of SFR and held that the HOA sale was void because of defects in the HOA sale process. The court held that SFR was not a good faith bona fide purchaser. Id at 612.

That case was cited by the Supreme Court with approval in U.S. Bank v. Resources Group LLC, 135 Nev. Adv. Op. 26, 444 P.3d 442, 448 (2019) ("A void sale, in contrast to a voidable sale, defeats the competing title of even a bona fide purchaser for value.").

Despite the existence of statutes dating back to the creation of Nevada as a state in 1861, this Court has never interpreted or applied the statutes in the context of a forged deed and an alleged bona fide purchaser.

By analogy, this court ruled in Alamo Rent-a-Car, Inc. v. Mendenhall, 113 Nev. 445, 937 P.2d 69 (1997) that a car thief who sold a car owned by Alamo to a Nevada resident by a forged certificate of title could not defeat the ownership rights of the defrauded party. A thief cannot convey good title even to an alleged good faith bona fide purchaser. Id at 451.

Other state courts have ruled that a forged deed is void per se and does not pass title to even a good faith, bona fide purchaser. See, e.g.

Faison v. Lewis, 32 N.E.3d 400, 402-3, 25 N.Y.3d 220, 202 (NY 2015) :

In Marden v Dorthy, this Court held that a forged deed was void at its inception, finding it to be a "spurious or fabricated paper" (160 NY 39, 47, 54 NE 726 [1899]), a forgery characterized by "the fraudulent making of a writing to the prejudice of another's rights" (id.). As Marden noted, a forged deed lacks the voluntariness of conveyance (see id. at 54). Therefore, it holds a unique position in the law; a legal nullity at its creation is never entitled to legal effect because "[v]oid things are as no things" (id. at 56).

The basic rule appears to be that forged deeds are a legal nullity and cannot pass title even to an alleged bona fide purchaser. Case examples include Lotspeich v. Dean, 211 P.2d 979, 983 (N.M.1949) (citing other

appellate decisions); Vazquez v. Deutsche Bank National Trust, 441 S.W.2d 783, 787 (TX App. 2014); WFG National Title Co.v. Wells Fargo Bank NA, 264 Cal. Rptr. 717, 724 (Cal.App. 2020).

Ironically, WFG is the same title company in the instant case. It tried to defend against a forged deed claim and lost in the California case. It's insured, Precision, should also lose this case. It should lose because a policy of title insurance obligates the insurer to cover any losses or damages resulting from a forged deed. The Georgia Supreme Court so ruled in Fidelity National Title v. Keyingham Investments LLC, 702 S.E.2d 851 (Ga. 2010).

Given the language of the statutes that support Dattala's legal claim that since the deeds were forged or obtained by fraud and thus they are void, this court should likewise join in the majority view. When a statute is clear and unambiguous, the judicial branch is not free to refuse to enforce

the statute on public policy grounds. NRS 111.025 and 111.175 are clear and unambiguous: a conveyance made and recorded to defraud is void.

Once the conveyance deed is determined to be a forgery, there is no such thing as a bona fide purchaser. NRS 111.180 cannot be applied to protect Precision Assets as it is a subsequent purchaser after a void deed, as explicitly provided in NRS 111.025.

Precision cannot assert that the recent judgment against Bursey and Medina does not apply to it. Precision's counsel was present in court on October 13, 2021 and was fully aware that Dattala was going to proceed to obtain the FFCL.

The remaining defendants are bound by the October 15, 2021 FFCL. They have to take that ruling as it is on the court record. Estate of Lomastro v. American Family Insurance Group, 124 Nev. 1060, 195 P.3d 339 (2008) is the controlling case. The Lomastro court expressly found

that an insurance company that failed to intervene in a case after being put on notice of the proceeding was bound by the default judgment entered in the case.

... In this case, American Family not only had notice of the pending suit against Leach but notice of the LoMastros' intent to seek entry of default; still, American Family waited to intervene until after default was entered against Leach. Our reasoning in Pietrosh, which was expanded in Christensen, supports our conclusion that the entry of default bound American Family in this case. Id @ 1069

The instant case was initiated in May, 2019 and Precision has been a defendant and an active participant throughout the entire case. Counsel for Precision was present at the trial on October 13, 2021. This is well beyond Lomastro notice. Further, Precision did not move to alter or amend the FFCL.

Substituting "Precision" for "American Family", and "Dattala" for "Lomastro" in the above quote from the Lomastro decision results in the

following.

In this case, Precision not only had notice of the pending suit against Leach but notice of Dattala's intent to seek entry of default; still, Precision waited to intervene until after default was entered against Leach. Our reasoning in Pietrosh, which was expanded in Christensen, supports our conclusion that the entry of default bound WFG in this case.

Only in the instant case it's the same case involving the same transactions and Precision has been a party for over 2 years. And Precision was aware of the findings on October 15, 2021 when the FFCL was served.

The Respondent Judge granted summary judgment for the purchasers and the title company based on an asserted good faith bona fide purchaser status pursuant to NRS 111.180. The Respondent Judge also granted an actual judgment that the deeds to the two properties were forgeries per NRS 111.025 and 111.175. Hence the internal inconsistency.

V. PRAYER FOR RELIEF

An extraordinary writ is an available remedy in this case. The conflict between the statutes and the inconsistent factual findings have been entered and are final.

Petitioner prays that the court issue a writ mandating the Respondent Court to vacate the Order regarding the quiet title issue and the derivative lis pendens expungement.

DECLARATION IN LIEU OF AFFIDAVIT OF VERIFICATION IN SUPPORT
OF PETITION FOR WRIT OF MANDAMUS OR WRIT OF PROHIBITION
[NRS 53.045]

JOHN DATTALA STATES :

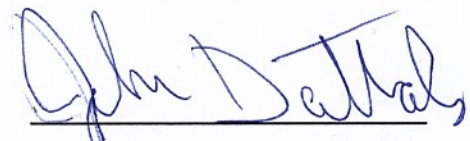
1. That affiant is the Petitioner in the Writ of Mandamus filed with this verification.
2. The affiant is the Plaintiff/Real Party in Interest in Dattala v. Bursey et al et al, Nevada Eighth Judicial District Court Case No.

A-19-794335-C.

3. That affiant verifies that the facts stated within the Petition of Mandamus are within the knowledge of Petitioner.
4. All documents contained in the Petitioners' Appendix filed herewith are true and correct copies of the pleadings and documents and they are represented to be in the Petitioners' Appendix and as cited herein.
5. This Petition complies with Nev. R. App. 21(d) and Nev. R. App. P. 32(e)(2).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 2021
(date)


(signature)

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CERTIFICATE OF COMPLIANCE

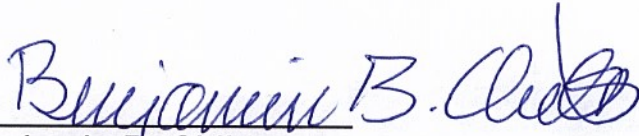
I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This Petition has been prepared in a proportionally spaced typeface using Wordperfect in Arial, font size 14.

I further certify that this brief complies with the page or type-volume limitations of NRAP 21(d) and NRAP 32(a)(7), it is proportionately spaced, has a typeface of 14 points or more and contains 5,209 words.

Finally, I hereby certify that I have read this Petition and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all application Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1) which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirement of the Nevada

Rules of Appellate Procedure.



Benjamin B. Childs
Nevada Bar No. 3946
318 S. Maryland Parkway
Las Vegas, NV 89101
Telephone: 702-251-0000
Attorney for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this December 18, 2021, I served the
PETITION FOR WRIT OF MANDAMUS upon the following parties by
placing a true and correct copy thereof in United Parcel Service in Las
Vegas, Nevada with first class postage fully prepaid:

Zachary T Ball, Esq.
Ball & Assoc.
1935 Village Center Cr # 120
Las Vegas, NV 89134
Attorney for Precision Assets

John Benedict, Esq.
Law Offices of John Benedict
2190 E. Pebble Rd # 260
Las Vegas, NV 89123
Attorney for Precision Assets and
ACRY Development

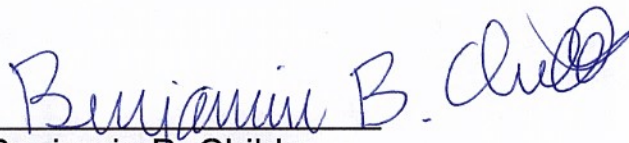
Honorable Adriana Escobar
Nevada Eighth Judicial District Court
Department 14
200 Lewis Ave.
Las Vegas, NV 89155
Respondent

Aaron Ford, Esq.
Attorney General
Nevada Department of Justice
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Benjamin B. Childs
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The UPS Store #0097
1350 E FLAMINGO RD STE 13B
Las Vegas, NV 89119-5293
702-732-0024

Terminal.....: POS0097B Date.: 12/18/2021
Employee.....: 166351 Time.: 05:02 PM

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Tax			\$0.00
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AAA			(\$1.88)
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