

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,

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
Electronically Filed
Dec 20 2021 10:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX TO

**JOHN DATTALA'S PETITION
FOR WRIT OF MANDAMUS**

VOLUME 5

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Telephone: 702-251-0000
Attorney for Petitioner

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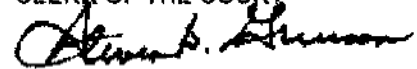
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JOHN DATTALA

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN DATTALA

Plaintiff

vs.

Case # A-19-794335-C
Dept # 14

EUSTACHIUS C. BURSEY and
PRECISION ASSETS and
ACRY DEVELOPMENT LLC and
LILLIAN MEDINA and
WFG NATIONAL TITLE INSURANCE
COMPANY and
JOHN DOES 1 through 5 inclusive and
ROE CORPORATIONS I through X

Defendants

AND RELATED ACTIONS

NOTICE OF ENTRY OF ORDER ON PLAINTIFF/COUNTERDEFENDANT'S MOTIONS IN
LIMINE

Take notice that an ORDER ON PLAINTIFF/COUNTERDEFENDANT'S MOTIONS IN
LIMINE was filed on October 21, 2021. A copy of said ORDER is attached.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr.ESQ.
NEVADA BAR # 3946

CERTIFICATE OF SERVICE

This NOTICE OF ENTRY OF ORDER ON PLAINTIFF/COUNTERDEFENDANT'S
MOTIONS IN LIMINE, with Exhibit, was served through the Odyssey File and Serve
system to all counsel on filing. Electronic service is in lieu of mailing.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr.ESQ.
NEVADA BAR # 3946

Heather L. Linn
CLERK OF THE COURT

1 ORDER
2 BENJAMIN B. CHILDS, ESQ.
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DISTRICT COURT
CLARK COUNTY, NEVADA

10 JOHN DATTALA

11 Plaintiff

12 vs.

Case # A-19-794335-C
Dept # 14

13 EUSTACHIUS C. BURSEY and
14 PRECISION ASSETS and
15 ACRY DEVELOPMENT LLC and
16 LILLIAN MEDINA and
17 WFG NATIONAL TITLE INSURANCE
18 COMPANY and
19 AVI SEGAL and
20 JOHN DOES 1 through 5 inclusive and
21 ROE CORPORATIONS I through X

22 Defendants

23 AND RELATED ACTIONS

24 ORDER ON PLAINTIFF/COUNTERDEFENDANT'S MOTIONS IN LIMINE

25 The Court reviewed PLAINTIFF/COUNTERDEFENDANT'S MOTIONS IN
26 LIMINE, the oppositions and joinder in oppositions thereto, and the reply.

27 Good cause appearing, the Court grants in part and denies in part the
28 Motions as set forth below.

29 1. ISSUE : EXCLUSION OF WITNESSES AND DOCUMENTS
30 DISCLOSED AFTER DISCOVERY DEADLINE, WITH
EXCEPTION

The Court GRANTS this Motion.

The discovery deadline was extended to July 23, 2021 by the First Amended
Order Setting Civil Jury Trial filed March 19, 2021. [1:18] Witnesses disclosed
after the close of discovery on July 23, 2021 will be excluded from testifying and

documents disclosed after the close of discovery on July 23, 2021 will be excluded from evidence

However, if Defendant Bursey is called as a witness and he has a felony conviction which is entered after July 23, 2021, evidence of that felony conviction and can be offered as impeachment pursuant to NRS 50.095.

2. ISSUE : ONLY FACTUAL ISSUES SHOULD BE SUBMITTED FOR DECISION BY THE JURY

The Court DENIES this Motion as being vague, but agrees that factual issues should be submitted for decision by the jury.

3 ISSUE : EVIDENCE OF FINANCIAL CONDITION

The Court GRANTS this Motion.

Pursuant to NRS 42.005 (4) Financial condition is a relevant factor for purposes of assessing punitive damages. When the jury determines to assess punitive damages, the party that the jury has decided will be subject to punitive damage shall be ordered to provide financial condition information within two weeks. This information will be provided only if the jury returns a verdict to impose punitive damages, and the financial information will be provided promptly for use in the 2nd punitive damages phase of the trial.

4. ISSUE : READ COMPLAINT TO JURY

The Court GRANTS this Motion.

The Court will read the Second Amended Complaint [SAC] to the jury.

5. ISSUE : EXCLUDE LAY OPINION AS TO WHETHER DATTALA SIGNED THE FOLLOWING SPECIFICALLY IDENTIFIED DOCUMENTS

The Court DENIES this Motion.

1 As long as foundation is laid pursuant to NRS 52.035 which allows lay
2 witness opinion regarding genuineness of handwriting if the opinions are "based on
3 familiarity not acquired for purposes of the litigation".
4

5 6. ISSUE : EXCLUDE COPIES OF CONTESTED DOCUMENTS - PLUS
6 THERE NEEDS TO BE A JURY INSTRUCTION ABOUT
7 DISPUTED DOCUMENTS.
8

9 The Court GRANTS this Motion in part and DENIES this Motion in part.

10 The jury will determine the genuineness of documents and which ones are
11 the authenticated ones. The jury instruction regarding disputed documents will be
12 introduced and Plaintiff can argue the authenticity of certain documents is in
13 dispute and Precision Assets may also rebut and defend their case.
14

15 7. ISSUE : NO ANSWER FILED BY BURSEY
16

17 The Court GRANTS this Motion.

18 Bursey has not been participating in this case. The Second Amended
19 Complaint was filed and served months ago, but Bursey has still not filed an
20 answer. Pursuant to NRCP 8(b) (6) Bursey has admitted all allegations in the SAC
21 which concern him.

22 The following paragraphs of the SAC directly address Bursey and have not
23 been denied and are therefore admitted are set forth below. These are
24 established facts as between Dattala and Bursey.
25

26 3. Defendant EUSTACHIUS C. BURSEY [Bursey] at all times relevant to the
27 transaction described herein was a resident of Las Vegas, Clark County,
28 Nevada. Bursey is now a resident of Detroit, Wayne County, Michigan.
29 10. When Dattala met Bursey in 2016, Dattala owned the parcels of real property
30 described below, referred to collectively as the Subject Properties.

a. 50 Sacramento Dr Las Vegas, NV 89110 was his residence since 1992
[referred to herein as the 50 Sacramento Property].

1 Street Address : 50 Sacramento Dr Las Vegas, NV 89110
2 Brief Legal Description :
3 Lot 28 in Block 2 of MEADOW HOMES UNIT # 1 as shown in PLAT
4 BOOK 7 PAGE 5 in the Clark County Recorder's Office.
5 APN 140-31-817-043

6 b. 59 Sacramento Dr Las Vegas, NV 89110 [referred to herein as the 59
7 Sacramento Property].

8 Street Address : 59 Sacramento Dr Las Vegas, NV 89110
9 Brief Legal Description :
10 Lot 87 in Block 5 of MEADOW HOMES UNIT # 3 2nd Amended as shown in
11 PLAT BOOK 9 PAGE 63 in the Clark County Recorder's Office.
12 APN 140-31-810-025

13 c. 4029 Colusa Circle Las Vegas, NV 89110 [referred to herein as the
14 Colusa Property].

15 Street Address : 4029 Colusa Circle Las Vegas, NV 89110
16 Brief Legal Description :
17 Lot 86 in Block 5 of MEADOW HOMES UNIT # 1 as shown in PLAT
18 BOOK 7 PAGE 5 in the Clark County Recorder's Office.
19 APN 140-31-817-001

- 20 11. Dattala had no relationship with Bursey other than through the dealings with
21 the three Properties described above.
- 22 12. Throughout his dealings with Bursey, Dattala drafted no documents. Dattala
23 is at most semi-literate and is incapable of drafting legal documents involving
24 real estate transactions. Dattala does not even have a copier and until the
25 middle of May, 2019 did not have an email address.
- 26 13. In 2017 Bursey sought to befriend Dattala and raised the idea of Dattala
27 selling Dattala's three properties described above.
- 28 14. Bursey presented Dattala with a Purchase Agreement which was signed by
29 Bursey and Dattala on June 3, 2018 for the purchase of the 50 Sacramento
30 Property. The June 3, 2018 Purchase Agreement required Bursey pay
Dattala \$5,000 and transfer was to be by "Warranty Deed or DEED OF
TRUST". A Deed of Trust in the amount of \$150,000 was recorded on
August 2, 2018 encumbering title to the 50 Sacramento Property.
Bursey did pay Dattala \$5,000 on or about June 3, 2018 as required by the
June 3, 2018 Purchase Agreement
The August 2, 2018 Deed of Trust encumbering title to the 50 Sacramento
Property states there is an associated Promissory Note, but Dattala does not
believe there was ever a Promissory Note executed which was associated

- 1 with the August 2, 2018 Deed of Trust.
- 2 With regards to the August 2, 2018 Deed of Trust encumbering title to the 50
- 3 Sacramento Property, Bursey did pay \$1,443 per month for ten months
- 4 starting August, 2018, with the last payment being made May 4, 2019.
- 5 15. In the latter part of the year 2018, Bursey made the following factual
- 6 representations to Dattala :
- 7 a. That Bursey's father had died.
- 8 b. That Bursey expected an inheritance from his deceased father's
- 9 estate
- 10 c. That Bursey wanted to buy the 59 Sacramento Property and the
- 11 Colusa Property from Dattala and planned to pay Dattala when
- 12 Bursey received his inheritance from his father's estate.
- 13 16. On March 19, 2019, and again on March 27, 2019, Bursey represented to
- 14 Dattala that Bursey needed to fix the 50 Sacramento Property so he could
- 15 bring it up to code and get insurance and move back in, and that he had "a
- 16 child on the way in September".
- 17 17. Bursey's representations in the latter part of the year 2018 that his father
- 18 had died and that he was waiting for his inheritance to come were false,
- 19 when he made those representations Bursey knew those representations
- 20 were false, and Bursey made those representations to induce Dattala to
- 21 enter into sales agreements for the 59 Sacramento Property and the Colusa
- 22 Property.
- 23 18. Bursey's representation on March 19, 2019, and again on March 27, 2019 to
- 24 Dattala that Bursey needed to fix the 50 Sacramento Property so he could
- 25 bring it up to code and get insurance and move back in, and that he had "a
- 26 child on the way in September" were false, when he made those
- 27 representations Bursey knew those representations were false, and Bursey
- 28 made those representations to induce Dattala to enter into sales agreements
- 29 for the 59 Sacramento Property and the Colusa Property.
- 30 19. For a purported purchase of the 59 Sacramento Property Bursey presented
- Dattala with a Deed of Trust in the amount of \$220,000 dated April 15, 2019
- with a Zillow printout and amortization schedule at 8% interest.
20. For a purported purchase of the 59 Sacramento Property, Bursey paid

- 1 Dattala \$10,000 purportedly as an Earnest Money Deposit on April 19, 2019.
- 2 21. Bursey knew he did not intend to purchase the 59 Sacramento Property for
- 3 \$220,000 at the time he presented Dattala with what was purported to be
- 4 \$10,000 as an Earnest Money Deposit on April 19, 2019.
- 5 22. Bursey knew he did not intend to purchase the 59 Sacramento Property for
- 6 \$220,000 at the time he presented Dattala with a Deed of Trust in the
- 7 amount of \$220,000 dated April 15, 2019 with a Zillow printout and
- 8 amortization schedule at 8% interest.
- 9 23. In April, 2019 Bursey stated to Dattala that once Bursey received his
- 10 inheritance from his father's estate, he would pay Dattala the balance of the
- 11 purchase prices for the 59 Sacramento Property as the April 19, 2019
- 12 \$10,000 payment was just earnest money or down payment until Bursey's
- 13 inheritance came.
- 14 24. In April, 2019, but prior to April 19, 2019, Bursy stated to Dattala that Bursey
- 15 was waiting for money from his inheritance and would rent the properties out
- 16 and make payments until he received his inheritance.
- 17 25. In April, 2019, but prior to April 19, 2019, Bursy stated to Dattala that Bursey
- 18 had to have a property management company come in to clean up the 59
- 19 Scaramento Property and that he needed to have documents signed and
- 20 notarized.
- 21 26. Bursey arranged for Dattala to sign two documents on April 5, 2019 being
- 22 represented as a Warranty Deed and and a Deed of Trust and then Bursey
- 23 had Dattala acknowledge his signatures on those two documents to Bonita
- 24 Spencer [Spencer herein], a Nevada Notary Public, on the same date.
- 25 27. Dattala did not know, and was never told, that Bursey intended to attach the
- 26 signature page from one of the documents Dattala had signed and
- 27 acknowledged to Spencer on April 5, 2019 to a Quitclaim Deed and that
- 28 Bursey intended to, and did, record that Quitclaim Deed to attempt to obtain
- 29 record title to the 50 Sacramento Property.
- 30 28. Dattala did not know, and was never told, that Bursey intended to attach the
- signature page from one of the documents Dattala had signed and
- acknowledged to Spencer on April 5, 2019 to a Deed of Reconveyance and
- that Bursey intended to, and did, record that Deed of Reconveyance to

1 attempt to remove the lien created by the Deed of Trust described in
2 Paragraph 14 above, which Deed of Trust encumbered title to the 50
3 Sacramento Property.

4 29. Bursey forged Dattala's signature on a document entitled NOTICE OF
5 PURCHASE purportedly dated April 1, 2019 in an attempt to justify why
6 Dattala would accept a total amount of \$10,000 from Bursey for the
7 purported purchase of the 50 Sacramento Property, when Dattala was
8 entitled to receive payments under the Deed of Trust described in Paragraph
9 14 above.

10 30. On April 29, 2019 Bursey and Medina conspired to further Bursey's
11 fraudulent scheme by forging Dattala's signature on two documents titled
12 Affidavit of Grantor purporting to state that Dattala was making numerous
13 factual representations about the title to the 59 Sacramento Property and the
14 Colusa Property, with Medina notarizing that document.

15 41. Without an escrow or title insurance, Bursey recorded Quitclaim Deeds for
16 the Subject Properties as set forth below :

17 a. For the 50 Sacramento Property, Quitclaim Deed recorded April 8,
18 2019. As set forth in Paragraph 27 above, Bursey attached the
19 signature page from one of the documents Dattala had signed and
20 acknowledged to Spencer on April 5, 2019 to the Quitclaim Deed
21 Bursey recorded in an attempt to obtain title to the 50 Sacramento
22 Property.

23 b. For the 59 Sacramento Property, Quitclaim Deed recorded April 22,
24 2019.

25 c. For the Colusa Property, Quitclaim Deed recorded April 22, 2019.

26 42. Ownership and financial issues regarding the Colusa Property were resolved
27 by FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT filed
28 in this case on October 15, 2020.

29 43. Dattala was tricked and defrauded into signing the Quitclaim Deed for the 59
30 Sacramento Property to Bursey and Plaintiff received only the payment set
forth in the table below from Bursey.

Property	Amount Received \$	Purchase Amount \$	DOV ¹ Amount \$
50 Sacramento	5,000 + 14,443 payments on Deed of Trust	150,000	73,540
59 Sacramento	10,000	220,000	79,091
Total	29,443 ²	370,000	152,263

44. Based on the purchase contracts drafted by Bursey, Dattala should have received a total of \$370,000 for the 50 Sacramento and the 59 Sacramento Properties, but instead received \$10,000 in earnest money down payments and \$4,467 principal and \$9,976 interest.
- Dattala should have received a total of \$152,263 based on the Declaration of Value forms for the 50 Sacramento and the 59 Sacramento Properties, which statements are made "under penalty of perjury", executed by Bursey, or Bursey's agent, attached to the recorded Quitclaim Deeds.
45. As to the 50 Sacramento Property, Bursey immediately transferred his interest to Precision Assets, LLC by Grant, Bargain and Sale deed recorded April 15, 2019, purportedly for \$95,000.
47. As to the 59 Sacramento Property, Bursey immediately transferred his interest to Precision Assets by Grant, Bargain and Sale deed recorded May 2, 2019, purportedly for \$130,000.
48. Dattala seeks to impose a constructive trust on the proceeds of the sales to Bursey and on title to the 50 Sacramento Property and the 59 Sacramento Properties based on Bursey obtaining the Quitclaim Deeds from Plaintiff by fraud and failing to pay fair value for the 50 Sacramento and the 59 Sacramento properties as described above. Bursey further attached a signature page from another document to the deed to the 50 Sacramento

¹DOV is an abbreviation of the Declaration of Value form which is signed "under penalty of perjury" and is required to be recorded with each deed stating the transaction value.

². \$4,467 of principal and \$9,976 of interest

1 Property as set forth in Paragraph 27 above.

2 49. Bursey and Medina engaged in concerted action intended to accomplish an
3 unlawful objective for the purpose of harming Plaintiff.

4 56. Plaintiff realleges and incorporates herein all of the allegations previously
5 made in all previous paragraphs as though fully set forth herein.

6 57. Bursey never paid Plaintiff the full amount due to Plaintiff, and Plaintiff never
7 received the full amount due to him from Bursey for the sale of the Subject
8 Properties.

9 58. When Bursey transferred his interest in the 50 Sacramento Property on April
10 15, 2019, it was with actual intent to hinder, delay or defraud Plaintiff.

11 59. When Bursey transferred his interest in the 59 Sacramento Property on May
12 2, 2019, it was with actual intent to hinder, delay or defraud Plaintiff.

13 60. Plaintiff suffered damages as a result of Bursey's actions.

14 62. The forged Affidavits of Grantor described in Paragraph 30 above are
15 evidence of the concert of action between Bursey and Medina.

16 63. Bursey and Medina engaged in concerted action to allow Bursey to sell the
17 50 Sacramento Property and the 59 Sacramento Property using an escrow
18 and title insurance as described above.

19 64. The concerted action engaged in by Bursey and Medina was intended to
20 accomplish an unlawful objective for the purpose of harming Plaintiff.

21 65. Plaintiff was damaged by the act or acts of Bursey and Medina and Plaintiff
22 has suffered and will suffer general and consequential damages in excess of
23 fifteen thousand dollars (\$15,000), exclusive of costs and interest, in an
24 amount to be determined according to proof adduced at trial.

25 66. Plaintiff has further been required to retain the services of an attorney to
26 prosecute this action on its behalf, and as such are entitled to attorney's fees
27 and costs incurred in prosecuting this matter.

28 84. Defendant Bursey engaged in criminal enterprise with at least one other
29 individual and engaged in criminal activity by knowingly making false
30 representations of fact to commit fraud on Plaintiff, forging Plaintiff's
signature on real estate and financial documents, placing forged documents
in the pubic record, committing perjury by executing and recording false
Declaration of Value forms, and conspiring with Medina as a Nevada Notary

- 1 Public to fabricate signatures on documents, to sign and stamp real estate
2 documents with notary seals to give the document the appearance of
3 authenticity, genuineness and enforceability.
- 4 85. Defendant Medina engaged in criminal enterprise with at least one other
5 individual by engaging in criminal activity with Bursey by falsely notarizing
6 real estate documents in violation of NRS 240.001 to 240.169, inclusive, or a
7 regulation or order adopted or issued pursuant thereto, by forging Dattala's
8 signature in her notary book, and by committing perjury by executing the
9 affidavits described above in Paragraphs 34 and 35.
- 10 86. NRS 240.175 makes violation of NRS 240.001 to 240.169, inclusive, or a
11 regulation or order adopted or issued pursuant thereto, a category D felony.
- 12 87. Defendant Medina engaged in criminal enterprise with at least one other
13 individual, that being Bursey, by engaging in criminal activity with Bursey by
14 violating NRS 205.120, which is a category D felony.
- 15 88. Defendant Medina engaged in criminal enterprise with at least one other
16 individual, that being Bursey, by engaging in criminal activity with Bursey by
17 violating NRS 205.090, which is a category D felony.
- 18 89. Medina committed perjury by executing the affidavits described above in
19 Paragraphs 34 and 35.
- 20 90. Medina offered false evidence by executing the affidavits described in
21 Paragraphs 34 and 35.
- 22 91. Bursey and Medina engaged in unlawful activity as defined by NRS 207.400.
- 23 92. As a direct and proximate result of the actions of Defendants Bursey and
24 Medina, Plaintiff has suffered and will suffer general and consequential
25 damages in will suffer general and consequential damages in the amount of
26 three hundred and seventy thousand dollars (\$370,000), exclusive of costs
27 and interest.
- 28 93. Plaintiff has further been required to retain the services of an attorney to
29 prosecute this action on its behalf, and as such are entitled to attorney's fees
30 and costs incurred in prosecuting this matter.

///

1 8. ISSUE : DEFINITIONS TO BE PRESENTED TO JURY

2
3 The Court GRANTS this Motion.

4 All counsel agreed that definitions of specific terms will be helpful to the jury.
5 A list of the terms identified by Dattala is set forth below.

6
7 DEFINITIONS

8
9 Warranty Deed

10 Quitclaim Deed

11 Escrow

12 Deed of Trust

13 Reconveyance

14 Title insurance

15 Title insurance company

16 Notary

17 Purchase Agreement

18 Wholesaler

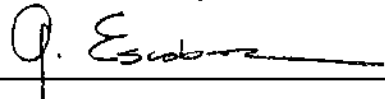
19 Flipper

20 Lis Pendens

21
22 9. ADMISSIBILITY OF BURSEY'S CRIMINAL CONVICTION.

23
24 The Court deferred ruling on this Motion.

25 Dated this 21st day of October, 2021

26 

27
28 D8A 8CA C416 8635

Adriana Escobar

29 Respectfully Drafted and Submitted by :

30 /s/ Benjamin B. Childs

BENJAMIN B. CHILDS, ESQ.

Nevada Bar # 3946

Attorney for Plaintiff/Counterdefendant

JOHN DATTALA

1 Approved as to Form and Content :

2 **THE BALL LAW GROUP**
3 *refused to sign*

4 ~~Zachary T. Ball, Esq. (SBN 8364)~~

Attorneys for Defendant/Counterclaimant/Crossdefendant Precision Assets

5 Approved as to Form and Content :

6
7 **LAW OFFICES OF JOHN BENEDICT**
8 *refused to sign*

9 ~~John Benedict, Esq. (SBN 5581)~~

10 Attorneys for Defendant Acry Development, LLC and
11 Crossclaimant Precision Assets

12 Approved as to Form and Content :

13 **WRIGHT, FINLAY & ZAK, LLP**
14 *refused to sign*

15 ~~Aaron D. Lancaster, Esq. (SBN 10115)~~

16 ~~Christina V. Miller, Esq. (SBN 12448)~~

17 Attorneys for Defendant/Crossdefendant WFG National Title Insurance Company
18
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 John Dattala, Plaintiff(s)

CASE NO: A-19-794335-C

7 vs.

DEPT. NO. Department 14

8 Eustachius Bursey, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/21/2021

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Attorney for *Precision Assets*, as

Defendant, Counterclaimant and

Crossclaimant against Eustachius Bursey

DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN DATTALA;

Plaintiffs,

vs.

EUSTACHIUS C. BURSEY and
PRECISION ASSETS LLC, and ACRY
DEVELOPMENT LLC and LILLIAN
MEDINA and WFG NATIONAL TITLE
INSURANCE COMPANY and BONITA
SPENCER and JOHN DOES 1 through 5
inclusive and ROE CORPORATIONS 1
through X,

Defendants.

Case No.: A-19-794335-C

Dept. No.: 14

**PRECISION ASSETS' OPPOSITION
TO PLAINTIFF'S MOTION FOR
RECONSIDERATION**

Date of Hearing: 11/16/2021

Time of Hearing: 10:00 am

Precision Assets (as Defendant, Counterclaimant against Eustachius Bursey hereinafter referred to as "Precision and/or Precision Assets"), by and through its attorney, Zachary T. Ball, Esq. of BALL LAW GROUP, submits its Opposition to the Motion for Reconsideration filed by plaintiff John Dattala as follows:

Plaintiff's Motion for Reconsideration should be denied as Mr. Dattala does not provide the Court with any legal reason to reconsider its rulings granting Precision's Motion for Summary Judgment, Motion to Expunge Lis Pendens or Motion to Expunge Deed of Trust. According to the Nevada Supreme Court "[a] district court may reconsider a previously decided issue if *substantially different evidence* is subsequently introduced or the decision is *clearly erroneous*." (*Masonry & Tile Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741

1 (1997) [emphasis added].) The high court also observed that “[o]nly in very rare instances in
2 which *new issues of fact or law* are raised supporting a ruling contrary to the ruling already
3 reached should a motion for rehearing be granted.” (*Id.* [emphasis in original].) Under these rules,
4 Plaintiff does not meet his burden.

5 First, Plaintiff does not identify any different evidence that would impact the Court’s
6 rulings, let alone substantially different evidence. While Plaintiff attempts to rely on the Court’s
7 legal rulings concerning motions in limine and findings of fact concerning his claims against
8 defendants Bursey and Medina¹, those rulings and findings are not evidence and do not impact
9 any of the motions filed by Precision. Second, Plaintiff does not argue that any of the Court’s
10 rulings are clearly erroneous. He instead argues that the Court’s rulings should be reconsidered
11 in light of unrelated rulings it made after it rendered the rulings at issue. Plaintiff does not even
12 attempt to satisfy the prongs identified by the Supreme Court to obtain reconsideration.

13 Plaintiff devotes almost all of his Motion, and all of his Supplement, to discussing facts
14 that have been deemed established between himself and defendants Bursey and Medina. On
15 pages 4 through 12 of his Motion, Plaintiff repeats allegations from his Second Amended
16 Complaint that implicate defendant Bursey. Pages 2 through 11 of his Supplement likewise
17 repeats allegations from his SAC that implicate Bursey and Medina. Plaintiff then identifies
18 facts that are now deemed to be true between himself and Bursey/Medina. However, these facts
19 *do not implicate Precision and do not create any liability by Precision*. These facts simply
20 establish that Plaintiff has valid claims against Bursey and Medina.

21 Plaintiff argues that it is now a fact “that Bursey’s representations ‘were false, when he
22 made those representations Bursey knew those representations were false, and Bursey made
23 those representations to induce Dattala to enter into sales agreements for the 59 Sacramento
24 Property.’” (Motion at 14:2-5.) Plaintiff also argues that it is “now a fact that Bursey fraudulently
25 recorded the Quitclaim Deed and a Deed of Reconveyance to attempt to obtain record title to the
26 50 Sacramento Property by attaching a signature page from another document to those
27

28 ¹ Precision objects to the Supplement filed by Plaintiff. The Supplement was filed on October 18, which was 7 days
before Precision was required to file its Opposition. As such, the Supplement is untimely.

1 documents.” (Motion at 14:10-13.) However, while these and the other deemed facts may impose
2 liability on Bursey *they have no impact on Precision.*

3 Plaintiff argues in his Supplement that “the authenticity of documents has now been
4 determined.” (Supplement at 12:20.) He then contends that four specific documents have now
5 been deemed to be “fraudulent, false and/or forged.” (Supp. At 12:21.) The four documents are:
6 (1) Quitclaim Deed to 50 Sacramento; (2) Deed of Full Reconveyance recorded April 8, 2019;
7 (3) WFG National Title Insurance Company Affidavit of Grantor; and (4) Page 96 of Lillian
8 Medina notary book. However, as discussed below, these “deemed facts” cannot help Plaintiff
9 as against Precision.

10 As noted in Precision’s Motion for Summary Judgment, Plaintiff’s SAC does not contain
11 any allegations that Precision committed any misconduct, that it had any knowledge of Bursey’s
12 misconduct or that it had reason to suspect that Bursey committed misconduct. The Court relied
13 on the total lack of allegations against Precision along with the evidence provided by Precision
14 when it granted Precision’s Motion for Summary Judgment and its other motions. None of the
15 facts Plaintiff identifies in his Motion for Reconsideration or his untimely Supplement have any
16 bearing on the Court’s reasoning or its findings as to Precision.

17 Further, Plaintiff either misunderstands the basis for the Court’s grant of Precision’s three
18 motions or he simply chose to ignore it. The Court found that Precision is a bona fide purchaser
19 and that, among other things, it did not have any notice that Plaintiff claimed an interest in either
20 of the two properties it bought from Bursey. Based on the evidence submitted by the parties,
21 these findings are still proper even if Bursey forged documents to obtain the two properties from
22 Plaintiff. (*See Barnett Bank v. Chiatovich*, 48 Nev. 319, 322 (1925) [“The general rule is that
23 fraud in a contract, or in the consideration out of which a negotiable instrument arose, is no
24 defense in favor of the maker as against a bona fide holder.”].) Plaintiff does not allege in his
25 SAC and he does not argue in his Motion that Precision should have known that any of the
26 documents were forged and nothing in his motion refutes the Court’s finding that Precision is a
27 bona fide purchaser.

1 The purpose of the bona fide purchaser doctrine is to protect buyers such as Precision
2 who, in good faith and without knowledge that its seller committed fraud, buy property. As noted
3 in Precision's Motion for Summary Judgment, "[Nevada] decisions are uniform that the *bona*
4 *fide* purchaser of a legal title is not affected by any latent equity founded either on a trust,
5 [e]ncumbrances, or otherwise, of which he has no notice, actual or constructive." (*Moore v. De*
6 *Barnardi*, 220 P. 544, 547 (Nev. 1923).) Precision does not and cannot challenge the Court's
7 finding that Precision is a bona fide purchaser and this finding renders the fact that Bursey forged
8 documents meaningless.

9 Plaintiff is grasping at straws when he seeks to resurrect claims that the Court properly
10 found were improper. While Plaintiff was apparently harmed by Bursey and Medina, Precision
11 did not do anything wrong it and it had no reason to suspect Bursey's misconduct. Plaintiff does
12 not identify any basis that allows the Court to reconsider its prior rulings, he does not identify
13 any different evidence and he does not contend that the Court's rulings were clearly erroneous.
14 Plaintiff does not meet his burden and his Motion for Reconsideration should be denied.

15 DATED this 24th day of October, 2021.

16 THE BALL LAW GROUP

17 /s/ Zachary T. Ball

18 Zachary T. Ball, Esq.

19 Nevada Bar No. 8364

20 1935 Village Center Circle, Suite 120

21 Las Vegas, NV 89134

22 Attorney for *Precision Assets, as*
23 *Defendant and Counterclaimant*
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PRECISION ASSETS' OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION** was electronically filed with the Eighth Judicial District Court on the 24th day of October, 2021. Electronic service of the foregoing document shall be sent by the Court via email to the addresses furnished by the registered user(s) pursuant to N.E.F.C.R. 9(b) and 13(c) and as shown below:

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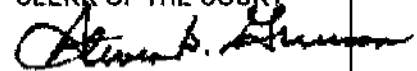
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/s/ Zachary T. Ball, Esq.

An Employee of the Ball Law Group



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*Attorneys for Defendant ACRY
Development LLC and for Precision Assets as
Crossclaimant only*

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN DATTALA,)	CASE NO.: A-19-794335-C
)	DEPT. NO.: 14
Plaintiff,)	
)	
vs.)	
)	
EUSTACHIUS C. BURSEY and PRECISION))	
ASSETS, and ACRY DEVELOPMENT LLC))	
and LILLIAN MEDINA and WFG))	
NATIONAL TITLE INSURANCE))	DEFENDANT ACRY DEVELOPMENT
COMPANY and AVI SEGAL and JOHN))	LLC'S JOINDER TO DEFENDANT/
DOES 1 through 5 inclusive and ROE))	COUNTERCLAIMANT PRECISION
CORPORATION 1 through X,)	ASSETS' OPPOSITION TO PLAINTIFF'S
)	MOTION FOR RECONSIDERATION
Defendants.)	
)	
)	
)	
)	
AND ALL RELATED CLAIMS.)	

//

//

//

1 COMES NOW Defendant ACRY DEVELOPMENT, LLC, by and through its counsel, John
2 Benedict, Esq. of the Law Offices of John Benedict, and hereby joins in Defendant/Counterclaimant
3 Precision Assets' Opposition to Plaintiff's Motion for Reconsideration filed on October 24, 2021,
4 in the above-captioned matter.

5 DATED this 27th day of October 2021.

6 **LAW OFFICES OF JOHN BENEDICT**

7
8 By: /s/ John Benedict
9 John Benedict, Esq. (SBN 5581)
10 Email: john@benedictlaw.com
2190 East Pebble Road, Suite 260
11 Las Vegas, Nevada 89123
Telephone: (702) 333-3770
12 *Attorneys for Defendant ACRY*
Development LLC and for Precision Assets as
Crossclaimant only

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of October 2021, I served a true and correct copy of the foregoing **DEFENDANT ACRY DEVELOPMENT LLC'S JOINDER TO DEFENDANT/ COUNTERCLAIMANT PRECISION ASSETS' OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION** through the Court's electronic filing system, addressed as follows:

Benjamin B. Childs, Esq. (SBN 3496)
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Las Vegas, Nevada 89101
Attorney for Plaintiff

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*Attorneys for Defendant/ Counterclaimant/
Crossdefendant WFG National Title Insurance Company*

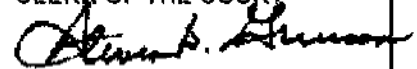
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Eustachius Bursey
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1658 Glynn Court
Detroit, Michigan 48206
Defendant In Proper Person

/s/ Tyler Dufrene

On behalf of the Law Offices of John Benedict



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DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN DATTALA

Plaintiff
vs.

Case # A-19-794335-C
Dept # 14

EUSTACHIUS C. BURSEY and
PRECISION ASSETS and
ACRY DEVELOPMENT LLC and
LILLIAN MEDINA and
WFG NATIONAL TITLE INSURANCE COMPANY
and JOHN DOES 1 through 5 inclusive and
ROE CORPORATIONS I through X

Defendants

HEARING : 11/16/2021
10:00 AM

AND RELATED ACTIONS

REPLY TO OPPOSITIONS AND THE JOINDER TO DATTALA'S MOTION FOR
RECONSIDERATION

Precision Assets [Precision] is the current record owner of 50 Sacramento and 59 Sacramento [the Subject Properties] which ownership it received from its seller EUSTACHIUS C. BURSEY [Brusey] after Bursey obtained his ownership interest by fraud perpetrated upon JOHN DATTALA [Dattala]. Given what are now final factual findings, how Precision continues to argue that has rights to the Subject Properties is a mystery in light of NRS 111.025, NRS 111,175 and NRS 111.340, set forth below. These statutes are not even addressed in the opposition; which is understandable because they are clear, unambiguous and directly on point, and they totally decimate Precision's claims.

1 NRS 111.025 - Conveyances void against purchasers are void against
2 their heirs or assigns.

3 Every conveyance, charge, instrument or proceeding declared to be void
4 by the provisions of this chapter, as against purchasers, shall be equally
5 void as against the heirs, successors, personal representatives or assigns
6 of such purchasers.

7 NRS 111.175 - Conveyances made to defraud prior or subsequent
8 purchasers are void.

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

14 NRS 111.340 - Certificate of acknowledgment and record may be rebutted.
15 Neither the certificate of the acknowledgment nor of the proof of any
16 conveyance or instrument, nor the record, nor the transcript of the record,
17 of such conveyance or instrument, shall be conclusive, but the same may
18 be rebutted.

19 Plaintiff JOHN DATTALA [Dattala] filed his Motion for Reconsideration [the
20 Motion] on October 9, 2021, addressing the decision on Precision Assets' motion for
21 summary judgment against himself and the resultant decision to cancel the Lis
22 Pendens' recorded by Dattala against the Subject Properties. The decisions were
23 announced from the bench on September 28, 2021 and subsequently a written order
24 [the Order] was filed October 22, 2021, although this Order was drafted by WFG's
25 counsel, not Precision's counsel, and was not approved by any party other than WFG.
26 The Order is a temporary, interim order.

27 This court has inherent authority to grant a motion for reconsideration and vacate
28 or modify any order before the entry of final judgment if the Court concludes re-
argument is warranted. Prior to the entry of a final judgment the district court remains
free to reconsider and issue a written judgment different from its oral pronouncement.
. *Gibbs, v. Giles*, 96 Nev. 243, 245, 6047 P.2d 118, 119 (1980); *Tener v. Babcock*, 97

1 Nev. 369, 632 P.2d 1140 (1981); *Lagrange Constr. v. Del E. Webb Corp.*, 83 Nev. 524,
2 435 P.2d 515 (1967); see also *Rae v. All American Life & Cas. Co.*, 95 Nev. 920, 605
3 P.2d 196 (1979).

4 A Motion for Reconsideration must set forth the following: (1) some valid reason
5 why the court should revisit its prior order; and (2) facts of law of a "strongly convincing
6 nature" in support of reversing the prior decision. *Frasure v. United States*, 256 F. Supp.
7 2d 1180, 1183 (D. Nev. 2003). A motion for reconsideration is reserved for the "very
8 rare instances in which new issues of fact or law are raised. supporting a ruling contrary
9 to the ruling already reached." *Moore v. City of Las Vegas*, 92 Nev. 402, 404, 551 P.2d
10 244, 246 (Nev. 1976).

11 As set forth below, the findings of fact support, nay **REQUIRE**, a ruling contrary
12 to the ruling set forth in the Order. Findings in the Order are interim. There is no final
13 order regarding the facts set forth as the basis for the Order. That only final order is the
14 FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT AGAINST EUSTACHIUS
15 C. BURSEY AND LILLIAN MEDINA IN FAVOR OF JOHN DATTALA [referred to herein as
16 the FFCL] that was signed by the Court and filed on October 15, 2021, with Notice of
17 Entry of Judgment being filed and served the same day. [Exhibit 3] The FFCL is
18 expressly "certified as a final, appealable judgment." [Exhibit 3, 21:14] Notably, the
19 Order relied upon by Precision, which it didn't even attach as an exhibit to its
20 Opposition, is NOT a final, appealable order. For the Court's convenience Dattala
21 attaches the October 22, 2021 Order as Exhibit 4 hereto.

22 Thus, subsequent to the September 28, 2021 hearing on Precision's Motion for
23 Summary Judgment which resulted in the Order the Court signed and filed the FFCL.
24 Factual findings in the FFCL preclude the granting of summary judgment in favor of
25 Precision against Dattala.¹ The specific findings in the FFCL were set forth in the

26
27 ¹. The factual findings in the FFCL support summary judgment being entered in favor of Dattala
28 agasint Precision, which will be addressed at in a subsequent motion.

1 Supplement filed October 18, 2021 and will not be repeated. Suffice it to say that the
2 Court has made factual findings that Bursey obtained evidence of ownership to the
3 Subject Properties by fraud. Since Precision obtained its ownership from Bursey, its
4 deeds from Bursey are void under NRS 111.025, NRS 111,175 and NRS 111.340.
5 Dattala doesn't even have to rebut the "certificate of the acknowledgment nor of the
6 proof of any conveyance or instrument" of the Subject Properties on which Precision
7 bases its claim of ownership because there is an express finding that both conveyances
8 to both Subject Properties were obtained by Bursey from Dattala through fraud.

9 At the very minimum, the Court has stated multiple disputes of material fact as
10 there are directly contrary facts set forth in the Order (which is interim and can be
11 changed) and the FFCL (which are final, appealable and cannot be changed). Given
12 the service date of the Notice of Entry of the FFCL on October 15, 2021, the deadline
13 for filing a motion for new trial or for amendment of judgments is November 12, 2021
14 and the appeal deadline is November 15, 2021. Barring either of those events
15 happening, the FFCL will then be a final, unappealed judgment.

16 17 CONCLUSION

18
19 Given the factual findings set forth in Dattala's October 18, 2021 Supplement,
20 which are factual findings are final and have been signed by a judge and filed in the
21 FFCL [Exhibit 3], under the statutes set forth at the beginning of this Reply, Precision
22 claims ownership of the Subject Properties through a void deed.

23 Precision cannot prevail in a quiet title cause of action. The facts are that it's
24 seller [Bursey] obtained title by fraud. So the conveyances to Precision are void.

25 Facts have been determined about Precision's title documents which preclude
26 summary judgment on the quiet title issues of the 50 Sacramento and the 59
27 Sacramento properties. The lis pendens issues are derivative in that if summary
28 judgment is precluded, then cancellation of the lis pendens must be denied since the

1 burden is much lower to retain the lis pendens.

2 Given the evidentiary impact of the now final facts set forth in the October 18,
3 2021 Supplement, which simply quotes the facts from the FFCL, the Court must vacate
4 the decisions announced from the bench on September 28, 2021 on Precision's
5 summary judgment motion regarding title to 50 Sacramento and to 59 Sacramento.
6 Further, the decision canceling the lis pendens' recorded against those two properties,
7 which decision was admittedly based on the summary judgment decision, must also be
8 reversed. Both of these decisions are memorialized in the Order, attached hereto as
9 Exhibit 4, which must specifically be set aside by Court Order.

10
11 /s/ Benjamin B. Childs

12 BENJAMIN B. CHILDS, ESQ.
13 NEVADA BAR # 3946
Attorney for Plaintiff

14 CERTIFICATE OF SERVICE
15

16 This REPLY TO OPPOSITION TO MOTION FOR RECONSIDERATION, with
17 Exhibit 4, was served through the Odyssey File and Serve system to opposing counsel
18 on filing. Electronic service is in lieu of mailing.

19
20 /s/ Benjamin B. Childs, Sr.

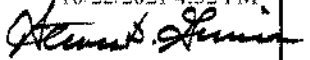
21 BENJAMIN B. CHILDS, Sr.ESQ.
22 NEVADA BAR # 3946
23
24
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27
28

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4


CLERK OF THE COURT

1 **ORDG**

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11 *Attorneys for Defendant/Crossclaim Defendant,*

12 *WFG National Title Insurance Company*

13
14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 **JOHN DATTALA;**

17 **Plaintiffs,**

18 **vs.**

19 **EUSTACHIUS C. BURSEY and**
20 **PRECISION ASSETS LLC, and ACRY**
21 **DEVELOPMENT LLC and LILLIAN**
22 **MEDINA and WFG NATIONAL TITLE**
23 **INSURANCE COMPANY and BONITA**
24 **SPENCER and JOHN DOES 1 through 5**
25 **inclusive and ROE CORPORATIONS 1**
26 **through X,**

27 **Defendants.**

28 **AND RELATED CLAIMS.**

Case No.: A-19-794335-C

Dept. No.: 14

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT, MOTION TO
EXPUNGE LIS PENDENS AND
MOTION TO EXPUNGE DEED OF
TRUST

22 The Motion for Summary Judgment, Motion to Expunge Deed of Trust, and Motion to
23 Expunge Lis Pendens filed by Precision Assets (as Defendant, Counterclaimant, and
24 Crossclaimant against Eustachius Bursey hereinafter referred to as "Precision and/or Precision
25 Assets") came on for hearing before Department 14 of the Eighth Judicial District Court, the
26 Honorable Adriana Escobar presiding, on September 28, 2021. Upon thorough review of the
27 pleadings and papers filed by the parties, and after entertaining arguments of counsel, this Court
28 issues the following order:

1 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.**

2 Precision Assets holds title to two parcels of real property that are involved in this action:
3 50 Sacramento Drive, Las Vegas, Nevada and 59 Sacramento Drive, Las Vegas, Nevada.
4 Precision Assets purchased both properties from defendant Eustachius C. Bursey, who claims to
5 have purchased the properties from plaintiff John Dattala.

6 **A. 50 SACRAMENTO DRIVE.**

7 On or about June 5, 1992, Dattala obtained title to 50 Sacramento pursuant to a Grant,
8 Bargain and Sale Deed, recorded on July 30, 1992. On June 3, 2018, Defendant Bursey borrowed
9 \$150,000.00 from Dattala to purchase 50 Sacramento, memorialized and secured by a Deed of
10 Trust recorded on August 2, 2018 against 50 Sacramento ("2018 Deed of Trust").

11 **1. Defendant Bursey Sells 50 Sacramento Drive.**

12 On April 1, 2019, HCO Residential, LLC ("HCO") and Defendant Bursey entered into a
13 purchase contract for 50 Sacramento for \$95,500.00 ("50 Sacramento Purchase
14 Contract"). Pursuant to the 50 Sacramento Purchase Contract, Defendant Bursey represented and
15 warranted that he was the only party in possession of the Property, and that there were no other
16 parties who claimed possession.

17 Defendant Bursey contends that he and Plaintiff executed two additional documents, with
18 both documents recorded on April 8, 2019:

- 19 • Dattala executes a Deed of Reconveyance relating to the 2018 Deed of Trust in full;
20 and
- 21 • Dattala and Defendant Bursey execute a quit claim deed, transferring title in 50
22 Sacramento from Dattala to Bursey in exchange for payment of \$73,540.00.

23 On April 7, 2019, Bursey contends that Dattala executed a notarized affidavit of grantor,
24 asserting that the quit claim deed was an arms-length transaction between Dattala and Defendant
25 Bursey, a valid transfer of ownership and that Dattala does not claim any further ownership to
26 50 Sacramento. When documents relating to an escrow transaction are executed outside of the
27 transaction, WFG may request an Affidavit of Grantor as a condition to Closing.

28 ///

1 1. Precision Receives An Assignment Of The HCO Contract To Purchase 50
2 Sacramento Drive.

3 Precision Assets is a real estate investment company. Precision Assets has established
4 multiple business channels whereby it can obtain information about parcels of real property
5 available for purchase. On April 9, 2019, Precision Assets received an email from a third party,
6 “Equity Connect – Wholesale Properties” (“Equity Connect”) regarding 50 Sacramento. After
7 completing a satisfactory investigation, Precision Assets agreed to be assigned the rights to the
8 50 Sacramento Purchase Contract.

9 On April 10, 2019, WFG confirmed receipt of \$5,000 from Precision Assets. On April 12,
10 2019, Defendant Bursey, as seller, and Precision Assets, as buyer, executed escrow instructions
11 and an amendment to the escrow instructions to fully perform the 50 Sacramento Purchase
12 Contract.

13 On April 12, 2019, Defendant Bursey provided two notarized affidavits to WFG as
14 follows:

- 15 1. Affidavit of No Mortgage or Deed of Trust – Defendant Bursey declares and certifies that
16 there are no encumbrances in the form of a mortgage or deed of trust against 50
17 Sacramento; and
- 18 2. Owner’s Affidavit – Defendant Bursey declares and certifies that he has full possession of
19 the property and that any liens and/or encumbrances have been duly disclosed to WFG;

20 On April 15, 2019, escrow confirmed receipt of \$106,675.61 from Precision
21 Assets. Combined with the prior \$5,000 payment from Precision Assets, Precision Assets paid a
22 total of \$111,675.61 to complete the 50 Sacramento purchase transaction. On April 15, 2019, a
23 Grant, Bargain and Sale Deed was recorded by WFG from Defendant Bursey to Precision Assets
24 to complete the arms-length transaction. On April 15, 2019, an owner’s title insurance policy
25 issued in favor of Precision Assets, with title vested in Precision Assets. On April 15, 2019,
26 escrow closed. Prior to the close of escrow, Precision Assets did not receive any communications
27 whatsoever from Dattala.

28 ///

1 3. Precision Assets' Detailed Due Diligence Never Identified Any Information
2 Indicating A Cloud On Title.

3 During escrow for 50 Sacramento, Precision Assets reviewed all escrow and title
4 documents before execution. Precision Assets did not uncover or suspect any potential problems
5 with 50 Sacramento before or during escrow. Indeed, Precision Assets received an insurance
6 policy concerning title to the property.

7 On April 18, 2019, Precision Assets borrowed \$149,675.61 from Acry Development, LLC,
8 secured by a Deed of Trust recorded against 50 Sacramento.

9 Furthermore, Defendant Spencer, the licensed notary who notarized Dattala and Defendant
10 Bursey's signatures on a Deed of Reconveyance and a Quit Claim Deed, testified that she had
11 no knowledge of Precision Assets nor had any communications with them in any capacity.
12 Defendant Spencer further testified that she personally witnessed Dattala sign the Deed of
13 Reconveyance and Deed of Trust in her presence. Defendant Spencer testified that she was not
14 a WFG employee, instead it was Dattala or Bursey whom directly contacted Ms. Spencer to
15 notarize the documents, specifically the Deed of Reconveyance and Quit Claim Deed.

16 B. 59 Sacramento Drive.

17 On or about November 14, 2008, Dattala obtained title to 59 Sacramento pursuant to a
18 Grant, Bargain and Sale Deed recorded on November 24, 2008. On April 19, 2019, HCO
19 Residential, LLC ("HCO") and Defendant Bursey entered into a purchase contract for 59
20 Sacramento for \$130,000.00 ("59 Sacramento Purchase Contract"). Pursuant to the 59
21 Sacramento Purchase Contract, Defendant Bursey represented and warranted to HCO that
22 Bursey was the only party in possession of the Property, and that there were no other
23 parties who claimed possession.

24 On April 22, 2019, a quit claim deed was recorded, whereby Dattala quitclaimed 59
25 Sacramento to Bursey in exchange for payment of \$79,091.00. On April 22, 2019, Bursey
26 contends that Dattala provided an executed notarized Affidavit of Grantor asserting that the quit
27 claim deed was, amongst other things, an arms-length transaction between Dattala and
28 Defendant Bursey, a valid transfer of ownership and that Dattala does not claim any further

1 ownership to 59 Sacramento.

2 1. Precision Assets Receives An Assignment Of The HCO Contract To Purchase
3 59 Sacramento Drive.

4 On April 22, 2019, Precision Assets received another email from Equity Connect,
5 providing information about 59 Sacramento and its availability for purchase. On April 30, 2019,
6 Defendant Bursey provided two notarized affidavits to WFG as follows:

- 7 • Affidavit of No Mortgage or Deed of Trust – Defendant Bursey declares and
8 certifies that there are no encumbrances in the form of a mortgage or deed of trust
9 against 59 Sacramento; and
10 • Owner's Affidavit – Defendant Bursey declares and certifies that he has full
11 possession of the property and that any liens and/or encumbrances have been duly
12 disclosed to the escrow company.

13 After completing a satisfactory investigation, Precision Assets agreed to be assigned the
14 rights to the 59 Sacramento Purchase Contract. On May 2, 2019, Defendant Bursey, as seller,
15 and Precision Assets, as buyer, executed escrow instructions, supplemental escrow instructions
16 and an amendment to the escrow instructions. On May 2, 2019, escrow confirmed Precision
17 Assets paid \$148,366.94 to close the 59 Sacramento purchase transaction. On May 2, 2019, WFG
18 recorded a Grant, Bargain and Sale Deed from Defendant Bursey to Precision Assets.

19 On May 2, 2019, WFG issued an owner's title insurance policy in favor of Precision Assets,
20 with title vested in Precision Assets. Prior to the close of escrow, Precision Assets did not receive
21 any communications whatsoever from Dattala.

22 1. Precision Assets' Detailed Due Diligence Never Identified Any Information
23 Indicating A Cloud On Title.

24 During escrow for 59 Sacramento, Precision Assets reviewed all escrow and title
25 documents before execution, and none of the documents reflected any defects or potential title
26 issues with 59 Sacramento. Precision Assets did not uncover or suspect any potential problems
27 with 59 Sacramento before or during escrow. Indeed, Precision Assets received an insurance
28 policy concerning title to the property.

1 Defendant Medina, the licensed notary who notarized Dattala and Defendant Bursey's
2 signatures on the Affidavit of Grantor, testified that she recalls personally meeting
3 with Dattala to obtain his signature on the Affidavit of Grantor. Ms. Medina
4 recalled Dattala signing the documents in question after reading the documents and did not
5 witness any duress or intoxication. Ms. Medina testified that she has no knowledge of Precision
6 Assets nor had any communications with Precision Assets in any capacity.

7 **II. STANDARD OF LAW.**

8 **A. Grant Of Summary Judgement.**

9 "Summary judgment is appropriate . . . when the pleadings, depositions, answers to
10 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate
11 that no genuine issue of material fact exists, and that the moving party is entitled to judgment as
12 a matter of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings
13 and other evidence must be construed in the light most favorable to the nonmoving party, that
14 party has the burden to 'do more than simply show that there is some metaphysical doubt' as to
15 the operative facts to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita*
16 *Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines
17 which "factual disputes are material and will preclude summary judgment; other factual disputes
18 are irrelevant." *Id.* Accordingly, Nevada courts follow the federal summary judgment standard,
19 not the "slightest doubt" standard previously applicable before *Wood*. *Id.* at 1031, 1037.

20 **B. Quiet Title And Bona Fide Purchaser.**

21 In a quiet title action, "the burden of proof rests with the plaintiff to prove good title in
22 himself. Moreover, there is a presumption in favor of the record titleholder." *Breliant v.*
23 *Preferred Equities Corp.*, *supra*, 112 Nev. at 669, 918 P.2d at 318. This is because Nevada is a
24 "race-notice" state, establishing that priority of title to real property vests in the party that records
25 first and without notice of prior claims on the same property. *Buhecker v. R.B. Petersen & Sons*
26 *Const. Co., Inc.*, 112 Nev. 1498, 1500, 929 P.2d 937, 936 (1996); *also see* N.R.S. §111.315,
27 §111.320. Furthermore:
28

1 Any purchaser who purchases an estate or interest in any real property
2 in good faith and for valuable consideration and *who does not have*
3 *actual knowledge, constructive notice of, or reasonable cause to know*
4 *that there exists a defect in, or adverse rights, title or interest to, the*
5 *real property is a bona fide purchaser.*

6 NRS 111.180(1) (emphasis added); *see also* *Bailey v. Butner*, 176 P.2d 226, 234 (Nev. 1947). In
7 order to demonstrate it is a *bona fide* purchaser as a matter of law, Precision Assets need only
8 show that: (1) that it purchased the properties for “valuable consideration”; and (2) without
9 notice of a competing or a superior interest in the property. *Berge v. Fredericks*, 95 Nev. 183,
10 591 P.2d 246 (1979). On this issue, “[Nevada] decisions are uniform that the *bona fide* purchaser
11 of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or
12 otherwise, of which he has no notice, actual or constructive.” *Moore v. De Bernardi*, 220 P. 544,
13 547 (Nev. 1923).

14 C. Expungement Of Deed Of Trust.

15 Nevada law requires that a promissory note and corresponding deed of trust must be held
16 by the same person to foreclose under NRS Chapter 107. *Leyva v. National Default Servicing*
17 *Corp.*, 127 Nev. 470, 476, 255 P.3d 1275, 1279-80 (2011). To have standing to foreclose, the
18 current beneficiary of the deed of trust and the current holder of the promissory note must be the
19 same. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 514, 286 P.3d 249, 255 (2012).

20 D. Expungement Of Lis Pendens.

21 A Lis Pendens is governed by NRS 14.015. Pursuant to NRS 14.015(2), a party seeking to
22 maintain a Lis Pendens must show four elements: (1) the action affects title or possession of the
23 real property described, (2) the action is not brought for bad faith or for an improper motive, (3)
24 perform any conditions precedent to the relief sought, and (4) the party who recorded the notice
25 would be injured by any transfer. Following a conclusive showing of all four of these elements,
26 the party seeking to maintain a Lis Pendens must then, pursuant to NRS 14.015(3), prove a fifth
27 element – either that it is likely to prevail in the action or has a fair chance of success on the
28 merits and that the harm to him would be greater than the harm to property owner. Without
proving all five of these elements, a Lis Pendens cannot remain on the property and the court
“shall order the cancellation of the notice of pendency.”

1 **III. FINDINGS OF FACT.**

2 Precision Assets is the record title holder of 50 Sacramento and 59 Sacramento.

3 Precision Assets purchased 50 Sacramento and 59 Sacramento from defendant Bursey
4 pursuant to assignments it received from HCO Residential, LLC.

5 Bursey did not sign a promissory note in favor of Plaintiff in connection with Bursey's
6 acquisition of 50 Sacramento or 59 Sacramento from Plaintiff.

7 Precision Assets paid \$95,000.00 for 50 Sacramento.

8 Precision Assets paid \$130,000.00 for 59 Sacramento.

9 Bursey represented to HCO Residential LLC that he was the only party in possession of
10 the two properties and that there were no other parties who claimed possession of the properties.

11 Bursey had recorded a Deed of Reconveyance concerning the 50 Sacramento property that
12 he claimed had been signed by Plaintiff.

13 Bursey had recorded a Quit Claim deed transferring title in 50 Sacramento from Plaintiff
14 to Bursey in exchange for payment of \$73,540.00, which Bursey represented had been signed
15 by Plaintiff.

16 Bursey provided WFG with a notarized Affidavit of Grantor, asserting that the Quit Claim
17 deed transferring 50 Sacramento to Bursey was an arms-length transaction and that Plaintiff does
18 not claim any further ownership interest in 50 Sacramento.

19 WFG National Title Insurance Company issued a title insurance policy to Precision Assets
20 concerning 50 Sacramento.

21 Bursey had recorded a Quit Claim deed transferring title in 59 Sacramento to Bursey in
22 exchange for payment of \$79,091.00, which Bursey represented had been signed by Plaintiff.

23 Bursey provided WFG with a notarized Affidavit of Grantor, asserting that the Quit Claim
24 deed transferring 59 Sacramento to Bursey was an arms-length transaction and that Plaintiff does
25 not claim any further ownership interest in 59 Sacramento.

26 ///

27 ///

28 ///

1 **IV. CONCLUSIONS OF LAW.**

2 The evidence presented by the parties demonstrates that no genuine issues of material fact
3 exist and that Precision Assets is entitled to judgment as a matter of law as set forth in its Motion
4 for Summary Judgment against plaintiff Dattala and cross-claimant Bursey.

5 Precision Assets purchased 50 Sacramento and 59 Sacramento in good faith.

6 Precision Assets purchased 50 Sacramento and 59 Sacramento for valuable consideration.

7 Precision Assets did not have actual knowledge, constructive notice of, or reasonable cause
8 to know that there was a defect in or adverse rights, title or interest to 50 Sacramento.

9 Precision Assets did not have actual knowledge, constructive notice of, or reasonable
10 cause to know that there was a defect in or adverse rights, title or interest to 59 Sacramento.

11 As a matter of law, any knowledge held by WFG as the escrow holder is not imputed to
12 Precision Assets. *Huntington v. Mila, Inc.*, 119 Nev. 355, 358, 75 P.3d 354, 356 (2003), as
13 corrected (Sept. 24, 2003).

14 Precision Assets is a bona fide purchaser of 50 Sacramento.

15 Precision Assets is a bona fide purchaser of 59 Sacramento.

16 Bursey has neither answered nor addressed Precision Assets' claims against him for breach
17 of contract, unjust enrichment, and fraud concerning both the 50 and 59 Sacramento properties.

18 As a matter of law, Plaintiff cannot succeed on the merits of his claims against Precision
19 Assets on 50 Sacramento.

20 As a matter of law, Plaintiff cannot succeed on the merits of his claims against Precision
21 Assets on 59 Sacramento.

22 As a matter of law, Precision Assets succeeds on the merits of its claims against Plaintiff.

23 As a matter of law, Plaintiff's Deed of Trust is improper because he does not have a related
24 Promissory Note, and that Deed of Trust shall be canceled and stricken from title to the 50
25 Sacramento Property.

26 As a matter of law, Plaintiff cannot meet his burden under NRS 14.015, to maintain the Lis
27 Pendens he recorded against 50 Sacramento and 59 Sacramento, and therefore those Lis Pendens
28 shall be expunged/canceled.

1 **ORDER**

2 **IT IS ORDERED** that Moving Defendant, Counterclaimant and Crossclaimant Precision
3 Asset's Motion for Summary Judgment against plaintiff Dattala and cross-claimant Bursey is
4 Granted.

5 **IT IS FURTHER ORDERED** that Moving Defendant/Counterclaimant Precision Asset's
6 Motion to Expunge Deed of Trust is Granted, and the Lis Pendens recorded by Plaintiff against
7 both 50 Sacramento and 59 Sacramento shall be released, canceled and stricken from title to the
8 50 Sacramento Property forthwith.

9 **IT IS FURTHER ORDERED** that Moving Defendant/Counterclaimant Precision Asset's
10 Motion to Expunge Lis Pendens is Granted.

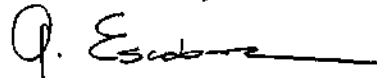
11 **IT IS FURTHER ORDERED** that Precision Asset is the sole and rightful owner to the
12 Property, free of any interest, liens, or encumbrances of plaintiff Dattala.

13 **IT IS FURTHER ORDERED** that Moving Defendant/Counterclaimant Precision Asset
14 may record this Judgment with the Clark County Recorder's Office and the Clark County
15 Recorder's Office shall record this Judgment in favor of Precision as to the Property.

16 **IT IS FURTHER ORDERED** that Deed of Trust identified in the Motion as not
17 securing a promissory note shall be canceled, released, and stricken from title to the 50
18 Sacramento Property forthwith.

19 **IT IS SO ORDERED.**

20 Dated this 22nd day of October, 2021

21 

22 DISTRICT COURT JUDGE

23 Respectfully Submitted by:

24 90A 6C7 A1DE 3A5E
Adriana Escobar
District Court Judge

25 WRIGHT, FINLAY & ZAK, LLP

26 /s/ Aaron D. Lancaster

27 Aaron D. Lancaster, Esq.

28 Nevada Bar No. 10115

7785 W. Sahara Ave., Suite 200

Las Vegas, NV 89117

Attorneys for Defendant/Crossclaim Defendant,

WFG National Title Insurance Company

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 John Dattala, Plaintiff(s)

CASE NO: A-19-794335-C

7 vs.

DEPT. NO. Department 14

8 Eustachius Bursey, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/22/2021

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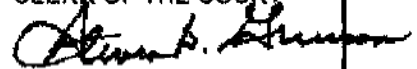
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JOHN DATTALA,

Plaintiff,

vs.

EUSTACHIUS BURSEY,

Defendant.

AND RELATED PARTIES

CASE NO. A-19-794335-C
DEPT NO. XIV

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 28, 2021

SEE NEXT PAGE FOR MATTERS

APPEARANCES:

FOR THE PLAINTIFF/
COUNTER DEFENDANT:

BENJAMIN B. CHILDS, ESQ.

FOR PRECISION ASSETS:

ZACHARY T. BALL, ESQ.

FOR ACRY DEVELOPMENT &
PRECISION ASSETS:

JOHN G. BENEDICT, ESQ.

FOR WFG NATIONAL TITLE:

AARON D. LANCASTER, ESQ.

RECORDED BY: STACEY RAY, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

M A T T E R S

Joinder to Defendant/Counterclaimant Precision Assets' Motion for Summary Judgment, Motion to Expunge Deed of Trust, and Motion to Expunge Lis Pendens

[229] Opposition to Precision Assets' Motion to Expunge Deed of Trust and Countermotion for Reformation of Deed of Trust

Precision Assets' Motion to Expunge Lis Pendens

Defendant, Precision Assets' Motion to Expunge Deed of Trust

Precision Assets' Motion in Limine No. 1

Precision Assets' Motion in Limine No. 2

Precision Assets' Motion in Limine No. 3

Precision Assets' Motion in Limine No. 4

Precision Assets' Motion in Limine No. 5

Plaintiff/Counterdefendant's Motions in Limine

Plaintiff/Counterdefendant's Conditional Joinder in Precision Assets Motion in Limine No. 4

Defendant Acry Development, LLC's Joinder to Defendant/Counterclaimant Precision Assets' Motions in Limine; Motions in Limine Nos. 1-5

WFG's Motion for Summary Judgment Against Cross-claimant Precision Assets

Defendant/Counterclaimant Precision Assets' Motion for Summary Judgment

WFG's Motion for Summary Judgment Against Plaintiff.

Defendant/Counterclaimant Precision Assets, LLC's Joinder to Defendant WFG National Title Insurance Company's Motion for Summary Judgment Against Plaintiff

WFG's Joinder/Non-opposition to Defendant/Counterclaimant Precision Assets' Motions in Limine; Motions in Limine Nos. 1-5

1 LAS VEGAS, CLARK COUNTY, NEVADA, SEPTEMBER 28, 2021, 10:16 A.M.

2 * * * * *

3 THE COURT: Okay. Then let's go then to page 6-7.
4 And this is John Dattala versus Eustachius Bursey.

5 And let's start with plaintiff's counsel. Your
6 appearances for the record, please.

7 MR. CHILDS: Benjamin Childs, 3946, for the
8 plaintiff. And Mr. Dattala is present in my office.

9 THE COURT: Okay. Good morning, Mr. Childs, and good
10 morning Mr. Dattala.

11 MR. CHILDS: Good morning.

12 THE PLAINTIFF: Good morning.

13 THE COURT: Okay. And for the defense?

14 MR. BALL: Good morning, Your Honor. Zach Ball for
15 Precision Assets as defendant, counterclaimant and
16 cross-claimant against Bursey.

17 THE COURT: Okay. Good morning, Mr. Ball.

18 MR. LANCASTER: Good morning, Your Honor. Aaron
19 Lancaster on behalf of WFG National Title. I also have my
20 client representative that's present.

21 THE COURT: Okay. Very good. Thank you.

22 MR. BENEDICT: Good morning, Your Honor. John
23 Benedict on behalf of with defendant Acry and Precision Assets
24 as cross-claimants against WFG.

25 THE COURT: Okay. Good morning, Mr. Benedict.

1 All right. So I am spending the afternoon doing
2 motions in limine. I don't know -- I believe that
3 Mr. (indiscernible) sent you an e-mail to let you know that.
4 Okay. So I'm ready to hear the motions.

5 Why don't we start with -- we only have one other
6 case. It's Mr. -- it's three cases, but it's about attorneys'
7 fees.

8 And by the way, since I have you, and I know that
9 you -- just to let you know that it appears -- there was a
10 training recently by the commissioners, the ADR Commissioner
11 and the new one Jay Young. And it appears that the Supreme
12 Court is becoming -- or our understanding is that, through
13 them, that the Supreme Court is being more observant with
14 respect to the -- all of the factors in attorneys' fees; right,
15 when you're doing that. They need to be more detailed. And
16 also for costs, pursuant to *Cadle*.

17 So I know that, believe me, it's so funny because I'm
18 more like a big picture person. I've had my own law firm, and
19 I think that frankly that *Cadle* is extremely onerous, that --
20 but what can we do, it's the law; right? So I just thought I'd
21 give you a heads up, not that you don't do that, but since this
22 is fairly new that they're starting to be -- it's my
23 understanding they're starting to pay more attention to it or,
24 you know, focus on it. I thought I'd just let you know.

25 All right. So let's go on with -- let's start

1 with -- let's start with WFG National Title Insurance Company's
2 Motion for Summary Judgment Against Plaintiff.

3 MR. LANCASTER: Thank you, Your Honor. Aaron
4 Lancaster on behalf of WFG.

5 To provide a little bit of background related to our
6 claims, we believe that a lot of the claims that are involved
7 at Precision -- Precision's motion for summary judgment is
8 involved with is a lot more detailed than our specific claims
9 related to plaintiffs.

10 He has a couple of causes of action that have been
11 asserted against us: His first cause of action is a
12 quiet-title action. The second one is a declaratory relief.

13 We've addressed both of those in our MSJ. Plaintiff
14 didn't respond to those. So we assumed that -- well, they're
15 unopposed as of right now which makes sense because WFG doesn't
16 claim any interest into it. So I assume that we can stipulate
17 or at least agree on the record that those claims are not
18 against WFG, and we can move on.

19 We can handle that in piecemeal if you would like,
20 Your Honor, because I believe Mr. Childs is shaking his head
21 yes.

22 MR. CHILDS: Yeah.

23 THE COURT: Why don't we -- I need your name for the
24 record, Mr. Childs.

25 MR. CHILDS: Benjamin Childs.

1 No, I agree. I don't know. I just didn't designate
2 who the parties were in the cause of action -- or in the cause
3 of action for the declaratory relief --

4 THE COURT: Okay. And I --

5 MR. CHILDS: -- and the quiet title.

6 And, yes, WFG I believe doesn't have any, that I know
7 of, claim of an interest in the subject property. So and I
8 apologize for that. He's -- I agree with Mr. Lancaster on
9 those two issues.

10 THE COURT: Okay. All right.

11 Mr. Benedict, Mr. Ball, do you have anything that
12 you'd like to add at this time? Even though I understand it's
13 between the other two parties, but this is all sort of, you
14 know, there's a lot of overlap in some ways.

15 MR. BALL: This is Zach Ball. Nothing to add.

16 THE COURT: Okay. Thank you.

17 Mr. Benedict.

18 MR. BENEDICT: John Benedict. Nothing to add, Your
19 Honor.

20 THE COURT: Okay. Very good.

21 So all right. So please go on, Mr. Lancaster.

22 MR. LANCASTER: Thank you, Your Honor.

23 So plaintiff's next cause of action is negligence per
24 se related to WFG and Lillian Medina, who's also a named
25 defendant in this action. She's not present here today is my

1 understanding.

2 But stepping back, this litigation revolves around
3 two different properties. So there's the 50 Sacramento
4 property, and then there's the neighboring property, which is
5 59 Sacramento.

6 THE COURT: There were three at some point, weren't
7 there?

8 MR. LANCASTER: Correct, Your Honor. That third one
9 I believe has been resolved.

10 THE COURT: Right. Okay.

11 MR. LANCASTER: And there's no additional issues
12 related to that property and my client and the plaintiff.

13 THE COURT: All right.

14 MR. LANCASTER: And so Ms. Medina, there's no
15 involvement related to the 50 Sacramento. So her involvement
16 is going to be specifically related to 59 Sacramento. And so
17 WFG was the escrow agent as well as the title agent that
18 handled the transaction between the Bursey to Precision Assets.
19 Through that transaction, WFG had retained the services of a
20 third-party service provider Simple Signings, LLC. And this
21 was related to getting an affidavit of grantor notarized.

22 You're going to hear a lot about, and I'm sure you've
23 read a lot about what this affidavit of grantor is. To
24 identify what it is, is it's an affidavit by the person or
25 entity that's conveying away title saying that they don't have

1 any additional interest in the property. And this is a
2 specific document that WFG -- it's an internal document -- that
3 doesn't affect title. It's for them to create an assurance for
4 them to go forward with their title insurance and ensuring the
5 title.

6 And so WFG retained simple signings, provided simple
7 signings with the affidavit of grantor, asked them to have it
8 notarized. Simple Signings engaged one of their third-party
9 independent contractors, which was Lillian Medina in this case,
10 and assigned her the task of going forward and getting that
11 affidavit of grantor notarized and executed.

12 There was no employee-employer relationship there.
13 None is asserted in the opposition. In the complaint it was
14 asserted in that manner, but the opposition doesn't address
15 that.

16 So what plaintiff is seeking to do, because there's
17 some allegations that there was some mishandlings and
18 misdealings related to the execution of that affidavit of
19 grantor, they're trying to assign vicariously that liability to
20 WFG related to the actions of Ms. Medina.

21 And so the theories that plaintiff sets forth is,
22 one, they look at respondeat superior, which we've identified
23 in our moving papers and identified that there must be an
24 employee-employer relationship there. There's certainly none
25 there. There's no evidence. In fact, there's -- all the

1 evidence is contrary to it.

2 Ms. Medina testified that she was a third party to
3 Simple Signings. Simple Signings was a third-party service
4 provider to WFG. There's no payment that was made from WFG or
5 even the title funds to Ms. Medina. It went through Simple
6 Signings. So there's no dispute as to the employee-employer
7 relationship, but Nevada law clearly provides that under that
8 theory and that doctrine that you have to have an
9 employee-employer relationship for that liability to be
10 vicariously assigned to WFG, which doesn't happen.

11 And so in the opposition, plaintiff hinges and argues
12 related to agent and principal relationship. Nevada law is
13 clear on that point as well. If you look at the *Hunter Mining*
14 *Lab* case by the Supreme Court, it identifies that an agency
15 relationship, the principal possesses the right to control the
16 agent's conduct, and it also identifies that the principal of
17 the agency, however, does not mean that an agency relationship
18 exists every time one party has a contractual right to control
19 some aspect of another party's business.

20 So there was no right or obligation for WFG to
21 control any activity of Medina. In fact, they had no idea who
22 Lillian Medina was prior to or after -- until after the
23 documents were signed and issues started arising related to
24 those documents signed. WFG didn't have any ability to hire
25 her, to fire her, to tell her how to perform her functions.

1 Their limited role was to provide them with the documents to be
2 notarized. This happens in thousands of transactions every
3 day. They didn't -- didn't provide any additional instruction,
4 or there's no evidence of any control that has to be evidenced
5 in order for that employee or employer relationship -- or
6 excuse me, the agent-principal relationship to be granted.

7 Because there was no agency relationship, and she
8 didn't set herself out as an employee of WFG, there's no
9 ability to vicariously hold that WFG would be liable for her
10 conduct and her actions.

11 If you go on and look at NRS 240.15, and this is
12 related to even a closer relationship. This is an
13 employee-employer relationship, and that statute says the
14 employer --

15 THE COURT: I'm sorry. Counsel, forgive me. I just
16 need to catch this really quickly. Okay?

17 MR. LANCASTER: Absolutely.

18 (Pause in the proceedings.)

19 THE COURT: Please go on, Mr. Lancaster. Sorry about
20 that. We're back on the record.

21 MR. LANCASTER: No problem. Thank you, Your Honor.

22 So I was discussing NRS 240.15, and this identifies
23 liability related to an employee-employer relationship and a
24 Notary Public. So it states that the employer of a Notary
25 Public is liable for the damages proximately caused by the

1 misconduct of the Notary Public if, A, the Notary Public was
2 acting within the scope of his or her employment at the time
3 the Notary Public engaged in the misconduct; and, B, the
4 employer was -- or of the Notary Public consented to the
5 misconduct of the Notary Public. There's certainly not any
6 facts to show that there's no employee-employer relationship,
7 which would be closer to it than the relationship that we have
8 here. But even if there were, there has to be evidence showing
9 that WFG consented to the misconduct of the Notary Public. And
10 the record shows that there was no communication with
11 Ms. Medina and WFG until after the escrow was closed.

12 And then finally, plaintiff's last cause of action
13 asserted against WFG is related to failure to supervise,
14 inadequate training and education.

15 And Nevada law is very clear that there has to be an
16 employer-employee relationship there. Plaintiff doesn't
17 identify any contrary law.

18 THE COURT: I'm so sorry. I apologize. I'll be
19 right back.

20 MR. LANCASTER: You're fine, Your Honor.

21 (Pause in the proceedings.)

22 THE COURT: I am so sorry about these interruptions.

23 (Pause in the proceedings.)

24 THE COURT: So go ahead, Mr. Lancaster, please.

25 MR. LANCASTER: Yes, Your Honor.

1 (Video interference) based upon Nevada law and
2 plaintiff's cause of action for failure to supervise,
3 inadequately train and educate, there must be that
4 employer-employee relationship, which certainly is not the case
5 here, and there's no Nevada law saying that even if there was
6 an agent-principal relationship, which we dispute vigorously,
7 that the obligation to supervise, train and educate is not
8 there.

9 And if the Court has any questions for me --

10 THE COURT: I don't.

11 MR. LANCASTER: Thank you.

12 THE COURT: No questions.

13 Okay. I'd like to hear from plaintiff, Mr. Childs.

14 MR. CHILDS: Thank you. Benjamin Childs.

15 So the first thing to keep in mind is that this is a
16 summary judgment motion. So all factual inferences are in
17 favor of the nonmoving party.

18 THE COURT: I understand.

19 MR. CHILDS: Which is my -- yeah, which is my client,
20 Mr. Dattala.

21 And what it boils down to, and I think I briefed it
22 pretty well in the opposition is that agency is a question of
23 fact for the jury. So it's not ripe for summary judgment. I
24 mean, I allege, and I quoted from the Second Amended Complaint:
25 Medina was employed and/or the agent of WFG and was within the

scope of her employment or agency relationship.

And this is the lady that went out to, she says, and got my client's signature on a couple of affidavits, and Mr. Bursey's signature, and then there's a dispute about whether she has the signature in her notary book. She initially stated that she didn't. And then all of a sudden it showed up. And so she was obviously their agent, but regardless of obvious or not, that's a factual question -- that's a factual question for the jury.

And I briefed it very well, I think. And I think the seminal case is, give me a second -- *McCrosky versus Carson Tahoe Regional Medical Center*. It's a 2017 case, and it just goes into, And it's reasonable for the patient to assume that the doctor is an agent of the hospital. So this is an agency scenario. And the doctor has apparent authority, can make the hospital vicariously liable for the doctor's action. Whether an ostensible, and I'm reading from my quote on page 4 of my opposition, which is quoting that case:

"Whether an ostensible agency relationship exists is genuinely a question of fact for the jury if the facts showing the existence of agency are disputed or if conflicting inferences can be drawn from the facts."

Which is where we are here.

And then there's a 1996 case, Footnote 3,

1 *Schlotfeldt* -- and I don't know how you pronounce it -- versus
2 *Charter Hospital of Las Vegas*, a 1996 case. This is at the top
3 of page 4, Footnote 3, Whether agency did exist or not is
4 determined -- and cannot -- let's make this real clear:
5 Whether agency did exist cannot be determined as a matter of
6 law, cannot be determined as a matter of law. And we're at a
7 summary judgment hearing. So this is something that the jury
8 needs to decide.

9 So I went over what Medina was, you know, supposedly
10 did, and quoted from her deposition. These were -- WFG gave
11 her documents to purportedly go out and have signed, and these
12 are forms that were given to her, and she didn't have any
13 authority to change any of them.

14 And then the cause of action for inadequate training
15 is derivative of agency.

16 So they're citing the statute about the notary, if
17 the notary is an employee. And again, when I filed the amended
18 complaint, none of this was really that -- strike that, the
19 initial complaint, none of this was really that clear. So now
20 I agree that it doesn't appear that Medina was an employee --
21 or employee relationship with WFG, but she certainly was an
22 agent, principal-agent relationship with WFG, and it cannot be
23 determined as a matter of law. So this has to be a fact for
24 the jury, and it would be invading the province of the jury to
25 make a decision at this point.

1 So do you have any questions, Judge?

2 I think it's been well briefed by both sides.

3 THE COURT: No. I don't have any questions right
4 now, Mr. Childs.

5 Mr. Lancaster, would you like to respond to
6 Mr. Childs, especially his last argument, please.

7 MR. LANCASTER: Yes. Briefly, Your Honor.

8 So the standard related to summary judgment, which we
9 cited in our reply, is that there are no genuine issues as to
10 any material fact, and the movant is entitled to judgment as a
11 matter of law. And a factual dispute is genuine when the
12 evidence is such that a rational trier of fact could return a
13 verdict to the nonmoving party.

14 Mr. Childs is essentially arguing that whenever you
15 assert an agency relationship, it automatically goes to trial.
16 It doesn't matter what the facts say. It's going to trial.
17 Because the Judge can't touch it.

18 We look at the facts in this case. It's clear,
19 absolutely clear that there was no relationship between the two
20 besides this case related to the doctor in the hospital that
21 said that the doctor had apparent authority. There is
22 certainly no apparent authority by Ms. Medina. She wasn't
23 provided the documents. The documents were provided to Simple
24 Signing. Simple Signing then enlisted one of their third-party
25 independent contractors to go and fulfill that.

1 And so certainly we don't believe that there's an
2 agency-principal relationship. They didn't even know -- WFG
3 had no knowledge of Lillian Medina, no communication with
4 Lillian Medina, no control. So the Court goes and identifies
5 what they have to actually show to carry at least their
6 requirement to show that there's a genuine issue of material
7 fact, and they failed to do that.

8 Thank you, Your Honor.

9 THE COURT: Okay. Thank you, Mr. Lancaster.

10 Well, I've reviewed, and, frankly, I agree. I don't
11 believe that there's sufficient, you know, I understand what
12 the standard for a motion for summary judgment is, and I don't
13 believe that there's any evidence that would place Ms. Medina
14 in -- as an agent of WFG. Okay. In this Court's view, she was
15 not an employee of WFG. WFG did not provide training or
16 supervision concerning her notary activities. No
17 employee-employer relationship between WFG and Medina exists.
18 So no liability can attach to WFG.

19 I think Ms. Medina is an independent contractor, and
20 I don't believe that any of the rights or obligations of the
21 employer relationship or even an agency relationship are met.
22 So I -- this Court grants WFG's motion for summary judgment
23 against plaintiff concerning Ms. Medina.

24 All right. Let's move on to the next one.

25 Okay. The next one -- I've numbered them. So the

1 next one --

2 MR. CHILDS: Judge, I apologize. This is Benjamin
3 Childs. Can I just point out one thing before we move on?

4 THE COURT: You can point it out, but I've made my
5 decision.

6 Go ahead, Mr. Childs.

7 MR. CHILDS: If you look at Exhibit 9, interrogatory
8 12, their response to interrogatories, Lillian Medina is an
9 independent notary, slash, signing agent, and WFG has no
10 responsibility to supervise her actions. They're saying she's
11 an agent. Those are their words, signing agent. It's the very
12 last -- it's the very last page, second, third to last page of
13 my opposition. So they -- they use the word agent, but so I
14 understand you've made your decision. That's one of -- I just
15 want to make that clear on the record. It's obviously in the
16 record. It's, like, attached. So thank you.

17 THE COURT: Mr. Lancaster's?

18 MR. LANCASTER: No. She was a signing agent as a
19 third-party independent contractor. That was her job. That
20 was her title as an independent contractor of Simple Signings.
21 WFG --

22 THE COURT: I agree with that. And I think it's
23 substance over form. And I don't believe that that agent, that
24 name there or that word where Mr. Childs is, you know,
25 directing us has to do with the agency relationship, the

1 classic agency relationship that is the subject of this first
2 motion for summary judgment. So this is granted.

3 And let's go on to the second one, please. This is
4 WFG's Motion for Summary Judgment Against Defendant Precision
5 Assets.

6 Let's keep going.

7 MR. CHILDS: Can there be some Rule 54 --

8 THE COURT: Mr. Childs, you're not going to be able
9 to just scream things out. I know that this is informal, and I
10 have to answer the phone every few minutes because we have
11 homicides out there. But the truth is -- for the search
12 warrants. But the truth is you can't just start screaming in
13 the middle of court.

14 MR. CHILDS: No, I'm asking if there could be some
15 Rule 54 certification. Because this is the only --

16 THE COURT: Let's take this as -- let's take this as
17 we go. Let's go to the second one. The second one is WFG's
18 Motion for Summary Judgment Against Defendant Precision Assets.

19 Go on, Mr. Lancaster.

20 MR. LANCASTER: Yes. Thank you, Your Honor.

21 So Precision Assets asserts nine different causes of
22 action, and they fall into two categories. The first category
23 is related to title and escrow claims. The second category is
24 related to title insurance defense claims. And so I'll handle
25 those separately to try and make it a little bit easier to

1 swallow.

2 So related to title and escrow claims, as previously
3 stated, WFG was the escrow agent, title agent on behalf of
4 Precision Assets and Bursey as escrow parties related to the 59
5 Sacramento and 50 Sacramento properties.

6 Throughout that handling of escrows, there was
7 constant communications. There's no doubt that these were
8 relatively quick transactions in the scope of what the industry
9 standard is. They were -- they were not quick transactions
10 related to a buy and sell and flip scenario. So one thing to
11 keep in mind throughout this is that Precision Assets is a
12 sophisticated buyer. They buy properties. They sell
13 properties. They flip properties. They do over a hundred of
14 these types of transactions a year. So they are certainly
15 experienced in the arena.

16 Related to what WFG's responsibility is to both
17 Bursey and Precision as parties to an escrow is Nevada law is
18 clear is that escrow instructions control the parties' rights
19 in defined escrow agent's duties. So that's the general idea
20 and the general rule related to what those obligations and
21 roles are.

22 There's a limited duty that Nevada courts have also
23 identified. And that's a duty to disclose facts concerning
24 actual fraud of which the agent is actually aware. And so I
25 want to break that a little bit down in that that duty is met

1 when the escrow agent discloses those facts. They don't have
2 any obligation to provide legal analysis of it or business
3 analysis related to those facts. Their duty and their
4 obligation is purely to disclose, and that's what they've done
5 in this case. And one additional point that Nevada law has
6 held is that there's no duty to investigate to discover facts.

7 And so throughout the process of the escrow
8 transaction, Precision Assets identifies what they couch as red
9 flags. And these are related to Dattala being the immediate
10 owner of the property prior to Bursey. And if this Court
11 remembers, this is a transaction where Bursey sold the
12 properties to Precision. So Bursey's acquired the properties
13 from Dattala, and then Bursey turned around, sold them on to
14 Precision. And so that red flag was disclosed to Precision
15 Assets. They were fully aware that Dattala was on title. They
16 provided him with a preliminary title report showing that he
17 was the title owner of the property. Certainly they can't say
18 that they were not disclosed of that information or the facts.

19 Additionally, on the 50 Sacramento property, there
20 was a deed of trust that was between Dattala and Bursey. That
21 was identified in the preliminary title report. It was also
22 identified that there would have to be a release of that deed
23 of trust, which happened prior to or outside of escrow. WFG
24 didn't have any involvement in that deed of trust, and
25 Precision was aware of the deed of trust because it identified

1 it on the preliminary title report. And that preliminary title
2 report was reviewed, and it was signed by Precision.

3 The deed to Bursey from Dattala related to the
4 59 Sacramento, happened immediately before the closing of the
5 59 Sacramento transaction and escrow; however, Precision was
6 fully aware of that recording. There's e-mail exchanges that
7 we identified that we provided that shows that Precision was
8 aware of this deed from Dattala to Bursey prior to the closing
9 of the 59 Sacramento.

10 And then the affidavits grantor and Precision
11 identifies these in their opposition as red flags. Well, there
12 was an affidavit of grantor related to the 50 Sacramento
13 property; however -- and that's the one that Precision says WFG
14 e-mailed it to Bursey, and then Bursey had it notarized and
15 signed by Dattala. And they said that that was not proper.
16 However, nobody is disputing that Dattala signed that. So no
17 one is disputing the factual issues related to that affidavit
18 of grantor.

19 The 59 Sacramento affidavit of grantor is the one
20 that we just discussed with Lillian Medina. This is one where
21 WFG retained independent third-party Simple Signings to have
22 that affidavit of grantor executed and notarized. And they
23 were not aware of any issues related to that affidavit of
24 grantor until after the closing of this 59 Sacramento property.

25 Additionally, those affidavits of grantor, like I

1 previously stated, they don't affect title. And Precision
2 testified that they don't review affidavits of grantor. If you
3 look at the actual language in the affidavits of grantor, it
4 says that,

5 The undersigned makes this declaration for
6 the purpose of inducing WFG to issue policies of
7 title insurance knowing that WFG will be issuing
8 such policies of title insurance in reliance
9 upon the truth and accuracy of the statement in
10 this declaration.

11 This is the document that WFG has signed to try to
12 provide additional assurances to them that when they issue
13 title insurance policies and coverage, then they are going to
14 be protected or at least that the title is properly
15 transferred.

16 Obviously there's issues related to that, but that's
17 WFG's internal document. It has nothing to do with the
18 transfer of title. Precision testified they don't rely upon
19 them. They don't review these. So it's certainly not a red
20 flag that would amount to any type of negligence on behalf of
21 WFG.

22 And all of the different items that WFG -- or sorry,
23 that Precision Assets identifies as red flags, they had
24 knowledge of. They either had knowledge of, or they are not
25 red flags at all. And so we believe that there's not any

1 issues related to the handling of those -- of the escrow
2 transactions.

3 And so would the Court like me to move on to the
4 title insurance defense claim or just handle those --

5 THE COURT: No. We're going through this right now
6 so I --

7 MR. LANCASTER: Okay.

8 THE COURT: -- from counsel, please. Thank you.

9 MR. LANCASTER: Yes. So I'll continue with the title
10 insurance defense claims.

11 So the paramount issue related to the title insurance
12 defense claims is the relationship between WFG and the counsel
13 that it retains on behalf of the insureds. In this case,
14 Dattala originally asserted its first cause of action -- or
15 first complaint, and it did not identify WFG. WFG, under the
16 terms of the title policy retained Wolfe & Wyman to act as
17 counsel for Precision Assets related to the Dattala claims.

18 Subsequently, Dattala asserted his First Amended
19 Complaint naming WFG, and we've just gone through those causes
20 of action.

21 At that point, Precision reached out and requested
22 that it be provided an opportunity to have its own independent
23 counsel of its own choosing retained.

24 Well, Nevada law is very clear on this issue as to
25 when a title insurance or an insurer is required to provide

1 independent counsel. And the first step that they have to meet
2 is there has to be a conflict of interest between the parties.
3 And if you look at this case, the interests of WFG and
4 Precision Assets are directly aligned. They are disputing
5 Dattala's claims related to title. If Precision Assets defeats
6 plaintiff's claims, WFG will have completely defended the title
7 pursuant to the title policies.

8 The actual causes of action asserted by Dattala
9 against WFG have nothing to do with title. We just identified
10 that. There were the original claims of quiet title and
11 declaratory relief were agreed by the parties that they were
12 not asserted against WFG.

13 And the additional issue related to a conflict is
14 related to if there's a coverage issue, meaning that the Courts
15 will look at and say does the outcome of the litigation also
16 effect coverage under the claims, and that's not the case here
17 at all. The outcome of the case against WFG would have no
18 issue related to -- or have any effect on the coverage and the
19 title claims under that policy. So WFG couldn't influence the
20 litigation to result in an actual coverage issue that WFG
21 wouldn't be responsible for.

22 That's not the facts of the case, and that's what the
23 *Hansen* Court in -- the Nevada Supreme Court in *Hansen*
24 identifies. They state that we further conclude that an
25 insurer is only, only obligated to provide independent counsel

1 when the insured's and the insurer's legal interests actually
2 conflicts. So that's certainly not the case here. They don't
3 conflict. They're actually in alignment.

4 If you look -- let me identify -- the *Hansen* Court
5 goes on to identify joint representation is permissible as long
6 as any conflict remains speculative; and for independent
7 counsel to be required, the conflict of interest must be
8 significant, not merely theoretical, actual, not merely
9 potential.

10 So here we certainly believe that not only is there
11 no conflict between WFG and Precision Assets related to
12 Dattala's claims, but they're in alignment because if Precision
13 Asset is successful in its defense of the title policy, then
14 WFG has met its title obligations under the title policies.

15 Thank you, Your Honor.

16 THE COURT: Okay. Counsel, Mr. Benedict.

17 MR. BENEDICT: Good morning, yes.

18 THE COURT: Good morning.

19 MR. BENEDICT: Good morning, Your Honor. John
20 Benedict, 5581, on behalf of Precision Assets as
21 cross-claimant.

22 Your Honor, I take great solace in the fact that the
23 Court reads everything thoroughly. I've had that experience
24 with you. So I'm certainly not going to just restate my
25 briefs.

1 But I think I have read them thoroughly in
2 preparation for this hearing, and I think they clearly -- the
3 brief clearly raises a myriad of questions of fact on both the
4 title and escrow handling as well as the claims handling. That
5 is supported by evidence, admissions from Jenine Santos, who is
6 the claims -- strike that, the title officer on this matter,
7 the escrow officer rather, and by Dawn Weller, from their
8 deposition.

9 So we have a myriad of questions of facts addressing
10 the title and escrow first. We supported our motion not only
11 with that evidence, not only with internal communications from
12 within WFG, not only with Ms. Santos's own testimony, but with
13 the expert's opinion of (video interference) was 40 years
14 (video interference).

15 What counsel asked the Court to determine as a matter
16 of law is that, one, the only thing that matters is the
17 insurance contract. That's the title policy, and that's wrong
18 as a matter of law. And, two, there are no questions of fact
19 that everything that they did here was proper and that no
20 reasonable jury could conclude otherwise. That is also untrue.

21 Mr. Blecker (phonetic) points out, and we attached
22 his opinion and I've highlighted some of his conclusions in the
23 brief at page 9 and 10 of the briefs in point after point from
24 him, but there are a number of things that they did wrong in
25 the claims handling. Let me be specific.

1 Mr. Lancaster raises really two points to ask you to
2 determine as a matter of law that there can be no causes of
3 action left for Precision Assets on the claims handling -- or
4 strike that, on the title and escrow; however, one of those
5 points is just blatantly not true, and that is that the
6 affidavit of grantor has no impact on the title.

7 Ms. Santos, and I quote her in her deposition on
8 page 62, line 2 through 25, says specifically, Title will not
9 close or insure the property without the affidavit of grantor.

10 So, Your Honor, what's missing here, and I hope I
11 articulated it well enough in the moving papers, it is this --
12 our affirmative claims for mishandling the title and escrow are
13 based on the contract we bargained for. Yes, Precision Assets
14 is a sophisticated buyer. There's no doubt. We've never
15 disputed that. It's smart enough to bargain for a third party
16 escrow holder and title insurance to ensure that this kind of
17 thing doesn't happen in its number of transactions.

18 What the moving papers try to do is turn Precision
19 Assets into its own insurer and its own escrow handlers saying,
20 well, we gave you this stuff, so you should have figured it
21 out. Well, there's two problems with that.

22 One, the contract says they're going to meet all
23 conditions precedent to provide -- to provide Precision Assets
24 with clear title. They clearly didn't do that here given the
25 number of alleged forgeries and problems with the handling,

1 number one.

2 Number two, the contract also says that they will
3 act, you know, as a neutral party on behalf of both parties.
4 It was never disclosed to Precision Assets that the way that
5 WFG was going about clearing title before they insure title to
6 us was to then fill in the affidavit of grantor after the fact.
7 Let me repeat that.

8 That document which Ms. Santos testified is required
9 before they're able to close escrow was purportedly signed and
10 notarized by Mr. Dattala, but she filled it in. And the reason
11 that WF -- that Precision Assets, one of the reasons that
12 Precision Assets is sued and is not -- and is alleged not to be
13 a bona fide purchaser is because that document cannot be true.
14 It was allegedly notarized on April the 7th for a transaction
15 that didn't occur until April the 8th. And that's an
16 impossibility.

17 So Ms. Santos admitted in her deposition that she was
18 the one that filled that in. So that in and of itself is
19 enough to raise questions of facts to the jury for mishandling
20 of title and escrow.

21 Secondly, and along that same lines, Ms. Santos was
22 forthright in her testimony that she sent the buyer -- strike
23 that. She sent the seller, who had monetary gain, who would
24 gain monetarily, Mr. Bursey, out with the documents to get
25 notarized. So she both had him get the notary, record the

1 documents and then accepted them.

2 The reason for an affidavit of grantor is because
3 it's an uninsured deed in the title. And my client has a right
4 to rely upon its contract upon the WFG's statutory duties,
5 which they're ignoring; statutory duties for an escrow officer
6 and a title officer, and both their internal policies and their
7 common law obligations as are set forth in Mr. Blecker's report
8 and in our summary judgment. My client is entitled to rely
9 upon that in signing off at closing on clear -- on what has
10 been represented to be clear title. And when that title is not
11 clear and my client is forced to go through what's now two and
12 a half years of litigation with its property tied up, WFG is
13 responsible for all that proximately flows from that. And
14 those damages have been documents exchanged in discovery and
15 will be presented at trial.

16 Mr. Lancaster refers to a preliminary title report.
17 Think about that in context. I know the Court is experienced
18 with real estate transactions. Preliminary title reports come
19 because that is what the snapshot of the title is at that time,
20 and it is title and escrow's job to get that title cleared.

21 So for Mr. Lancaster to point to an April 8th or
22 before April 8th -- excuse me, an April 8th preliminary
23 title report for a transaction that closed on the 15th and to
24 identify in his reply a number of exceptions to title, that it
25 was incumbent upon WFG to legally and properly clear before

1 closing, and to say, ha, ha, got you, we gave you all that
2 stuff that went with that preliminary title report, and
3 therefore, you can't sue us; that is just dead wrong, Your
4 Honor.

5 It defeats a third-party title and escrow company.
6 It defeats the contract. It defeats the obligations under
7 Nevada law, under the NRS. It defeats the common law
8 obligations of proper handling because it is the title and
9 escrow company's obligation to clear those things before
10 issuing clear title. And if there is something that comes up
11 and it cannot clear those things, as Mr. Blecker points out, it
12 is -- and its contract states, it is its absolute duty to
13 inquire of the parties if they're willing to go forward with
14 the transaction given the known facts.

15 I disagree vehemently with Mr. Lancaster that there
16 was ongoing and constant communications here. There were not.
17 Ms. Santos testified unequivocally that she never contacted,
18 never was in contact with anyone at Precision Assets for
19 purposes of any of these issues.

20 So what we have is a property on April 8th and a
21 two-week escrow that is in the name of John Dattala. There is
22 nothing unusual or untoward about that.

23 In the course of the next week before closing, WFG is
24 charged with the legal obligation to clear title in a
25 nonnegligent manner, without accepting forged documents, poor

1 recordings and marking up after the fact an affidavit of
2 grantor. And when it doesn't do that, it is not only a breach
3 of contract, it is negligence, and the causes of actions raise
4 a myriad of facts supported by admissions from the WFG,
5 supported by the law and supported by the expert opinion of
6 Mr. Blecker.

7 And I would simply also adjust the Court -- or refer
8 the Court to Mr. Lancaster citing the Mark Properties One and
9 Two cases. He does not cite those in full. His limited
10 position is that one must be -- that the escrow agent must be
11 fully aware of the fraud before it has any duty to obligate.
12 And he goes on to say, well, there's no duty to investigate. I
13 have two rebuttal points on that.

14 First, the escrow agent cannot create the
15 circumstance of fraud, which Ms. Santos did here by allowing
16 the buyer who has an interest in the transaction to go out and
17 procure all the documents that were going to be needed to clear
18 title. She did that. She admitted that she did that. There's
19 no disputed fact that she did that.

20 Secondly, the case says, and I'm going to try to pull
21 up the language, the case says,

22 That an escrow agent may not close its eyes
23 in the face of known facts, known facts, and
24 console itself with the thought that no one has
25 yet confessed fraud. Although not required to

1 investigate when the agent is aware of facts and
2 circumstances that a reasonable escrow agent
3 would perceive as, quote, evidence of fraud,
4 then there is then a duty to disclose.

5 So I want to be clear. Ms. Santos created the
6 situation by negligently having Mr. Bursey, who stood to make
7 money from this transaction, be the one to get the documents
8 signed, notarized and recorded. She enabled that fraud. She
9 knew of those facts, she alone, and she never disclosed them to
10 Precision Assets. That enough, I believe, will ultimately
11 carry our burden at trial, but certainly, respectfully, is
12 enough to surpass summary judgment.

13 If there's no questions on that portion, Your Honor,
14 I'll turn to the claims handling.

15 THE COURT: Okay. That's good. Thank you,
16 Mr. Benedict.

17 Go ahead, Counsel.

18 MR. BENEDICT: No, wait, yeah, so I would like to
19 address the claims handling --

20 THE COURT: Okay. Very good.

21 MR. BENEDICT: Thank you.

22 So the second part of Mr. Lancaster's argument is
23 that there are no questions of fact related to the claims
24 handling. And that too ignores both the facts, the expert
25 opinion, the admissions and the law.

1 So we've supported our opposition with admissions
2 from the deposition of Dawn Weller, who is their third-party
3 designee as the person most knowledgeable who also is the first
4 party claims handler. So she has the direct knowledge of the
5 information here. And we quoted her extensively in our --
6 excuse me, in our opposition.

7 Secondly, we supported the opposition with the
8 conclusions of a very esteemed expert, especially in our local
9 community, Professor Jeffrey Stempel, who went into great
10 detail about all of the conflicts of interest that existed that
11 triggered a right under *Hansen* to independent counsel. And
12 those have not been rebutted. Certainly, and I don't want to
13 mislead the Court, WFG has submitted a counter-expert opinion;
14 however, that just highlights the fact that at a minimum there
15 are questions of fact.

16 And thirdly, the timing sequence I think is
17 important, Your Honor, and Mr. Lancaster just kind of glossed
18 over it.

19 So there was the original complaint, and then very
20 quickly, so that was May 7th, from memory, of '19, and very
21 quickly thereafter certainly by July, Mr. Childs had filed a
22 first amended complaint which named WFG. And right from the
23 get go, WFG was named for negligence per se, poor claims
24 handling as the agent of the notaries were employees or agents,
25 et cetera.

1 And so I acknowledge that today the Court has ruled
2 that they weren't, but the Court has the benefit of two years
3 of discovery and, you know, briefed out motions for summary
4 judgment. But in July of and August of 2019, it was clear that
5 if the allegations were true against WFG, there was a conflict
6 of interests. And therefore, because the allegations were made
7 and its interests could be put ahead of its insured, there was
8 an obligation under *Hansen -- State Farm/Hansen* to provide for
9 independent counsel.

10 We did not ask for independent counsel upon the
11 filing of the complaint. We did not ask for independent
12 counsel until after the depositions of the notaries, which in
13 the context were still alleged to be the agents of WFG where as
14 we quoted its own lawyer said that Ms. Medina had handled the
15 notary responsibilities improperly and that there was going to
16 be issues that arose from that. And at that point, it was
17 clear that there was a conflict of interest, that WFG had an
18 incentive to protect its own interests over its insureds.

19 And Mr. Lancaster can say that those interests are
20 aligned all he wants, but I would like to draw a fine point for
21 the Court on this.

22 My client is in the business of selling homes
23 quickly. It does not hold harmless for what's going on 30
24 months. Ms. Weller testified she knew full well that my client
25 was in the flipping business, and she knew full well, and my

1 clients, and we cited the evidence repeatedly told WFG that
2 they were being injured by the fact that this case was going
3 on, and they couldn't because of the lis pendens sell either 50
4 or 59 Sacramento. That's undisputed. WFG was fully aware.

5 WFG took the position that, well, however long it
6 takes, our only duty is to clear title, and we're going to do
7 that. And we were saying all along, no, you're damaging us.
8 And so beginning in November of '19 and into the first part of
9 2020, not only did we communicate that we were being damaged
10 and that we needed -- Precision needed its own counsel, which
11 would have been me, who I've represented them for over 10
12 years.

13 We also asked that various causes of action be
14 brought on its behalf, and Precision was ignored. And then
15 worse, WFG brought causes of actions back against Dattala and
16 ultimately Bursey, that it thought benefited it while ignoring
17 the causes of action that would have benefited Precision
18 Assets, another direct conflict.

19 And then finally, we attached my May of 2020 letter,
20 which I think, Your Honor, respectfully, is as unequivocal as
21 possible to point out there is a direct conflict; there has
22 been a direct conflict; and quoting *State Farm* that we are
23 entitled to -- that Precision is entitled to counsel of its
24 choice at its -- at the insurance company's cost and that
25 that's what the law says and so forth.

1 So to say, well, on the one hand well, you know,
2 *State Farm* doesn't really apply to us in the title business is
3 incorrect. And to say there has to be an unequivocal direct
4 conflict of interest is also incorrect. Mr. -- Professor
5 Stempel gives a number of examples supporting that and says,
6 look, that conflict was so direct it was not proper for that
7 joint law firm to go on to continue to represent both WFG and
8 Precision for as long as it did. So you have a breach there,
9 and you have a breach by not presenting counsel, by not paying
10 for and allowing for independent counsel.

11 And, Your Honor, at a minimum, we believe very
12 strongly that these arguments and the law are going to carry
13 the day at trial.

14 But at a minimum, on both the title and escrow
15 handling as well as the claims handling, we respectfully submit
16 that there are a number of questions of fact, as I've just
17 highlighted some in my argument, but are more detailed and
18 supported by evidence and admissions in the oppositions of
19 summary judgment.

20 Thank you. And I'll be happy to answer any questions
21 the Court has.

22 THE COURT: Okay. I don't have any questions right
23 now, Mr. Benedict.

24 Mr. Lancaster, please.

25 MR. LANCASTER: Yes. Thank you, Your Honor.

1 I wanted to go back and address the issues related to
2 the affidavit of grantor. And what opposing counsel fails to
3 clearly identify is that there are two, two different
4 affidavits of grantor. One of those is a document that was
5 sent to Bursey, which I identified that, that nobody is
6 disputing any issues related to that document. Dattala is not
7 saying he didn't sign it. And so there's no issues related to
8 it. Just because Precision Assets thinks that it's not within
9 the industry standards that WFG sent it to Bursey to have this
10 document executed, well, the document was executed, and there's
11 no issues regarding whether it was properly done so. And so
12 there's no damages or issues related to that affidavit.

13 The other affidavit related to 59 Sacramento and
14 Lillian Medina, the WFG inserted recording information into
15 that document.

16 And step back again, remember, Precision Assets
17 testified that it doesn't review and it doesn't rely upon these
18 documents. When I say that these affidavits don't affect
19 title, there's nothing that transfers upon the execution of
20 these documents. As I read what the actual document says,
21 these are for the benefit of WFG.

22 What counsel tries to confuse the Court with is
23 related to what title insurance is. And it's not to say you're
24 going to get a perfect title every time. No. The policy and
25 title insurance is to protect against losses for defects in the

1 title. And so that's exactly what happened here is that there
2 was a claim made on the title policy. WFG accepted that
3 without -- didn't do a reservation of rights related to it,
4 accepted that claim and came in and defended Precision related
5 to that policy.

6 Moving on to the preliminary title report. Opposing
7 counsel tries to just wash away what this is. This is a
8 document that clearly identified what the prior -- or what the
9 current situation was, and that's what Precision is arguing
10 that it wasn't aware of. It's saying that, well, we didn't
11 know that Dattala was out there. We didn't know that there was
12 this deed of trust that was recorded between Bursey and
13 Dattala. All of that was clearly identified in that document.

14 Precision identified -- or didn't identify, excuse
15 me, that they executed documents saying that they had reviewed
16 related to utility bills and water bills that had Dattala's
17 name on it. So they certainly were aware that Dattala was a
18 party in this case.

19 And you don't hear opposing counsel identify any
20 facts that we didn't already address because there are not red
21 flagged issues that they didn't know. And what they try to say
22 is well, we may have known it, but you should have done more.
23 Well, that's not what Nevada law says. We've got to remember
24 exactly what the obligation and the duty of the title insurance
25 company is, and it's that limited duty to disclose these facts,

1 and it did that.

2 And now Precision is saying, well, I mean, yeah,
3 we're sophisticated, but are we supposed to read these
4 documents? Well, yeah. Are you supposed to make your own
5 independent decision? Yes, if you have questions legally, then
6 the title policies and the escrow documents say we're not your
7 attorneys. Go and find somebody that'll answer these questions
8 if you have them related to these disclosures, but they cannot
9 come back now and say that they weren't disclosed to them, that
10 they weren't aware of them.

11 Opposing counsel talks related to his expert report
12 as though it is fact. It's not. There's rebuttal. Our
13 rebuttal evidence that identifies, you know, the issues related
14 to that expert report, but you can't come in and say, well,
15 these are the issues of fact because our expert says so. No.
16 They have an obligation to come in, identify issues of fact,
17 and we've gone through in our reply to their opposition,
18 addressed each of the factual issues that they state would
19 prevent summary judgment, and we addressed it. We identified
20 that there's not a genuine issue of material fact related to
21 that.

22 And then moving on to the claims handling issues.
23 Counsel admits exactly that when Dattala filed its first
24 amended complaint against WFG, the claims were speculative.
25 They thought that there would be an issue there.

1 But let's look at what *Hansen*, which is Nevada law.
2 Joint representation is permissible as long as any conflict
3 remains speculative. So for independent counsel to be
4 required, the conflicts of interest must be significant. They
5 must not merely be theoretical. They must be actual, not
6 merely potential. That's exactly what he just identified and
7 agreed.

8 Yeah, when they submitted that claim against WFG,
9 those were potential. They were speculative. But the Court
10 has determined here today that they weren't warranted. And so
11 we believe that WFG's interest and Precision Assets' interests
12 were aligned in the fact that they were trying to resolve the
13 litigation, and they were trying to identify clear title. Or
14 if there was not clear title, then the title insurance, the
15 policy, is to be there for the protection of losses due to
16 title.

17 So the whole premise related to Precision Assets'
18 issues is because it is in the business of a quick flip. Well,
19 title insurance policy doesn't qualify and doesn't protect and
20 guarantee you're going to have perfect title. You're going to
21 be able to do a quick flip on this property, and you're going
22 to be able to continue with your business model.

23 What it does say is this is our belief of the policy
24 and the title issues. And if there's losses related to the
25 title, then we have an insurance policy here. But that's what

1 the litigation is about.

2 If Precision Assets is successful in its claims
3 related to Dattala and identifies that there's not any title
4 defects, then Precision doesn't have a loss underneath the
5 title policy.

6 Thank you, Your Honor.

7 THE COURT: Okay. Mr. Lancaster, I'm going to -- no
8 one is calling me, but I need to take just like a three to five
9 minute comfort break. Okay.

10 MR. LANCASTER: Yes, Your Honor.

11 THE COURT: And my team too. Thank you.

12 (Proceedings recessed at 11:26 a.m., until 11:37 a.m.)

13 THE COURT: I've reviewed this several times and then
14 I've heard argument. So with respect to WSG's Motion for
15 Summary Judgment Against Defendant Precision Assets, this Court
16 is going -- this Court denies that.

17 And the reason for that is -- are many. So dividing
18 this in between the title and escrows and then come the claims,
19 I mean, there's a lot of testimony from Ms. Santos, I believe,
20 that there wasn't -- there wasn't enough going on to do -- to
21 conduct a proper escrow. And I'm going to adopt some of
22 Mr. Benedict's information in his opposition, and I think that
23 that absolutely places you over a motion for summary judgment
24 burden where a trier of fact should take a look at that.

25 With respect to the claims, the, you know, the

1 professor -- let me look at my notes -- Professor Stempel,
2 concerning the issue, you know, it appears that a jury could or
3 could not decide, or a trier of fact could or could not decide
4 that there were significant conflicts in the claim handling.
5 One, you know, having the same attorney, I don't -- I think
6 it's for the jury to decide when the conflict --

7 There's just a lot of facts that are in conflict in
8 this motion for summary judgment, and I don't think in good
9 stead that I can decide this as a Court. I think that I would
10 be overstepping my boundaries if I were to make a decision on
11 this except for deny it so that the jury can hear it, okay.

12 So when this order is prepared, you know, well, I
13 would direct each one of you, but I want to make sure that
14 everything is very thorough and detailed, please. All right.
15 And that goes to Mr. Lancaster for WSG's motion for summary
16 judgment against plaintiffs as well.

17 Okay. So and I think that's the reason, and I don't
18 know, I never talked to anyone outside of, being with everyone
19 all together, no ex parte here, but I can see that that's one
20 of the issues that presents possibly defendants their
21 counterclaims.

22 But anyway, there's just too much. There is a
23 significant amount of material issues of fact that are in
24 controversy here, and for that reason this Court denies this
25 motion.

1 All right. Now we're going to go to Number 3. This
2 is how I have them. This is Defendant Counterclaimant
3 Precision Assets motion for summary judgment.

4 MR. BALL: Thank you, Your Honor. Zach Ball
5 representing Precision Assets on that exciting motion.

6 THE COURT: Okay. Go on, Mr. Ball. And I don't know
7 if --

8 MR. BALL: Thank you.

9 THE COURT: Then I have next, just so all of you
10 know, Precision's motion to expunge deed of trust and
11 Precision's motion to expunge lis pendens. And then there's
12 one more.

13 UNIDENTIFIED SPEAKER: I think that's all.

14 THE COURT: I think that's it. Okay. I just wanted
15 to make sure that I have everything.

16 Okay. Please go on, Mr. Ball.

17 MR. BALL: Thank you, Your Honor.

18 By my calculation we've been going for a good amount
19 here. I believe that all the facts have been properly laid
20 out, not only at this time but given the numerous hearings this
21 Court has heard.

22 I'd like to just jump to setting this up for our
23 motion and specifically our motion for summary judgment is
24 requesting that the Court find that Precision Assets has a bona
25 fide purchaser status here. And that's broken into two

1 distinct factors.

2 Precision need show that it purchased the properties
3 for valuable consideration, which it did, 59 and 50 Sacramento
4 Drive; and that it did so without notice of a competing or
5 superior interest (video interference) property.

6 As this Court's aware, it has already heard portions
7 of this argument. It was a January hearing in which the Court
8 specifically ruled as to genuine issues of material fact, not
9 as to the first for valuable consideration, but as to the
10 second, constructive notice, actual knowledge and other
11 factors.

12 Since that time, we've had some changes in the case.
13 Specifically discovery was -- remained -- seven months of
14 discovery was remaining. Discovery is now closed. We've had
15 expert opinions. And really we've had some clarification as to
16 what has happened in the facts.

17 As (video interference), all discovery has come in,
18 and no more discovery can be admitted. We have a real clarity
19 as to what's happened here.

20 And we wagered a guess as to what the opposition
21 would be, and it was so, specifically that Precision Assets
22 should have been aware of certain red flags, that term again
23 today, that should have made it aware and thus dispute its
24 qualification as not being on actual or constructive notice.

25 But if we look at each one of those alleged red flags

1 that plaintiff alleges, none of them are indicative that Bursey
2 was perpetrating a fraud, except in hindsight and with the
3 benefit of additional information.

4 The primary red flag is timing of Precision's
5 purchase of the assignment of contract from a nonparty HCO
6 Residential. This distracts from the status of title. At the
7 time of purchase by Precision, Bursey was the owner of both 50
8 and 59 Sacramento properties. And we'll get into that
9 continuously throughout this argument is that there's a big
10 issue with what was allegedly at issue on preliminary title
11 reports and what happened thereafter when title was clear, and
12 the purchase took place.

13 The assignment of contract agreements are with
14 nonparty HCO Residential. They were not with Bursey or
15 Dattala. That's an additional argument. And with those two
16 arguments, Dattala seeks to infer that Precision should have
17 conducted more research into Dattala's ownership of the
18 property, disregarding the recorded documents, once again, at
19 the time of purchase from Bursey, indicating that title to the
20 50 and 59 Sacramento properties had transferred, albeit
21 recently, from Dattala to Bursey.

22 Dattala references these preliminary title reports
23 containing a reference to 50 Sacramento being vested in Bursey
24 and the preliminary title report for both 50 and 59 Sacramento
25 properties showing sewer and tax records in Dattala's name.

1 Once again, a red herring diversion from the relevant
2 information in the recorded documents.

3 The amendment to the preliminary title report
4 specifically hold the title was proper. It was transferred and
5 was clear at the time of transfer. The outstanding trash and
6 tax liens were disclosed as a component of the preliminary
7 title reports. These were in Dattala's name, admittedly, as a
8 prior owner, but that's not surprising. That's not reason for
9 further investigation by Precision. If that were the case, if
10 these alleged red flags were a true issue, then this would
11 negate bona fide purchaser status not only for my client but
12 for numerous other transactions going forward, and that's
13 simply not the case. These are red herrings, and it should be
14 ignored by the Court.

15 Once again, as a final argument, we hear Precision
16 Assets, LLC, that's not an issue. The Court has already ruled
17 on that. That's an issue still ongoing within the motions in
18 limine that we understand the Court will rule on shortly.

19 And as we look to the opposition, it's unfortunate
20 that Dattala recycles so much of the opposition already filed,
21 but really it gives us the clarity. Precision was a bona fide
22 purchaser. And as we sit back, we can clearly see why.
23 Specifically, the burden of proof rests with the plaintiff to
24 prove good title itself.

25 Moreover, there's a presumption in favor of the

1 record title owner. That's *Breliant versus Preferred Equity*
2 *Corp.*, 112 Nevada at 669. So that is, as we talk burdens, the
3 burden of plaintiff going forward here. Bona fide purchaser of
4 a legal title is not affected by any latent equity founded
5 either on a trust, encumbrance or otherwise of which he has no
6 notice, actual or constructive.

7 Dattala makes no arguments against Precision having
8 paid valuable consideration, deliberately ignoring that
9 analysis. So once again, we come to this realization. All
10 that is at issue are these alleged red flags, which we submit
11 we've adequately explained and set forth.

12 Precision can satisfy notice inquiry by showing they
13 relied on the public records to insure the title of the
14 property was not an issue. And Nevada imparts noticed a
15 property in the grantor grantee index. And that's exactly what
16 they've done here. Clear title was provided at the time of
17 closing, and it was provided to precision. These issues came
18 up later on.

19 We also look towards this alleged argument as to
20 changes in NRS 111.180. Much of the opposition is made of that
21 argument. That argument only applies if there's ambiguity
22 within the statute. The statute is written clear. It is
23 written broad. It does not specifically apply nor can it be
24 isolated to foreclosure sales. And so we submit that the bona
25 fide purchaser statute and the accompanying case law since

1 2000 -- 2013 on specifically allows for a finding of this Court
2 of bona fide purchaser status.

3 Lastly, WSG, it's argued in the opposition that the
4 knowledge of WSG should be imparted to Precision. That's not
5 the case. A title company conducting a title search on behalf
6 of a lender was not the lender's agent and thus its
7 constructive notice could not be imputed to the lender. That's
8 *Huntington versus MILA*, 119 Nevada, 355. Nevada law does not
9 allow any alleged notice that WSG had to be imputed to
10 Precision.

11 With that, Your Honor, we would request that summary
12 judgment be granted.

13 Thank you.

14 THE COURT: Thank you.

15 Mr. Childs.

16 I don't believe we've heard from Mr. Bursey, have we?
17 Mr. Ball, have we heard from --

18 MR. BALL: I have not heard from Mr. Bursey.

19 THE COURT: Okay. I just wanted to double check,
20 okay.

21 All right. Mr. Childs.

22 MR. CHILDS: Along that line, I did try to call him.
23 When was it, John, last week, after the calendar call, just
24 to -- because we brought that up at the calendar call.

25 So I've tried to communicate to him.

1 THE COURT: Thank you for doing that, Mr. Childs. I
2 appreciate it. I really do.

3 MR. CHILDS: Yet, of course, he gets all the -- he
4 gets everything that's filed. So...

5 I came up with a couple more statutes after I
6 submitted my opposition, and I want to just read those into the
7 record. I know they're not in the pleadings, but NRS 11.025 --

8 THE COURT: Wait. Mr. Childs, you want to read
9 something into the record that's not in the pleadings?

10 MR. CHILDS: Yeah.

11 THE COURT: Okay. Well, that's not really how this
12 works. I mean, I don't want to be the other attorney here, but
13 I do have -- I am the person who's the gatekeeper, and if this
14 was not in your pleadings, I don't believe I can entertain it
15 during these motions, Mr. Childs.

16 MR. CHILDS: I disagree with you, but, okay.
17 So on page 17.

18 UNIDENTIFIED SPEAKER: Your Honor, for the --

19 MR. BALL: I apologize. I interrupted.

20 MR. CHILDS: On page 17 of my opposition, I cite to
21 the *U.S. Bank National Association* case that a void sale in
22 contracts with a voidable sale defeats the competing title of
23 even a bona fide purchaser for value. I mean, their big
24 argument is this 11, 111, 180 and just arguing, well, we're a
25 bona fide purchaser. We paid value, but there's a factual

1 question of whether they had actual knowledge, and I don't
2 believe they did. So that's not my argument, constructive
3 knowledge of or reasonable cause to know there exists a defect
4 in or adverse rights title or interest to the real property --
5 to the real property. So any -- none of those happened that
6 they're a bona fide purchaser.

7 And they say why is it being recycled? I can't
8 change the facts. The facts are what they are, and I cited all
9 of these notices that they had. And then my client is
10 essentially the victim of a criminal act, and I think it's
11 undisputed at this point that Mr. Bursey took a document that
12 he signed for a different reason, and this is what Bonita
13 Spencer testified to on -- my client signed some documents on
14 April 5th, 2019, that were not the documents that were
15 recorded.

16 And simply saying, well, we didn't have any notice of
17 that because they're in the public record, it's a void sale.
18 The sale is void. How much more void can you get than the
19 actual forged documents that are in the public -- that are
20 recorded. So it's void, and so that's defeats the competing
21 title of a bona fide purchaser for value.

22 And I don't have a countermotion for summary judgment
23 or declaratory relief. So talking about my burden, the
24 plaintiff doesn't have a burden. I'm opposing. All I have to
25 do is come up with facts or a finding that all facts taken in

1 light of all inferences in favor of the nonmoving party, which
2 is my client, that there's a factual dispute, and I can't
3 believe that we're still arguing about whether there's a
4 factual dispute or not. There is a factual dispute, and I can
5 go through them again, and I probably should.

6 The property was occupied by a tenant.
7 (Indiscernible) assignment of a purchase contract, and there
8 was reasonable -- the counter movant. The movant in this case
9 was on notice of all facts that are inspection of the property.
10 So and I have pictures that I've attached that were provided by
11 Precision about what it looked like when they moved in.
12 Stuffed with my client's personal property. And then he had no
13 idea that this had been sold. He goes over there. Hey, what's
14 going on. Yeah, this is my house now get your stuff out of the
15 dumpster. And I've attached my client's affidavit, which
16 clearly sets that -- sets that forth.

17 Let's see here.

18 And again, I've [video interference] all of these red
19 flags, and I'm saying that these are -- it's not a red herring.
20 These are creating factual issues that need to be addressed by
21 the jury. This is not ripe for summary judgment.

22 If you look at the -- Mr. Benedict talked about this.
23 This is a problem where they have an affidavit without an
24 attachment of grantor dated April 7th for a transaction that
25 took place on April 8th, and there's no document attached to

1 it. That's a problem.

2 And again, this is why they have title -- this is why
3 they have title insurance. I mean, my client was unaware of
4 any of this. So this is a quick sale from HCO, Bursey to HCO,
5 and then they assigned it. And they paid \$95,000 for it. They
6 paid Bursey \$95,000. HCO got 15,000. This is dated April
7 1st, and they sold it on April 12th, eleven days before the
8 assignment. And it discusses the tenants residing in the
9 property. And again, all these red flags with these -- the
10 sewer bill was in my client's name. The property bill is in my
11 client's name. There's a tenant, and we get into the deed to
12 Precision Assets, LLC, which is a separate issue, and then all
13 these things are assigned to a different company than the
14 current plaintiff.

15 The preliminary title report had the property vested
16 in Eustachius Bursey on March 19th when his deed wasn't even
17 recorded until April 8th. This is the deed that Bonita
18 Spencer, who is the notary, testified was not the document that
19 she notarized, the document that was recorded. So clear fraud,
20 which is why this U.S. Bank 2019 case is so important because a
21 void sale defeats even a bona fide purchaser for value. And
22 we're at the summary judgment stage. I mean, obviously that's
23 a question of fact.

24 So let's see here.

25 Bursey was not the title owner when he signed -- when

1 he gave the assignment to Precision on 50 Sacramento on April
2 1st. The deed was recorded after that. And then the tax,
3 again, that's for 50 Sacramento. Now, for 59 Sacramento, my
4 client's name is on the property tax records and same issue
5 with the assignment from HCO, and the personal property being
6 in the property. So nobody is contacting my client.

7 And amazingly, Santos -- Jenine Santos takes the
8 position that, well, we never heard from Dattala. Well, how
9 would they know to hear from Dattala. What did they -- what
10 did they do to contact Dattala to notify him? I don't know
11 what the whole conspiratorial thing was, but obviously they
12 don't want to notify Dattala either because then he would say,
13 well, what are you talking about? I did not agree to sell this
14 property. I haven't been paid yet. He did agree to sell it,
15 but he hadn't been paid.

16 And then Bursey obtained a fraudulent reconveyance
17 and a fraudulent deed to 50 Sacramento, which we're going to
18 address this deed of trust in the next motion, but -- and then
19 recorded it without -- without of course not notifying Dattala.
20 He's the victim of the fraud.

21 Now, I don't know why they're blowing him off. This
22 is a sophisticated purchaser. I think I attached the affidavit
23 or the deposition transcript of Mr. Siegel (phonetic), that
24 they buy and sell 600 properties a year -- or 300 properties a
25 year, 600 in two years. They don't get a seller -- a real

1 property seller disclosure form. That's required by statute.
2 Why didn't they get that from Bursey. That's another red flag
3 that there's something not kosher here.

4 So the law is clear that a void sale defeats a
5 summary -- a bona fide purchaser. And the reason I went into
6 that legislative history is because the statute was changed
7 based on the foreclosure statute or the foreclosure crisis in
8 2008. And I have it right there in the assembly committee
9 notes that this is the reason why we're changing the bona fide
10 purchaser statute. I mean, that's why it was changed. It had
11 been the same statute since 1960, and there hasn't been one
12 case on it. So it seems to be very clear that when there's
13 fraud in the chain of title, the thief doesn't convey good
14 title, and so the person that receives the title doesn't have
15 good title, and that's what the quiet-title action is about.

16 I also rebutted their arguments about this *Shadow*
17 *Wood Homeowners Association*. That was before the revision of
18 the statute, and it's very narrow, and it doesn't favor the
19 bona fide purchaser statute of the defendant. And I'm looking
20 at page 4 of my opposition. It's simply that a Court can grant
21 equitable relief from a defective homeowners association lien.
22 And this is one of the cases that led to the modification of
23 the NRS 111.180. So they're relying on a case that was decided
24 on the previous statute, and the statute was changed
25 essentially for that based on that case.

1 The other problem they have is, as far as quiet title
2 issues go, they don't have any admissible evidence of their
3 vesting deed. They filed their own motion in limine to exclude
4 their vesting deed. They don't have any -- they don't have any
5 admissible evidence that they're the owner. And I address -- I
6 addressed that.

7 This is their own motion in limine to not -- to
8 exclude evidence of anything to do that says Precision Assets,
9 LLC, which is their vesting deed. So my client is the only one
10 that has any evidence of ownership. And again, the deed to
11 Bursey is not going to be admissible because that's a
12 fraudulent document, and he doesn't have the original.

13 So I can't believe that we're even arguing about
14 whether there's a genuine issue of material fact. There's all
15 kinds of issues of material fact that the jury needs to make
16 findings, and then this is a blended case. And then the Court
17 will issue decisions based on the findings of the jury, but
18 there are all kinds of disputed facts, and I've -- I beat a
19 dead horse trying to set forth all of the facts, and the
20 special verdict form is obviously going to be kind of an
21 interesting thing to craft, but they're going -- the jury is
22 going to have to make findings about all of these issues.

23 And then for Precision to come in and just say
24 there's a bona fide purchaser statute, is not appropriate. If
25 you look at NRS 111.175, and I'm looking at page 16 of my

1 opposition, conveyances made to default prior or subsequent
2 purchasers are void. I mean, that's what happened here. There
3 is a conveyance made to defraud by Bursey. I got that.
4 They're not the ones that did it, but this statute is clear.
5 Conveyances made to defraud prior or subsequent purchasers,
6 which Precision was a subsequent purchaser from Bursey, are
7 void. And then this U.S. Bank case, which is a 2019 case, says
8 that a void sale defeats competing title of even a bona fide
9 purchaser for value.

10 So the statute is clear, and the case applies --
11 that's applying the statute is clear, and so, obviously,
12 they're not -- their bona fide purchaser is not going to stand
13 up legally in Nevada anyway.

14 And so do you have any questions, Judge? Because I
15 think I have really set forth why we have to have a trial.

16 THE COURT: Just give me a moment, Mr. Childs. Let
17 me write this --

18 MR. CHILDS: Sure.

19 THE COURT: Okay. Mr. Ball.

20 MR. BENEDICT: Your Honor. I'm sorry to interrupt.
21 This is John Benedict.

22 THE COURT: Yes.

23 MR. BENEDICT: I filed a joinder in this motion on
24 behalf of Acry.

25 THE COURT: Yes.

1 MR. BENEDICT: May I have a quick moment to
2 respond --

3 THE COURT: Yes.

4 MR. BENEDICT: -- Court. And then Mr. Ball can take
5 it?

6 THE COURT: Yes. Absolutely. Thank you. Thank you
7 for the reminder, Counsel.

8 MR. BENEDICT: Okay. I'll be brief.

9 Mr. Childs's argument was made in August of 2019 and
10 then again in January of 2021, I believe. And with the whole
11 thing of, well, you denied the summary judgments at that time
12 on the basis. Well, discovery could lead us into a location.
13 A location could be either -- it could be fraud and conspiracy.

14 If you look at the complaints, it's alleged on a
15 conspiratorial basis that Precision was in the midst of it.
16 But the truth of the matter is the evidence shows, by admission
17 from Mr. Dattala and admission from Mr. Bursey that neither of
18 them ever communicated with anyone from Precision Assets,
19 period. Neither of them ever communicated with anyone from
20 Acry Development, who is an investor along with Precision in
21 the 50 Sacramento property.

22 So there is no connection whatsoever, no direct path,
23 no information, no communication, not a single e-mail, not a
24 single document connecting Mr. Dattala and Mr. Bursey to either
25 Precision or Acry. So there is no -- Mr. Childs concedes that

1 there's no actual knowledge. There's no constructive knowledge
2 of anything under the bona fide purchaser statute because there
3 can't be because the documents were recorded showing in time
4 for closing that Mr. Bursey was the owner, et cetera. So that
5 leaves reasonable cause to know something.

6 And in August of 2019, when there were all these what
7 turned out to be baseless allegations made --

8 THE COURT: Excuse me, Mr. Benedict. Mr. Benedict,
9 this is Judge Escobar. I'd like you to start that argument
10 again. I think I missed a couple of sentences. So you
11 discussed about not having actual knowledge.

12 MR. BENEDICT: Yes. Okay. Fair enough.

13 So Mr. Childs concedes in his argument and in his
14 papers that there's no actual knowledge of any problem or
15 anything of record to Precision Assets and by analogy or
16 through Precision Assets to Acry Development. That's the first
17 prong of the BFP statute.

18 The second prong of the BFP statute deals with
19 constructive knowledge. And there's no constructive knowledge
20 to anything to Precision Assets because there's nothing of
21 record that would've put a reasonable party on notice of a
22 problem. All that was on record was proper transfer deeds,
23 reconveyances and so forth that now they're asserting are
24 frauds or misstated documents or whatever, but were in the
25 public record, and that gives the person constructive notice.

1 Constructive notice for the bona fide purchaser
2 statute is something of record, that a buyer didn't know about.
3 That defeats the BFP, not something that was of record that
4 looks proper and then someone alleges after the fact is
5 improper.

6 So that leaves simply the reasonable -- did Precision
7 or Acry have reasonable cause to know that there was a problem?
8 And that's where what Mr. Ball focused on is extremely
9 important, that the knowledge of what WSG had or knew is not
10 imputed to Precision Assets or to Acry. And the admissions
11 from Mr. Dattala in his deposition and from Mr. Bursey in his
12 deposition is they never had any communications whatsoever with
13 either Precision or with Acry. There was never an e-mail,
14 never a conversation, never anything. So all of those
15 allegations about, you know, conspiracy and so forth turned out
16 to be from two years ago, flatly untrue. And so what the --
17 the big white elephant in the room for Mr. Childs's argument is
18 Mr. Bursey.

19 Mr. Childs would like the Court's sympathy to say,
20 well, gosh, I'm left as a victim. I'm left without a remedy.
21 But that ignores the fact that the perpetrator here, if it
22 turns out that what Mr. Dattala says is true, turns out to be
23 true is Mr. Bursey.

24 And what do we know about that? We know that the
25 Court has already granted one judgment on behalf of Mr. Bursey,

1 and there's vehicles by which Mr. Dattala can amend that
2 judgment or prove up or whatever he wants to prove up as to
3 these two properties for his damages. So he's not left without
4 a remedy.

5 What he did is he chose to do business with the wrong
6 person. It's two and a half years later. He hasn't raised a
7 single question of fact that ties Precision Assets or Acry to
8 that transaction at all. That sophisticated buyer and its
9 investor went to title and escrow to avoid this very thing.
10 Title and escrow gave a title policy, not ever putting
11 Precision or Acry on notice that there was any issue. There's
12 no link. There's no imputing what WFG knew to Precision or
13 Acry. And therefore all of the stuff, all of the purported red
14 flags were to be cleared at title.

15 All the things that Mr. Childs points to (video
16 interference) Mr. Ball appropriately says are standard
17 operating procedure. Yes, the tax bill was in Dattala's name
18 preclosing until -- until it got updated after that transfer.
19 The sewer bill, same thing. Those are very common things, and
20 Mr. Siegel testified in his deposition that none of that raised
21 him any kind of concern, both because it was how things worked
22 in the various transactions he had been involved in, and he had
23 title in escrow to clear all those things.

24 So when you stand it on his head, it's a different
25 case (video interference) discovery here, you know, potentially

1 two weeks away from trial, Judge, as to what they don't have.

2 What they don't have is any connection or any
3 imputation or actual knowledge to Precision Assets or to Acry,
4 which would defeat the bona fide purchaser.

5 Thank you for allowing me to speak.

6 MR. BALL: Thank you, Your Honor.

7 You know, I appreciate Mr. Benedict's comments. I
8 join in them.

9 You know, in addition, I want to talk about and go
10 through those points made by plaintiff's counsel.

11 It was first pointed out that these facts are what
12 they are, and that's, once again, exactly where we're at.

13 Discovery is closed. We have a finite amount --

14 THE COURT: Forgive me.

15 MR. BALL: -- amount of facts, and I think this Court
16 is --

17 THE COURT: Mr. Ball, this is Judge Escobar. I am so
18 sorry. Will you please start your argument again, and I --

19 MR. BALL: That's no problem.

20 THE COURT: I'm sorry. Thank you.

21 MR. BALL: No problem, Your Honor.

22 Just once again I want to join in those comments made
23 by Mr. Benedict. I appreciate those. I know he detailed that
24 and other comments in the joinder he filed.

25 I want to rebut and go through those comments made by

1 plaintiff's counsel. They're specifically in the order that
2 they were presented.

3 We heard that the facts are what they are, and that's
4 exactly where we're at today. As I mentioned, we have a finite
5 amount of facts, and the Court's in very good position to have
6 rulings that it's already made today on the summary judgment
7 case ending motions. The purpose of that really is just that.
8 We're at the end of this. We believe the Court can dispose of
9 this, the claims we've set forth by granting our motion.

10 And more importantly, I think we can look at it in
11 hindsight and see that all of us, I don't think there's a
12 single attorney or client that can look at the actions of
13 Mr. Bursey and feel good about those. But that's really where
14 that liability ends. That's not Precision. As was pointed out
15 by Mr. Benedict, there was not a conspiracy that was
16 promulgated between these parties. Precision's adjudications
17 with these two buyer and seller parties has been nothing, not
18 only minimal, but nothing, and they qualify for that bona fide
19 purchaser statute.

20 More importantly, the case law that I pointed out, at
21 some point plaintiff must prove good title. This is the time.
22 They're at the end of their case. There are motions filed that
23 could end the case for plaintiff, and we submit that the good
24 skills of Mr. Childs, those should have come out, and the only
25 thing I can think of is that they just don't exist and that

1 we're at this crossroads where the opposition does not
2 adequately oppose the motion, and the motion should be granted.

3 I want to talk about this voided sale language.
4 That's correct. I agree with the case law cited in the
5 opposition; however, the facts are different here.

6 If you go through the Second Amended Complaint
7 allegation by allegation, you'll see that the forgery portions
8 are not (indiscernible) from the transfer of the title. We can
9 go through them now, but I submit to you that the Second
10 Amended Complaint, upon close review, forgery is not as to
11 operative documents transferring title. We heard about the
12 affidavit of grantor. We've heard about related documents, but
13 we did not hear about the transfer of title.

14 And as Mr. Childs pointed out, plaintiff agreed to
15 sell this property. There was a dispute. There were money
16 issues, but those issues go to Mr. Bursey. They don't go to
17 Precision. This is a money issue case.

18 Moreover, we heard some real vague claims that they
19 do affect title. We don't see those though, and that's a very
20 important distinction here.

21 As to, you know, the title insurance, you know,
22 that's simply a, once again a red herring. You know, we've
23 seen a lot of that. This is a red herring that simply should
24 not be paid attention to. The Court is well aware of how the
25 policy works after today's argument.

1 And really the merits of the case, the merits of
2 Precision Assets defense carry the day, and we submit and
3 request humbly that the motion be granted.

4 And if there's any questions, we can answer those.
5 Thank you, Your Honor.

6 THE COURT: I'll be with you in just a moment,
7 Counsel.

8 (Pause in the proceedings.)

9 THE COURT: All right. I just want you to know that
10 I -- this is Judge Escobar. We can go back on the record.

11 This is a very difficult case for me because, you
12 know, I feel that it's just -- the outcome is difficult. I
13 have to be fair. That's an oath I took. So my thoughts are
14 this. Okay.

15 First of all, this was not purchased by way of a quit
16 claim deed; right? I mean, we've already heard that Precision
17 and also or, you know, whatever the relationship with Acry is
18 that they went through the title company WSG National Title.
19 The record, you know, the record statute is very important in
20 not just Nevada but in California and other places.

21 There was nothing there that I've seen that would
22 indicate -- so we'll start with it. Okay. There's nothing
23 there to indicate that somebody else owned this property when
24 they purchased it, when Precision purchased it. I think it's
25 very, very difficult because, you know, I find that,

1 Mr. Bursey, and it appears from everything that I've read and
2 everything that I've heard throughout, I don't know, has it
3 been several years now? It's a June '19 case. We've had
4 significant motion practice on this.

5 It sounds like Mr. Bursey was supposed to purchase
6 this on behalf of Mr. Dattala, or they had some sort of
7 understanding. And Mr. Bursey obviously didn't follow through.
8 He hasn't even made it to court. Okay. So regrettably, I
9 don't have him in this case. But I do agree that, you know --
10 I can't give legal advice, but I do agree that there may be a
11 way for Mr. Dattala, since Mr. Ball brought that up or
12 Mr. Benedict brought that up, I'm just stating something that
13 the lawyer said. Okay. He may have some recourse there.

14 But I don't see where any actual knowledge would have
15 occurred. And I've also thought about the utility issue. All
16 right. Just because someone is paying utilities, that doesn't
17 mean its knowledge of another owner. It really isn't. I have
18 a place in Delmar right now that's leased, and the tenant pays
19 for all the utilities and everything else. So. And that
20 doesn't -- that's not the type of notice that you would need in
21 order to take you out of a bona fide purchaser status in this
22 Court's opinion. I don't see where the actual knowledge comes
23 from. I don't think that payment of utilities or whatever it
24 was that was discussed would charge anyone with constructive
25 knowledge. There's no record.

1 There's nothing recorded for actual knowledge. I
2 don't see how they would know -- why they would have
3 construction knowledge -- forgive me, constructive knowledge,
4 nor would -- why would they -- what tells us if there was
5 reasonable cause for them to know there was a problem? I just
6 don't see those facts anywhere in these pleadings. And I think
7 that it may be because of the situation or the relationship
8 with Mr. Bursey. I think that's what it may be.

9 But I don't believe that I should, you know, even if
10 somebody else is paying the water, the electricity, the gas,
11 whatever, it's not enough. And this was not a quit claim deed
12 sale. This was, you know, a sale that went through exactly
13 what you're supposed to go through when you purchase property.
14 Even if you are a sophisticated buyer or not; right? Either
15 way.

16 I don't see with respect to actual knowledge,
17 constructive knowledge or reasonable cause to know that there
18 was a problem that anyone, whether they were a sophisticated or
19 not at the time of the sale would reach any of those three that
20 would take you out of bona fide purchaser. I just don't see
21 it.

22 And to let this go on to trial over something that I
23 haven't seen evidence. And, you know, sometimes is very
24 difficult for me to make a decision, not because I don't know
25 what the decision should be. Sometimes I have to be honest

1 with you. The consequences I'm not fond of. I feel very badly
2 for Mr. Dattala and the situation with Mr. Bursey. But I still
3 have to follow the law, and before me, and I think Mr. Childs
4 has done a very good job. But I think that the problem lies
5 elsewhere.

6 So I'm going -- let me just make sure I say this the
7 right way -- grant Precision Assets and -- is it Acry's motion
8 for summary judgment? I don't --

9 MR. CHILDS: (Indiscernible.)

10 THE COURT: I'm sorry?

11 MR. CHILDS: This is Ben Childs.

12 It was just Precision Assets's motion. Acry joined.

13 THE COURT: Okay. So I am -- thank you, for
14 correcting that, Mr. Childs.

15 Then I grant -- I'm going to grant, for the reason
16 that I've indicated, I mean, I'm just glossing it, but I could
17 tell you that I've read so much in this case, and my sense is
18 that it's a shame that this is the result. Okay. And that
19 doesn't mean that I have anything against your client,
20 Mr. Ball. Please don't take that personally, but I feel very
21 badly for Mr. Dattala. Maybe as a Judge I shouldn't, but I do.
22 I'm not going to pretend.

23 And but it sounds, legally, if I follow the -- you
24 know, I have to use -- I have to use my legal mind here, and I
25 don't think there's enough here to take this to -- with respect

1 to these things, you know, to take -- to allow that part to go
2 on because there was -- there has been evidence that there was,
3 you know, that Precision purchased it for valuable
4 consideration, and I don't see any evidence that rises to
5 actual constructive or the possibility that a reasonable cause
6 to know that there was a problem. I just don't see it.

7 And, you know, so that's why I'm going to -- that's
8 why I grant this. It boils down to notice, and I just don't
9 see, for the reasons I've just stated, how that would take,
10 even if they're sophisticated, the plaintiffs out of -- forgive
11 me, Precision Assets out of the bona fide purchaser category.
12 I don't see how that would happen with what's in front of me.

13 And also, I also -- I've already granted a motion
14 against Mr. Bursey; correct, or summary judgment?

15 MR. CHILDS: On the one --

16 THE COURT: Mr. Childs --

17 MR. CHILDS: On the one property. That's why I tried
18 to get a default entered, and I address it in my motion in
19 limine.

20 So I would raise an issue about Lillian Medina and
21 Mr. Bursey because they didn't file a pretrial memo. They
22 weren't at calendar call. But no, there's never -- there's
23 nothing with Mr. Bursey about these two -- the two remaining
24 properties.

25 THE COURT: Okay.

1 MR. CHILDS: I have something else. This is Ben
2 Childs.

3 THE COURT: Go ahead, Mr. Childs.

4 MR. CHILDS: I think (video interference) -- in this
5 order.

6 You're going to have to address the NRS 111.175
7 issue, that statute.

8 MR. BALL: We can do so, Your Honor, if the Court --

9 THE COURT: Yeah. Well, yeah. I was going to say
10 I'm not going to start making the arguments now. I need to
11 listen to what --

12 MR. CHILDS: No. I'm saying in the order I think it
13 has to address it.

14 THE COURT: Right. So that's for counsel to address,
15 all counsel, not myself.

16 Mr. Ball.

17 MR. BALL: Agreed, Your Honor. We can do so.

18 THE COURT: Let's see. I think before me today is
19 also expunging the deed of trust and the lis pendens; is that
20 correct?

21 MR. BALL: That's correct, Your Honor.

22 THE COURT: Well, Mr. Childs.

23 MR. CHILDS: (Indiscernible.)

24 THE COURT: I show that -- I'm sure that that was not
25 opposed.

1 MR. CHILDS: Oh, no, I opposed -- I opposed both of
2 those. The lis pendens you pretty much took care of with this
3 decision, but the deed of trust is a totally separate issue.

4 THE COURT: Well, I would -- I do see that it was
5 opposed. And you --

6 MR. CHILDS: I have a countermotion.

7 THE COURT: -- have a countermotion. That's correct.
8 So let's hold that -- let's put those aside right now, and I'd
9 like to hear your countermotion, Mr. Childs.

10 MR. CHILDS: Okay. Give me a second to pull it up.
11 A lot of moving parts here.

12 THE COURT: I understand, believe me. It's okay.

13 And thank you to my team for being so patient.

14 MR. CHILDS: Well, the countermotion is for
15 reformation because we've got an admission by Mr. Dattala. I
16 think even the Court today that my client intended to sell the
17 property to Bursey, and I attached the purchase agreement that
18 Mr. Bursey is the one that drafted the deed of trust itself and
19 recorded it. And so if the intention was --

20 So I don't even know why they brought this up,
21 because they've insured over it, and so apparently it's an
22 admission on their part that this deed of trust is a problem,
23 is an encumbrance. Otherwise they wouldn't be -- it would be a
24 frivolous motion.

25 It is an encumbrance on this piece of property on the

1 title to 50 Sacramento. And the sale was to be by warranty
2 deed or deed of trust, and I attached a copy of the purchase
3 agreement. And so if the deed of trust is an encumbrance on
4 the property, I have a countermotion to reform it, and Bursey
5 hasn't opposed it. It was a transfer.

6 And so it's -- they've acknowledged that it's an
7 active encumbrance, and, if their position is true, that he's
8 entitled to reformation under the *Lattin* case, and I quoted the
9 *Lattin* case. Let me get that up here. *L-a-t-t-i-n*, which
10 allows the Court to reform documents if there's a mutual
11 mistake, and it's unrebutted by Mr. Bursey anyway that my
12 client thought it was a sale, and he never got paid.

13 So it should still -- and this was -- the
14 reconveyance was recorded by this activity with Mr. Bursey and
15 the notary Bonita Spencer that testified that the reconveyance
16 that Mr. Bursey recorded on April 8th was not the document
17 that she notarized. So it's a unreconveyed deed of trust
18 that's outstanding. And the title company insured over it.
19 But apparently because of this existing motion, it must be an
20 encumbrance. So if it is an encumbrance, it should be reformed
21 to reflect that it was a sale, and I attached a copy of the
22 purchase agreement as Exhibit 9.

23 And if you look at, I think it's page 3, it's
24 page 4 of the document in the Exhibit 9, but it's missing pages
25 1 and 2. And it says seller to convey title to buyer by

1 warranty, deed or deed of trust. And that's what reformation
2 is. That's why that *Lattin* case specifically says that the
3 Court has authority and shall -- I believe it's mandatory --
4 reform contracts to reflect the intent of the parties, and that
5 was the intent of the parties. It's a 1959 case. It's on
6 page 8 of my opposition. Our courts -- and I'm just going to
7 read from the quote.

8 It is undisputed that our courts will, which is the
9 mandatory, will reform contracts and deed -- and deeds in
10 accordance with the true intention of the parties when their
11 intention has been frustrated by a mistake.

12 And so this was a deed of trust that was recorded,
13 and it was supposed to be a conveyance, and it's clear that the
14 purchase agreement intended it to be a conveyance, and the
15 purchase agreement states that.

16 So I would ask that it be reformed to be a conveyance
17 to Mr. Dattala. That's my counter. That's my countermotion.
18 That's all I have unless you have some questions.

19 THE COURT: I'm sorry. Mr. Childs, so you're
20 saying -- this was your countermotion; right?

21 MR. CHILDS: Yes, ma'am. Yes, ma'am.

22 THE COURT: That the deed of trust, that a deed of
23 trust should be reformed?

24 MR. CHILDS: Yes.

25 THE COURT: All right. Let's see. There's been so

1 many different motions that I -- I think, Counsel, Mr. Ball.

2 MR. BALL: Yes, Your Honor.

3 THE COURT: Do you have something to add?

4 MR. BALL: Yes. I can speak to that.

5 It's concerning --

6 MR. CHILDS: And I object to that because --

7 THE COURT: One second.

8 MR. CHILDS: Was the countermotion objected to? I
9 don't think the -- I don't think the countermotion was opposed.

10 MR. BALL: It was, Your Honor, specifically on
11 page 5 of 7 of our reply, title heading Reformation of the Deed
12 of Trust is Futile.

13 THE COURT: Will you please -- will you please make,
14 for me, a clear record, Mr. Ball.

15 MR. BALL: Yes, Your Honor.

16 This at this point with the Court's ruling it made
17 just a moment ago, it is really just a matter of cleaning up
18 title to the property. There's a deed of trust. It does not
19 have a promissory note.

20 We cited within our motion case law that specifically
21 holds that a deed of trust's purpose is to encumber title to
22 real property as to a debt, as was stated within both the buyer
23 and seller, Dattala and Bursey's deposition and written
24 discovery responses, both testified that there was never a
25 promissory note and thus no debt to be secured.

1 It's very concerning because now we have a document
2 that is a fugitive document on the title of this property that
3 needs to be cleaned up.

4 That was not opposed. That case law was not directly
5 opposed in plaintiff's opposition. And so the concern there
6 has been what's the purpose of the requested changes to that
7 document. And that request, as we just heard, is to not only
8 clean that up, but I believe, and forgive me if I'm misquoting,
9 but the plaintiff seeks the transfer of title. That would
10 go -- and transfer of title back to himself, and that would go
11 directly in opposition to what the Court has already ruled.
12 And it's a convoluting of the record even more so than has
13 already happened.

14 Plaintiff's effort to reform the 2018 deed of trust
15 only underscores that this deed of trust is invalid and should
16 be expunged by this Court's order. And that's what we're
17 requesting, Your Honor.

18 MR. BENEDICT: Your Honor, this is John Benedict.
19 Acry filed a joinder if I may address the Court?

20 THE COURT: I'm sorry. I was muted.

21 Please go on, Mr. Benedict.

22 MR. BENEDICT: Thank you. Again, being brief and
23 just adding to Mr. Ball's argument, which I adopt.

24 What Mr. Childs argues is a backdoor way to get title
25 back to the property or to continue to encumber it. But what

1 he also acknowledges in his argument are twofold.

2 One, this is another issue between Dattala and Bursey
3 for which Dattala has rights and remedies, number one.

4 And Number 2, Mr. Childs acknowledges that there was
5 a reconveyance of this deed of trust. He may believe it's a
6 forgery, but for the same reasons you just granted the summary
7 judgment in favor of Precision Assets and Acry, that
8 reconveyance again would be an issue between Mr. Dattala and
9 Mr. Bursey and not some acknowledgment or admission by any of
10 the other parties -- Precision, Acry, and I don't speak for
11 WSG, but WSG -- that, you know, once a reconveyance was
12 entitled, that trust deed was gone as far as the folks
13 concerned, and it's just an attenuated backdoor effort to undo
14 what the Court just did with the summary judgment motion.

15 And, you know, we joined in Mr. Ball's, you know,
16 arguments that there was no place in the title for that deed of
17 trust. It was improper, and we repeat that here. But even
18 more so given the summary judgment.

19 Thank you.

20 THE COURT: I'll be right with you.

21 All right. You know, I'm sorry. This has just gone
22 so long, but it is -- there's so much to this case. All right.
23 So I'm looking at --

24 Mr. Childs, can you hear me?

25 MR. CHILDS: Yes, I can.

1 THE COURT: Okay. So I'm looking at this, and there
2 is no promissory note attached to this deed of trust; is that
3 correct?

4 MR. CHILDS: Yes. That's why I moved for
5 reformation.

6 THE COURT: Right. But I think that that promissory
7 note would only help you with respect to Mr. Bursey.
8 Mr. Dattala with respect to Mr. Bursey. Mr. Childs.

9 MR. CHILDS: There isn't a promissory note. I
10 acknowledge that. I'm just pointing out I don't even know why
11 they brought it up because they have insured over it. But if
12 they wanted to bring it up and talk about this is still an
13 encumbrance on our title, then it should be a conveyance, which
14 will -- obviously has never been -- has never been dealt with.

15 That's my only point, Judge, is if they're saying
16 that it's still an encumbrance on their title, that it needs to
17 be reformed because the intent was to be a conveyance. That
18 seems to be undisputed or un rebutted anyway. That's my point.
19 So it should be reformed under that *Lattin* case.

20 THE COURT: Mr. Ball.

21 MR. BALL: Your Honor, that is absolutely refuted.
22 You know, this is, again, as Mr. Benedict pointed out, an
23 attempt at the 12th hour, too late at this point in the hearing
24 today, to claim an interest in a property which the Court has
25 already ruled against. It's improper.

1 This would otherwise just be part of an order to
2 expunge that portion of the record, and we submit that, you
3 know, there's just simply no reason to reform the deed of
4 trust. It's not part of the complaint or the Second Amended
5 Complaint as a request for relief and should be denied, and we
6 respectfully request that our motion be granted so that we can
7 have clear title.

8 THE COURT: All right. I'm going to -- I'm going to
9 be consistent in my decision. It looks to me like a -- so if
10 there is a promissory note, and I understand, Mr. Childs, what
11 you are saying, that you want it reformed, but I'm not going to
12 do that because in this Court's view the evidence is the
13 plaintiff is a bona fide purchaser.

14 So I'm going to go ahead and grant and expunge the
15 deed of trust and also the lis pendens. And that's -- for the
16 reasons that I've enunciated and that are in all of the
17 pleadings that are consistent with the plaintiffs, you know,
18 being bona fide purchasers.

19 And this is really, really terrible, that we don't
20 have Mr. Bursey here and that he, you know -- but it is what it
21 is.

22 I am going to go ahead and that's the order.

23 I'd like, Mr. Ball, for you to prepare this, please,
24 and make sure that Mr. Childs and other counsel, Mr. Childs,
25 Mr. Benedict, Mr. Lancaster, have a chance to take a look at

1 everything as to form and substance. And I want it to be
2 extremely detailed.

3 And this afternoon I will begin the motions in
4 limine. Okay?

5 MR. BENEDICT: Your Honor, this is John Benedict.
6 This is John Benedict. Just one point because on this
7 transcript, you know, may end up being reviewed at some point.

8 THE COURT: Right.

9 MR. BENEDICT: I believe in your recitation just a
10 moment ago you misspoke. I'm not really arguing.

11 UNIDENTIFIED SPEAKER: Right.

12 MR. BENEDICT: I'm not really arguing. I think you
13 just misspoke. I think you said the plaintiff was a bona fide
14 purchaser. I believe you said it twice.

15 THE COURT: No. No. No. The defendant is,
16 Precision. You are correct. I said the wrong name. Yes,
17 Precision. Thank you for the correction.

18 MR. BENEDICT: Thank you.

19 THE COURT: Yes. Yes. No, it's the defendant
20 Precision Assets.

21 MR. BENEDICT: Thank you, Judge, and thank you to
22 your staff for working through lunch. We appreciate it.

23 MR. CHILDS: Judge, some of these orders are ripe for
24 a 54(b) certification because it's like -- my plaintiff's claim
25 against WFG is completely over. So I would ask that we have

1 54(b) certification.

2 THE COURT: On what?

3 MR. CHILDS: Well, on for, like, WSG's summary
4 judgment motion against my client, I think that's ripe. And
5 now this summary judgment -- or the summary judgment by
6 Precision because now my client doesn't have any further causes
7 of action against Precision or Acry. So I think that's ripe
8 for 54(b) certification. And every motion that was heard
9 today. It makes sense. I mean --

10 MR. BENEDICT: Your Honor, John Benedict if I may.

11 THE COURT: Yes. Go on, Mr. Benedict.

12 Oh, wait, am I on? Yes, go ahead. You can hear me.

13 MR. BENEDICT: I can hear you.

14 I can't from memory cite chapter and verse, but the
15 54(b) certification was significantly limited, both by rule and
16 Supreme Court decision. And so I'm not asking the Court to
17 prejudge. I'm just asking that the Court review it via a
18 written submitted motion.

19 THE COURT: I would actually -- I was just going to
20 ask you to please, and I can hear it on an order shortening
21 time so that I have enough time to read it and really
22 internalize it. I'm very open to it, but I need to make sure
23 that I have the right law and that everything is correct.
24 Okay. So.

25 MR. CHILDS: It will be --

1 THE COURT: So I would like you to all work together,
2 please, Mr. Ball, Mr. Benedict, Mr. Lancaster and Mr. Childs
3 with respect to the 54(b) certification. And, you know, I am
4 just, you know, as counsel indicated, Mr. Benedict and
5 Mr. Ball, you know, that may be something, I don't know, it can
6 go to the Supreme Court, and they can overturn me if that's
7 necessary. Or it may place you in a better situation with
8 respect to Mr. Dattala, Mr. Childs, or your client as --

9 MR. CHILDS: Yeah, Bursey. It's so confusing.

10 THE COURT: I'm so sorry. Yes.

11 MR. CHILDS: Judge, I know.

12 THE COURT: Bursey, yes.

13 I've been trying to do search warrants at the same
14 time because there's honestly, all of us -- and there's no
15 one -- I mean, everyone is so busy that there's not like -- I
16 was designated a year ago. I was very busy, and I was hearing
17 things. You know I've heard things through the entire
18 pandemic, but right now it's even busier for a civil
19 department. It's interesting.

20 MR. CHILDS: Judge, my question is I don't mind
21 filing a motion for a 54(b) certification, but I don't want to
22 wait until there's written orders. I mean, I can file it this
23 afternoon or tomorrow.

24 THE COURT: I would -- right. Take a look at the
25 rule. I will too, and then I'd like you to meet with Mr. Ball

1 and Mr. Lancaster and Mr. Benedict. If you can give Mr. Childs
2 a few minutes so you can all talk about this, please and maybe
3 it will save us some time. Okay.

4 MR. CHILDS: Okay.

5 THE COURT: All right. Thank you. Have a great day.

6 MR. CHILDS: Thank you for your time, Judge. That's
7 extremely --

8 MR. BALL: Thank you, Your Honor.

9 MR. CHILDS: -- draining.

10 (Proceedings concluded at 12:51 p.m.)

11 -oOo-

12 ATTEST: I do hereby certify that I have truly and correctly
13 transcribed the audio/video proceedings in the above-entitled
14 case to the best of my ability.

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17 Dana L. Williams
18 Transcriber
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<p>MR. BALL: [20] 3/14 6/15 43/4 43/8 43/17 48/18 49/19 61/6 61/15 61/19 61/21 69/8 69/17 69/21 73/2 73/4 73/10 73/15 76/21 81/8</p> <p>MR. BENEDICT: [21] 3/22 6/18 25/17 25/19 32/18 32/21 56/20 56/23 57/1 57/4 57/8 58/12 74/18 74/22 78/5 78/9 78/12 78/18 78/21 79/10 79/13</p> <p>MR. CHILDS: [45] 3/7 3/11 5/22 5/25 6/5 12/14 12/19 17/2 17/7 18/7 18/14 48/22 49/3 49/10 49/16 49/20 56/18 67/9 67/11 68/15 68/17 69/1 69/4 69/12 69/23 70/1 70/6 70/10 70/14 72/21 72/24 73/6 73/8 75/25 76/4 76/9 78/23 79/3 79/25 80/9 80/11 80/20 81/4 81/6 81/9</p> <p>MR. 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Petitioner's Appendix

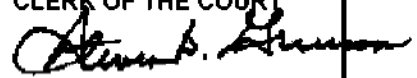
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Dattala Writ

Petitioner's Appendix



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JOHN DATTALA,
Plaintiff,

vs.

EUSTACHIUS BURSEY,
Defendant.

AND RELATED PARTIES

CASE NO. A-19-794335-C
DEPT NO. XIV

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 16, 2021

**DEFENDANT ACRY DEVELOPMENT LLC'S JOINDER TO
DEFENDANT/COUNTERCLAIMANT PRECISION ASSETS OPPOSITION TO
PLAINTIFF'S MOTION FOR RECONSIDERATION**

ALL PENDING MOTIONS

APPEARANCES:

FOR JOHN DATTALA: BENJAMIN B. CHILDS, ESQ.

FOR PRECISION ASSETS: ZACHARY T. BALL, ESQ.

FOR WFG NATIONAL TITLE: AARON D. LANCASTER, ESQ.

RECORDED BY: STACEY RAY, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, NOVEMBER 16, 2021, 10:23 A.M.**

2 * * * * *

3 THE COURT: All right. This is John Dattala versus
4 Eustachius Bursey.

5 I believe Mr. Childs is here on behalf of Mr. Dattala
6 with Mr. Dattala; is that correct?

7 MR. CHILDS: Yes. That's correct.

8 THE COURT: Good morning.

9 MR. CHILDS: Good morning.

10 THE COURT: Okay. And I believe Mr. Ball is here on
11 behalf of Precision Assets; is that correct? Good morning,
12 Mr. Ball.

13 MR. BALL: Yes. Good morning.

14 THE COURT: Okay. Do I have anyone else?

15 MR. LANCASTER: Yeah, Aaron Lancaster on behalf of
16 WFG National Title.

17 THE COURT: Okay. Good morning, Mr. Lancaster.

18 All right. This is plaintiff Dattala's motion for
19 reconsideration. I've reviewed this thoroughly.

20 I'll let you make a record, Mr. Childs.

21 And actually, just for the record, on today's
22 calendar is page, 6, 7, 11 and 12. Because I also have -- I
23 don't know how you pronounce it -- Acry Development, LLC,'s
24 joinder to defendant and counterclaimant Precision Assets
25 opposition to plaintiff's motion for reconsideration.

1 So, Mr. Childs, go ahead.

2 MR. CHILDS: Okay. It's a real simple concept, Your
3 Honor.

4 THE COURT: I know -- I know, Mr. Childs. Go on.

5 MR. CHILDS: I hold in my left hand --

6 THE COURT: Yes.

7 MR. CHILDS: -- a findings of fact, conclusions of
8 law and judgment against Eustachius Bursey and Lillian Medina
9 in favor of John Dattala, which was filed on October 15th,
10 2021. The notice of entry of order was served on October 15,
11 2021.

12 THE COURT: Yes, I remember last month spending the
13 day in court with you.

14 MR. CHILDS: Yeah. So this is --

15 THE COURT: And you're --

16 Yes. Go on.

17 MR. CHILDS: This is a final --

18 THE COURT: (Video interference) had to do with
19 Mr. Bursey and Ms. Medina; correct?

20 MR. CHILDS: Yeah. There were filings in here that
21 the trial -- only Mr. Dattala participated. Everybody had
22 notice of it. Everybody was there on the day of the trial.
23 They left. Mr. Ball wasn't there, but he certainly had notice
24 of it.

25 But if I could complete my --

1 THE COURT: Yes. Go on. Go on.

2 MR. CHILDS: So this is a final appealable order, and
3 the timing is fortuitous because the appeal time ran out
4 yesterday, 30 days from October 15th, 2021. It was actually
5 on Saturday or Sunday, 31 days in October. So I waited until
6 midnight yesterday. This has not been appealed. So final
7 appealable order with findings that has not been appealed.

8 In my right hand is a written order that was entered
9 on -- that's the basis of this motion for reconsideration.
10 That's an interim order. That cannot be appealed yet. It can
11 be modified or changed at any time based on new findings, new
12 facts. So in the appealable order, which has not been
13 appealed -- so it's final now; these facts are final -- there
14 are specific factual findings about the title to this case now.
15 It has to do with two pieces of property. One is
16 50 Sacramento, and one is 59 Sacramento, Las Vegas, Nevada. I
17 think it's 89110. So these facts are now set forth in a final
18 appealable order, which is not been appealed. So these are
19 final.

20 And the facts essentially -- I could go through and
21 read them. I attached, I highlighted the findings of fact that
22 have been entered, and the sum total is that Mr. Bursey
23 obtained his title, his deed from Mr. Dattala by fraud. So
24 that deed to Mr. Bursey from Mr. Dattala is void. And so the
25 findings are based not only on the fact that Bursey has not

1 denied them, and I'm reading from the filed findings of fact,
2 conclusions of law now on page 2. These are now established
3 facts based not only on the fact that Bursey has not denied
4 them but also based on the sworn testimony of Dattala to the
5 Court on October 13th and the documentary exhibits admitted
6 into evidence on October 13th.

7 Again, everybody had notice of this trial. So they
8 can't be arguing later that there's any due process issue.
9 Because they choose not to participate, that's on them.

10 So just going through on page 4, it goes into the
11 representations that were made to obtain by Bursey the
12 documents that he recorded affecting the title to 50 Sacramento
13 and 59 Sacramento. And at the time he made those
14 representations, and I'm reading from page 4 of the finding of
15 fact, conclusions of law that was filed on October 15th,
16 2021. Bursey made those representations to induce Dattala to
17 enter into sales agreements for the 59 Sacramento property.
18 Bursey's representations on March 19th, 2019, and March 27th,
19 2019, that Bursey needed to fix the 50 Sacramento property so
20 he could bring it up to code, and that they had this child on
21 the way in September were false.

22 When he made those representations, Bursey notes
23 those representations were false, and Bursey made his
24 representations to induce Dattala to enter into sales
25 agreements for the 59 Sacramento property. Bursey did not

1 intend to purchase the 59 Sacramento property for \$220,000. At
2 the time he presented Dattala with what was purported to be a
3 \$10,000 earnest money deposit on April 19, 2019.

4 Bursey knew that he did not intend to purchase the
5 59 Sacramento property for \$220,000 at the time he presented
6 Dattala with a deed of trust.

7 THE COURT: Mr. Childs.

8 MR. CHILDS: Yeah?

9 THE COURT: I'm going to stop you there because I
10 know what my order says.

11 MR. CHILDS: Okay. So that's all in the record.

12 THE COURT: I've got quite a few other cases. I
13 don't want to be disrespectful, but I need to make sure that we
14 don't have people waiting all day, and I'm quite aware of the
15 order.

16 So if you would please go on.

17 MR. CHILDS: Okay. So that's all in the record.

18 THE COURT: Yes.

19 MR. CHILDS: It's undisputed that these are facts
20 now, appealable that have not been appealed. They're final
21 facts.

22 So contrast that to the interim order. There's at
23 least a question of, which precludes summary judgment because
24 this interim order is a summary judgment order. So based on
25 the findings that are final, Dattala can file his own summary

1 judgment order now, and perhaps he will.

2 Anyway, going into the law.

3 THE COURT: That's not why we're here today, are we,
4 Mr. Childs?

5 MR. CHILDS: No. No. I'm just --

6 THE COURT: Okay. Let's go on --

7 (Indiscernible -- simultaneous speech) --

8 MR. CHILDS: -- summary judgment order cannot stand.

9 THE COURT: Mr. Childs, I am a very respectful
10 person, but I need to make sure you stay on track, please.

11 MR. CHILDS: Okay.

12 THE COURT: All right. Go on.

13 MR. CHILDS: Yeah, their summary judgment order can't
14 stand. So I quoted the statutes that (indiscernible) void
15 against purchasers are void against their heirs and assigns.
16 It's NRS 111.025.

17 And so every conveyance declared to be void by the
18 provisions of this chapter as against purchasers, which would
19 be Bursey, shall equally be void again as against the heirs,
20 successors and personal representatives and assigns of such
21 person. Which Bursey's person that he sold it to, which is
22 Precision.

23 And then NRS 111.175, which was not addressed in this
24 interim order, even though I brought it up in the opposition
25 and at the hearing, conveyances made to default prior or

1 subsequent purchasers are void. Every conveyance of an estate
2 or an interest in land and every (video interference) charge
3 upon land made and created with the intent to defraud prior to
4 or subsequent purchasers for a valuable consideration of the
5 same lands as against such purchasers shall be void. So
6 Dattala's transfer to Bursey is void. It's right in this final
7 findings.

8 And then also, again, back on the summary judgment
9 order, because this is a motion to reconsider, certificates of
10 acknowledgment and record may be rebutted. Neither the
11 certificate of acknowledgment nor the proof of conveyance shall
12 be conclusive, but the same may be rebutted.

13 So my client now has facts that are final that rebut
14 the facts upon which this interim order is based. So that's
15 just the reason why the interim order needs to be set aside.

16 Now, the opposition filed by Mr. Ball is talking
17 about evidence and NRS 52.125, certified copies of public
18 records, which is this final order, your own order, is
19 admissible. So new evidence, and it's not inadmissible because
20 it's hearsay because it's a public record.

21 So records of documents affecting interest in
22 property are admissible, and this is again the final order. I
23 keep holding up the final order for the record. The final
24 order that was filed October 15th, 2021.

25 So what Precision did -- so I patiently waited (video

1 interference) 30 day appeal period, which entered yesterday at
2 midnight.

3 THE COURT: Okay.

4 MR. CHILDS: Because under Rule 62.

5 THE COURT: Mr. Childs, we've already discussed that.
6 Please move on. I am not trying to --

7 MR. CHILDS: No --

8 THE COURT: -- you did discuss your waiting and so
9 forth. I'd like you to please continue.

10 MR. CHILDS: Well, under Rule 62, you can't execute
11 any judgment for 30 days after notice of written order. They
12 did it. They went and recorded theirs on October 25th. It's
13 not even a final order. So at this point we have a final
14 appealable order which has not been appealed which contains
15 facts which preclude the summary judgment which was issued at
16 the hearing, and the time escapes me when the hearing was.

17 So their summary judgment cannot stand at this point.

18 THE COURT: Okay. Thank you.

19 Mr. Ball.

20 MR. BALL: Thank you, Your Honor. I'll be brief.

21 You know, this is, in fact, an order that dealt with
22 defendants, not Precision Assets. And really you can draw a
23 straight line between the Second Amended Complaint, the
24 operative complaint in this matter, the two motions for summary
25 judgment that my client filed in this exact issue and the

1 judgment that came out of that along with the findings of facts
2 and conclusions of law against Bursey and Medina in favor of
3 John Dattala. The issue that we're hearing a lot about today.

4 And in that, nowhere in that does it claim that in
5 the Second Amended Complaint, the various other documents,
6 nowhere in that does it claim that this was nothing more than a
7 financial fraud. In fact, the findings of facts and
8 conclusions of law specifically state the word fraud five times.
9 And you can go through, and if you look at each instance of
10 fraud, in speaking about this, there was an agreement between
11 the parties to allow this property to be sold.

12 There was a disagreement as to the terms of that, and
13 it resulted in what it resulted in, but none of that affects my
14 client. None of it, we submit, is relevant here. The Court
15 has already ruled on that. All of this was in front of the
16 Court prior to this alleged final order -- or I shouldn't say
17 alleged. It is a final order. And the Court still made the
18 decision in favor of my clients as to three motions for summary
19 judgment which -- motions, which turned into our submitted
20 order.

21 Importantly, even the statute itself, there's three
22 statutes mixed in the motion for reconsideration. The second,
23 NRS 111.175 was listed in the opposition to motion for summary
24 judgment. That's really the operative, you know, best argument
25 made in the opposition as to -- or made in the motion for

1 reconsideration. Based on that, you know, we submit that this
2 shouldn't -- this is not new evidence. This is not a clearly
3 erroneous decision, and based upon that, we would request that
4 the Court deny the motion.

5 And just by way of housekeeping, Your Honor,
6 Mr. Benedict did inform -- he reached out to me ahead of the
7 hearing and let me know that he had a family emergency, and he
8 will not be in attendance today.

9 THE COURT: Okay. Thank you for the information. I
10 hope everything is well with his family.

11 All right. Mr. Childs.

12 MR. CHILDS: Your Honor, does Mr. Lancaster want to
13 say something --

14 THE COURT: Oh, I'm sorry. Forgive me.

15 Mr. Lancaster.

16 Thank you.

17 MR. LANCASTER: Thank you, Your Honor. All I do is
18 agree with what Mr. Ball has said on the record and join his
19 oral comments.

20 THE COURT: Okay. Thank you, Mr. Lancaster.

21 Now, Mr. Childs.

22 MR. CHILDS: It's obviously new facts, Judge, because
23 the summary judgment motion was sometime in September. These
24 facts came out on -- or they're final now on October 13th.

25 THE COURT: Why are they new facts, Mr. Childs?

1 MR. CHILDS: Because they certainly preclude summary
2 judgment because they specifically state that Bursey
3 obtained -- when the hearing happened in September, it was just
4 speculation about what was going to happen at the trial. Now,
5 there's an undisputed fact that Bursey obtained his title by
6 fraud. So it's a fact. At the time it was speculation, and
7 you said, well, it's -- you don't have any evidence of it, but
8 now I do. It's a fact. This is an undisputed fact now.
9 That's why it's a new fact.

10 I brought it up at the summary judgment hearing, and
11 it didn't work. You made a finding that -- now, you're finding
12 from the -- let me get the actual date, Judge, September
13 28th, from the September 28th hearing, you made a finding
14 that's directly contradicted by facts now. These are
15 admissible, undisputed unappealed, final facts that were not in
16 existence on September 28th. They were just speculation.

17 THE COURT: All right. I'm just going to take a very
18 quick recess. Excuse me a moment. I'll be right back.

19 (Proceedings recessed at 10:40 a.m., until 10:49 a.m.)

20 THE COURT: Okay. This is Judge Escobar. I'm back.
21 I took a quick recess so that I could try to understand what
22 is -- what Mr. Childs' arguments are. And even though I read
23 them.

24 So here are my thoughts on this, okay. When
25 Mr. Bursey was defaulted by this Court, it was a sanction. It

1 had to do with his not participating in this -- in this case.
2 It was a default judgment. And the motion for summary judgment
3 preempts the motions in limine and whatever it is that was out
4 there.

5 When this Court made a finding of fraud, it was after
6 the motion for summary judgment, and we still have the (video
7 interference) law in Nevada. Before the findings of fraud,
8 this Court found that Precision was a bona fide purchaser, and
9 as far as I know, even with the -- I know it's a different
10 issue, but even with the NRS 116 cases, we still have bona fide
11 purchasers, and that is what I believe Mr.-- Precision to be.

12 Now, I agree with you. I agree with Mr. Childs's
13 arguments that there's fraud, but I believe that the issue, in
14 this Court's view, since you were bringing up the -- you've
15 brought up the chronologically these hearings and so fourth,
16 Mr. Childs, is that your -- your client, Mr. Dattala, has
17 recourse against Mr. Bursey and against Ms. Medina, not
18 Precision Assets. I believe that they were a bona fide
19 purchaser, and I decided that before the prove-up hearing.

20 So I don't believe just from a (video interference)
21 perspective -- these were my notes yesterday when I was
22 studying, we did have a prove-up hearing, and it had to do with
23 Mr. Bursey and Ms. Medina, and Mr. Dattala was there, but it
24 had nothing to do with Precision Assets.

25 And with respect to a motion for reconsideration

1 or -- I don't believe that the plaintiff meets this. I don't
2 believe that this Court -- and believe me, if I believe I was
3 clearly erroneous, I have no ego in this. My hope is to follow
4 the law, and that's because that's the oath I took.

5 One, I don't believe my decision was clearly -- this
6 Court's decision was clearly erroneous.

7 I don't believe there was any intervening change in
8 controlling law or that any of these (indiscernible), and no
9 difference or substantially different evidence has been
10 presented, and I don't believe there's been a change in
11 circumstance, nor is it a manifest injustice because
12 Mr. Dattala has Ms. Medina and Mr. Bursey to look to.

13 So again, Precision asset was found to be a bona fide
14 purchaser, and this Court, after everything I've read, does not
15 believe that Precision Assets had knowledge or notice that
16 plaintiff claimed an interest in either of the two properties
17 it purchased from Mr. Bursey.

18 So for that reason, this Court -- this Court denies
19 plaintiff's motion for reconsideration.

20 Let's see. Mr. Ball, will you -- I'd like you to
21 please prepare an order with the details and the chronology
22 that's discussed.

23 As to form and content, please make sure that
24 Mr. Childs and Mr. Lancaster have an opportunity to take a look
25 at it as to form and content.

1 And also, please submit that in Microsoft Word and
2 PDF format to the Department 14 inbox.

3 And I hope -- I hope that you have a great
4 Thanksgiving. Okay. Have a great day.

5 MR. BALL: Thank you, Your Honor.

6 MR. CHILDS: I wanted to be clear there --

7 MR. LANCASTER: Thank you, Your Honor.

8 THE COURT: Mr. Childs, we're done. We're done.
9 Okay. I mean, you know that this case is done, and I (video
10 interference) -- well, I'm not encouraging it, but whatever, if
11 you think you need to discuss something else, I think I've just
12 made myself clear, and we need to move forward on the other
13 cases.

14 But I hope you do have a great Thanksgiving.

15 MR. CHILDS: You too.

16 THE COURT: Thank you.

17 (Proceedings concluded at 10:54 a.m.)

18 -oOo-

19 ATTEST: I do hereby certify that I have truly and correctly
20 transcribed the audio/video proceedings in the above-entitled
21 case to the best of my ability.

22 
23

24 Dana L. Williams
25 Transcriber

MR. BALL: [3] 2/13
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MR. CHILDS: [25]

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THE COURT: [31]

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