

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA;

Petitioner,

vs.

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 LLC, and
ACRY DEVELOPMENT LLC and
LILLIAN MEDINA and WFG
NATIONAL TITLE INSURANCE
COMPANY and BONITA SPENCER,

Real Parties In Interest.

Supreme Court No. 83939
District Court No. A-19-794335-C
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Elizabeth A. Brown
Clerk of Supreme Court

**PRECISION ASSETS'
OPPOSITION TO MOTION TO
STAY**

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Precision Assets (as Defendant, Counterclaimant and Crossclaimant against Eustachius Bursey hereinafter referred to as "Precision"), by and through its counsel of record, Zachary T. Ball of THE BALL LAW GROUP, LLC, hereby files its Opposition to Petitioner John Dattala's ("Dattala") Motion to Stay ("Motion").

A. INTRODUCTION

The Motion should be denied as Dattala misconstrues an adverse finding with bias and prejudice to avoid addressing the deficiencies both procedurally and equitably. Dattala failed to move the District Court for the requested relief pursuant to NRAP 8(a), contending that the District Court failed "to consider that the findings in the FFCL of forged and fraudulently obtain[ed] deeds do to create either

a genuine issue of material [fact] barring summary judgement.” *See* Motion p. 7. While Dattala contends that the District Court is “biased” against him, he fails to address the multiple grounds for relief set forth by Precision, as well as the reasoning of the other defendants. Precision established its status as a *bona fide purchaser* (“BFP”) through exhaustive pleadings and analysis substantiating its position. For all of these reasons, Plaintiff’s Motion should be denied.

B. STATEMENT OF THE LAW

NRAP 8(a) and NRAP 8(c) provides in pertinent part as follows:

(a) Motion for Stay.

(1) **Initial Motion in the District Court.** A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring or granting an injunction while an appeal or original writ petition is pending.

(2) **Motion in the Court; Conditions on Relief.** A motion for the relief mentioned in Rule 8(a)(1) may be made to the Supreme Court or the Court of Appeals or to one of its justices or judges.

(A) The motion shall:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion shall also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(D) The moving party must give reasonable notice of the motion to all parties.

(E) In an exceptional case in which time constraints make consideration by a panel impracticable, the motion may be considered by a single justice or judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

...

(c) **Stays in Civil Cases Not Involving Child Custody.** In deciding whether to issue a stay or injunction, the Supreme Court or Court of Appeals will generally consider the following factors:

(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied;

(2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied;

(3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and

(4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Because the District Court is more familiar with the facts of the case, a request for relief under NRAP 8 should first be made to the District Court. *See Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005), as modified (Jan. 25, 2006).

The factors considered for an injunction during an appeal are different than those required for the granting of an injunction under NRCP 65 and NRS 33.010.

The NRAP 8 factors to be considered by the Court are:

(1) whether the object of the appeal will be defeated if the injunction is denied;

(2) whether the appellant will suffer irreparable or serious injury if the injunction is denied;

(3) whether respondent will suffer irreparable or serious injury if the injunction is granted; and

1 (4) whether appellant is likely to prevail on the merits of the appeal.

2 NRAP 8(c); *Mikohn Gaming Corp. V. McCrea*, 120 Nev. 248, 251 (2004). The
3 factors are not equally weighted: “if one or two factors are especially strong, they
4 by counterbalance other weak factors. *Id.*

5 Furthermore, pursuant to NRCP 62(d)(1), a supersedes bond is required for a
6 matter on appeal, whether the claim is brought before the District Court or the
7 appellate court; “[i]f an appeal is taken, the appellant may obtain a stay by
8 supersedeas bond, except in an action described in Rule 62(a)(2). The bond may
9 be given upon or after filing the notice of appeal or after obtaining the order
10 allowing the appeal. The stay is effective when the supersedeas bond is filed.”

11 **C. ARGUMENT**

12 **1. Dattala’s Claim Of Impracticability Has No Factual Or Legal Basis,**
13 **Fails To Articulate Any Bias Of The District Court And Should Be**
14 **Denied In Favor Of Following NRAP 8(a)(2)(B).**

15 Dattala provides no basis for his claim of “impracticability” other than a prior
16 contrary ruling. By definition, every appellant will have a prior, contrary, ruling
17 against them, such that Dattala’s apparent understanding of “impracticability”
18 would make the requirements of NRAP 8 moot. Dattala present no basis for his
19 “inapplicability” argument beyond the adverse decision which Dattala now appeals,
20 and no supporting case law justifying completely foregoing the requirements of
21 NRAP 8(a)(2)(B).

22 Further, Dattala fails to set forth any support or evidence of any judicial bias,
23 other than the adverse ruling. Dattala does not cite to any prior interlocutory rulings
24 or even testimony evidencing a bias at the trial court level. Nor does Dattala set
25 forth an indirect evidence of bias. This could include prior involvement or hostility
26 against him or in favor of Precision.

27 As set forth by the trial court docket, and as made apparent in the record on
28

1 appeal, Precision's position was clearly set forth for the District Court's
2 consideration. While Dattala fails to present more than a cursory analysis of the
3 underlying issue or the process by which the appealed order came about, what
4 analysis Dattala presents is either premised upon inapplicable case law or
5 distortions of the record, while wholly avoiding any analysis of Precision's status
6 as a BFP.

7 **2. The Motion's Cited Case Law Does Not Support Dattala's Request**
8 **To Void The District Court's Determination That Precision Is A**
9 **Bona Fide Purchaser.**

10 First, Dattala seeks to rely upon various homeowner association foreclosure
11 sales, premised upon *Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp.*
12 *Inc.*, 132 Nev. 49, 366 P.3d 1105 (2016) ("*Shadow Wood*") and its progeny for the
13 position that the underlying sale to Precision by Bursey should be found void. *See*
14 Motion pp. 5-6. *Shadow Wood*, as quoted by Dattala, notes that "a bona fide
15 purchaser of a legal title is not affected by any latent equity." *See* Motion p. 5. The
16 District Court specifically found that Precision was a BFP as to both the 50
17 Sacramento and 59 Sacramento properties. *See* p. 1277 of Petitioner's Appendix.

18 To the extent that the holding was limited by *Bank of Am., N.A. v. SFR Invs.*
19 *Pool 1, Ltd. Liab. Co.*, 134 Nev. 604, 427 P.3d 113 (2018), as Dattala notes, the
20 Court reversed the judgment, finding that SFR's status a BFP was irrelevant in
21 light of the voidness of the underlying sale. While Dattala contends that the sale in
22 this matter was void due to an alleged forgery, Dattala's arguments are premised
23 upon a series of assumptions that are unsupported by the record to date.

24 **3. As Dattala Agreed To The Sale Of Sacramento And 59 Sacramento**
25 **Properties, Any Further Dispute Is Monetary And Has No Effect**
26 **On Precision's Bona Fide Purchaser Status.**

27 The Motion claims that Bursey obtained ownership by fraud and forgery. *See*
28 Motion, p. 2, ll. 25-26. However, by his own admission, Dattala did intend to sell

1 both properties. *See* Petitioner’s Appendix, page 1013. Indeed, the alleged “fraud
2 and forgery” that took place for transfer of only one property, 50 Sacramento, was
3 allegedly a switching of a signature page from a Warranty Deed to a Quitclaim
4 Deed. *See* Petitioner’s Appendix, pp. 1035-1036. Both transfer title and it is that
5 transfer of title that Dattala agreed to. *See* Petitioner’s Appendix, page 1012.

6 The dispute is one of money, not ownership. Dattala alleges that he should
7 have received additional funds for the sale of 59 Sacramento and 50 Sacramento.
8 He further alleges that he did not. This thus becomes a money dispute between a
9 buyer and a seller (Dattala and Bursey, respectively). Precision was not a party to
10 that transaction, was in fact a purchaser from Bursey, and qualifies as a BFP with
11 no legal grounds to remove title from Precision’s real properties of 59 Sacramento
12 and 50 Sacramento.

13 **4. Dattala Fails To Have The Needed Elements For This Court To**
14 **Grant A Stay, Necessitating Denial Of The Motion.**

15 Dattala fails to adequately address the requirements for a stay, namely 1)
16 whether the object of the writ petition will be defeated if a stay is denied; 2)
17 whether petitioner will suffer irreparable or serious injury if a stay is denied; 3)
18 whether respondent/real party in interest will suffer irreparable or serious injury if
19 a stay is granted; and 4) whether petitioner is likely to prevail on the merits in the
20 writ petition. *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116
21 Nev. 650, 657, 6 P.3d 982, 986 (Nev. 2000) (citing *Kress v. Corey*, 65 Nev. 1, 189
22 P.2d 352 (1948)). While Dattala’s petition seeks to address the first and second,
23 Dattala pays little heed to injury to Precision. Further, Dattala fails to explain why
24 he is likely to prevail on the merits.

25 Here, as in the District Court, Dattala fails to comment on the expense and
26 burden to Precision regarding the preservation, maintenance and payment of
27 applicable taxes. Precision’s business model is the acquisition and sale of
28 properties, not the retention of property for extended periods. Precision has been

1 forced to retain and maintain the subject properties during the pendency of this
2 action. Upon the entry of the order of the District Court, Precision was able to stop
3 this loss. Despite this, Dattala demands that Precision continue to retain 59
4 Sacramento at Precision's expense, while Dattala attempts to re-litigate his claims
5 for title of the subject properties.

6 Dattala is quite unlikely to succeed on the merits; the District Court properly
7 found that Precision was a BFP for the subject properties. Precision established
8 that it purchased the subject properties without notice of any competing interest,
9 for good and valuable consideration, and in good faith. Other than seeking to
10 impart Bursey's fraud upon Precision, Dattala makes no showing of success on the
11 merits as to refuting Precision's BFP status. This failure will continue on appeal.

12 In addition to failing to address the hardship on Precision, Dattala fails to
13 address the requirement of a supersedes bond. This failure is in violation of NRCP
14 62(d). Such a bond is required to address the possible prejudice to the enjoined
15 party; only the state is exempt from such a bond requirement. *State ex rel. Public*
16 *Serv. Comm'n v. First Judicial Dist. Court*, 94 Nev. 42, 574 P.2d 272, 1978 Nev.
17 LEXIS 469 (Nev. 1978).

18 Dattala fails to address the requirements for a supersedes bond; Precision asks
19 that if the Court consider an injunction appropriate, then a significant bond ordered.
20 Plaintiff be required to submit a bond in the amount of \$189,000.00, the total of
21 the \$148,366.94 Precision paid for the 59 Sacramento property, plus approximately
22 \$40,000.00 in carrying costs and fees Precision has incurred and anticipates
23 incurring to retain 59 Sacramento. This bond is to make Precision whole should
24 Dattala be unable to succeed of the merits.

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D. CONCLUSION

Dattala's Motion fails both procedurally and functionally. For the foregoing reasons, the Court should deny the Motion to Stay in its entirety.

DATED this 27th day of December, 2021.

THE BALL LAW GROUP

/s/ Zachary T. Ball, Esq.
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CERTIFICATE OF SERVICE

I certify that I electronically filed on the 27th day of December, 2021, the foregoing **PRECISION ASSETS' OPPOSITION TO MOTION TO STAY** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

☐ By placing a true copy enclosed in sealed envelope(s) addressed as follows:

☒ (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

Service via electronic notification will be sent to the following:

John Benedict
Benjamin Childs
Zachary Ball

☒ (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Hannah Hancock
An Employee of BALL LAW GROUP