

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA

Petitioner

v.

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

Respondents,

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

Real Parties in Interest

Supreme Court No. 83939
District Court No. A-19-794335-G
Dec 30 2021 12:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

REPLY TO OPPOSITIONS TO
MOTION FOR STAY

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

LEGAL CONFLICT IS PLAIN, DISTRICT COURT AND ALL PARTIES WERE AWARE OF IT, IT WAS REQUESTED TO BE ADDRESSED BUT WAS IGNORED

The legal conflict could not be more plain and direct. Dattala proved with competent evidence that deeds to two of his houses were forged by defendant Bursey. The prove-up hearing for the default took about four hours on October 13, 2021. Counsel for Precision, the buyer of the Subject Properties and WFG, the title company, were present [Exhibit 7] and had full and unchallenged opportunity to participate in that hearing.

In fact, these defendants have never directly challenged the fact that the deeds were forged. The Order decided that Precision was a bona fide purchaser based on NRS 111.180. But the district court completely ignored NRS 111.175, quoted in the Motion. This was addressed both in Dattala's opposition to the summary judgment motion, and on the record at the hearing twice. [Exhibit 8, 1318:23-1319:19 and 1332:6-15] At 1319:1, the word should be "defraud", not "default", because that's the clear

language in the statute. "NRS 111.175 Conveyances made to defraud prior or subsequent purchasers are void."

Dattala's counsel directly stated that given the court's ruling, it would have to address NRS 111.175 in the order. The exchange is set forth below. [Exhibit 8, 1132:4-17]

MR. CHILDS: I think (video interference) -- in this order. You're going to have to address the NRS 111.175 issue, that statute.

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

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

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

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

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

Yet, despite everyone being aware of the conflict in statutes, and the assurance by Mr. Ball that the clear language of NRS 111.175 would be addressed in the Order, neither this statute nor anything related to it's

impact on the title to the Subject Properties is mentioned in the Order.

[Exhibit 1] There is NO mention of NRS 111.175 in the Order.

FRITZ HANSEN A/S FACTORS ARE CLEARLY MET

Quiet title actions are in rem proceedings. Chapman v. Deutsche

Bank Nat'l Trust Co. 129 Nev. 314, 302 P.3d 1103 (2013)

Real estate being unique, the first two FRITZ HANSEN A/S factors are met because object of this writ petition will be defeated and Dattala will suffer irreparable harm in that Dattala will have to deal with yet another, or multiple, subsequent title holders, whose title is defective due to the fraud and forgery in the chain of title. Respondent Precision will suffer no injury if the stay is granted because it received a defective title already. And Dattala is likely to prevail on the merits in the writ petition because clearly

(1) the contradictory statutes were ignored by the district court in making its decision and (2) unappealed factual findings at least preclude summary judgment in favor of Precision; in fact, as discussed in the Motion, the subsequent Findings of Fact in the FFCL support summary judgment being entered in favor of Dattala.

WFG'S OPPOSITION MISSTATES THE HOLDING OF LOMASTRO

WFG's argument that the findings in the FFCL have no effect or impact on it, or impliedly Precision, is directly contrary to clear, controlling Nevada law. Estate of Lomastro v. American Family Insurance Group, 124 Nev. 1060, 195 P.3d 339 (2008), cited in WFG's Opposition, expressly found that an insurance company that failed to intervene in a case after being put on notice of the proceeding was bound by the default judgment

entered in the case. Under clear Nevada law, Precision is bound by the findings in the FFCL.

COURT HAS RULED ON FRAUDULENT TITLES

This Court has already ruled this way in Alamo Rent-a-Car, Inc. v. Mendenhall, 113 Nev. 445, 937 P.2d 69 (1997) and it should do the same in the instant case.

FINAL JUDGMENT WAS ENTERED AND NOT APPEALED

There is nothing left of consequence to try in the District Court case that involves Dattala. He already has a final judgment that no one has appealed. Dattala seeks a stay which should be granted with no, or at most nominal bond. All factors have been met. He has no recourse to an appeal in district court because there is not a final judgment under NRCP 54(b) allowing him to appeal.

/s/ Benjamin B. Childs

BENJAMIN B. CHILDS, ESQ.
Attorney for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this December 30, 2021, I served this REPLY TO OPPOSITION TO MOTION FOR STAY, with Exhibits 7 and 8, upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

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

Lillian Medina
818 S. 7th St # 4
Las Vegas, NV 89101

Aaron Ford, Esq.
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, NV 89701
Counsel for Respondent

Eustachius C. Bursey
Inmate # 1251187
HIGH DESERT STATE PRISON
PO Box 650
Indian Springs, NV 89070

/s/ Benjamin B. Childs

Benjamin B. Childs
Nevada Bar No. 3946

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

EXHIBIT 7

Case Information

A-19-794335-C | John Dattala, Plaintiff(s) vs. Eustachius Bursey, Defendant(s)

Case Number
A-19-794335-C
File Date
05/07/2019

Court
Department 14
Case Type
Other Title to Property

Judicial Officer
Escobar, Adriana
Case Status
Reopened

Party

Plaintiff

Dattala, John

DOB
XX/XX/XXXX

Address
43 Ronald Lane
Las Vegas NV 89110

Active Attorneys▼

Lead Attorney
Childs, Benjamin B.,
ESQ
Retained

Counter Defendant

Dattala, John

DOB
XX/XX/XXXX

Address
43 Ronald Lane
Las Vegas NV 89110

Active Attorneys▼

Lead Attorney
Childs, Benjamin B.,
ESQ
Retained

Defendant

Bursey, Eustachius C

Address
50 Sacramento DR

Inactive Attorneys▼

Lead Attorney
Kleven, Dale K.
Retained

Las Vegas NV 89110

Pro Se

Attorney
Fronczek, Thomas
Retained

Defendant
Acry Development LLC

Active Attorneys ▼
Lead Attorney
Benedict, John G
Retained

Attorney
Dziminski, Brian R.
Retained

Defendant
Medina, Lillian

Active Attorneys ▼
Attorney
Hansen, Joel F.
Retained

Lead Attorney
Hansen, Jonathan J.
Retained

Defendant
WFG National Title Insurance Company

Address
4000 S Eastern Ave Suite 100
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Active Attorneys ▼
Lead Attorney
Lancaster, Aaron
Retained

Attorney
Miller, Christina V.
Retained

Attorney
Riether, Robert A
Retained

Inactive Attorneys ▼

Attorney
Bao, Andrew A.
Retained

Cross Defendant
WFG National Title Insurance Company

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4000 S Eastern Ave Suite 100
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Active Attorneys ▼
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Lancaster, Aaron
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Attorney
Miller, Christina V.
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Attorney
Riether, Robert A
Retained

Inactive Attorneys ▼
Attorney
Bao, Andrew A.
Retained

Defendant
Percision Assets

Active Attorneys ▼
Lead Attorney
Ball, Zachary T
Retained

Cross Claimant
Precision Assets LLC

Active Attorneys ▼
Attorney
Benedict, John G
Retained

Lead Attorney
Ball, Zachary T
Retained

Inactive Attorneys ▼
Attorney
Bao, Andrew A.

[271] Clerk's Notice of Nonconforming Document

10/12/2021 Objection ▼

Objection - OBJ (CIV)

Comment

[272] Crossclaimant Precision Asset's Objection to Crossclaim Defendant WFG National Title Insurance Company's Proposed Jury Instructions

10/13/2021 Jury Trial ▼

Judicial Officer

Escobar, Adriana

Hearing Time

11:00 AM

Result

Vacated and Reset

Parties Present▲

Plaintiff: Dattala, John

Attorney: Childs, Benjamin B., ESQ

Cross Claimant

Attorney: Benedict, John G

Defendant

Attorney: Benedict, John G

Defendant

Attorney: Lancaster, Aaron

10/13/2021 Prove Up ▼

Judicial Officer

Escobar, Adriana

Hearing Time

11:00 AM

Result

Granted

Comment

Plaintiff's Prove- Up Hearing

Parties Present▲

Plaintiff: Dattala, John

Attorney: Childs, Benjamin B., ESQ

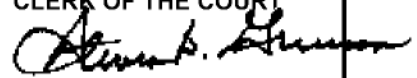
10/13/2021 Order Shortening Time ▼

EXHIBIT 8

EXHIBIT 8

EXHIBIT 8

EXHIBIT 8



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 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. 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.