

IN THE SUPREME COURT OF THE STATE OF NEVADA

1			
2	TAHICAN, LLC,)	Appeal No.: 22-84352
3)	
4	Petitioner,)	Nature of Proceeding: Writ of
5)	Electronically Filed
6	vs.)	May 20 2022 02:25 p.m.
7)	Elizabeth A. Brown
8)	Clerk of Supreme Court
9	THE EIGHTH JUDICIAL DISTRICT)	Court below:
10	COURT of the State of Nevada in and)	Eighth Judicial District Court
11	for the County of Clark, and THE)	Case No.: A-16-734832-C
12	HONORABLE KATHLEEN E.)	
13	DELANEY,)	
14)	
15	Respondents.)	
16)	
17	and)	
18)	
19	MAX JOLY, PATRICIA JOLY, JEAN)	
20	FRANCOIS RIGOLLET, LE)	
21	MACARON LLC and BYDOO, LLC,)	
22)	
23	Real Parties in Interest,)	
24)	
25)	
26)	
27)	
28)	

**REPLY IN SUPPORT OF PETITION FOR WRIT OF
MANDAMUS PURSUANT TO NRAP 21**

R. Christopher Reade, Esq.
Nevada Bar No. 006791
P. Rowland Graff, Esq.
Nevada Bar No. 015050
CORY READE DOWS & SHAFER
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
Telephone: (702) 794-4411
Facsimile: (702) 794-4421
creade@crdslaw.com
Attorneys for Petitioner Tahican LLC

1 **NRAP 26.1 DISCLOSURE STATEMENT**

2 The undersigned counsel of record certifies that the following are persons and
3 entities as described in NRAP 26.1(a) that must be disclosed. These representations
4 are made in order that the judges and justices of this court may evaluate possible
5 disqualification or recusal.
6

7 Petitioner Tahican, LLC is a privately held limited liability company and there
8 is no publicly held company that owns 10% or more of Tahican¹. Cory Reade Dows
9 & Shafer represents Tahican LLC in this proceeding.
10

11 Dated this 20th day of May, 2022.
12

13 CORY READE DOWS & SHAFER

14 By: /s/ R. Christopher Reade
15 R. CHRISTOPHER READE, ESQ.
16 Nevada Bar No. 006791
17 P. ROWLAND GRAFF, ESQ.
18 Nevada Bar No. 015050
19 1333 North Buffalo Drive, Suite 210
20 Las Vegas, Nevada 89128
21 Telephone: (702) 794-4411
22 Facsimile: (702) 794-4421
23 create@crdslaw.com
24 Attorneys for Petitioner Tahican, LLC
25

26 _____
27 ¹ Capitalized terms, not otherwise defined herein, will have those meanings ascribed to them in the
28 Petitioner’s Petition for Writ of Mandamus Pursuant to NRAP 21.

TABLE OF CONTENTS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

NRAP 26.1 DISCLOSURE STATEMENT	II
TABLE OF CONTENTS	III
TABLE OF AUTHORITIES	IV
ARGUMENT.....	1
I. INTRODUCTION.....	1
II. WRIT RELIEF IS APPROPRIATE.....	1
III. THE DISTRICT COURT ERRED IN REFUSING TO EXPUNGE THE LIS PENDENS BECAUSE JOLY DOES NOT HAVE ANY CLAIMS RELATED TO THE PROPERTY.....	2
CONCLUSION.....	8
CERTIFICATE OF COMPLIANCE	9
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

Cases

Bank of the W. v. Second Judicial Dist. Court, 2017 Nev. App. Unpub. LEXIS 134, 133 Nev. 982 (unpublished disposition).....2, 8

Burger v. Superior Court of Santa Clara County, 151 Cal.App.3d 1013, 199 Cal.Rptr. 227 (1984).....1, 4

Estate of Adams v. Fallini, 132 Nev. 814, 386 P.3d 621 (2016).....6

Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 21 P.3d 16 (2001).....3

Levinson v. Eighth Judicial Dist. Court, 109 Nev. 747, 857 P.2d 180 (1993) 1, 2, 3, 4, 5, 7

Okada v. Eighth Judicial Dist. Court of Nev., 134 Nev. 6, 408 P.3d 566 (2018).2

St. James Vill., Inc. v. Cunningham, 125 Nev. 211, 210 P.3d 190 (2009)4

Statutes

Nevada Revised Statutes 112.220.....7

Nevada Revised Statutes 14.010.....1

Rules

Nevada Rules of Appellate Procedure 26.1 ii

Nevada Rules of Appellate Procedure 289

Nevada Rules of Appellate Procedure 329

Nevada Rules of Appellate Procedure 42

ARGUMENT

I. INTRODUCTION

Joly in his answer spends a lot of time trying to confuse a simple issue—That Joly never made any claims in this litigation which effect the title or possession of Real Property as required by NRS 14.010. Regardless of Joly’s unsupported claims that the Property was to secure the Purchase Agreement, at the time that the Lis Pendens was filed, all of the claims related to the payment of money from Bydoo to Joly and not any interest in the Property. (I AA034–AA038). Joly use of the Lis Pendens is beyond what is allowed in Nevada Law and is the exact abuse that the Burger court was concerned about. See Levinson v. Eighth Judicial Dist. Court, 109 Nev. 747, 751, 857 P.2d 18, 20 (1993) (quoting Burger v. Superior Court of Santa Clara County, 151 Cal. App. 3d 1013, 199 Cal. Rptr. 227 (Cal. Ct. App. 1984)).

II. WRIT RELIEF IS APPROPRIATE.

Joly claims that Writ relief is not appropriate because of the District Courts findings in the case. See Real Parties in Interest Max Joly and Patricia Joly’s Answer to Petition for Writ of Mandamus Pursuant to NRAP 21 (“Joly Answer”) p 9. However, that is not the right standard. “A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control a manifest abuse or an arbitrary or capricious exercise

1 of discretion." Okada v. Eighth Judicial Dist. Court of Nev., 134 Nev. 6, 8, 408 P.3d
2 566, 569 (2018).

3 Tahican cannot appeal the district court's multiple decisions to not expunge
4 the Lis Pendens because they do not constitute appealable orders. NRAP 4.
5 Furthermore, this Court has repeatedly held that the District Court's decision to
6 refuse to grant a motion to expunge lis pendens leaves petitioners with no plain,
7 speedy and adequate remedy in the ordinary course of law and thus are appropriate
8 for writ relief. See Levinson 109 Nev. at 752, 857 P.2d at 21. See also Bank of the
9 W. v. Second Judicial Dist. Court, 2017 Nev. App. Unpub. LEXIS 134, *1, 133 Nev.
10 982, (unpublished disposition) (II AA343–AA344) (the use of a lis pendens in a
11 fraudulent transfer action was not appropriate). As Tahican does not have plain,
12 speedy, and adequate remedy in the ordinary course of law and the use of lis pendens
13 is inappropriate in a fraudulent transfer case, the court should grant the writ relief

14 **III. THE DISTRICT COURT ERRED IN REFUSING TO EXPUNGE THE LIS**
15 **PENDENS BECAUSE JOLY DOES NOT HAVE ANY CLAIMS**
16 **RELATED TO THE PROPERTY.**

17 In order to get around the lis pendens requirement that the claims must relate
18 to the real property, Joly has claimed that Bydoo's real property was to secure the
19 payment under the purchase agreement. See Joly Answer p 3, 4, 5–6, and 14.
20 However, nothing in the Purchase Agreement contemplates that this agreement
21 would be secured in any way. (I AA002–AA004). The Purchase Agreement only
22
23
24
25
26
27
28

1 required that the payment was made in four installments. (IAA002 §1). The Purchase
2 Agreement also has an integration clause. “This Agreement, including any attached
3 exhibits, embodies the entire agreement and understanding of the Parties with
4 respect to its subject matter and supersedes all prior discussions, agreements, and
5 undertakings between the Parties.” (IAA003 §13). Lastly, Joly testimony concerning
6 the security is inadmissible as it violates the parol evidence rule. “Generally, parol
7 evidence may not be used to contradict the terms of a written contractual agreement.”
8
9 Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 281, 21 P.3d 16, 21 (2001). “Where a
10 written contract is clear and unambiguous on its face, extraneous evidence cannot be
11 introduced to explain its meaning.” Id. (cleaned up). Since Joly’s claim that Bydoo’s
12 real property was to secure the Purchase Agreement is without merit, it cannot be
13 used to make Joly personal property claims affect the title or possession of the
14 Property.
15
16
17

18 Next, Joly attempts to create an exemption to the general rule that “lis pendens
19 are not appropriate instruments for use in promoting recoveries in actions for
20 personal or money judgments”. Levinson 109 Nev. at 750, 857 P.2d at 20. Joly
21 misquotes the Levinson court stating that a “lis pendens may apply to actions
22 designed to avoid conveyances or transfers in fraud of creditors...”. See Joly Answer
23 p 14. However, that is not what the Levinson Court found. The Levenson Court
24 stated “While [the petitioner] has presented relevant case law indicating that lis
25
26
27
28

1 pendens may apply to actions designed to avoid conveyances or transfers in fraud of
2 creditors, she has not adequately demonstrated actionable fraud in the instant case.
3 Levinson 109 Nev. at 752, 857 P.2d at 21. First, this is dicta. “A statement in a case
4 is dictum when it is unnecessary to a determination of the questions involved.” St.
5 James Vill., Inc. v. Cunningham, 125 Nev. 211, 216, 210 P.3d 190, 193 (2009)
6 (cleaned up). The Levinson Court did not find that a lis pendens may apply to
7 fraudulent transfer actions, it never reached that point because the petitioner failed
8 to provide any evidence on this issue. Levinson 109 Nev. at 752, 857 P.2d at 21.
9 Since this issue was not necessary to determine the questions in Levinson, this
10 statement is dicta.
11
12
13

14 Next, this is the slippery slope, about which both the Levinson and Burger
15 Courts we concerned. “Although the doctrine of lis pendens may be applied to
16 actions other than foreclosures, its use is restricted to avoid abuse.” Levinson at
17 750–751, 20. See also Burger 151 Cal. App. 3d at 1018, 199 Cal. Rptr. at 230. In
18 Levinson, the petitioner recorded a Lis Pendens because petitioner believed that a
19 principal of the judgment debtors in the underlying case had fraudulently transferred
20 their various properties. Id. at 749, 19. The Levinson Court held that a fraudulent
21 transfer “action is not of the type envisioned under this statute.” Id. at 751–752, 21.
22 The petitioner “is now attempting to encumber the property of the Levinsons despite
23 the fact that they were not parties to her original personal injury action.” Id.
24
25
26
27
28

1 Levinson is similar to the instant case. Joly filed a breach of contract action
2 against Bydoo, Le Macaron, and Rigollet. (I AA006–AA017). On October 7, 2016,
3 Joly amended his complaint to drop the Fraud in the Inducement and Fraud claims
4 and bring a Fraudulent Misrepresentation claim against Bydoo, Le Macaron, and
5 Rigollet. (I AA024–AA044). Tahican was not a party to the action. The Lis Pendens
6 was recorded on April 4, 2017. (I AA 46–48). Tahican was not added as a party until
7 the Stipulation and Order filed with the Court on October 17, 2018, allowing Joly to
8 again amend the complaint. (I AA 237–239). Just as when the petitioner in Levinson,
9 when Joly recorded his Lis Pendens, Tahican was not a party to the litigation.

10 Further, Joly’s Lis Pendens only purpose was to make assets available to pay
11 any judgment he might receive. There must be some claim of entitlement to title or
12 possession of the real property affected by the lis pendens. Levinson, 109 Nev. at
13 752, 857 P.2d at 21. Joly made no claims that Joly is entitled to title or possession
14 of the Property; instead, Joly has made claims that the Property should be returned
15 back to Bydoo so that upon entry of a judgment against Bydoo that Joly could use
16 Property to collect on any future judgment. This is the same argument that the
17 petitioner in Levinson made, which this Court rejected.

18 The District Court also erred by finding that “the lis pendens has appropriate
19 status based on the fraudulent transfer claim, the fraud claim, or the slander of title
20 claim in this case.” (II AA 441) First, Defendant’s claim of slander of title can not
21
22
23
24
25
26
27
28

1 support the Lis Pendens. The Lis Pendens is required to be based on Plaintiffs claims
2 at the time that he filed his complaint. NRS 14.010(1). Further, the Slander of Title
3 claim was not brought until the Second Amended Counterclaim, which was filed
4 with the District Court on April 19, 2021. Lastly, it seems counter intuitive that a
5 claim stating that the Lis Pendens is inappropriate could be a bases for allowing the
6 Lis Pendens to continue, especially when the District Court has already dismissed
7 the claim. (II RP192 ¶ 104).
8
9

10 The Fraud Claim and the Fraudulent Transfer claims are based on Joly claim
11 that Bydoo transferred the property without adequate consideration. The District
12 Court granted summary judgment on the Fraudulent transfer claim sole on the basis
13 of requests for admissions that that are contrary to the evidence of the case. See
14 Estate of Adams v. Fallini, 132 Nev. 814, 822, 386 P.3d 621, 626 (2016) (Estate's
15 counsel's duty of candor required him to refrain from relying on opposing counsel's
16 default admission that the accident did not occur on open range, when he knew or
17 should have known that it was false) “A transfer or obligation is not voidable under
18 paragraph (a) of subsection 1 of NRS 112.180 against a person who took in good
19 faith and for a reasonably equivalent value or against any subsequent transferee or
20 obligee.” NRS § 112.220(1). The Declaration of Value, attached to the Quit Claim
21 deed, show that the transfer tax was paid on \$155,000.00 purchase price. (I AA 221)
22 “The law presumes that the deed expresses the real transaction between the parties.”
23
24
25
26
27
28

1 Bingham v. Thompson, 4 Nev. 231, 232 (1868). Joly has not provided any evidence
2 that the transfer of the Property was not for value.

3 Further, Tahican actually provided value for the Property. On May 19, 2015,
4 Tahican, though its principal Borris Jakubczack's Jakubczack Group, LLC,
5 transferred \$100,000.00 to Bydoo. (II AA394). On June 9, 2015, Tahican, though its
6 principal Borris Jakubczack's Jakubczack Group, LLC, transferred \$40,000.00 to
7 Bydoo. (II AA397). As the evidence shows that, Tahican paid value for the Property,
8 Joly's fraudulent transfer claim fails as a matter of law. Joly even admits that the
9 Property was transferred for consideration. Joly states that the property was
10 transferred as part of a contract between Borris Jakubczack and Rigollet. See Joly
11 Answer p 4. See also Agreement between Jean-Francois Rigollet and Borris
12 Jakubczack (I RP 123).
13

14 However, without the court finding the Property's transfer was for value,
15 neither of these claims are seek title or possession of the property. Joly is using a Lis
16 Pendens only to secure any future judgment he may receive, which is not allowed
17 under Nevada Law. See Levinson 109 Nev. at 752, 857 P.2d at 21. See also Bank of
18 the W. v. Second Judicial Dist. Court, 2017 Nev. App. Unpub. LEXIS 134, *1, 133
19 Nev. 982, (unpublished disposition) (the use of a lis pendens in a fraudulent transfer
20 action was not appropriate). Therefore, these causes of action cannot support the Lis
21 Pendens.
22
23
24
25
26
27
28

1 **CONCLUSION**

2 Tahican has no plain, speedy, and adequate remedy in the ordinary course of
3 law and is entitled to a writ of mandamus because Joly has not brought any claims
4 related to title or possession of the Property. Tahican respectfully requests and is
5 entitled to a Writ of Mandamus and direct the Eighth Judicial District Court to enter
6 an order to cancel and expunge Joly’s Lis Pendens pursuant to NRS 14.015(5).
7

8 Dated this 20th day of May, 2022.
9

10 CORY READE DOWS & SHAFER

11 By: /s/ R. Christopher Reade
12 R. CHRISTOPHER READE, ESQ.
13 Nevada Bar No. 006791
14 P. ROWLAND GRAFF, ESQ.
15 Nevada Bar No. 015050
16 1333 North Buffalo Drive, Suite 210
17 Las Vegas, Nevada 89128
18 Telephone: (702) 794-4411
19 Attorneys for Petitioner TAHICAN, LLC
20
21
22
23
24
25
26
27
28

CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this Reply complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
4 the type style requirements of NRAP 32(a)(6) because this Opening Brief has been
5 prepared in a proportionally spaced typeface using Microsoft Word in double spaced
6 14-point Times New Roman typeface.
7

8
9 2. I further certify that this Reply complies with the page- or type-volume
10 limitations of NRAP 21(d) because, excluding the parts of this Petition exempted by
11 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more,
12 it does not exceed 15 pages, and it contains 2984 words.
13

14 3. Finally, I certify that I have read the foregoing brief and to my best
15 knowledge, information and belief, the Reply is not frivolous or interposed for any
16 improper purpose. I further certify that this brief complies with all applicable Nevada
17 Rules of Appellate Procedure, in particular NRAP 28(e), which requires every
18 assertion in the brief regarding matters in the record to be supported by a reference
19 to the page of the transcript or appendix where the matter raised can be found.
20

21
22

23

24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that on the 20th day of May, 2022, a copy of the foregoing Reply in Support of Petition for Writ of Mandamus was served by electronic means to registered users of the court’s electronic filing system consistent with NEFCR 9.

Jared B. Jennings, Esq.
Adam R. Fulton, Esq.
Logan G. Wilson, Esq.
JENNINGS & FULTON
2580 Sorrel Street
Las Vegas, Nevada 89146
Attorneys for Plaintiff and Real Party
in Interest Max Joly

R. Christopher Reade, Esq.
P. Rowland Graff, Esq.
CORY READE DOWS & SHAFER
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
Attorneys for Defendants and Real
Parties in Interest Le Macaron LLC and
Bydoo LLC

Pursuant to NRAP 25, I hereby certify that on the 20th day of May, 2022, a copy of the foregoing Reply in Support of Petition for Writ of Mandamus was deposited in the US Mail by first class mail, postage fully prepaid, to the following

Honorable Kathleen E. Delaney
EIGHTH JUDICIAL DISTRICT COURT
Department 25
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Jean Francois Rigollet
2003 Smoketree Village
Henderson, Nevada 89012
Defendant Pro Se and Real Parties in
Interest

/s/ Elizabeth Arthur

An Employee of CORY READE DOWS & SHAFER