

CASE NO. 84762

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA

Appellant

vs.

PRECISION ASSETS;  
ACRY DEVELOPMENT LLC;  
WFG NATIONAL TITLE INSURANCE COMPANY

Respondents

Electronically Filed  
Aug 21 2022 12:50 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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JOINT APPENDIX - VOLUME 9

Chronological Order [NRAP 30(c)(1)] Pages 3 - 5

Alphabetical Index [NRAP 30(c)(2)] Pages 6 - 9

Appeal from the Eighth Judicial District Court, Clark County, Nevada

District Court Case # A-19-794335-C

The Honorable District Court Judge Adriana Escobar

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INSURANCE COMPANY

Dattala - NSC # 84762  
Appendix index

Chronological Order [NRAP 30(c)(1)]

Document	Bates #
VOLUME 1	
Complaint filed 5/7/2019	1 - 13
Bursey Answer filed 5/10/2019	14 - 28
First Amended Complaint filed 7/11/2019	29 - 51
Service of Process - Acry Development filed 7/18/2019	52 - 56
Acceptance of Service - Bursey filed 7/30/2019	57 - 59
Service of Process - WFG file 7/30/2019	60 - 62
Acceptance of Service - Precision Assets and WFG filed 7/30/2019	63 - 67
Service - Spencer filed 8/8/2019	68 - 70
Service - Medina filed 8/20/2019	71 - 73
Answer - Spencer filed 8/23/2019	74 - 77
Answer and Counterclaim - Bursey filed 8/30/2019	78 - 92
Answer - Medina filed 9/5/2019	93 - 105
Answer to Counterclaim - Dattala filed 9/24/2019	106 - 109
Answer and Counterclaim - Precision Assets and WFG filed 3/2/2020	110-129
Answer to Counterclaim - Dattala filed 6/5/2020	130 - 135
Answer and Counterclaim - Acry Development filed 6/19/2020	136 - 141
Stipulation and Order Removing Spencer as a party filed 8/26/2020	142 - 146
Findings of Fact, Conclusions of Law and Judgment [with Notice of Entry] filed 10/15/2020	147 - 154
Cross-claim - Precision Assets vs. WFG filed 11/5/2020	155 - 170
Answer - WFG to cross-claim filed 11/30/2020	171 - 181
Second Amended Complaint [SAC] filed 1/31/2021	182 - 200
Answer to SAC - Medina filed 2/5/2021	201 - 210
Answer to SAC - WFG filed 2/16/2021	211 - 220
Answer to SAC - Acry Development filed 2/19/2021	221 - 225
Answer to SAC - Precision Assets, Cross-claim against Bursey filed 2/22/2021	226 - 241
VOLUME 2	
Amended Answer to SAC - Medina filed 7/20/2021	242 - 252
Motion for Summary Judgment - WFG v. Dattala filed 8/23/2021	253 - 335
Motion to Expunge Deed of Trust - Precision v. Dattala filed 8/23/2021	336 - 492
VOLUME 3	
Motion to Expunge Deed of Trust - Precision v. Dattala filed 8/23/2021	493 - 553

Motion to Expunge Lis Pendens - Precision v. Dattala filed 8/23/2021	554 - 575
Motion for Summary Judgment - Precision v. Dattala filed 8/23/2021	576 - 742
VOLUME 4	
Motion for Summary Judgment - Precision v. Dattala filed 8/23/2021	743 - 993
VOLUME 5	
Motion for Summary Judgment - Precision v. Dattala filed 8/23/2021	994 - 1084
Joinder to Precision Assets' motions - by Acry Development filed 8/25/2021	1085 - 1087
Joinder to WFG's motions - by Precision Assets filed 8/26/2021	1088 - 1091
Opposition to WFG's Motion for Summary Judgment - Dattala filed 9/13/2021	1092 - 1134
Opposition to Precision Assets' Motion for Summary Judgment - Dattala filed 9/13/2021	1135 - 1244
VOLUME 6	
Opposition to Precision Assets' Motion for Summary Judgment - Dattala filed 9/13/2021	1245 - 1384
Opposition to Precision Assets' Motion to Expunge Deed of Trust and Conter- motion - Dattala filed 9/13/2021	1385 - 1393
Reply to Opposition - Precision Assets' Summary Judgment filed 9/21/2021	1394 - 1402
Reply to Opposition - Precision Assets' Motion Expunge Deed of Trust filed 9/21/2021	1403 - 1409
Reply to Opposition - Precision Assets' Motion Expunge Lis Pendens filed 9/21/2021	1410 - 1416
Reply to Opposition to Countermotion - Dattala filed 9/22/2021	1417 - 1438
Motion for Reconsideration (Precision Assets motions) Dattala filed 10/9/2021	1439 - 1495
VOLUME 7	
Motion for Reconsideration (Precision Assets motions) Dattala filed 10/9/2021	1496 - 1531
Findings of Facts, Conclusions of Law and Judgment - Dattala v. Bursey and Medina [with Notice of Entry] filed 10/15/2021	1532 - 1556
Supplement to Dattala's Motion for Reconsideration filed 10/18/2021	1557 - 1596
Motion for Declaratory Relief - Dattala filed 10/20/2021	1597 - 1677
Order on Plaintiff/Counterdefendant's Motions in Limine [with Notice of Entry] filed 10/21/2021	1678 - 1692
Order on Precision Assets' Motion in Limine No. 4 [with Notice of Entry] filed 10/21/2021	1693 - 1697
Order Granting Precision Assets' Motions for Summary Judgment, to Expunge Deed of Trust and to Expunge Lis Pendens [with Notice of Entry] filed 10/22/2021 [Order being appealed]	1698 - 1712
Opposition to Motion for Reconsideration - Precision Assets filed 10/24/2021	1713 - 1717
Order Granting WFG's Motions for Summary Judgment, [with Notice of Entry] filed 10/25/2021 [Order being appealed]	1718 - 1727



Joinder in Opposition to Motion for Reconsideration - Acry Development and Precision Assets filed 11/4/2021	1728 - 1730
---	-------------

#### VOLUME 8

Motion for Reconsideration (WFG motions)- Dattala filed 11/8/2021	1731 - 1779
Reply to Opposition - Dattala filed 11/9/2021	1780 - 1797
Opposition to Motion for Reconsideration - WFG filed 11/22/21	1798 - 1804
Joinder in Opposition to Motion for Reconsideration - Acry Development and Precision Assets filed 11/29/2021	1805 - 1806
Reply to Opposition and Joinder - Dattala filed 12/2/2021	1807 - 1813
Declaration of Eustachius Bursey - Dattala filed 12/08/2021	1814 - 1817
Reply to Opposition and Joinder - Dattala filed 1/13/2022	1818 - 1825
Order Denying Motion for Reconsideration [with Notice of Entry] for Dattala's Motion v. WFG, filed 1/31/2022 [Order being appealed]	1826 - 1838
Release of Lis Pendens - Acry Development and Precision Assets filed 2/4/2022	1839 - 1841
Order Denying Motion for Declaratory Relief [with Notice of Entry] filed 2/28/2022. [Order being appealed]	1842 - 1859
Order Denying Motion for Reconsideration [with Notice of Entry] for Dattala's Motion v. Precision Assets filed 5/4/2022	1860 - 1877
Stipulation and Order to Dismiss - WFG and Precision Assets [with Notice of Entry] filed 5/11/2022	1878 - 1886
Notice of Appeal filed May 17, 2022	1887 - 1888
Amendment to Order Granting Defendant's Motion for Summary Judgment, Motion to Expunge Lis Pendens and Motion to Expunge Deed of Trust [with Notice of Entry] filed August 16, 2022	1889 - 1893

#### VOLUME 9

Transcript of 9/28/2021 hearing	1894 - 1987
Transcript of 11/16/2021 hearing	1988 - 2005
Transcript of 12/16/2021 hearing	2006 - 2020
Transcript of 1/20/2022 hearing	2021 - 2046

Dattala - NSC # 84762  
Appendix index

Alphabetical Index [NRAP 30(c)(2)]

VOLUME 1

Acceptance of Service - Bursey filed 7/30/2019 57 - 59  
Acceptance of Service - Precision Assets and WFG filed 7/30/2019 63 - 67

VOLUME 2

Amended Answer to SAC - Medina filed 7/20/2021 242 - 252

VOLUME 8

Amendment to Order Granting Defendant's Motion for Summary Judgment,  
Motion to Expunge Lis Pendens and Motion to Expunge Deed of Trust [with  
Notice of Entry] filed August 16, 2022 1889 - 1893

VOLUME 1

Answer and Counterclaim - Acry Development filed 6/19/2020 136 - 141  
Answer and Counterclaim - Bursey filed 8/30/2019 78 - 92  
Answer and Counterclaim - Precision Assets and WFG filed 3/2/2020 110-129  
Answer - Bursey filed 5/10/2019 14 - 28  
Answer - Medina filed 9/5/2019 93 - 105  
Answer - Spencer filed 8/23/2019 74 - 77  
Answer - WFG to cross-claim filed 11/30/2020 171 - 181  
Answer to Counterclaim - Dattala filed 9/24/2019 106 - 109  
Answer to Counterclaim - Dattala filed 6/5/2020 130 - 135  
Answer to SAC - Medina filed 2/5/2021 201 - 210  
Answer to SAC - WFG filed 2/16/2021 211 - 220  
Answer to SAC - Acry Development filed 2/19/2021 221 - 225  
Answer to SAC - Precision Assets, Cross-claim against Bursey  
filed 2/22/2021 226 - 241  
Complaint filed 5/7/2019 1 - 13  
Cross-claim - Precision Assets vs. WFG filed 11/5/2020 155 - 170

VOLUME 8

Declaration of Eustachius Bursey - Dattala filed 12/08/2021 1814 - 1817

VOLUME 1

Findings of Fact, Conclusions of Law and Judgment [with Notice of Entry]  
filed 10/15/2020 147 - 154

///

VOLUME 7

Findings of Facts, Conclusions of Law and Judgment - Dattala v. Bursey and Medina [with Notice of Entry] filed 10/15/2021 1532 - 1556

Joinder in Opposition to Motion for Reconsideration - Acry Development and Precision Assets filed 11/4/2021 1728 - 1730

VOLUME 8

Joinder in Opposition to Motion for Reconsideration - Acry Development and Precision Assets filed 11/29/2021 1805 - 1806

VOLUME 5

Joinder to Precision Assets' motions - by Acry Development filed 8/25/2021 1085 - 1087

Joinder to WFG's motions - by Precision Assets filed 8/26/2021 1088 - 1091

VOLUME 7

Motion for Declaratory Relief - Dattala filed 10/20/2021 1597 - 1677

Motion for Reconsideration (Precision Assets motions) Dattala filed 10/9/2021 1496 - 1531

VOLUME 8

Motion for Reconsideration (WFG motions)- Dattala filed 11/8/2021 1731 - 1779

VOLUMES 3, 4 and 5

Motion for Summary Judgment - Precision v. Dattala filed 8/23/2021 576 - 1084

VOLUME 2

Motion for Summary Judgment - WFG v. Dattala filed 8/23/2021 253 - 335

VOLUMES 2 and 3

Motion to Expunge Deed of Trust - Precision v. Dattala filed 8/23/2021 493 - 553

VOLUME 3

Motion to Expunge Lis Pendens - Precision v. Dattala filed 8/23/2021 554 - 575

VOLUME 8

Opposition to Motion for Reconsideration - WFG filed 11/22/21 1798 - 1804

VOLUME 5

Opposition to Precision Assets' Motion for Summary Judgment - Dattala filed 9/13/2021 1135 - 1244

VOLUME 6

Opposition to Precision Assets' Motion to Expunge Deed of Trust and Conter- motion - Dattala filed 9/13/2021 1385 - 1393

## VOLUME 5

Opposition to WFG's Motion for Summary Judgment - Dattala filed 9/13/2021 1092 - 1134

## VOLUME 8

Order Denying Motion for Declaratory Relief [with Notice of Entry]  
filed 2/28/2022. [Order being appealed] 1842 - 1859

Order Denying Motion for Reconsideration [with Notice of Entry] for Dattala's  
Motion v. Precision Assets filed 5/4/2022 1860 - 1877

Order Denying Motion for Reconsideration [with Notice of Entry]  
for Dattala's Motion v. WFG, filed 1/31/2022 [Order being appealed] 1826 - 1838

## VOLUME 7

Order Granting Precision Assets' Motions for Summary Judgment,  
to Expunge Deed of Trust and to Expunge Lis Pendens [with Notice of Entry]  
filed 10/22/2021 [Order being appealed] 1698 - 1712

Order Granting WFG's Motions for Summary Judgment, [with Notice of Entry]  
filed 10/25/2021 [Order being appealed] 1718 - 1727

Order on Plaintiff/Counterdefendant's Motions in Limine [with Notice of Entry]  
filed 10/21/2021 1678 - 1692

Order on Precision Assets' Motion in Limine No. 4 [with Notice of Entry]  
filed 10/21/2021 1693 - 1697

## VOLUME 8

Release of Lis Pendens - Acry Development and Precision Assets filed 2/4/2022 1839 - 1841

Reply to Opposition and Joinder - Dattala filed 12/2/2021 1807 - 1813

## VOLUME 6

Reply to Opposition to Countermotion - Dattala filed 9/22/2021 1417 - 1438

Reply to Opposition - Precision Assets' Motion Expunge Deed of Trust  
filed 9/21/2021 1403 - 1409

Reply to Opposition - Precision Assets' Motion Expunge Lis Pendens  
filed 9/21/2021 1410 - 1416

Reply to Opposition - Precision Assets' Summary Judgment filed 9/21/2021 1394 - 1402

## VOLUME 1

Service of Process - Acry Development filed 7/18/2019 52 - 56

Service of Process- Spencer filed 8/8/2019 68 - 70

Service of Process - Medina filed 8/20/2019 71 - 73

Service of Process - WFG file 7/30/2019 60 - 62

Stipulation and Order Removing Spencer as a party filed 8/26/2020 142 - 146

///

VOLUME 8

Stipulation and Order to Dismiss - WFG and Precision Assets [with Notice of Entry] filed 5/11/2022

1878 - 1886

VOLUME 7

Supplement to Dattala's Motion for Reconsideration filed 10/18/2021

1557 - 1596

VOLUME 9

Transcript of 9/28/2021 hearing

1894 - 1987

Transcript of 11/16/2021 hearing

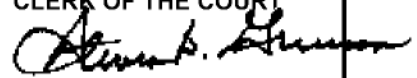
1988 - 2005

Transcript of 12/16/2021 hearing

2006 - 2020

Transcript of 1/20/2022 hearing

2021 - 2046



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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.

Dattal v. Precision Assets et al

**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

1 scope of her employment or agency relationship.

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

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

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

24 Which is where we are here.

25 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 counter motion 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 counter motion.

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

15   
16

17 Dana L. Williams  
18 Transcriber  
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<p><b>MR. BALL:</b> [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><b>MR. BENEDICT:</b> [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><b>MR. CHILDS:</b> [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><b>MR. LANCASTER:</b> [18] 3/18 5/3 6/22 7/8 7/11 7/14 10/17 10/21 11/20 11/25 12/11 15/7 17/18 18/20 23/7 23/9 36/25 41/10</p> <p><b>THE COURT:</b> [95]</p> <p><b>THE PLAINTIFF:</b> [1] 3/12</p> <p><b>UNIDENTIFIED SPEAKER:</b> [3] 43/13 49/18 78/11</p> <p><b>\$</b></p> <p><b>\$95,000</b> [2] 52/5 52/6</p> <p><b>'</b></p> <p><b>'19</b> [3] 33/20 35/8 65/3</p> <p><b>-</b></p> <p><b>-oOo</b> [1] 81/11</p> <p><b>1</b></p> <p><b>1 and</b> [1] 71/25</p> <p><b>1-5</b> [2] 2/16 2/23</p> <p><b>10</b> [2] 26/23 35/11</p> <p><b>10:16</b> [1] 3/1</p> <p><b>11</b> [1] 49/24</p> <p><b>11.025</b> [1] 49/7</p> <p><b>111</b> [1] 49/24</p> <p><b>111.175</b> [2] 55/25 69/6</p> <p><b>111.180</b> [2] 47/20 54/23</p> <p><b>112</b> [1] 47/2</p> <p><b>119</b> [1] 48/8</p> <p><b>11:26 a.m</b> [1] 41/12</p> <p><b>11:37 a.m</b> [1] 41/12</p> <p><b>12</b> [1] 17/8</p> <p><b>12:51 p.m</b> [1] 81/10</p> <p><b>12th</b> [2] 52/7 76/23</p> <p><b>15,000</b> [1] 52/6</p> <p><b>15th</b> [1] 29/23</p>	<p><b>16</b> [1] 55/25</p> <p><b>17</b> [2] 49/17 49/20</p> <p><b>180</b> [1] 49/24</p> <p><b>1959</b> [1] 72/5</p> <p><b>1960</b> [1] 54/11</p> <p><b>1996</b> [2] 13/25 14/2</p> <p><b>19th</b> [1] 52/16</p> <p><b>1st</b> [2] 52/7 53/2</p> <p><b>2</b></p> <p><b>2000</b> [1] 48/1</p> <p><b>2008</b> [1] 54/8</p> <p><b>2013</b> [1] 48/1</p> <p><b>2017</b> [1] 13/12</p> <p><b>2018</b> [1] 74/14</p> <p><b>2019</b> [6] 34/4 50/14 52/20 56/7 57/9 58/6</p> <p><b>2020</b> [2] 35/9 35/19</p> <p><b>2021</b> [3] 1/12 3/1 57/10</p> <p><b>229</b> [1] 2/4</p> <p><b>240.15</b> [2] 10/11 10/22</p> <p><b>25</b> [1] 27/8</p> <p><b>28</b> [2] 1/12 3/1</p> <p><b>3</b></p> <p><b>30</b> [1] 34/23</p> <p><b>300</b> [1] 53/24</p> <p><b>355</b> [1] 48/8</p> <p><b>3946</b> [1] 3/7</p> <p><b>4</b></p> <p><b>40</b> [1] 26/13</p> <p><b>5</b></p> <p><b>50</b> [8] 7/3 7/15 19/5 20/19 35/3 45/7 45/20 45/24</p> <p><b>50 Sacramento</b> [8] 21/12 44/3 45/23 53/1 53/3 53/17 57/21 71/1</p> <p><b>54</b> [8] 18/7 18/15 78/24 79/1 79/8 79/15 80/3 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<p><b>absolutely</b> [5] 10/17 15/19 41/23 57/6 76/21</p> <p><b>accepted</b> [3] 29/1 38/2 38/4</p> <p><b>accepting</b> [1] 30/25</p> <p><b>accompanying</b> [1] 47/25</p> <p><b>accordance</b> [1] 72/10</p> <p><b>accuracy</b> [1] 22/9</p> <p><b>acknowledge</b> [2] 34/1 76/10</p> <p><b>acknowledged</b> [1] 71/6</p> <p><b>acknowledges</b> [2] 75/1 75/4</p> <p><b>acknowledgment</b> [1] 75/9</p> <p><b>acquired</b> [1] 20/12</p> <p><b>ACRY</b> [20] 1/20 2/15 3/23 56/24 57/20 57/25 58/16 59/7 59/10 59/13 60/7 60/11 60/13 61/3 64/17 67/12 74/19 75/7 75/10 79/7</p> <p><b>Acry's</b> [1] 67/7</p> <p><b>act</b> [3] 23/16 28/3 50/10</p> <p><b>acting</b> [1] 11/2</p> <p><b>action</b> [20] 5/10 5/11 5/12 6/2 6/3 6/23 6/25 11/12 12/2 13/16 14/14 18/22 23/14 23/20 24/8 27/3 35/13 35/17 54/15 79/7</p> <p><b>actions</b> [6] 8/20 10/10 17/10 31/3 35/15 62/12</p> <p><b>active</b> [1] 71/7</p> <p><b>activities</b> [1] 16/16</p> <p><b>activity</b> [2] 9/21 71/14</p> <p><b>actual</b> [21] 19/24 22/3 24/8 24/20 25/8 37/20 40/5 44/10 44/24 47/6 50/1 50/19 58/1 58/11 58/14 61/3 65/14 65/22 66/1 66/16 68/5</p> <p><b>actually</b> [5] 16/5 19/24 25/1 25/3 79/19</p> <p><b>add</b> [4] 6/12 6/15 6/18</p>	<p>73/3</p> <p><b>adding</b> [1] 74/23</p> <p><b>addition</b> [1] 61/9</p> <p><b>additional</b> [8] 7/11 8/1 10/3 20/5 22/12 24/13 45/3 45/15</p> <p><b>Additionally</b> [2] 20/19 21/25</p> <p><b>address</b> [11] 8/14 32/19 37/1 38/20 53/18 55/5 68/18 69/6 69/13 69/14 74/19</p> <p><b>addressed</b> [5] 5/13 39/18 39/19 51/20 55/6</p> <p><b>addressing</b> [1] 26/9</p> <p><b>adequately</b> [2] 47/11 63/2</p> <p><b>adjudications</b> [1] 62/16</p> <p><b>adjust</b> [1] 31/7</p> <p><b>admissible</b> [3] 55/2 55/5 55/11</p> <p><b>admission</b> [5] 57/16 57/17 70/15 70/22 75/9</p> <p><b>admissions</b> [6] 26/5 31/4 32/25 33/1 36/18 59/10</p> <p><b>admits</b> [1] 39/23</p> <p><b>admitted</b> [3] 28/17 31/18 44/18</p> <p><b>admittedly</b> [1] 46/7</p> <p><b>adopt</b> [2] 41/21 74/23</p> <p><b>ADR</b> [1] 4/10</p> <p><b>ADRIANA</b> [1] 1/11</p> <p><b>adverse</b> [1] 50/4</p> <p><b>advice</b> [1] 65/10</p> <p><b>affect</b> [4] 8/3 22/1 37/18 63/19</p> <p><b>affected</b> [1] 47/4</p> <p><b>affidavit</b> [23] 7/21 7/23 7/24 8/7 8/11 8/18 21/12 21/17 21/19 21/22 21/23 27/6 27/9 28/6 29/2 31/1 37/2 37/12 37/13 51/15 51/23 53/22 63/12</p> <p><b>affidavits</b> [7] 13/3 21/10 21/25 22/2 22/3 37/4 37/18</p> <p><b>affirmative</b> [1] 27/12</p> <p><b>after</b> [14] 9/22 9/22 11/11 21/24 26/23 28/6 31/1 34/12 48/23 49/5 53/2 59/4 60/18 63/25</p> <p><b>afternoon</b> [3] 4/1 78/3 80/23</p> <p><b>again</b> [22] 14/17 37/16 44/22 45/18 46/1 46/15 47/9 51/5 51/18 52/2 52/9 53/3 55/10 57/10 58/10 61/12 61/18 61/22 63/22 74/22 75/8 76/22</p> <p><b>again a</b> [1] 63/22</p> <p><b>against</b> [29] 2/17 2/20 2/22 3/16 3/24 5/2 5/11 5/18 11/13 16/23 18/4 18/18 24/9 24/12 24/17 34/5 35/15 37/25</p>	<p>40/8 41/15 42/16 47/7 67/19 68/14 76/25 78/25 79/4 79/7</p> <p><b>agency</b> [17] 9/14 9/17 9/17 10/7 12/22 13/1 13/14 13/19 13/22 14/3 14/5 14/15 15/15 16/2 16/21 17/25 18/1</p> <p><b>agency-principal</b> [1] 16/2</p> <p><b>agent</b> [28] 7/17 7/17 9/12 10/6 12/6 12/25 13/7 13/14 14/22 14/22 16/14 17/9 17/11 17/11 17/13 17/18 17/23 19/3 19/3 19/24 20/1 31/10 31/14 31/22 32/1 32/2 33/24 48/6</p> <p><b>agent's</b> [2] 9/16 19/19</p> <p><b>agent-principal</b> [2] 10/6 12/6</p> <p><b>agents</b> [2] 33/24 34/13</p> <p><b>ago</b> [4] 59/16 73/17 78/10 80/16</p> <p><b>agree</b> [11] 5/17 6/1 6/8 14/20 16/10 17/22 53/13 53/14 63/4 65/9 65/10</p> <p><b>agreed</b> [4] 24/11 40/7 63/14 69/17</p> <p><b>agreement</b> [5] 70/17 71/3 71/22 72/14 72/15</p> <p><b>agreements</b> [1] 45/13</p> <p><b>ahead</b> [8] 11/24 17/6 32/17 34/7 69/3 77/14 77/22 79/12</p> <p><b>albeit</b> [1] 45/20</p> <p><b>aligned</b> [3] 24/4 34/20 40/12</p> <p><b>alignment</b> [2] 25/3 25/12</p> <p><b>all</b> [68] 4/1 4/14 4/25 6/10 6/13 6/21 7/13 8/25 12/16 13/6 16/24 22/22 22/25 24/17 27/22 29/13 30/1 31/17 33/10 34/20 35/7 38/13 42/14 42/19 43/1 43/9 43/13 43/19 44/17 47/9 48/21 49/3 50/8 50/24 50/25 51/1 51/9 51/18 52/9 52/12 55/14 55/18 55/19 55/22 58/6 58/22 59/14 60/8 60/13 60/13 60/15 60/23 62/11 64/9 64/15 65/15 65/19 69/15 72/18 72/25 75/21 75/22 77/8 77/16 80/1 80/14 81/2 81/5</p> <p><b>allegation</b> [2] 63/7 63/7</p> <p><b>allegations</b> [5] 8/17 34/5 34/6 58/7 59/15</p> <p><b>allege</b> [1] 12/24</p> <p><b>alleged</b> [9] 27/25 28/12 34/13 44/25 46/10 47/10 47/19 48/9 57/14</p> <p><b>allegedly</b> [2] 28/14</p>
---	---	--	--	--

<p><b>A</b></p> <p><b>alleges</b> [2] 45/1 59/4</p> <p><b>allow</b> [2] 48/9 68/1</p> <p><b>allowing</b> [3] 31/15 36/10 61/5</p> <p><b>allows</b> [2] 48/1 71/10</p> <p><b>alone</b> [1] 32/9</p> <p><b>along</b> [4] 28/21 35/7 48/22 57/20</p> <p><b>already</b> [11] 38/20 44/6 46/16 46/20 59/25 62/6 64/16 68/13 74/11 74/13 76/25</p> <p><b>also</b> [22] 3/19 4/16 6/24 9/16 19/22 20/21 24/15 26/20 28/2 31/7 33/3 35/13 36/4 47/19 54/16 64/17 65/15 68/13 68/13 69/19 75/1 77/15</p> <p><b>Although</b> [1] 31/25</p> <p><b>am</b> [8] 4/1 11/22 49/13 61/17 67/13 77/22 79/12 80/3</p> <p><b>amazingly</b> [1] 53/7</p> <p><b>ambiguity</b> [1] 47/21</p> <p><b>amend</b> [1] 60/1</p> <p><b>amended</b> [8] 12/24 14/17 23/18 33/22 39/24 63/6 63/10 77/4</p> <p><b>amendment</b> [1] 46/3</p> <p><b>amount</b> [6] 22/20 42/23 43/18 61/13 61/15 62/5</p> <p><b>analogy</b> [1] 58/15</p> <p><b>analysis</b> [3] 20/2 20/3 47/9</p> <p><b>another</b> [5] 9/19 35/18 54/2 65/17 75/2</p> <p><b>answer</b> [4] 18/10 36/20 39/7 64/4</p> <p><b>any</b> [54] 5/16 6/6 8/1 9/21 9/24 10/3 10/4 11/5 11/17 12/9 14/12 14/13 15/1 15/3 15/10 16/13 16/20 20/2 20/24 21/23 22/20 22/25 24/18 25/6 30/19 31/11 36/20 36/22 37/6 38/19 40/2 41/3 47/4 48/9 50/5 50/16 52/4 55/2 55/4 55/4 55/10 56/14 58/14 59/12 60/11 60/21 61/2 61/2 64/4 65/14 66/19 68/4 75/9 79/6</p> <p><b>anyone</b> [6] 30/18 42/18 57/18 57/19 65/24 66/18</p> <p><b>anything</b> [7] 6/11 55/8 58/2 58/15 58/20 59/14 67/19</p> <p><b>anyway</b> [4] 42/22 56/13 71/11 76/18</p> <p><b>anywhere</b> [1] 66/6</p> <p><b>apologize</b> [4] 6/8 11/18 17/2 49/19</p> <p><b>apparent</b> [3] 13/15</p>	<p>15/21 15/22</p> <p><b>apparently</b> [2] 70/21 71/19</p> <p><b>appear</b> [1] 14/20</p> <p><b>appearances</b> [2] 1/16 3/6</p> <p><b>appears</b> [4] 4/9 4/11 42/2 65/1</p> <p><b>applies</b> [2] 47/21 56/10</p> <p><b>apply</b> [2] 36/2 47/23</p> <p><b>applying</b> [1] 56/11</p> <p><b>appreciate</b> [4] 49/2 61/7 61/23 78/22</p> <p><b>appropriate</b> [1] 55/24</p> <p><b>appropriately</b> [1] 60/16</p> <p><b>April</b> [14] 28/14 28/15 29/21 29/22 29/22 30/20 50/14 51/24 51/25 52/6 52/7 52/17 53/1 71/16</p> <p><b>are</b> [70] 5/6 5/17 12/16 13/22 13/24 14/12 15/9 16/21 17/11 19/14 19/21 20/9 22/13 22/24 24/4 24/4 26/18 26/24 27/12 29/7 32/23 33/15 34/19 35/22 36/12 36/16 36/17 37/3 37/21 38/20 39/3 39/4 39/15 41/17 42/7 42/23 45/1 45/13 46/13 47/10 50/8 50/8 50/19 50/19 51/9 51/19 51/20 52/13 53/13 55/18 56/2 56/6 58/23 60/16 60/19 61/11 61/12 62/3 62/3 62/22 63/5 63/8 64/13 66/14 75/1 77/11 77/16 77/17 78/16 78/23</p> <p><b>arena</b> [1] 19/15</p> <p><b>argued</b> [1] 48/3</p> <p><b>argues</b> [2] 9/11 74/24</p> <p><b>arguing</b> [7] 15/14 38/9 49/24 51/3 55/13 78/10 78/12</p> <p><b>argument</b> [21] 15/6 32/22 36/17 41/14 44/7 45/9 45/15 46/15 47/19 47/21 47/21 49/24 50/2 57/9 58/9 58/13 59/17 61/18 63/25 74/23 75/1</p> <p><b>arguments</b> [6] 36/12 45/16 47/7 54/16 69/10 75/16</p> <p><b>arising</b> [1] 9/23</p> <p><b>arose</b> [1] 34/16</p> <p><b>around</b> [2] 7/2 20/13</p> <p><b>articulated</b> [1] 27/11</p> <p><b>as</b> [92]</p> <p><b>aside</b> [1] 70/8</p> <p><b>ask</b> [6] 27/1 34/10 34/11 72/16 78/25 79/20</p> <p><b>asked</b> [3] 8/7 26/15 35/13</p> <p><b>asking</b> [3] 18/14 79/16 79/17</p> <p><b>aspect</b> [1] 9/19</p> <p><b>assembly</b> [1] 54/8</p>	<p><b>assert</b> [1] 15/15</p> <p><b>asserted</b> [8] 5/11 8/13 8/14 11/13 23/14 23/18 24/8 24/12</p> <p><b>asserting</b> [1] 58/23</p> <p><b>asserts</b> [1] 18/21</p> <p><b>Asset</b> [1] 25/13</p> <p><b>ASSETS</b> [54] 1/19 1/21 2/14 2/17 2/21 3/15 3/23 7/18 18/5 18/18 18/21 19/4 19/11 20/8 20/15 22/23 23/17 24/4 24/5 25/11 25/20 27/3 27/13 27/19 27/23 28/4 28/11 28/12 30/18 32/10 35/18 37/8 37/16 41/2 41/15 43/3 43/5 43/24 44/21 46/16 52/12 55/8 57/18 58/15 58/16 58/20 59/10 60/7 61/3 64/2 67/7 68/11 75/7 78/20</p> <p><b>Assets'</b> [14] 2/2 2/4 2/5 2/6 2/7 2/8 2/9 2/10 2/11 2/15 2/18 2/23 2/11 41/40/17</p> <p><b>Assets's</b> [1] 67/12</p> <p><b>assign</b> [1] 8/19</p> <p><b>assigned</b> [4] 8/10 9/10 52/5 52/13</p> <p><b>assignment</b> [6] 45/5 45/13 51/7 52/8 53/1 53/5</p> <p><b>association</b> [3] 49/21 54/17 54/21</p> <p><b>assume</b> [2] 5/16 13/13</p> <p><b>assumed</b> [1] 5/14</p> <p><b>assurance</b> [1] 8/3</p> <p><b>assurances</b> [1] 22/12</p> <p><b>at</b> [79] 5/7 5/17 6/12 7/6 8/22 9/13 10/11 11/2 14/2 14/6 14/25 15/18 16/5 17/7 22/3 22/14 22/25 23/21 24/3 24/15 24/17 26/23 29/9 29/15 29/19 30/18 32/11 33/14 34/16 35/24 35/24 36/11 36/13 36/14 40/1 41/12 41/24 42/1 43/20 44/25 45/6 45/10 45/18 46/5 47/2 47/10 47/16 48/24 50/11 51/22 52/22 54/20 55/25 55/25 57/11 57/14 60/8 60/14 61/12 62/4 62/8 62/10 62/12 62/20 62/22 63/1 66/19 68/22 71/23 73/16 75/23 76/1 76/23 76/23 77/25 78/7 80/13 80/24 81/10</p> <p><b>attach</b> [1] 16/18</p> <p><b>attached</b> [11] 17/16 26/21 35/19 51/10 51/15 51/25 53/22 70/17 71/2 71/21 76/2</p> <p><b>attachment</b> [1] 51/24</p> <p><b>attempt</b> [1] 76/23</p> <p><b>attention</b> [2] 4/23</p>	<p>63/24</p> <p><b>attenuated</b> [1] 75/13</p> <p><b>ATTEST</b> [1] 81/12</p> <p><b>attorney</b> [3] 42/5 49/12 62/12</p> <p><b>attorneys</b> [1] 39/7</p> <p><b>attorneys'</b> [2] 4/6 4/14</p> <p><b>audio</b> [1] 81/13</p> <p><b>audio/video</b> [1] 81/13</p> <p><b>August</b> [3] 34/4 57/9 58/6</p> <p><b>authority</b> [5] 13/15 14/13 15/21 15/22 72/3</p> <p><b>automatically</b> [1] 15/15</p> <p><b>avoid</b> [1] 60/9</p> <p><b>aware</b> [16] 19/24 20/15 20/25 21/6 21/8 21/23 31/11 32/1 35/4 38/10 38/17 39/10 44/6 44/22 44/23 63/24</p> <p><b>away</b> [3] 7/25 38/7 61/1</p>	<p>43/19 44/22 51/13 53/14 53/15 54/11 54/11 60/22 62/17 65/3 68/2 72/11 72/25 74/6 76/14 76/14 80/13</p> <p><b>before</b> [14] 1/11 17/3 21/4 28/5 28/9 29/22 29/25 30/9 30/23 31/11 52/7 54/17 67/3 69/18</p> <p><b>begin</b> [1] 78/3</p> <p><b>beginning</b> [1] 35/8</p> <p><b>behalf</b> [13] 3/19 3/23 5/4 19/3 22/20 23/13 25/20 28/3 35/14 48/5 56/24 59/25 65/6</p> <p><b>being</b> [13] 4/13 20/9 35/2 35/9 42/18 44/24 45/23 50/7 53/5 70/13 74/22 77/18 78/7</p> <p><b>belief</b> [1] 40/23</p> <p><b>believe</b> [32] 4/2 4/17 5/6 5/20 6/6 7/9 16/1 16/11 16/13 16/20 17/23 22/25 25/10 32/10 36/11 40/11 41/19 43/19 48/16 49/14 50/2 51/3 55/13 57/10 62/8 66/9 70/12 72/3 74/8 75/5 78/9 78/14</p> <p><b>Ben</b> [2] 67/11 69/1</p> <p><b>BENEDICT</b> [28] 1/20 3/23 3/25 6/11 6/17 6/18 25/16 25/20 32/16 36/23 51/22 56/21 58/8 58/8 61/23 62/15 65/12 74/18 74/21 76/22 77/25 78/5 78/6 79/10 79/11 80/2 80/4 81/1</p> <p><b>Benedict's</b> [2] 41/22 61/7</p> <p><b>benefit</b> [3] 34/2 37/21 45/3</p> <p><b>benefited</b> [2] 35/16 35/17</p> <p><b>BENJAMIN</b> [5] 1/17 3/7 5/25 12/14 17/2</p> <p><b>besides</b> [1] 15/20</p> <p><b>best</b> [1] 81/14</p> <p><b>better</b> [1] 80/7</p> <p><b>between</b> [13] 6/13 7/18 15/19 16/17 20/20 23/12 24/2 25/11 38/12 41/18 62/16 75/2 75/8</p> <p><b>BFP</b> [3] 58/17 58/18 59/3</p> <p><b>big</b> [4] 4/18 45/9 49/23 59/17</p> <p><b>bill</b> [4] 52/10 52/10 60/17 60/19</p> <p><b>bills</b> [2] 38/16 38/16</p> <p><b>bit</b> [3] 5/5 18/25 19/25</p> <p><b>blatantly</b> [1] 27/5</p> <p><b>Blecker</b> [3] 26/21 30/11 31/6</p> <p><b>Blecker's</b> [1] 29/7</p> <p><b>blended</b> [1] 55/16</p> <p><b>blowing</b> [1] 53/21 54/22</p> <p><b>Case</b> [2] 21/21 68/8</p>
---	--	---	---	--



5 competing [4] 44/4 continue [4] 40/22 74/2  
21 Dattaraj Precision Assets et al  
complaint [14] 8 Case # 84762

<p><b>C</b></p> <p><b>contract</b> [11] 26/17 27/13 27/22 28/2 29/4 30/6 30/12 31/3 45/5 45/13 51/7</p> <p><b>contractor</b> [3] 16/19 17/19 17/20</p> <p><b>contractors</b> [2] 8/9 15/25</p> <p><b>contracts</b> [3] 49/22 72/4 72/9</p> <p><b>contractual</b> [1] 9/18</p> <p><b>contrary</b> [2] 9/1 11/17</p> <p><b>control</b> [6] 9/15 9/18 9/21 10/4 16/4 19/18</p> <p><b>controversy</b> [1] 42/24</p> <p><b>conversation</b> [1] 59/14</p> <p><b>convey</b> [2] 54/13 71/25</p> <p><b>conveyance</b> [6] 56/3 72/13 72/14 72/16 76/13 76/17</p> <p><b>conveyances</b> [2] 56/1 56/5</p> <p><b>conveying</b> [1] 7/25</p> <p><b>convoluting</b> [1] 74/12</p> <p><b>copy</b> [2] 71/2 71/21</p> <p><b>Corp</b> [1] 47/2</p> <p><b>correct</b> [9] 7/8 63/4 68/14 69/20 69/21 70/7 76/3 78/16 79/23</p> <p><b>correcting</b> [1] 67/14</p> <p><b>correction</b> [1] 78/17</p> <p><b>correctly</b> [1] 81/12</p> <p><b>cost</b> [1] 35/24</p> <p><b>costs</b> [1] 4/16</p> <p><b>couch</b> [1] 20/8</p> <p><b>could</b> [14] 15/12 18/14 26/20 34/7 42/2 42/3 42/3 42/3 48/7 57/12 57/13 57/13 62/23 67/16</p> <p><b>couldn't</b> [2] 24/19 35/3</p> <p><b>counsel</b> [36] 3/5 10/15 23/8 23/12 23/17 23/23 24/1 24/25 25/7 25/16 26/15 32/17 33/11 34/9 34/10 34/12 35/10 35/23 36/9 36/10 37/2 37/22 38/7 38/19 39/11 39/23 40/3 57/7 61/10 62/1 64/7 69/14 69/15 73/1 77/24 80/4</p> <p><b>counter</b> [4] 1/17 33/13 51/8 72/17</p> <p><b>counter-expert</b> [1] 33/13</p> <p><b>counterclaimant</b> [7] 2/2 2/15 2/18 2/21 2/23 3/15 43/2</p> <p><b>counterclaims</b> [1] 42/21</p> <p><b>Counterdefendant's</b> [2] 2/12 2/13</p> <p><b>countermotion</b> [11] 2/4 50/22 70/6 70/7 70/9 70/14 71/4 72/17 72/20 73/8 73/9</p> <p><b>COUNTY</b> [2] 1/2 3/1</p>	<p><b>couple</b> [4] 5/10 13/3 49/5 58/10</p> <p><b>course</b> [3] 30/23 49/3 53/19</p> <p><b>court</b> [58] 1/2 1/11 1/25 4/12 4/13 9/14 12/9 16/4 16/22 18/13 20/10 23/3 24/23 24/23 25/4 25/23 26/15 29/17 31/7 31/8 33/13 34/1 34/2 34/21 36/21 37/22 40/9 41/15 41/16 42/9 42/24 43/21 43/24 44/7 46/14 46/16 46/18 48/1 54/20 55/16 57/4 59/25 61/15 62/8 63/24 65/8 69/8 70/16 71/10 72/3 74/11 74/19 75/14 76/24 79/16 79/16 79/17 80/6</p> <p><b>Court's</b> [8] 16/14 44/6 59/19 62/5 65/22 73/16 74/16 77/12</p> <p><b>courts</b> [4] 19/22 24/14 72/6 72/8</p> <p><b>coverage</b> [5] 22/13 24/14 24/16 24/18 24/20</p> <p><b>craft</b> [1] 55/21</p> <p><b>create</b> [2] 8/3 31/14</p> <p><b>created</b> [1] 32/5</p> <p><b>creating</b> [1] 51/20</p> <p><b>criminal</b> [1] 50/10</p> <p><b>crisis</b> [1] 54/7</p> <p><b>cross</b> [4] 2/17 3/16 3/24 25/21</p> <p><b>cross-claimant</b> [3] 2/17 3/16 25/21</p> <p><b>cross-claimants</b> [1] 3/24</p> <p><b>crossroads</b> [1] 63/1</p> <p><b>current</b> [2] 38/9 52/14</p> <p><b>D</b></p> <p><b>damaged</b> [1] 35/9</p> <p><b>damages</b> [4] 10/25 29/14 37/12 60/3</p> <p><b>damaging</b> [1] 35/7</p> <p><b>Dana</b> [1] 81/17</p> <p><b>dated</b> [2] 51/24 52/6</p> <p><b>DATTALA</b> [54] 1/4 3/4 3/8 3/10 12/20 20/9 20/13 20/15 20/20 21/3 21/8 21/15 21/16 23/14 23/17 23/18 24/8 28/10 30/21 35/15 37/6 38/11 38/13 38/17 39/23 41/3 45/15 45/16 45/21 45/22 46/20 47/7 53/8 53/9 53/10 53/12 53/19 57/17 57/24 59/11 59/22 60/1 65/6 65/11 67/2 67/21 70/15 72/17 73/23 75/2 75/3 75/8 76/8 80/8</p> <p><b>Dattala's</b> [7] 24/5 25/12 38/16 45/17 45/25 46/7 60/17</p> <p><b>Dawn</b> [2] 26/7 33/2</p>	<p><b>day</b> [4] 10/3 36/13 64/2 81/5</p> <p><b>days</b> [1] 52/7</p> <p><b>dead</b> [2] 30/3 55/19</p> <p><b>deals</b> [1] 58/18</p> <p><b>dealt</b> [1] 76/14</p> <p><b>debt</b> [2] 73/22 73/25</p> <p><b>decide</b> [5] 14/8 42/3 42/3 42/6 42/9</p> <p><b>decided</b> [1] 54/23</p> <p><b>decision</b> [10] 14/25 17/5 17/14 39/5 42/10 66/24 66/25 70/3 77/9 79/16</p> <p><b>decisions</b> [1] 55/17</p> <p><b>declaration</b> [2] 22/5 22/10</p> <p><b>declaratory</b> [4] 5/12 6/3 24/11 50/23</p> <p><b>deed</b> [50] 2/2 2/4 2/4 2/6 20/20 20/22 20/24 20/25 21/3 21/8 29/3 38/12 43/10 52/11 52/16 52/17 53/2 53/17 53/18 55/3 55/4 55/9 55/10 64/16 66/11 69/19 70/3 70/18 70/22 71/2 71/2 71/3 71/17 72/1 72/1 72/9 72/12 72/22 72/22 73/11 73/18 73/21 74/14 74/15 75/5 75/12 75/16 76/2 77/3 77/15</p> <p><b>deeds</b> [2] 58/22 72/9</p> <p><b>default</b> [2] 56/1 68/18</p> <p><b>defeat</b> [1] 61/4</p> <p><b>defeats</b> [11] 24/5 30/5 30/6 30/6 30/7 49/22 50/20 52/21 54/4 56/8 59/3</p> <p><b>defect</b> [1] 50/3</p> <p><b>defective</b> [1] 54/21</p> <p><b>defects</b> [2] 37/25 41/4</p> <p><b>defendant</b> [20] 1/9 1/17 2/2 2/6 2/15 2/15 2/18 2/21 2/21 2/23 3/15 3/23 6/25 18/4 18/18 41/15 43/2 54/19 78/15 78/19</p> <p><b>Defendant/Counterclai</b> <b>mant</b> [5] 2/2 2/15 2/18 2/21 2/23</p> <p><b>defendants</b> [1] 42/20</p> <p><b>defended</b> [2] 24/6 38/4</p> <p><b>defense</b> [7] 3/13 18/24 23/4 23/10 23/12 25/13 64/2</p> <p><b>defined</b> [1] 19/19</p> <p><b>defraud</b> [2] 56/3 56/5</p> <p><b>deliberately</b> [1] 47/8</p> <p><b>Delmar</b> [1] 65/18</p> <p><b>denied</b> [2] 57/11 77/5</p> <p><b>denies</b> [2] 41/16 42/24</p> <p><b>deny</b> [1] 42/11</p> <p><b>department</b> [1] 80/19</p> <p><b>deposition</b> [10] 14/10 26/8 27/7 28/17 33/2 53/23 59/11 59/12 60/20 73/23</p>	<p><b>depositions</b> [1] 34/12</p> <p><b>DEPT</b> [1] 1/6</p> <p><b>derivative</b> [1] 14/15</p> <p><b>designate</b> [1] 6/1</p> <p><b>designated</b> [1] 80/16</p> <p><b>designee</b> [1] 33/3</p> <p><b>detail</b> [1] 33/10</p> <p><b>detailed</b> [6] 4/15 5/8 36/17 42/14 61/23 78/2</p> <p><b>determine</b> [2] 26/15 27/2</p> <p><b>determined</b> [5] 14/4 14/5 14/6 14/23 40/10</p> <p><b>DEVELOPMENT</b> [4] 1/20 2/15 57/20 58/16</p> <p><b>did</b> [29] 14/3 14/5 14/10 16/15 23/15 26/19 26/24 31/15 31/18 31/18 31/19 34/10 34/11 35/9 36/8 39/1 44/3 44/4 48/22 50/2 53/9 53/10 53/13 53/14 56/4 59/6 60/5 63/13 75/14</p> <p><b>didn't</b> [24] 5/14 6/1 9/24 10/3 10/3 10/8 13/6 14/12 16/2 20/24 27/24 28/15 37/7 38/3 38/10 38/11 38/14 38/20 38/21 50/16 54/2 59/2 65/7 68/21</p> <p><b>different</b> [9] 7/3 18/21 22/22 37/3 50/12 52/13 60/24 63/5 73/1</p> <p><b>difficult</b> [4] 64/11 64/12 64/25 66/24</p> <p><b>direct</b> [8] 33/4 35/18 35/21 35/22 36/3 36/6 42/13 57/22</p> <p><b>directing</b> [1] 17/25</p> <p><b>directly</b> [3] 24/4 74/4 74/11</p> <p><b>disagree</b> [2] 30/15 49/16</p> <p><b>disclose</b> [4] 19/23 20/4 32/4 38/25</p> <p><b>disclosed</b> [6] 20/14 20/18 28/4 32/9 39/9 46/6</p> <p><b>discloses</b> [1] 20/1</p> <p><b>disclosure</b> [1] 54/1</p> <p><b>disclosures</b> [1] 39/8</p> <p><b>discover</b> [1] 20/6</p> <p><b>discovery</b> [11] 29/14 34/3 44/13 44/14 44/14 44/17 44/18 57/12 60/25 61/13 73/24</p> <p><b>discussed</b> [3] 21/20 58/11 65/24</p> <p><b>discusses</b> [1] 52/8</p> <p><b>discussing</b> [1] 10/22</p> <p><b>dispose</b> [1] 62/8</p> <p><b>dispute</b> [9] 9/6 12/6 13/4 15/11 44/23 51/2 51/4 51/4 63/15</p> <p><b>disputed</b> [4] 13/22 27/15 31/19 55/18</p> <p><b>disputing</b> [4] 21/16 21/17 24/4 37/6</p>	<p><b>disregarding</b> [1] 45/18</p> <p><b>distinct</b> [1] 44/1</p> <p><b>distinction</b> [1] 63/20</p> <p><b>distracts</b> [1] 45/6</p> <p><b>DISTRICT</b> [2] 1/2 1/11</p> <p><b>diversion</b> [1] 46/1</p> <p><b>dividing</b> [1] 41/17</p> <p><b>do</b> [36] 4/20 4/21 6/11 8/16 15/1 16/7 17/25 19/13 22/17 24/9 27/18 27/24 31/2 35/6 38/3 40/21 41/20 49/2 49/13 50/25 53/10 55/8 56/14 59/24 60/5 63/19 65/9 65/10 67/21 69/8 69/17 70/4 73/3 77/12 80/13 81/12</p> <p><b>doctor</b> [4] 13/14 13/15 15/20 15/21</p> <p><b>doctor's</b> [1] 13/16</p> <p><b>doctrine</b> [1] 9/8</p> <p><b>document</b> [25] 8/2 8/2 22/11 22/17 28/8 28/13 37/4 37/6 37/10 37/10 37/15 37/20 38/8 38/13 50/11 51/25 52/18 52/19 55/12 57/24 71/16 71/24 74/1 74/2 74/7</p> <p><b>documents</b> [27] 9/23 9/24 10/1 14/11 15/23 15/23 28/24 29/1 29/14 30/25 31/17 32/7 37/18 37/20 38/15 39/4 39/6 45/18 46/2 50/13 50/14 50/19 58/3 58/24 63/11 63/12 71/10</p> <p><b>does</b> [9] 9/17 24/15 31/9 34/23 40/23 47/23 48/8 63/1 73/18</p> <p><b>doesn't</b> [25] 5/15 6/6 8/3 8/14 9/10 11/16 14/20 15/16 27/17 31/2 36/2 37/17 37/17 40/19 40/19 41/4 50/24 54/13 54/14 54/18 55/12 65/16 65/20 67/19 79/6</p> <p><b>doing</b> [3] 4/1 4/15 49/1</p> <p><b>don't</b> [73] 4/2 4/5 4/21 5/23 6/1 7/25 12/10 14/1 15/3 16/1 16/10 16/12 16/20 17/23 20/1 22/1 22/2 22/18 22/19 25/2 33/12 36/22 37/18 38/19 42/5 42/8 42/17 43/6 48/16 49/12 49/14 50/1 50/22 53/10 53/12 53/21 53/25 55/2 55/4 55/4 61/1 61/2 62/11 62/25 63/16 63/19 65/2 65/9 65/14 65/22 65/23 66/2 66/6 66/9 66/16 66/20 66/24 67/8 67/20 67/25 68/4 68/6 68/8 68/12 70/20 73/9 73/9 75/10 76/10 77/19 80/5 80/20 80/21</p> <p><b>done</b> [5] 20/4 37/11 48/24 72/16 67/4</p>
---	---	---	---	--



<b>G</b>	<b>grants [1]</b> 16/22 <b>great [3]</b> 25/22 33/9 81/5 <b>guarantee [1]</b> 40/20 <b>guess [1]</b> 44/20	53/12 53/14 53/15 55/12 60/2 60/5 60/5 60/6 60/22 60/22 61/23 61/24 65/8 65/13 71/12 75/1 75/5 77/20 <b>he's [4]</b> 6/8 53/20 60/3 71/7 <b>head [2]</b> 5/20 60/24 <b>heading [1]</b> 73/11 <b>heads [1]</b> 4/21 <b>hear [13]</b> 4/4 7/22 12/13 38/19 42/11 46/15 53/9 63/13 70/9 75/24 79/12 79/13 79/20 <b>heard [16]</b> 41/14 43/21 44/6 48/16 48/17 48/18 53/8 62/3 63/11 63/12 63/18 64/16 65/2 74/7 79/8 80/17 <b>hearing [5]</b> 14/7 26/2 44/7 76/23 80/16 <b>hearings [1]</b> 43/20 <b>held [1]</b> 20/6 <b>help [1]</b> 76/7 <b>her [23]</b> 7/15 8/10 9/25 9/25 9/25 9/25 10/9 10/10 11/2 13/1 13/5 14/10 14/11 14/12 16/16 17/10 17/19 17/20 27/7 27/7 28/17 28/22 33/5 <b>here [38]</b> 6/25 11/8 12/5 13/24 24/16 25/2 25/10 26/19 27/10 27/24 30/16 31/15 33/5 38/1 40/10 40/25 42/19 42/24 43/19 43/25 44/19 47/3 47/16 49/12 51/17 52/24 54/3 56/2 59/21 60/25 63/5 63/20 67/24 67/25 70/11 71/9 75/17 77/20 <b>hereby [1]</b> 81/12 <b>herring [4]</b> 46/1 51/19 63/22 63/23 <b>herrings [1]</b> 46/13 <b>herself [1]</b> 10/8 <b>Hey [1]</b> 51/13 <b>highlighted [2]</b> 26/22 36/17 <b>highlights [1]</b> 33/14 <b>him [9]</b> 20/16 26/24 28/25 48/22 48/25 53/10 53/21 60/21 65/9 <b>himself [1]</b> 74/10 <b>hindsight [2]</b> 45/2 62/11 <b>hinges [1]</b> 9/11 <b>hire [1]</b> 9/24 <b>his [20]</b> 5/11 5/20 11/2 15/6 23/18 26/22 26/22 29/24 31/9 39/11 41/22 52/16 58/13 58/13 59/11 59/11 60/3 60/20 60/24 75/1 <b>history [1]</b> 54/6 <b>hold [4]</b> 10/9 34/23 46/4 70/8	<b>holder [1]</b> 27/16 <b>holds [1]</b> 73/21 <b>homeowners [2]</b> 54/17 54/21 <b>homes [1]</b> 34/22 <b>homicides [1]</b> 18/11 <b>honest [1]</b> 66/25 <b>honestly [1]</b> 80/14 <b>Honor [46]</b> 3/14 3/18 3/22 5/3 5/20 6/19 6/22 7/8 10/21 11/20 11/25 15/7 16/8 18/20 25/15 25/19 25/22 27/10 30/4 32/13 33/17 35/20 36/11 36/25 41/6 41/10 43/4 43/17 48/11 49/18 56/20 61/6 61/21 64/5 69/8 69/17 69/21 73/2 73/10 73/15 74/17 74/18 76/21 78/5 79/10 81/8 <b>HONORABLE [1]</b> 1/11 <b>hope [1]</b> 27/10 <b>horse [1]</b> 55/19 <b>hospital [4]</b> 13/14 13/16 14/2 15/20 <b>hour [1]</b> 76/23 <b>house [1]</b> 51/14 <b>how [11]</b> 9/25 14/1 43/2 49/11 50/18 53/8 60/21 63/24 66/2 68/9 68/12 <b>however [8]</b> 9/17 21/5 21/13 21/16 27/4 33/14 35/5 63/5 <b>humily [1]</b> 64/3 <b>hundred [1]</b> 19/13 <b>Hunter [1]</b> 9/13 <b>Huntington [1]</b> 48/8	<b>idea [3]</b> 9/21 19/19 51/13 <b>identified [14]</b> 8/22 8/23 19/23 20/21 20/22 20/25 21/7 24/9 37/5 38/8 38/13 38/14 39/19 40/6 <b>identifies [10]</b> 9/14 9/16 10/22 16/4 20/8 21/11 22/23 24/24 39/13 41/3 <b>identify [11]</b> 7/24 11/17 23/15 25/4 25/5 29/24 37/3 38/14 38/19 39/16 40/13 <b>if [61]</b> 5/19 9/13 10/11 11/1 11/8 12/5 12/9 13/21 13/22 14/16 17/7 18/14 20/10 22/2 24/3 24/5 24/14 25/4 25/12 30/10 30/13 32/13 34/5 39/5 39/8 40/14 40/24 41/2 42/10 43/7 44/25 46/9 46/9 47/21 49/13 51/22 55/24 57/14 59/21 63/6 64/4 66/4 66/9 66/14 67/23 68/10 69/8 70/19 71/3 71/7 71/10 71/20 71/23 74/8 74/19 76/11 76/15 77/9 79/10 80/6 81/1 <b>ignored [2]</b> 35/14 46/14 <b>ignores [2]</b> 32/24 59/21 <b>ignoring [3]</b> 29/5 35/16 47/8 <b>immediate [1]</b> 20/9 <b>immediately [1]</b> 21/4 <b>impact [1]</b> 27/6 <b>imparted [1]</b> 48/4 <b>imparts [1]</b> 47/14 <b>important [5]</b> 33/17 52/20 59/9 63/20 64/19 <b>importantly [2]</b> 62/10 62/20 <b>impossibility [1]</b> 28/16 <b>improper [3]</b> 59/5 75/17 76/25 <b>improperly [1]</b> 34/15 <b>imputation [1]</b> 61/3 <b>imputed [3]</b> 48/7 48/9 59/10 <b>imputing [1]</b> 60/12 <b>in [220]</b> <b>inadequate [2]</b> 11/14 14/14 <b>inadequately [1]</b> 12/3 <b>INC [1]</b> 1/25 <b>incentive [1]</b> 34/18 <b>incorrect [2]</b> 36/3 36/4 <b>incumbent [1]</b> 29/25 <b>independent [18]</b> 8/9 15/25 16/19 17/9 17/19 17/20 21/21 23/22 24/1 24/25 25/6 33/11 34/9 34/10 34/11 36/10 39/5 40/3 <b>indefinite [1]</b> 47/15
----------	---	---	--	---

<b>I</b>	<b>interrogatory [1]</b> 17/7	31/22 34/7 34/7 34/14	73/17 74/7 74/23 75/6	<b>least [3]</b> 5/17 16/5
<b>indicate [2]</b> 64/22	<b>interrupt [1]</b> 56/20	34/18 34/18 35/10	75/13 75/14 75/21	22/14
64/23	<b>interrupted [1]</b> 49/19	35/14 35/23 35/24	76/10 77/1 77/3 78/6	<b>leaves [2]</b> 58/5 59/6
<b>indicated [2]</b> 67/16	<b>interruptions [1]</b> 11/22	39/23 41/2 44/23 48/6	78/9 78/13 79/17 79/19	<b>led [1]</b> 54/22
80/4	<b>into [15]</b> 5/16 13/13	60/8 65/17	80/4	<b>left [4]</b> 27/3 59/20
<b>indicating [1]</b> 45/19	18/22 27/19 33/9 35/8	<b>itself [4]</b> 28/18 31/24		59/20 60/3
<b>indicative [1]</b> 45/1	37/14 43/25 45/8 45/17	46/24 70/18	<b>K</b>	<b>legal [6]</b> 20/2 25/1
<b>indiscernible [5]</b> 4/3	49/6 49/9 52/11 54/5	<b>J</b>	<b>keep [3]</b> 12/15 18/6	30/24 47/4 65/10 67/24
51/7 63/8 67/9 69/23	57/12	<b>January [2]</b> 44/7 57/10	19/11	<b>legally [4]</b> 29/25 39/5
<b>inducing [1]</b> 22/6	<b>invading [1]</b> 14/24	<b>Jay [1]</b> 4/11	<b>kind [4]</b> 27/16 33/17	56/13 67/23
<b>industry [2]</b> 19/8 37/9	<b>invalid [1]</b> 74/15	<b>JD [1]</b> 1/25	55/20 60/21	<b>legislative [1]</b> 54/6
<b>infer [1]</b> 45/16	<b>investigate [3]</b> 20/6	<b>Jeffrey [1]</b> 33/9	<b>kinds [2]</b> 55/15 55/18	<b>lender [2]</b> 48/6 48/7
<b>inferences [3]</b> 12/16	31/12 32/1	<b>Jenine [2]</b> 26/5 53/7	<b>knew [5]</b> 32/9 34/24	<b>lender's [1]</b> 48/6
13/22 51/1	<b>investigation [1]</b> 46/9	<b>job [3]</b> 17/19 29/20	34/25 59/9 60/12	<b>let [11]</b> 4/3 4/9 4/24
<b>influence [1]</b> 24/19	<b>investor [2]</b> 57/20 60/9	67/4	<b>know [85]</b>	25/4 26/25 28/7 42/1
<b>informal [1]</b> 18/9	<b>involved [3]</b> 5/6 5/8	<b>JOHN [13]</b> 1/4 1/20 3/4	<b>knowing [1]</b> 22/7	56/16 66/22 67/6 71/9
<b>information [7]</b> 20/18	60/22	3/22 6/18 25/19 30/21	<b>knowledge [25]</b> 16/3	<b>let's [19]</b> 3/3 3/5 4/25
33/5 37/14 41/22 45/3	<b>involvement [3]</b> 7/15	48/23 56/21 74/18 78/5	22/24 22/24 33/4 44/10	4/25 5/1 14/4 16/24
46/2 57/23	7/15 20/24	78/6 79/10	48/4 50/1 50/3 58/1	18/3 18/6 18/16 18/16
<b>initial [1]</b> 14/19	<b>is [319]</b>	<b>join [2]</b> 61/8 61/22	58/1 58/11 58/14 58/19	18/17 40/1 51/17 52/24
<b>initially [1]</b> 13/6	<b>isn't [2]</b> 65/17 76/9	<b>joinder [8]</b> 2/2 2/13	58/19 59/9 61/3 65/14	69/18 70/8 70/8 72/25
<b>injured [1]</b> 35/2	<b>isolated [1]</b> 47/24	2/15 2/21 2/23 56/23	65/17 65/22 65/25 66/1	<b>letter [1]</b> 35/19
<b>inquire [1]</b> 30/13	<b>issue [31]</b> 16/6 22/6	61/24 74/19	66/3 66/3 66/16 66/17	<b>liability [5]</b> 8/19 9/9
<b>inquiry [1]</b> 47/12	22/12 23/11 23/24	<b>Joinder/Non-oppositio</b>	<b>knowledgeable [1]</b>	10/23 16/18 62/14
<b>inserted [1]</b> 37/14	24/13 24/14 24/18	<b>n [1]</b> 2/23	33/3	<b>liable [3]</b> 10/9 10/25
<b>inspection [1]</b> 51/9	24/20 39/20 39/25 42/2	<b>joined [2]</b> 67/12 75/15	<b>known [4]</b> 30/14 31/23	13/16
<b>instruction [1]</b> 10/3	45/10 45/10 46/10	<b>joint [3]</b> 25/5 36/7 40/2	31/23 38/22	<b>lien [1]</b> 54/21
<b>instructions [1]</b> 19/18	46/16 46/17 47/10	<b>JUDGE [16]</b> 1/11 15/1	<b>kosher [1]</b> 54/3	<b>liens [1]</b> 46/6
<b>insurance [22]</b> 2/21	47/14 52/12 53/4 55/14	15/17 17/2 56/14 58/9	<b>L</b>	<b>lies [1]</b> 67/4
5/1 8/4 18/24 22/7 22/8	55/17 60/11 63/17	61/1 61/17 64/10 67/21	<b>L-a-t-t-i-n [1]</b> 71/9	<b>light [1]</b> 51/1
22/13 23/4 23/10 23/11	65/15 68/20 69/7 70/3	76/15 78/21 78/23	<b>Lab [1]</b> 9/14	<b>like [24]</b> 4/18 5/19 6/12
23/25 26/17 27/16	75/2 75/8	80/11 80/20 81/6	<b>lady [1]</b> 13/2	12/13 15/5 17/16 21/25
35/24 37/23 37/25	<b>issues [33]</b> 6/9 7/11	<b>judgment [43]</b> 2/2 2/17	<b>laid [1]</b> 43/19	23/3 32/18 34/20 41/8
38/24 40/14 40/19	9/23 15/9 21/17 21/23	2/19 2/20 2/22 5/2 5/7	<b>LANCASTER [23]</b> 1/22	43/22 51/11 58/9 59/19
40/25 52/3 63/21	22/16 23/1 30/19 34/16	12/16 12/23 14/7 15/8	3/19 5/4 6/8 6/21 10/19	65/5 70/9 77/9 77/23
<b>insure [3]</b> 27/9 28/5	37/1 37/6 37/7 37/11	15/10 16/12 16/22 18/2	11/24 15/5 16/9 18/19	78/24 79/3 80/1 80/15
47/13	37/12 38/21 39/13	18/4 18/18 29/8 32/12	27/1 29/16 29/21 30/15	80/25
<b>insured [4]</b> 34/7 70/21	39/15 39/16 39/18	34/4 36/19 39/19 41/15	31/8 33/17 34/19 36/24	<b>Lillian [9]</b> 6/24 8/9 9/22
71/18 76/11	39/22 40/18 40/24	41/23 42/8 42/16 43/3	41/7 42/15 77/25 80/2	16/3 16/4 17/8 21/20
<b>insured's [1]</b> 25/1	42/20 42/23 44/8 47/17	43/23 48/12 50/22	81/1	37/14 68/20
<b>insureds [2]</b> 23/13	51/20 55/2 55/15 55/22	51/21 52/22 59/25 60/2	<b>Lancaster's [2]</b> 17/17	<b>limine [17]</b> 2/7 2/8 2/9
34/18	63/16 63/16	62/6 67/8 68/14 75/7	32/22	2/10 2/11 2/12 2/14
<b>insurer [3]</b> 23/25 24/25	<b>issuing [2]</b> 22/7 30/10	75/14 75/18 79/4 79/5	<b>language [3]</b> 22/3	2/15 2/16 2/23 2/23 4/2
27/19	<b>it [204]</b>	79/5	31/21 63/3	46/18 55/3 55/7 68/19
<b>insurer's [1]</b> 25/1	<b>it's [73]</b> 4/6 4/6 4/6	<b>judgments [1]</b> 57/11	<b>LAS [2]</b> 2/25 14/2	78/4
<b>intended [2]</b> 70/16	4/17 4/20 4/22 6/12	<b>July [2]</b> 33/21 34/4	<b>Las Vegas [1]</b> 14/2	<b>limited [5]</b> 10/1 19/22
72/14	7/24 8/2 8/3 12/23	<b>jump [1]</b> 43/22	<b>last [6]</b> 11/12 15/6	31/9 38/25 79/15
<b>intent [3]</b> 72/4 72/5	13/12 13/13 15/2 15/16	<b>June [1]</b> 65/3	17/12 17/12 17/12	<b>line [2]</b> 27/8 48/22
76/17	15/18 17/11 17/12	<b>June '19 case [1]</b> 65/3	48/23	<b>lines [1]</b> 28/21
<b>intention [3]</b> 70/19	17/15 17/16 17/22	<b>jury [15]</b> 12/23 13/9	<b>Lastly [1]</b> 48/3	<b>link [1]</b> 60/12
72/10 72/11	22/19 27/15 29/3 37/8	13/21 14/7 14/24 14/24	<b>late [1]</b> 76/23	<b>lis [7]</b> 2/3 2/5 35/3
<b>interest [14]</b> 5/16 6/7	37/23 38/10 38/25	26/20 28/19 42/2 42/6	<b>latent [1]</b> 47/4	43/11 69/19 70/2 77/15
8/1 24/2 25/7 31/16	39/12 42/6 46/19 48/3	42/11 51/21 55/15	<b>later [2]</b> 47/18 60/6	<b>listen [1]</b> 69/11
33/10 34/17 36/4 40/4	50/10 50/17 50/20	55/17 55/21	<b>Lattin [4]</b> 71/8 71/9	<b>litigation [6]</b> 7/2 24/15
40/11 44/5 50/4 76/24	51/19 54/18 54/20	<b>just [70]</b> 4/9 4/20 4/24	72/2 76/19	24/20 29/12 40/13 41/1
<b>interesting [2]</b> 55/21	57/14 60/6 60/24 62/6	6/1 10/15 13/12 17/3	<b>law [37]</b> 4/18 4/20 9/7	<b>little [3]</b> 5/5 18/25
80/19	64/12 64/24 65/3 66/11	17/14 18/9 18/12 21/20	9/12 11/15 11/17 12/1	19/25
<b>interests [7]</b> 24/3 25/1	67/18 70/12 70/21 71/6	23/4 23/19 24/9 25/24	12/5 14/6 14/6 14/23	<b>LLC [4]</b> 7/20 46/16
34/6 34/7 34/18 34/19	71/6 71/11 71/17 71/23	27/5 30/3 33/14 33/17	15/11 19/17 20/5 23/24	52/12 55/9
40/11	71/23 71/24 72/3 72/5	36/16 37/8 38/7 40/6	26/16 26/18 27/2 29/7	<b>LLC's [2]</b> 2/15 2/21
<b>interference [9]</b> 12/1	72/5 72/13 73/5 74/1	41/8 42/7 42/22 43/9	30/7 30/7 31/5 32/25	<b>local [1]</b> 33/8
26/13 26/14 44/5 44/17	74/12 75/5 75/13 76/16	43/14 43/22 48/19	35/25 36/7 36/12 38/23	<b>location [2]</b> 57/12
51/18 60/16 60/25 69/4	76/25 77/4 78/19 78/24	48/23 49/6 49/24 55/23	40/1 47/25 48/8 54/4	57/13
<b>internal [4]</b> 8/2 22/17	80/9 80/18 80/19	56/16 61/22 62/7 62/25	62/20 63/4 67/3 73/20	<b>long [5]</b> 25/5 35/5 36/8
26/11 29/6	<b>items [1]</b> 22/22	64/6 64/9 64/12 64/20	74/4 79/23	40/2 75/22
<b>internalize [1]</b> 79/22	<b>its [28]</b> 23/14 23/22	65/12 65/16 66/5 66/20	<b>lawyer [2]</b> 34/14 65/13	<b>look [24]</b> 8/22 9/13
<b>interrogatories [1]</b>	23/23 25/13 25/14	67/6 67/12 67/16 68/6	<b>lead [1]</b> 57/12	10/11 15/18 17/7 22/3
17/8	27/17 27/19 27/19 29/4	68/8 68/9 72/6 73/17	<b>leased [1]</b> 65/18 Case #84762	24/3 24/15 25/4 36/6
	29/12 30/12 30/12			40/4 42/1 44/25





<p><b>N</b></p> <p><b>notary</b> [17] 10/24 10/24 11/1 11/1 11/3 11/4 11/5 11/9 13/5 14/16 14/17 16/16 17/9 28/25 34/15 52/18 71/15</p> <p><b>note</b> [6] 73/19 73/25 76/2 76/7 76/9 77/10</p> <p><b>notes</b> [2] 42/1 54/9</p> <p><b>nothing</b> [13] 6/15 6/18 22/17 24/9 30/22 37/19 58/20 62/17 62/18 64/21 64/22 66/1 68/23</p> <p><b>notice</b> [15] 44/4 44/10 44/24 47/6 47/12 48/7 48/9 50/16 51/9 58/21 58/25 59/1 60/11 65/20 68/8</p> <p><b>noticed</b> [1] 47/14</p> <p><b>notices</b> [1] 50/9</p> <p><b>notify</b> [2] 53/10 53/12</p> <p><b>notifying</b> [1] 53/19</p> <p><b>November</b> [1] 35/8</p> <p><b>now</b> [23] 5/15 14/19 15/4 23/5 29/11 36/23 39/2 39/9 43/1 44/14 51/14 53/3 53/21 58/23 63/9 65/3 65/18 69/10 70/8 74/1 79/5 79/6 80/18</p> <p><b>NRS</b> [8] 10/11 10/22 30/7 47/20 49/7 54/23 55/25 69/6</p> <p><b>NRS 11.025</b> [1] 49/7</p> <p><b>NRS 111.175</b> [2] 55/25 69/6</p> <p><b>NRS 111.180</b> [2] 47/20 54/23</p> <p><b>NRS 240.15</b> [2] 10/11 10/22</p> <p><b>number</b> [11] 26/24 27/17 27/25 28/1 28/2 29/24 36/5 36/16 43/1 75/3 75/4</p> <p><b>Number 2</b> [1] 75/4</p> <p><b>Number 3</b> [1] 43/1</p> <p><b>numbered</b> [1] 16/25</p> <p><b>numerous</b> [2] 43/20 46/12</p>	<p>53/11 55/20 56/11 65/7 76/14</p> <p><b>occupied</b> [1] 51/6</p> <p><b>occur</b> [1] 28/15</p> <p><b>occurred</b> [1] 65/15</p> <p><b>off</b> [2] 29/9 53/21</p> <p><b>office</b> [1] 3/8</p> <p><b>officer</b> [4] 26/6 26/7 29/5 29/6</p> <p><b>Oh</b> [2] 70/1 79/12</p> <p><b>okay</b> [50] 3/3 3/9 3/13 3/17 3/21 3/25 4/4 6/4 6/10 6/16 6/20 7/10 10/16 12/13 16/9 16/14 16/25 23/7 25/16 32/15 32/20 36/22 41/7 41/9 42/11 42/17 43/6 43/14 43/16 48/19 48/20 49/11 49/16 56/19 57/8 58/12 64/14 64/22 65/8 65/13 67/13 67/18 68/25 70/10 70/12 76/1 78/4 79/24 81/3 81/4</p> <p><b>on</b> [126]</p> <p><b>once</b> [8] 45/18 46/1 46/15 47/9 61/12 61/22 63/22 75/11</p> <p><b>one</b> [52] 4/5 4/11 5/12 7/8 8/8 8/22 9/18 15/24 16/24 16/25 17/1 17/3 17/14 18/3 18/17 18/17 19/10 20/5 21/13 21/17 21/19 21/20 26/16 27/4 27/22 28/1 28/11 28/18 31/8 31/10 31/24 32/7 36/1 37/4 41/8 42/5 42/13 42/19 43/12 44/25 54/11 54/22 55/9 59/25 68/15 68/17 70/18 73/7 75/2 75/3 78/6 80/15</p> <p><b>onerous</b> [1] 4/19</p> <p><b>ones</b> [1] 56/4</p> <p><b>ongoing</b> [2] 30/16 46/17</p> <p><b>only</b> [22] 4/5 18/15 24/25 24/25 25/10 26/10 26/11 26/12 26/16 31/2 35/6 35/9 43/20 46/11 47/21 55/9 62/18 62/24 74/7 74/15 76/7 76/15</p> <p><b>oOo</b> [1] 81/11</p> <p><b>open</b> [1] 79/22</p> <p><b>operating</b> [1] 60/17</p> <p><b>operative</b> [1] 63/11</p> <p><b>opinion</b> [6] 26/13 26/22 31/5 32/25 33/13 65/22</p> <p><b>opinions</b> [1] 44/15</p> <p><b>opportunity</b> [1] 23/22</p> <p><b>oppose</b> [1] 63/2</p> <p><b>opposed</b> [8] 69/25 70/1 70/1 70/5 71/5 73/9 74/4 74/5</p> <p><b>opposing</b> [5] 37/2 38/6 38/19 39/11 50/24</p> <p><b>opposition</b> [28] 2/4 2/23 8/13 8/14 9/11</p>	<p>12/22 13/18 17/13 21/11 33/1 33/6 33/7 39/17 41/22 44/20 46/19 46/20 47/20 48/3 49/6 49/20 54/20 56/1 63/1 63/5 72/6 74/5 74/11</p> <p><b>oppositions</b> [1] 36/18 <b>or</b> [102]</p> <p><b>order</b> [10] 10/5 42/12 62/1 65/21 69/5 69/12 74/16 77/1 77/22 79/20</p> <p><b>orders</b> [2] 78/23 80/22</p> <p><b>original</b> [3] 24/10 33/19 55/12</p> <p><b>originally</b> [1] 23/14</p> <p><b>ostensible</b> [2] 13/17 13/19</p> <p><b>other</b> [11] 4/5 6/13 37/13 44/10 46/12 49/12 55/1 61/24 64/20 75/10 77/24</p> <p><b>otherwise</b> [4] 26/20 47/5 70/23 77/1</p> <p><b>our</b> [28] 4/12 5/5 5/8 5/13 8/23 15/9 26/10 27/12 29/8 32/11 33/1 33/5 33/6 33/8 35/6 39/12 39/15 39/17 40/23 43/22 43/23 62/9 72/6 72/8 73/11 73/20 76/13 77/6</p> <p><b>out</b> [33] 10/8 13/2 14/11 17/3 17/4 18/9 18/11 23/21 26/21 27/21 28/24 30/11 31/16 34/3 35/21 38/11 43/20 51/14 58/7 59/15 59/22 59/22 61/11 62/14 62/20 62/24 63/14 65/21 66/20 68/10 68/11 76/10 76/22</p> <p><b>outcome</b> [3] 24/15 24/17 64/12</p> <p><b>outside</b> [2] 20/23 42/18</p> <p><b>outstanding</b> [2] 46/5 71/18</p> <p><b>over</b> [13] 14/9 17/23 19/13 33/18 34/18 35/11 41/23 51/13 66/22 70/21 71/18 76/11 78/25</p> <p><b>overlap</b> [1] 6/14</p> <p><b>overstepping</b> [1] 42/10</p> <p><b>overturn</b> [1] 80/6</p> <p><b>own</b> [12] 4/18 23/22 23/23 26/12 27/19 27/19 34/14 34/18 35/10 39/4 55/3 55/7</p> <p><b>owned</b> [1] 64/23</p> <p><b>owner</b> [9] 20/10 20/17 45/7 46/8 47/1 52/25 55/5 58/4 65/17</p> <p><b>ownership</b> [2] 45/17 55/10</p>	<p><b>page</b> [16] 1/14 3/3 13/17 14/3 17/12 17/12 26/23 27/8 49/17 49/20 54/20 55/25 71/23 71/24 72/6 73/11</p> <p><b>page 16</b> [1] 55/25</p> <p><b>page 17</b> [2] 49/17 49/20</p> <p><b>page 3</b> [1] 71/23</p> <p><b>page 4</b> [2] 13/17 14/3</p> <p><b>page 4 of</b> [2] 54/20 71/24</p> <p><b>page 5 of</b> [1] 73/11</p> <p><b>page 6-7</b> [1] 3/3</p> <p><b>page 62</b> [1] 27/8</p> <p><b>page 8 of</b> [1] 72/6</p> <p><b>pages</b> [1] 71/24</p> <p><b>paid</b> [8] 47/8 49/25 52/5 52/6 53/14 53/15 63/24 71/12</p> <p><b>pandemic</b> [1] 80/18</p> <p><b>papers</b> [4] 8/23 27/11 27/18 58/14</p> <p><b>paramount</b> [1] 23/11</p> <p><b>part</b> [6] 32/22 35/8 68/1 70/22 77/1 77/4</p> <p><b>parte</b> [1] 42/19</p> <p><b>parties</b> [15] 1/10 6/2 6/13 19/4 19/17 24/2 24/11 28/3 30/13 62/16 62/17 72/4 72/5 72/10 75/10</p> <p><b>parties'</b> [1] 19/18</p> <p><b>parts</b> [1] 70/11</p> <p><b>party</b> [18] 7/20 8/8 9/2 9/3 9/18 12/17 15/13 15/24 17/19 21/21 27/15 28/3 30/5 33/2 33/4 38/18 51/1 58/21</p> <p><b>party's</b> [1] 9/19</p> <p><b>path</b> [1] 57/22</p> <p><b>patient</b> [2] 13/13 70/13</p> <p><b>Pause</b> [4] 10/18 11/21 11/23 64/8</p> <p><b>pay</b> [1] 4/23</p> <p><b>paying</b> [3] 36/9 65/16 66/10</p> <p><b>payment</b> [2] 9/4 65/23</p> <p><b>pays</b> [1] 65/18</p> <p><b>pendens</b> [7] 2/3 2/5 35/3 43/11 69/19 70/2 77/15</p> <p><b>per</b> [2] 6/23 33/23</p> <p><b>perceive</b> [1] 32/3</p> <p><b>perfect</b> [2] 37/24 40/20</p> <p><b>perform</b> [1] 9/25</p> <p><b>period</b> [1] 57/19</p> <p><b>permissible</b> [2] 25/5 40/2</p> <p><b>perpetrating</b> [1] 45/2</p> <p><b>perpetrator</b> [1] 59/21</p> <p><b>person</b> [7] 4/18 7/24 33/3 49/13 54/14 58/25 60/6</p> <p><b>personal</b> [2] 51/12 53/5</p> <p><b>personally</b> [1] 67/20</p> <p><b>phone</b> [1] 18/10</p> <p><b>phonetic</b> [2] 26/23</p>	<p>53/23</p> <p><b>picture</b> [1] 4/18</p> <p><b>pictures</b> [1] 51/10</p> <p><b>piece</b> [1] 70/25</p> <p><b>piecemeal</b> [1] 5/19</p> <p><b>place</b> [6] 16/13 45/12 51/25 65/18 75/16 80/7</p> <p><b>places</b> [2] 41/23 64/20</p> <p><b>plaintiff</b> [27] 1/5 1/17 2/12 2/13 2/20 2/22 3/8 5/2 5/13 7/12 8/16 8/21 9/11 11/16 12/13 16/23 45/1 46/23 47/3 50/24 52/14 62/21 62/23 63/14 74/9 77/13 78/13</p> <p><b>plaintiffs</b> [10] 3/5 6/23 11/12 12/2 24/6 61/10 62/1 74/5 74/14 78/24</p> <p><b>Plaintiff/Counterdefen</b> <b>dant's</b> [2] 2/12 2/13</p> <p><b>plaintiffs</b> [4] 5/9 42/16 68/10 77/17</p> <p><b>pleadings</b> [5] 49/7 49/9 49/14 66/6 77/17</p> <p><b>please</b> [19] 3/6 6/21 10/19 11/24 15/6 18/3 23/8 36/24 42/14 43/16 61/18 67/20 73/13 73/13 74/21 77/23 79/20 80/2 81/2</p> <p><b>point</b> [21] 7/6 9/13 14/25 17/3 17/4 20/5 23/21 26/23 26/23 29/21 34/16 34/20 35/21 50/11 62/21 73/16 76/15 76/18 76/23 78/6 78/7</p> <p><b>pointed</b> [5] 61/11 62/14 62/20 63/14 76/22</p> <p><b>pointing</b> [1] 76/10</p> <p><b>points</b> [7] 26/21 27/1 27/5 30/11 31/13 60/15 61/10</p> <p><b>policies</b> [7] 22/6 22/8 22/13 24/7 25/14 29/6 39/6</p> <p><b>policy</b> [14] 23/16 24/19 25/13 26/17 37/24 38/2 38/5 40/15 40/19 40/23 40/25 41/5 60/10 63/25</p> <p><b>poor</b> [2] 30/25 33/23</p> <p><b>portion</b> [2] 32/13 77/2</p> <p><b>portions</b> [2] 44/6 63/7</p> <p><b>position</b> [5] 31/10 35/5 53/8 62/5 71/7</p> <p><b>possesses</b> [1] 9/15</p> <p><b>possibility</b> [1] 68/5</p> <p><b>possible</b> [1] 35/21</p> <p><b>possibly</b> [1] 42/20</p> <p><b>potential</b> [3] 25/9 40/6 40/9</p> <p><b>potentially</b> [1] 60/25</p> <p><b>practice</b> [1] 65/4</p> <p><b>precedent</b> [1] 27/23</p> <p><b>precision</b> [123]</p> <p><b>Precision's</b> [5] 5/7 43/10 43/11 45/4 62/16 # 84762</p> <p><b>prelong</b> [1] 60/18</p>
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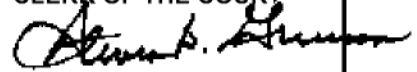
<p><b>P</b></p> <p><b>Preferred</b> [1] 47/1</p> <p><b>prejudge</b> [1] 79/17</p> <p><b>preliminary</b> [15] 20/16 20/21 21/1 21/1 29/16 29/18 29/22 30/2 38/6 45/10 45/22 45/24 46/3 46/6 52/15</p> <p><b>premise</b> [1] 40/17</p> <p><b>preparation</b> [1] 26/2</p> <p><b>prepare</b> [1] 77/23</p> <p><b>prepared</b> [1] 42/12</p> <p><b>present</b> [3] 3/8 3/20 6/25</p> <p><b>presented</b> [2] 29/15 62/2</p> <p><b>presenting</b> [1] 36/9</p> <p><b>presents</b> [1] 42/20</p> <p><b>presumption</b> [1] 46/25</p> <p><b>pretend</b> [1] 67/22</p> <p><b>pretrial</b> [1] 68/21</p> <p><b>pretty</b> [2] 12/22 70/2</p> <p><b>prevent</b> [1] 39/19</p> <p><b>previous</b> [1] 54/24</p> <p><b>previously</b> [2] 19/2 22/1</p> <p><b>primary</b> [1] 45/4</p> <p><b>principal</b> [7] 9/12 9/15 9/16 10/6 12/6 14/22 16/2</p> <p><b>principal-agent</b> [1] 14/22</p> <p><b>prior</b> [8] 9/22 20/10 20/23 21/8 38/8 46/8 56/1 56/5</p> <p><b>probably</b> [1] 51/5</p> <p><b>problem</b> [14] 10/21 51/23 52/1 55/1 58/14 58/22 59/7 61/19 61/21 66/5 66/18 67/4 68/6 70/22</p> <p><b>problems</b> [2] 27/21 27/25</p> <p><b>procedure</b> [1] 60/17</p> <p><b>proceedings</b> [8] 1/8 10/18 11/21 11/23 41/12 64/8 81/10 81/13</p> <p><b>process</b> [1] 20/7</p> <p><b>procure</b> [1] 31/17</p> <p><b>professor</b> [4] 33/9 36/4 42/1 42/1</p> <p><b>promissory</b> [6] 73/19 73/25 76/2 76/6 76/9 77/10</p> <p><b>promulgated</b> [1] 62/16</p> <p><b>prong</b> [2] 58/17 58/18</p> <p><b>pronounce</b> [1] 14/1</p> <p><b>proof</b> [1] 46/23</p> <p><b>proper</b> [8] 21/15 26/19 30/8 36/6 41/21 46/4 58/22 59/4</p> <p><b>properly</b> [4] 22/14 29/25 37/11 43/19</p> <p><b>properties</b> [16] 7/3 19/5 19/12 19/13 19/13 20/12 20/12 31/8 44/2 45/8 45/20 45/25 53/24 53/24 60/3 68/24</p>	<p><b>property</b> [44] 6/7 7/4 7/4 7/12 8/1 20/10 20/17 20/19 21/13 21/24 27/9 29/12 30/20 40/21 44/5 45/18 47/14 47/15 50/4 50/5 51/6 51/9 51/12 52/9 52/10 52/15 53/4 53/5 53/6 53/14 54/1 57/21 63/15 64/23 66/13 68/17 70/17 70/25 71/4 73/18 73/22 74/2 74/25 76/24</p> <p><b>protect</b> [3] 34/18 37/25 40/19</p> <p><b>protected</b> [1] 22/14</p> <p><b>protection</b> [1] 40/15</p> <p><b>prove</b> [4] 46/24 60/2 60/2 62/21</p> <p><b>provide</b> [11] 5/5 10/1 10/3 16/15 20/2 22/12 23/25 24/25 27/23 27/23 34/8</p> <p><b>provided</b> [9] 8/6 15/23 15/23 20/16 21/7 23/22 47/16 47/17 51/10</p> <p><b>provider</b> [2] 7/20 9/4</p> <p><b>provides</b> [1] 9/7</p> <p><b>province</b> [1] 14/24</p> <p><b>proximately</b> [2] 10/25 29/13</p> <p><b>public</b> [12] 10/24 10/25 11/1 11/1 11/3 11/4 11/5 11/9 47/13 50/17 50/19 58/25</p> <p><b>pull</b> [2] 31/20 70/10</p> <p><b>purchase</b> [12] 45/5 45/7 45/12 45/19 51/7 65/5 66/13 70/17 71/2 71/22 72/14 72/15</p> <p><b>purchased</b> [5] 44/2 64/15 64/24 64/24 68/3</p> <p><b>purchaser</b> [29] 28/13 43/25 46/11 46/22 47/3 47/25 48/2 49/23 49/25 50/6 50/21 52/21 53/22 54/5 54/10 54/19 55/24 56/6 56/9 56/12 58/2 59/1 61/4 62/19 65/21 66/20 68/11 77/13 78/14</p> <p><b>purchasers</b> [3] 56/2 56/5 77/18</p> <p><b>purely</b> [1] 20/4</p> <p><b>purported</b> [1] 60/13</p> <p><b>purportedly</b> [2] 14/11 28/9</p> <p><b>purpose</b> [4] 22/6 62/7 73/21 74/6</p> <p><b>purposes</b> [1] 30/19</p> <p><b>pursuant</b> [2] 4/16 24/7</p> <p><b>put</b> [3] 34/7 58/21 70/8</p> <p><b>putting</b> [1] 60/10</p> <p><b>Q</b></p> <p><b>qualification</b> [1] 44/24</p> <p><b>qualify</b> [2] 40/19 62/18</p> <p><b>question</b> [8] 12/22 13/8 13/9 13/20 50/1 52/23 60/7 80/20</p>	<p><b>questions</b> [19] 12/9 12/12 15/1 15/3 26/3 26/9 26/18 28/19 32/13 32/23 33/15 36/16 36/20 36/22 39/5 39/7 56/14 64/4 72/18</p> <p><b>quick</b> [6] 19/8 19/9 40/18 40/21 52/4 57/1</p> <p><b>quickly</b> [4] 10/16 33/20 33/21 34/23</p> <p><b>quiet</b> [5] 5/12 6/5 24/10 54/15 55/1</p> <p><b>quiet-title</b> [2] 5/12 54/15</p> <p><b>quit</b> [2] 64/15 66/11</p> <p><b>quote</b> [4] 13/17 27/7 32/3 72/7</p> <p><b>quoted</b> [5] 12/24 14/10 33/5 34/14 71/8</p> <p><b>quoting</b> [2] 13/18 35/22</p> <p><b>R</b></p> <p><b>raise</b> [3] 28/19 31/3 68/20</p> <p><b>raised</b> [2] 60/6 60/20</p> <p><b>raises</b> [2] 26/3 27/1</p> <p><b>rather</b> [1] 26/7</p> <p><b>rational</b> [1] 15/12</p> <p><b>RAY</b> [1] 1/25</p> <p><b>reach</b> [1] 66/19</p> <p><b>reached</b> [1] 23/21</p> <p><b>read</b> [10] 7/23 26/1 37/20 39/3 49/6 49/8 65/1 67/17 72/7 79/21</p> <p><b>reading</b> [1] 13/17</p> <p><b>reads</b> [1] 25/23</p> <p><b>ready</b> [1] 4/4</p> <p><b>real</b> [8] 14/4 29/18 44/18 50/4 50/5 53/25 63/18 73/22</p> <p><b>realization</b> [1] 47/9</p> <p><b>really</b> [20] 10/16 14/18 14/19 27/1 36/2 44/15 46/21 49/2 49/11 56/15 62/7 62/13 64/1 65/17 73/17 77/19 77/19 78/10 78/12 79/21</p> <p><b>reason</b> [11] 28/10 29/2 41/17 42/17 42/24 46/8 50/12 54/5 54/9 67/15 77/3</p> <p><b>reasonable</b> [12] 13/13 26/20 32/2 50/3 51/8 58/5 58/21 59/6 59/7 66/5 66/17 68/5</p> <p><b>reasons</b> [4] 28/11 68/9 75/6 77/16</p> <p><b>rebut</b> [1] 61/25</p> <p><b>rebuttal</b> [3] 31/13 39/12 39/13</p> <p><b>rebutted</b> [2] 33/12 54/16</p> <p><b>receives</b> [1] 54/14</p> <p><b>recently</b> [2] 4/10 45/21</p> <p><b>recessed</b> [1] 41/12</p> <p><b>recitation</b> [1] 78/9</p> <p><b>reconveyance</b> [6] 53/16 71/14 71/15 75/5</p>	<p>75/8 75/11</p> <p><b>reconveyances</b> [1] 58/23</p> <p><b>record</b> [25] 3/6 5/17 5/24 10/20 11/10 17/15 17/16 28/25 47/1 49/7 49/9 50/17 58/15 58/21 58/22 58/25 59/2 59/3 64/10 64/19 64/19 65/25 73/14 74/12 77/2</p> <p><b>recorded</b> [17] 1/25 32/8 38/12 45/18 46/2 50/15 50/20 52/17 52/19 53/2 53/19 58/3 66/1 70/19 71/14 71/16 72/12</p> <p><b>RECORDER</b> [1] 1/25</p> <p><b>recording</b> [2] 21/6 37/14</p> <p><b>recordings</b> [1] 31/1</p> <p><b>records</b> [3] 45/25 47/13 53/4</p> <p><b>recourse</b> [1] 65/13</p> <p><b>recycled</b> [1] 50/7</p> <p><b>recycles</b> [1] 46/20</p> <p><b>red</b> [21] 20/8 20/14 21/11 22/19 22/23 22/25 38/20 44/22 44/25 45/4 46/1 46/10 46/13 47/10 51/18 51/19 52/9 54/2 60/13 63/22 63/23</p> <p><b>refer</b> [1] 31/7</p> <p><b>reference</b> [1] 45/23</p> <p><b>references</b> [1] 45/22</p> <p><b>refers</b> [1] 29/16</p> <p><b>reflect</b> [2] 71/21 72/4</p> <p><b>reform</b> [6] 71/4 71/10 72/4 72/9 74/14 77/3</p> <p><b>reformation</b> [6] 2/4 70/15 71/8 72/1 73/11 76/5</p> <p><b>reformed</b> [6] 71/20 72/16 72/23 76/17 76/19 77/11</p> <p><b>refuted</b> [1] 76/21</p> <p><b>regarding</b> [1] 37/11</p> <p><b>regardless</b> [1] 13/8</p> <p><b>Regional</b> [1] 13/12</p> <p><b>regrettably</b> [1] 65/8</p> <p><b>related</b> [57] 1/10 5/5 5/9 6/24 7/12 7/15 7/16 7/21 8/18 8/20 9/12 9/23 10/12 10/23 11/13 15/8 15/20 18/23 18/24 19/2 19/4 19/10 19/16 19/20 20/3 20/9 21/3 21/12 21/17 21/23 22/16 23/1 23/11 23/17 24/5 24/13 24/14 24/18 25/11 32/23 37/1 37/6 37/7 37/12 37/13 37/23 38/3 38/4 38/16 39/8 39/11 39/13 39/20 40/17 40/24 41/3 63/12</p> <p><b>relationship</b> [33] 8/12 8/24 9/7 9/9 9/12 9/15 9/17 10/5 10/6 10/7 10/12 10/13 10/21</p>	<p>11/7 11/16 12/4 12/6 13/1 13/19 14/21 14/22 15/15 15/19 16/2 16/17 16/21 16/21 17/25 18/1 23/12 64/17 66/7</p> <p><b>relatively</b> [1] 19/8</p> <p><b>release</b> [1] 20/22</p> <p><b>relevant</b> [1] 46/1</p> <p><b>reliance</b> [1] 22/8</p> <p><b>relied</b> [1] 47/13</p> <p><b>relief</b> [6] 5/12 6/3 24/11 50/23 54/21 77/5</p> <p><b>rely</b> [4] 22/18 29/4 29/8 37/17</p> <p><b>relying</b> [1] 54/23</p> <p><b>remained</b> [1] 44/13</p> <p><b>remaining</b> [2] 44/14 68/23</p> <p><b>remains</b> [2] 25/6 40/3</p> <p><b>remedies</b> [1] 75/3</p> <p><b>remedy</b> [2] 59/20 60/4</p> <p><b>remember</b> [2] 37/16 38/23</p> <p><b>remembers</b> [1] 20/11</p> <p><b>reminder</b> [1] 57/7</p> <p><b>repeat</b> [2] 28/7 75/17</p> <p><b>repeatedly</b> [1] 35/1</p> <p><b>reply</b> [4] 15/9 29/24 39/17 73/11</p> <p><b>report</b> [14] 20/16 20/21 21/1 21/2 29/7 29/16 29/23 30/2 38/6 39/11 39/14 45/24 46/3 52/15</p> <p><b>REPORTING</b> [1] 1/25</p> <p><b>reports</b> [4] 29/18 45/11 45/22 46/7</p> <p><b>represent</b> [1] 36/7</p> <p><b>representation</b> [2] 25/5 40/2</p> <p><b>representative</b> [1] 3/20</p> <p><b>represented</b> [2] 29/10 35/11</p> <p><b>representing</b> [1] 43/5</p> <p><b>request</b> [5] 48/11 64/3 74/7 77/5 77/6</p> <p><b>requested</b> [2] 23/21 74/6</p> <p><b>requesting</b> [2] 43/24 74/17</p> <p><b>required</b> [6] 23/25 25/7 28/8 31/25 40/4 54/1</p> <p><b>requirement</b> [1] 16/6</p> <p><b>research</b> [1] 45/17</p> <p><b>reservation</b> [1] 38/3</p> <p><b>Residential</b> [2] 45/6 45/14</p> <p><b>residing</b> [1] 52/8</p> <p><b>resolve</b> [1] 40/12</p> <p><b>resolved</b> [1] 7/9</p> <p><b>respect</b> [9] 4/14 41/14 41/25 66/16 67/25 76/7 76/8 80/3 80/8</p> <p><b>respectfully</b> [4] 32/11 35/20 36/15 77/6</p> <p><b>respond</b> [3] 5/14 15/5 57/2</p> <p><b>responder</b> [1] 8/22</p> <p><b>response</b> [1] 17/8</p> <p><b>responses</b> [1] 73/24</p>
--	---	--	--	--



<p><b>R</b></p> <p><b>responsibilities [1]</b> 34/15</p> <p><b>responsibility [2]</b> 17/10 19/16</p> <p><b>responsible [2]</b> 24/21 29/13</p> <p><b>restate [1]</b> 25/24</p> <p><b>rests [1]</b> 46/23</p> <p><b>result [2]</b> 24/20 67/18</p> <p><b>retained [5]</b> 7/19 8/6 21/21 23/16 23/23</p> <p><b>retains [1]</b> 23/13</p> <p><b>return [1]</b> 15/12</p> <p><b>review [5]</b> 22/2 22/19 37/17 63/10 79/17</p> <p><b>reviewed [5]</b> 16/10 21/2 38/15 41/13 78/7</p> <p><b>revision [1]</b> 54/17</p> <p><b>revolves [1]</b> 7/2</p> <p><b>right [45]</b> 4/1 4/14 4/20 4/25 5/15 6/10 6/21 7/10 7/13 9/15 9/18 9/20 11/19 15/3 16/24 23/5 29/3 33/11 33/22 36/22 42/14 43/1 48/21 54/8 64/9 64/16 65/16 65/18 66/14 67/7 69/14 70/8 72/20 72/25 75/20 75/21 75/22 76/6 77/8 78/8 78/11 79/23 80/18 80/24 81/5</p> <p><b>rights [5]</b> 16/20 19/18 38/3 50/4 75/3</p> <p><b>ripe [5]</b> 12/23 51/21 78/23 79/4 79/7</p> <p><b>rises [1]</b> 68/4</p> <p><b>role [1]</b> 10/1</p> <p><b>roles [1]</b> 19/21</p> <p><b>room [1]</b> 59/17</p> <p><b>rule [6]</b> 18/7 18/15 19/20 46/18 79/15 80/25</p> <p><b>Rule 54 [2]</b> 18/7 18/15</p> <p><b>ruled [5]</b> 34/1 44/8 46/16 74/11 76/25</p> <p><b>ruling [1]</b> 73/16</p> <p><b>rulings [1]</b> 62/6</p>	<p>80/13</p> <p><b>Santos [11]</b> 26/5 27/7 28/8 28/17 28/21 30/17 31/15 32/5 41/19 53/7 53/7</p> <p><b>Santos's [1]</b> 26/12</p> <p><b>satisfy [1]</b> 47/12</p> <p><b>save [1]</b> 81/3</p> <p><b>say [21]</b> 15/16 20/17 24/15 30/1 31/12 34/19 36/1 36/3 37/18 37/23 38/21 39/6 39/9 39/14 40/23 50/7 53/12 55/23 59/19 67/6 69/9</p> <p><b>saying [15]</b> 7/25 12/5 17/10 27/19 35/7 37/7 38/10 38/15 39/2 50/16 51/19 69/12 72/20 76/15 77/11</p> <p><b>says [20]</b> 10/13 13/2 21/13 22/4 27/8 27/22 28/2 31/20 31/21 35/25 36/5 37/20 38/23 39/15 55/8 56/7 59/22 60/16 71/25 72/2</p> <p><b>scenario [2]</b> 13/15 19/10</p> <p><b>Schlotfeldt [1]</b> 14/1</p> <p><b>scope [3]</b> 11/2 13/1 19/8</p> <p><b>scream [1]</b> 18/9</p> <p><b>screaming [1]</b> 18/12</p> <p><b>se [2]</b> 6/24 33/23</p> <p><b>search [3]</b> 18/11 48/5 80/13</p> <p><b>second [16]</b> 5/12 12/24 13/11 17/12 18/3 18/17 18/17 18/23 32/22 44/10 58/18 63/6 63/9 70/10 73/7 77/4</p> <p><b>Secondly [3]</b> 28/21 31/20 33/7</p> <p><b>secured [1]</b> 73/25</p> <p><b>see [21]</b> 1/14 42/19 46/22 51/17 52/24 62/11 63/7 63/19 65/14 65/22 66/2 66/6 66/16 66/20 68/4 68/6 68/9 68/12 69/18 70/4 72/25</p> <p><b>seeking [1]</b> 8/16</p> <p><b>seeks [2]</b> 45/16 74/9</p> <p><b>seems [2]</b> 54/12 76/18</p> <p><b>seen [3]</b> 63/23 64/21 66/23</p> <p><b>sell [8]</b> 19/10 19/12 35/3 53/13 53/14 53/24 63/15 70/16</p> <p><b>seller [6]</b> 28/23 53/25 54/1 62/17 71/25 73/23</p> <p><b>selling [1]</b> 34/22</p> <p><b>seminal [1]</b> 13/11</p> <p><b>sense [3]</b> 5/15 67/17 79/9</p> <p><b>sent [5]</b> 4/3 28/22 28/23 37/5 37/9</p> <p><b>sentences [1]</b> 58/10</p> <p><b>separate [2]</b> 52/12 70/3</p> <p><b>separately [1]</b> 18/25</p> <p><b>SEPTEMBER [2]</b> 1/12</p>	<p>3/1</p> <p><b>sequence [1]</b> 33/16</p> <p><b>service [2]</b> 7/20 9/3</p> <p><b>services [1]</b> 7/19</p> <p><b>set [6]</b> 10/8 29/7 47/11 55/19 56/15 62/9</p> <p><b>sets [3]</b> 8/21 51/16 51/16</p> <p><b>setting [1]</b> 43/22</p> <p><b>seven [1]</b> 44/13</p> <p><b>several [2]</b> 41/13 65/3</p> <p><b>sewer [3]</b> 45/25 52/10 60/19</p> <p><b>Shadow [1]</b> 54/16</p> <p><b>shaking [1]</b> 5/20</p> <p><b>shall [1]</b> 72/3</p> <p><b>shame [1]</b> 67/18</p> <p><b>she [31]</b> 9/2 10/7 13/2 13/5 13/5 13/6 13/7 14/12 14/21 15/22 16/14 17/18 28/10 28/17 28/22 28/23 28/25 30/17 31/18 31/18 31/18 31/19 32/8 32/8 32/9 32/9 33/4 34/24 34/25 52/19 71/17</p> <p><b>she's [2]</b> 6/25 17/10</p> <p><b>shortening [1]</b> 79/20</p> <p><b>shortly [1]</b> 46/18</p> <p><b>should [21]</b> 27/20 38/22 41/24 44/22 44/23 45/16 46/13 48/4 51/5 62/24 63/2 63/23 66/9 66/25 71/13 71/20 72/23 74/15 76/13 76/19 77/5</p> <p><b>shouldn't [1]</b> 67/21</p> <p><b>show [5]</b> 11/6 16/5 16/6 44/2 69/24</p> <p><b>showed [1]</b> 13/7</p> <p><b>showing [6]</b> 11/8 13/21 20/16 45/25 47/12 58/3</p> <p><b>shows [3]</b> 11/10 21/7 57/16</p> <p><b>sides [1]</b> 15/2</p> <p><b>Siegel [2]</b> 53/23 60/20</p> <p><b>sign [1]</b> 37/7</p> <p><b>signature [3]</b> 13/3 13/4 13/5</p> <p><b>signed [12]</b> 9/23 9/24 14/11 21/2 21/15 21/16 22/11 28/9 32/8 50/12 50/13 52/25</p> <p><b>significant [5]</b> 25/8 40/4 42/4 42/23 65/4</p> <p><b>significantly [1]</b> 79/15</p> <p><b>signing [6]</b> 15/24 15/24 17/9 17/11 17/18 29/9</p> <p><b>signings [9]</b> 7/20 8/6 8/7 8/8 9/3 9/3 9/6 17/20 21/21</p> <p><b>simple [11]</b> 7/20 8/6 8/6 8/8 9/3 9/3 9/5 15/23 15/24 17/20 21/21</p> <p><b>simply [8]</b> 31/7 46/13 50/16 54/20 59/6 63/22</p>	<p>63/23 77/3</p> <p><b>since [6]</b> 4/8 4/21 44/12 47/25 54/11 65/11</p> <p><b>single [4]</b> 57/23 57/24 60/7 62/12</p> <p><b>sit [1]</b> 46/22</p> <p><b>situation [5]</b> 32/6 38/9 66/7 67/2 80/7</p> <p><b>skills [1]</b> 62/24</p> <p><b>slash [1]</b> 17/9</p> <p><b>smart [1]</b> 27/15</p> <p><b>snapshot [1]</b> 29/19</p> <p><b>so [194]</b></p> <p><b>solace [1]</b> 25/22</p> <p><b>sold [4]</b> 20/11 20/13 51/13 52/7</p> <p><b>some [22]</b> 6/14 7/6 8/17 8/17 9/19 18/7 18/14 26/22 36/17 41/21 44/12 44/15 50/13 62/21 63/18 65/6 65/13 72/18 75/9 78/7 78/23 81/3</p> <p><b>somebody [3]</b> 39/7 64/23 66/10</p> <p><b>someone [2]</b> 59/4 65/16</p> <p><b>something [12]</b> 14/7 30/10 49/9 54/3 58/5 59/2 59/3 65/12 66/22 69/1 73/3 80/5</p> <p><b>sometimes [2]</b> 66/23 66/25</p> <p><b>sophisticated [8]</b> 19/12 27/14 39/3 53/22 60/8 66/14 66/18 68/10</p> <p><b>sorry [13]</b> 10/15 10/19 11/18 11/22 22/22 56/20 61/18 61/20 67/10 72/19 74/20 75/21 80/10</p> <p><b>sort [2]</b> 6/13 65/6</p> <p><b>sounds [2]</b> 65/5 67/23</p> <p><b>speak [3]</b> 61/5 73/4 75/10</p> <p><b>special [1]</b> 55/20</p> <p><b>specific [3]</b> 5/8 8/2 26/25</p> <p><b>specifically [14]</b> 7/16 27/8 43/23 44/8 44/13 44/21 46/4 46/23 47/23 48/1 62/1 72/2 73/10 73/20</p> <p><b>speculative [4]</b> 25/6 39/24 40/3 40/9</p> 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<p><b>step [2]</b> 24/1 37/16</p> <p><b>stepping [1]</b> 7/2</p> <p><b>still [7]</b> 34/13 46/17 51/3 67/2 71/13 76/12 76/16</p> <p><b>stipulate [1]</b> 5/16</p> <p><b>stood [1]</b> 32/6</p> <p><b>strike [4]</b> 14/18 26/6 27/4 28/22</p> <p><b>strongly [1]</b> 36/12</p> <p><b>stuff [4]</b> 27/20 30/2 51/14 60/13</p> <p><b>Stuffed [1]</b> 51/12</p> <p><b>subject [2]</b> 6/7 18/1</p> <p><b>submit [7]</b> 36/15 47/10 47/24 62/23 63/9 64/2 77/2</p> <p><b>submitted [4]</b> 33/13 40/8 49/6 79/18</p> <p><b>subsequent [3]</b> 56/1 56/5 56/6</p> <p><b>Subsequently [1]</b> 23/18</p> <p><b>substance [2]</b> 17/23 78/1</p> <p><b>successful [2]</b> 25/13 41/2</p> <p><b>such [2]</b> 15/12 22/8</p> <p><b>sudden [1]</b> 13/6</p> <p><b>sue [1]</b> 30/3</p> <p><b>sued [1]</b> 28/12</p> <p><b>sufficient [1]</b> 16/11</p> <p><b>summary [42]</b> 2/2 2/17 2/18 2/20 2/22 5/2 5/7 12/16 12/23 14/7 15/8 16/12 16/22 18/2 18/4 18/18 29/8 32/12 34/3 36/19 39/19 41/15 41/23 42/8 42/15 43/3 43/23 48/11 50/22 51/21 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<p><b>S</b></p> <p><b>Sacramento [26]</b> 7/3 7/5 7/15 7/16 19/5 19/5 20/19 21/4 21/5 21/9 21/12 21/19 21/24 35/4 37/13 44/3 45/8 45/20 45/23 45/24 53/1 53/3 53/3 53/17 57/21 71/1</p> <p><b>said [7]</b> 15/21 21/15 34/14 65/13 78/13 78/14 78/16</p> <p><b>sale [15]</b> 49/21 49/22 50/17 50/18 52/4 52/21 54/4 56/8 63/3 66/12 66/12 66/19 71/1 71/12 71/21</p> <p><b>sales [1]</b> 47/24</p> <p><b>same [7]</b> 28/21 42/5 53/4 54/11 60/19 75/6</p>				<p><b>start [9]</b> 3/5 4/5 4/25 5/1 18/12 58/9 61/18 64/22 69/10</p> <p><b>Case #84762</b></p>
<p>Page 1985 of 2046</p>				







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.

Dattal v. Precision Assets et al

Case # 84762

Page 1988 of 2046

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

	above-entitled [1] 15/20	attendance [1] 11/8	charge [1] 8/2	declared [1] 7/17
MR. BALL: [3] 2/13 9/20 15/5	acknowledgment [2] 8/10 8/11	ATTEST [1] 15/19	child [1] 5/20	deed [3] 4/23 4/24 6/6
MR. CHILDS: [25]	ACRY [2] 1/13 2/23	audio [1] 15/20	CHILDS [15] 1/18 2/5 2/20 3/1 3/4 6/7 7/4 7/9 9/5 11/11 11/21 11/25 13/16 14/24 15/8	default [2] 7/25 13/2
MR. LANCASTER: [3] 2/15 11/17 15/7	actual [1] 12/12	audio/video [1] 15/20	Childs' [1] 12/22	defaulted [1] 12/25
THE COURT: [31]	actually [2] 2/21 4/4	aware [1] 6/14	Childs's [1] 13/12	defendant [4] 1/9 1/13 1/14 2/24
\$	addressed [1] 7/23		choose [1] 5/9	DEFENDANT/COUNTE
\$10,000 [1] 6/3	admissible [3] 8/19 8/22 12/15	B	chronologically [1] 13/15	RCLAIMANT [1] 1/14
\$220,000 [2] 6/1 6/5	admitted [1] 5/5	back [3] 8/8 12/18 12/20	chronology [1] 14/21	defendants [1] 9/22
-	ADRIANA [1] 1/11	BALL [8] 1/19 2/10 2/12 3/23 8/16 9/19 11/18 14/20	circumstance [1] 14/11	defraud [1] 8/3
-oOo [1] 15/18	affecting [2] 5/12 8/21	based [8] 4/11 4/25 5/3 5/4 6/24 8/14 11/1 11/3	claim [2] 10/4 10/6	denied [2] 5/1 5/3
1	affects [1] 10/13	basis [1] 4/9	claimed [1] 14/16	denies [1] 14/18
10:23 [1] 2/1	after [3] 9/11 13/5 14/14	be [20]	CLARK [2] 1/2 2/1	deny [1] 11/4
10:40 a.m [1] 12/19	again [5] 5/7 7/19 8/8 8/22 14/13	because [14] 2/22 4/3 5/9 6/9 6/23 8/9 8/19 8/20 9/4 11/22 12/1 12/2 14/4 14/11	clear [2] 15/6 15/12	Department [1] 15/2
10:49 a.m [1] 12/19	against [9] 3/8 7/15 7/15 7/18 7/19 8/5 10/2 13/17 13/17	been [9] 4/6 4/7 4/12 4/18 4/22 6/20 9/14 14/9 14/10	clearly [4] 11/2 14/3 14/5 14/6	Department 14 [1] 15/2
10:54 a.m [1] 15/17	agree [3] 11/18 13/12 13/12	before [3] 1/11 13/7 13/19	client [4] 8/13 9/25 10/14 13/16	deposit [1] 6/3
11 [1] 2/22	agreement [1] 10/10	behalf [3] 2/5 2/11 2/15	clients [1] 10/18	DEPT [1] 1/6
111.025 [1] 7/16	agreements [2] 5/17 5/25	believe [14] 2/5 2/10 13/11 13/13 13/18 13/20 14/1 14/2 14/2 14/2 14/5 14/7 14/10 14/15	code [1] 5/20	details [1] 14/21
111.175 [2] 7/23 10/23	ahead [2] 3/1 11/6	Benedict [1] 11/6	comments [1] 11/19	DEVELOPMENT [2] 1/13 2/23
116 [1] 13/10	all [11] 1/15 2/3 2/18 6/11 6/14 6/17 7/12 10/15 11/11 11/17 12/17	BENJAMIN [1] 1/18	complaint [3] 9/23 9/24 10/5	did [7] 5/25 6/4 8/25 9/8 9/12 11/6 13/22
12 [1] 2/22	alleged [2] 10/16 10/17	best [2] 10/24 15/21	complete [1] 3/25	didn't [1] 12/11
13th [3] 5/5 5/6 11/24	allow [1] 10/11	between [2] 9/23 10/10	concept [1] 3/2	difference [1] 14/9
14 [1] 15/2	along [1] 10/1	bona [4] 13/8 13/10 13/18 14/13	concluded [1] 15/17	different [2] 13/9 14/9
15 [1] 3/10	already [2] 9/5 10/15	brief [1] 9/20	conclusions [5] 3/7 5/2 5/15 10/2 10/8	directly [1] 12/14
15th [4] 3/9 4/4 5/15 8/24	also [4] 2/22 5/4 8/8 15/1	bring [1] 5/20	conclusive [1] 8/12	disagreement [1] 10/12
16 [2] 1/12 2/1	am [2] 7/9 9/6	bringing [1] 13/14	consideration [1] 8/4	discuss [2] 9/8 15/11
19 [1] 6/3	Amended [2] 9/23 10/5	brought [3] 7/24 12/10 13/15	contains [1] 9/14	discussed [2] 9/5 14/22
19th [1] 5/18	any [6] 4/11 5/8 9/11 12/7 14/7 14/8	BURSEY [25]	content [2] 14/23 14/25	disrespectful [1] 6/13
2	anyone [1] 2/14	Bursey's [2] 5/18 7/21	continue [1] 9/9	DISTRICT [2] 1/2 1/11
2019 [3] 5/18 5/19 6/3	Anyway [1] 7/2	but [13] 3/23 3/25 5/4 6/13 7/10 8/12 10/13 12/7 13/10 13/13 13/23 15/10 15/14	contradicted [1] 12/14	do [10] 2/14 3/18 4/15 11/17 12/8 13/1 13/22 13/24 15/14 15/19
2021 [7] 1/12 2/1 3/10 3/11 4/4 5/16 8/24	appeal [2] 4/3 9/1	C	contrast [1] 6/22	documentary [1] 5/5
25th [1] 9/12	appealable [6] 4/2 4/7 4/12 4/18 6/20 9/14	calendar [1] 2/22	controlling [1] 14/8	documents [3] 5/12 8/21 10/5
27th [1] 5/18	appealed [7] 4/6 4/7 4/10 4/13 4/18 6/20 9/14	came [2] 10/1 11/24	conveyance [3] 7/17 8/1 8/11	does [4] 10/4 10/6 11/12 14/14
28th [3] 12/13 12/13 12/16	APPEARANCES [1] 1/17	can [4] 4/10 6/25 9/22 10/9	conveyances [1] 7/25	don't [10] 2/23 6/13 6/14 12/7 13/20 14/1 14/1 14/5 14/7 14/10
3	April [1] 6/3	can't [3] 5/8 7/13 9/10	copies [1] 8/17	done [3] 15/8 15/8 15/9
30 [3] 4/4 9/1 9/11	April 19 [1] 6/3	cannot [3] 4/10 7/8 9/17	correct [4] 2/6 2/7 2/11 3/19	draw [1] 9/22
31 [1] 4/5	are [17]	case [5] 1/5 4/14 13/1 15/9 15/21	correctly [1] 15/19	due [1] 5/8
5	arguing [1] 5/8	cases [3] 6/12 13/10 15/13	could [4] 3/25 4/20 5/20 12/21	E
50 Sacramento [3] 4/16 5/12 5/19	argument [1] 10/24	certainly [2] 3/23 12/1	counterclaimant [2] 1/14 2/24	each [1] 10/9
52.125 [1] 8/17	arguments [2] 12/22 13/13	certificate [1] 8/11	COUNTY [2] 1/2 2/1	earnest [1] 6/3
59 Sacramento [6] 4/16 5/13 5/17 5/25 6/1 6/5	as [10] 7/18 7/19 8/5 10/12 10/18 10/25 13/9 13/9 14/23 14/25	certified [1] 8/17	court [16]	ego [1] 14/3
6	aside [1] 8/15	certify [1] 15/19	Court's [2] 13/14 14/6	either [1] 14/16
62 [2] 9/4 9/10	asset [1] 14/13	change [2] 14/7 14/10	created [1] 8/3	else [2] 2/14 15/11
8	ASSETS [8] 1/14 1/19 2/11 2/24 9/22 13/18 13/24 14/15	changed [1] 4/11	D	emergency [1] 11/7
89110 [1] 4/17	assigns [2] 7/15 7/20 at [17]	chapter [1] 7/18	Dana [1] 15/24	encouraging [1] 15/10
A	attached [1] 4/21		date [1] 12/12	enter [2] 5/17 5/24
a.m [4] 2/1 12/19 12/19 15/17			DATTALA [19]	entered [3] 4/8 4/22 9/1
AARON [2] 1/21 2/15			Dattala's [2] 2/18 8/6	entitled [1] 15/20
ability [1] 15/21			day [5] 3/13 3/22 6/14 9/1 15/4	entry [1] 3/10
about [5] 4/14 8/17 10/3 10/10 12/4			days [3] 4/4 4/5 9/11	equally [1] 7/19
above [1] 15/20			dealt [1] 9/21	erroneous [3] 11/3 14/3 14/6
			decided [1] 13/19	escapes [1] 9/16
			decision [4] 10/18 11/3 12/20 14/5 14/6	ESCOBAR [2] 1/11
				Escobar 18 [1] 1/19 1/21

<p><b>E</b></p> <p>essentially [1] 4/20</p> <p>established [1] 5/2</p> <p>estate [1] 8/1</p> <p>EUSTACHIUS [3] 1/7 2/4 3/8</p> <p>even [6] 7/24 9/13</p> <p>10/21 12/22 13/9 13/10</p> <p>every [3] 7/17 8/1 8/2</p> <p>everybody [3] 3/21 3/22 5/7</p> <p>everything [2] 11/10 14/14</p> <p>evidence [6] 5/6 8/17 8/19 11/2 12/7 14/9</p> <p>exact [1] 9/25</p> <p>Excuse [1] 12/18</p> <p>execute [1] 9/10</p> <p>exhibits [1] 5/5</p> <p>existence [1] 12/16</p>	<p>12/4 12/17</p> <p>Good [5] 2/8 2/9 2/11 2/13 2/17</p> <p>got [1] 6/12</p> <p>great [3] 15/3 15/4 15/14</p> <p><b>H</b></p> <p>had [10] 3/18 3/21 3/23 5/7 5/20 11/7 13/1 13/22 13/24 14/15</p> <p>hand [2] 3/5 4/8</p> <p>happen [1] 12/4</p> <p>happened [1] 12/3</p> <p>has [13] 4/6 4/7 4/12 4/15 4/25 5/3 8/13 9/14 10/15 11/18 13/16 14/9 14/12</p> <p>have [16]</p> <p>he [13] 3/23 5/12 5/13 5/20 5/22 6/2 6/4 6/5 7/1 7/21 11/6 11/7 11/7</p> <p>hearing [10] 7/25 9/16 9/16 10/3 11/7 12/3 12/10 12/13 13/19 13/22</p> <p>hearings [1] 13/15</p> <p>hearsay [1] 8/20</p> <p>heirs [2] 7/15 7/19</p> <p>here [6] 2/5 2/10 3/20 7/3 10/14 12/24</p> <p>hereby [1] 15/19</p> <p>highlighted [1] 4/21</p> <p>his [8] 4/23 4/23 5/23 6/25 11/10 11/18 12/5 13/1</p> <p>hold [1] 3/5</p> <p>holding [1] 8/23</p> <p>Honor [7] 3/3 9/20 11/5 11/12 11/17 15/5 15/7</p> <p>HONORABLE [1] 1/11</p> <p>hope [5] 11/10 14/3 15/3 15/3 15/14</p> <p>housekeeping [1] 11/5</p> <p>how [1] 2/23</p>	<p>intent [1] 8/3</p> <p>interest [3] 8/2 8/21 14/16</p> <p>interference [6] 3/18 8/2 9/1 13/7 13/20 15/10</p> <p>interim [6] 4/10 6/22 6/24 7/24 8/14 8/15</p> <p>intervening [1] 14/7</p> <p>into [6] 5/6 5/10 5/17 5/24 7/2 10/19</p> <p>is [42]</p> <p>issue [5] 5/8 9/25 10/3 13/10 13/13</p> <p>issued [1] 9/15</p> <p>it [33]</p> <p>it's [16]</p> <p>itself [1] 10/21</p> <p><b>J</b></p> <p>JD [1] 1/25</p> <p>JOHN [5] 1/4 1/18 2/3 3/9 10/3</p> <p>join [1] 11/18</p> <p>joinder [2] 1/13 2/24</p> <p>JUDGE [4] 1/11 11/22 12/12 12/20</p> <p>judgment [20]</p> <p>just [10] 2/21 5/10 7/5 8/15 11/5 12/3 12/16 12/17 13/20 15/11</p>	<p><b>M</b></p> <p>made [14] 5/11 5/13 5/16 5/22 5/23 7/25 8/3 10/17 10/25 10/25 12/11 12/13 13/5 15/12</p> <p>make [4] 2/20 6/13 7/10 14/23</p> <p>manifest [1] 14/11</p> <p>March [2] 5/18 5/18</p> <p>March 27th [1] 5/18</p> <p>matter [1] 9/24</p> <p>may [2] 8/10 8/12</p> <p>me [7] 9/16 11/6 11/7 11/14 12/12 12/18 14/2</p> <p>mean [1] 15/9</p> <p>Medina [6] 3/8 3/19 10/2 13/17 13/23 14/12</p> <p>meets [1] 14/1</p> <p>Microsoft [1] 15/1</p> <p>midnight [2] 4/6 9/2</p> <p>mixed [1] 10/22</p> <p>modified [1] 4/11</p> <p>moment [1] 12/18</p> <p>money [1] 6/3</p> <p>month [1] 3/12</p> <p>more [1] 10/6</p> <p>morning [5] 2/8 2/9 2/11 2/13 2/17</p> <p>motion [14] 1/14 2/18 2/25 4/9 8/9 10/22 10/23 10/25 11/4 11/23 13/2 13/6 13/25 14/19</p> <p>motions [5] 1/15 9/24 10/18 10/19 13/3</p> <p>move [2] 9/6 15/12</p> <p>Mr [1] 13/11</p> <p>Mr. [45]</p> <p>Mr. Ball [7] 2/10 2/12 3/23 8/16 9/19 11/18 14/20</p> <p>Mr. Benedict [1] 11/6</p> <p>Mr. Bursey [8] 3/19 4/22 4/24 12/25 13/17 13/23 14/12 14/17</p> <p>Mr. Childs [14] 2/5 2/20 3/1 3/4 6/7 7/4 7/9 9/5 11/11 11/21 11/25 13/16 14/24 15/8</p> <p>Mr. Childs' [1] 12/22</p> <p>Mr. Childs's [1] 13/12</p> <p>Mr. Dattala [8] 2/5 2/6 3/21 4/23 4/24 13/16 13/23 14/12</p> <p>Mr. Lancaster [5] 2/17 11/12 11/15 11/20 14/24</p> <p>Ms. [4] 3/19 13/17 13/23 14/12</p> <p>Ms. Medina [4] 3/19 13/17 13/23 14/12</p> <p>my [13] 3/5 3/25 4/8 6/10 8/13 9/25 10/13 10/18 12/24 13/21 14/3 14/5 15/21</p> <p>myself [1] 15/12</p>	<p>2/16</p> <p>need [4] 6/13 7/10 15/11 15/12</p> <p>needed [1] 5/19</p> <p>needs [1] 8/15</p> <p>Neither [1] 8/10</p> <p>NEVADA [4] 1/2 2/1 4/16 13/7</p> <p>new [7] 4/11 4/11 8/19 11/2 11/22 11/25 12/9</p> <p>no [7] 1/5 1/6 7/5 7/5 9/7 14/3 14/8</p> <p>none [2] 10/13 10/14</p> <p>nor [2] 8/11 14/11</p> <p>not [27]</p> <p>notes [2] 5/22 13/21</p> <p>nothing [2] 10/6 13/24</p> <p>notice [6] 3/10 3/22 3/23 5/7 9/11 14/15</p> <p>NOVEMBER [2] 1/12 2/1</p> <p>now [17]</p> <p>nowhere [2] 10/4 10/6</p> <p>NRS [5] 7/16 7/23 8/17 10/23 13/10</p> <p>NRS 111.025 [1] 7/16</p> <p>NRS 111.175 [2] 7/23 10/23</p> <p>NRS 116 [1] 13/10</p> <p>NRS 52.125 [1] 8/17</p>
<p><b>F</b></p> <p>fact [13] 3/7 4/21 4/25 5/1 5/3 5/15 9/21 10/7 12/5 12/6 12/8 12/8 12/9</p> <p>facts [17]</p> <p>factual [1] 4/14</p> <p>false [2] 5/21 5/23</p> <p>family [2] 11/7 11/10</p> <p>far [1] 13/9</p> <p>favor [3] 3/9 10/2 10/18</p> <p>few [1] 6/12</p> <p>fide [4] 13/8 13/10 13/18 14/13</p> <p>file [1] 6/25</p> <p>filed [6] 3/9 5/1 5/15 8/16 8/24 9/25</p> <p>filings [1] 3/20</p> <p>final [21]</p> <p>financial [1] 10/7</p> <p>finding [5] 5/14 12/11 12/11 12/13 13/5</p> <p>findings [12] 3/7 4/7 4/11 4/14 4/21 4/25 5/1 6/25 8/7 10/1 10/7 13/7</p> <p>five [1] 10/8</p> <p>fix [1] 5/19</p> <p>follow [1] 14/3</p> <p>Forgive [1] 11/14</p> <p>form [2] 14/23 14/25</p> <p>format [1] 15/2</p> <p>forth [2] 4/17 9/9</p> <p>fortuitous [1] 4/3</p> <p>forward [1] 15/12</p> <p>found [2] 13/8 14/13</p> <p>fourth [1] 13/15</p> <p>fraud [8] 4/23 10/7 10/8 10/10 12/6 13/5 13/7 13/13</p> <p>front [1] 10/15</p>	<p><b>I</b></p> <p>I'd [2] 9/9 14/20</p> <p>I'll [3] 2/20 9/20 12/18</p> <p>I'm [9] 5/1 5/14 6/9 6/14 7/5 11/14 12/17 12/20 15/10</p> <p>I've [4] 2/19 6/12 14/14 15/11</p> <p>if [5] 3/25 6/16 10/9 14/2 15/10</p> <p>Importantly [1] 10/21</p> <p>in [49]</p> <p>inadmissible [1] 8/19</p> <p>inbox [1] 15/2</p> <p>INC [1] 1/25</p> <p>indiscernible [3] 7/7 7/14 14/8</p> <p>induce [2] 5/16 5/24</p> <p>inform [1] 11/6</p> <p>information [1] 11/9</p> <p>injustice [1] 14/11</p> <p>instance [1] 10/9</p> <p>intend [2] 6/1 6/4</p>	<p><b>K</b></p> <p>keep [1] 8/23</p> <p>knew [1] 6/4</p> <p>know [11] 2/23 3/4 3/4 6/10 9/21 10/24 11/1 11/7 13/9 13/9 15/9</p> <p>knowledge [1] 14/15</p> <p><b>L</b></p> <p>LANCASTER [7] 1/21 2/15 2/17 11/12 11/15 11/20 14/24</p> <p>land [2] 8/2 8/3</p> <p>lands [1] 8/5</p> <p>LAS [2] 2/1 4/16</p> <p>Las Vegas [1] 4/16</p> <p>last [1] 3/12</p> <p>later [1] 5/8</p> <p>law [9] 3/8 5/2 5/15 7/2 10/2 10/8 13/7 14/4 14/8</p> <p>least [1] 6/23</p> <p>left [2] 3/5 3/23</p> <p>let [3] 2/20 11/7 12/12</p> <p>Let's [2] 7/6 14/20</p> <p>like [2] 9/9 14/20</p> <p>Lillian [1] 3/8</p> <p>limine [1] 13/3</p> <p>line [1] 9/23</p> <p>listed [1] 10/23</p> <p>LLC'S [1] 1/13</p> <p>LLC,'s [1] 2/23</p> <p>look [3] 10/9 14/12 14/24</p> <p>lot [1] 10/3</p>	<p><b>N</b></p> <p>National [2] 1/21</p>	<p><b>O</b></p> <p>oath [1] 14/4</p> <p>obtain [1] 5/11</p> <p>obtained [3] 4/23 12/3 12/5</p> <p>obviously [1] 11/22</p> <p>October [10] 3/9 3/10 4/4 4/5 5/5 5/6 5/15 8/24 9/12 11/24</p> <p>October 15 [1] 3/10</p> <p>Oh [1] 11/14</p> <p>okay [16]</p> <p>on [42]</p> <p>one [3] 4/15 4/16 14/5</p> <p>only [3] 3/21 4/25 5/3</p> <p>oOo [1] 15/18</p> <p>operative [2] 9/24 10/24</p> <p>opportunity [1] 14/24</p> <p>opposition [6] 1/14 2/25 7/24 8/16 10/23 10/25</p> <p>or [12] 4/5 4/11 7/25 8/2 8/4 10/16 10/25 11/24 14/1 14/8 14/9 14/15</p> <p>oral [1] 11/19</p> <p>order [32]</p> <p>other [3] 6/12 10/5 15/12</p> <p>our [1] 10/19</p> <p>out [5] 4/3 10/1 11/6 11/24 13/3</p> <p>own [2] 6/25 8/18</p>
<p><b>G</b></p> <p>get [1] 12/12</p> <p>go [10] 3/1 3/4 3/16 4/1 4/1 4/20 6/16 7/6 7/12 10/9</p> <p>goes [1] 5/10</p> <p>going [5] 5/10 6/9 7/2</p>				<p><b>P</b></p> <p>page [4] 2/22 5/2 5/10</p>

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15/1  submitted [1] 10/19  subsequent [2] 8/1 8/4  substantially [1] 14/9  successors [1] 7/20  such [2] 7/20 8/5  sum [1] 4/22  summary [16]  Sunday [1] 4/5  sure [3] 6/13 7/10 14/23  sworn [1] 5/4</p> <p><b>T</b></p> <p>take [2] 12/17 14/24  talking [1] 8/16  terms [1] 10/12  testimony [1] 5/4  than [1] 10/6  Thank [9] 9/18 9/20 11/9 11/16 11/17 11/20 15/5 15/7 15/16  Thanksgiving [2] 15/4 15/14  that [71]  that's [14] 2/7 4/9 4/10 5/9 6/11 6/17 7/3 8/14 10/24 12/9 12/14 14/4 14/4 14/22  their [3] 7/13 7/15 9/17  theirs [1] 9/12  them [5] 4/21 5/1 5/4 5/9 12/23  then [2] 7/23 8/8  there [11] 3/20 3/22 3/23 4/13 6/9 10/10 10/12 13/4 13/23 14/7 15/6  there's [6] 5/8 6/22 10/21 12/5 13/13 14/10</p>	<p>these [10] 4/13 4/17 4/18 5/2 6/19 11/23 12/14 13/15 13/21 14/8  they [11] 3/23 5/7 5/9 5/20 9/11 9/12 11/25 12/1 12/2 12/16 13/18  they're [2] 6/20 11/24  think [3] 4/17 15/11 15/11  this [49]  thoroughly [1] 2/19  those [4] 5/13 5/16 5/22 5/23  though [2] 7/24 12/22  thoughts [1] 12/24  three [2] 10/18 10/21  through [3] 4/20 5/10 10/9  time [7] 4/3 4/11 5/13 6/2 6/5 9/16 12/6  times [1] 10/8  timing [1] 4/3  title [6] 1/21 2/16 4/14 4/23 5/12 12/5  today [3] 7/3 10/3 11/8  today's [1] 2/21  too [1] 15/15  took [2] 12/21 14/4  total [1] 4/22  track [1] 7/10  TRAN [1] 1/1  transcribed [2] 1/25 15/20  Transcriber [1] 15/24  TRANSCRIPT [1] 1/8  transfer [1] 8/6  trial [4] 3/21 3/22 5/7 12/4  truly [1] 15/19  trust [1] 6/6  try [1] 12/21  trying [1] 9/6  TUESDAY [1] 1/12  turned [1] 10/19  two [3] 4/15 9/24 14/16</p> <p><b>U</b></p> <p>unappealed [1] 12/15  under [2] 9/4 9/10  understand [1] 12/21  undisputed [4] 6/19 12/5 12/8 12/15  until [2] 4/5 12/19  up [8] 5/20 7/24 8/23 12/10 13/14 13/15 13/19 13/22  upon [3] 8/3 8/14 11/3</p> <p><b>V</b></p> <p>valuable [1] 8/4  various [1] 10/5  VEGAS [2] 2/1 4/16  versus [1] 2/3  very [2] 7/9 12/17  video [7] 3/18 8/2 8/25 13/6 13/20 15/9 15/20  view [1] 13/14  void [8] 4/24 7/14 7/15 7/17 7/19 8/1 8/5 8/6</p>	<p><b>W</b></p> 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CLERK OF THE COURT  
*Albert B. Hanson*

## RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

JOHN DATTALA,

Plaintiff(s),

VS.

EUSTACHIUS BURSEY,

Defendant(s).

CASE NO: A-19-794335-C

DEPT. NO: XIV

BEFORE THE HONORABLE ADRIANA ESCOBAR,  
DISTRICT COURT JUDGE

THURSDAY, JANUARY 20, 2022

**RECORDER'S TRANSCRIPT OF HEARING RE:  
PLAINTIFF'S MOTION FOR DECLARATORY RELIEF**

(See appearances on page 2)

RECORDED BY: STACEY RAY, COURT RECORDER

Dattal v. Precision Assets et al

Case # 84762

Page 2006 of 2046

1 APPEARANCES VIA VIDEOCONFERENCE:

2 For the Plaintiff(s): BENJAMIN B. CHILDS, ESQ.

3  
4 For Defendant Precision Assets: ZACHARY T. BALL, ESQ.

5 For Defendant WFG National  
6 Title Insurance Company: CHRISTINA V. MILLER, ESQ.

7 For Cross Claimant  
8 Precision Assets: JOHN G. BENEDICT, ESQ.

1 **Las Vegas, Nevada; Thursday, December 16, 2021**

2 [Case called at 10:22 a.m.]

3  
4 THE MARSHAL: From our 10:00 a.m. civil law and motion  
5 calendar, we will be calling page 4, case number A-19-794335-C, John  
6 Dattala versus Eustachius Bursey.

7 THE COURT: Okay. Let me just get there. All right. Very  
8 good. I'd like your appearances for the record. Mr. Childs, I see you.  
9 Good morning.

10 MR. CHILDS: Good morning. Benjamin Childs for the  
11 Plaintiff, 3946.

12 THE COURT: Okay. And Mr. Ball, go ahead, I see you as  
13 well.

14 MR. BALL: Thank you. Zach Ball, 8364 for Precision.

15 THE COURT: I don't know if I see anyone else. Is there  
16 anyone else present?

17 MR. BENEDICT: Yes, Your Honor.

18 MS. MILLER: Yes. Good morning, Your Honor.

19 THE COURT: Yes. Go on. Ms. Miller?

20 MS. MILLER: Sorry, Your Honor. Yes. Good morning, Your  
21 Honor. Christina Miller on behalf of WFG National Title, Bar number  
22 12448.

23 THE COURT: Okay. Very good. Thank you. And --

24 MR. BENEDICT: And good morning, Your Honor. John  
25 Benedict, 5581, on behalf of Precision Assets, Cross Claimant.



1 THE COURT: Good morning, Mr. Benedict. I feel like, aside  
2 from Mr. Childs, you're the other person that I see quite often here --

3 MR. BENEDICT: It's my pleasure.

4 THE COURT: -- because, I think, of this case. But anyway, --  
5 all right. So this is Plaintiff's motion for declaratory relief.

6 Mr. Childs, I have to tell you that I've reviewed this thoroughly,  
7 and I'm concerned that you're even filing this motion. But I want you,  
8 just for the record, you know how straightforward I am, please go on and  
9 -- and discuss -- well, we possibly discussed, I don't know, I don't want  
10 to exaggerate, three to four times before. Go on.

11 MR. CHILDS: Yeah. This is a case that's covered by statute  
12 and these statutes have never been addressed by the Court ever. It's  
13 11 -- 111.025 and 111.175, that a deed that's obtained by fraud is void  
14 as to that purchaser and all subsequent -- all subsequent purchasers.  
15 So there's the final conclusions of -- finding of fact, conclusions of law  
16 that the deed to the two subject properties were acquired by Bursey by  
17 fraud, and so all subsequent -- that deed to him and all subsequent  
18 deeds are void.

19 And then I just emphasize that later judgments control earlier  
20 judgments, 'cause their defenses or responses -- well, there was a  
21 summary judgment order, but that was before there were these final  
22 findings of facts, conclusions of law that was -- that were entered in, I  
23 think, October 30<sup>th</sup> or -- the date escapes me. But they also bring up  
24 that -- make an argument that Rule 11 -- strike that -- Rule 57 doesn't  
25 allow declaratory relief and that's obviously not true; I cited Rule 57.

1 And then I had a case just yesterday that was resolved by declaratory  
2 relief where in *Thorton versus Weston*, that could've been resolved by  
3 summary judgment, but it was resolved by a declaratory relief motion.

4 So I'm, frankly, just making a record to exhaust the remedies  
5 to make sure that everything's clear for review. And I'm -- it's crystal  
6 clear to me. This 111.025, just seems like there shouldn't even be an  
7 argument, at this point, but I can see what's happening. And so in my  
8 reply, I cited several other cases, from other courts, that this is just a  
9 normal thing. That if there's a void deed in the chain of title, you don't  
10 just keep on going and say, well, this person is a bona fide purchaser  
11 because they paid cash. It doesn't make any difference because there's  
12 a void deed in the chain of title.

13 So I agree with you, Judge, I don't think I need to beat it to  
14 death anymore. I just have -- want to make sure that it's clear; I've  
15 exhausted all remedies and made the record. Thank you.

16 THE COURT: Before we go on, I just want to remind you, Mr.  
17 Childs, that we spent the better part of a court day, almost a full court  
18 day, together with my staff, of course, in court, and you -- there were  
19 default judgments against Mr. Bursey and Ms. Medina for \$355,000.00 --  
20 five hundred and -- \$355,533.00 that you -- that your clients were  
21 awarded in compensatory damages, and \$1,066,599.00 in treble  
22 damages. And it appears that your clients have been well compensated  
23 for the relief that you -- that you requested and the relief that is proper  
24 under your request. But -- but we'll talk about that later.

25 Mr. Ball.

1 MR. BALL: Thank you, Your Honor.

2 I believe the Court's already properly stated and Mr. Childs, at  
3 the end of his argument, mentioned not to beat a dead horse, but yet  
4 here we are. This motion, if you look at the motion and reply and you  
5 compare it to the previous pleadings on file with the court, those -- they  
6 are the same or nearly identical arguments. Admittedly, somewhat  
7 refined but the same or identical. And yet here we are on a motion that  
8 has -- these arguments have already been ruled against by the court,  
9 and we're here today in a similar fashion. I can understand that a need  
10 to exhaust, but this is, you know, one bridge too far that we would  
11 submit. These arguments have already been ruled against, and we set  
12 forth all the legal reasoning why the court should deny them. And we  
13 request the Court --

14 THE COURT: I'd like you to make a record of that. I'd like  
15 you to make a record of the legal reasoning, please, Mr. Ball.

16 MR. BALL: -- I will do so, Your Honor.

17 There's three main reasons. Plaintiff cannot obtain the  
18 release sought without a proper summary judgment motion pursuant to  
19 Rule 56. I understand that's been argued against, by Mr. Childs, but we  
20 cited specific case law and reasoning as to why this -- why this is such a  
21 case and why it's procedurally in error even with a motion for summary  
22 judgment under Rule 56. This is already -- the Court's already ruled on  
23 this and that we should go forward with appellant remedies which  
24 Plaintiff has already sought.

25 Second, is that there's already been an election of remedies.

1 And as this Court's mentioned, there was a \$355,000 judgment in  
2 compensatory damages, treble damages in over a million, and we  
3 submit, at this point, that it can't -- double recovery is not possible. That  
4 election of remedies already exist. And, as you stated, Plaintiff has been  
5 well compensated at least in a judgment form. Collection is always a  
6 question going forward.

7 And secondly, or third point, Your Honor, these findings of  
8 fact, I think most important point, these findings of fact apply to  
9 Defendants Bursey and Medina only. There's specific case law on that.  
10 In the reply, it specifically states on page 6 of 8, lines 1 through 3, that  
11 counsel for Precision, Acrylic Development, and WFG were all present  
12 at the trial. Technically, that is correct. However, for these claims,  
13 Precision, being represented by myself in the specific claim we  
14 represent, were not present; and that's a continued representation in  
15 these pleadings that, you know, it's not correct. I wasn't present  
16 because the summary judgment had already been granted, and this was  
17 essentially a prove-up hearing which this Courts already mentioned and  
18 remembers well. The better part of a judicial day.

19 So based upon that, Your Honor, we submit that this motion,  
20 like the previous motion in nearly identical format just with a different  
21 setting of legal argument and rules, should be denied.

22 THE COURT: Okay. Thank you.

23 Mister -- Ms. Miller do you have anything to add? I know this  
24 isn't, necessarily, you know, your on-point issue, but anything to add?

25 MS. MILLER: No. Thank you, Your Honor. I'll just note very

1 quickly that on behalf of WFG, we did file a joinder to Precision Assets'  
2 opposition so I also join in Mr. Ball's argument to the Court this morning.

3 THE COURT: Okay. Thank you. And Mr. Benedict?

4 MR. BENEDICT: Your Honor, I'd like to correct my  
5 appearance to the extent this has anything to do with Acry; I'm  
6 appearing on behalf of Acry. My position is, Acry's been dismissed with  
7 summary judgment order and judgment. But just in case, as far as  
8 Precision as a Cross Claimant, we join in the arguments that've been  
9 made.

10 And I would just point out, to make the record as thorough as  
11 possible, this was also fully vetted -- the exact same issues were fully  
12 vetted on a motion for reconsideration which I believe is the appropriate  
13 method to have challenged the summary judgment order and not this  
14 vehicle.

15 THE COURT: We've already -- we've -- I'm sorry -- I believe  
16 we've already -- I've already heard a motion for reconsideration.  
17 Correct?

18 MR. BENEDICT: You have. You've heard a motion for --

19 MR. BALL: Correct, Your Honor.

20 MR. BENEDICT: -- reconsideration from Mr. Childs on this --

21 THE COURT: Yes.

22 MR. BENEDICT: -- very issue, and you denied it.

23 THE COURT: That is correct. All right. Thank you very  
24 much.

25 Mr. Childs.

1 MR. CHILDS: It's never been addressed. 111.025 and  
2 111.175, right in the motion hearing -- I have the transcript. I'm asking  
3 the Court -- you have -- if you're gonna make that order, you need to  
4 address those statutes, and they were never addressed. It's never -- it's  
5 never been addressed. And as to this *LoMastro* argument about we  
6 were at the trial but we left, *LoMastro* -- they're citing it for the exact  
7 opposite of what *LoMastro* says. And that's why, in my reply, I just  
8 changed the name from the name in the *LoMastro* case to Precision  
9 Assets; they were there and they had notice. So the finding of fact,  
10 conclusion of law is binding on them. So that's all I have, Judge. Unless  
11 you have some specific questions.

12 THE COURT: I do.

13 MR. CHILDS: Okay.

14 THE COURT: I want to hear -- I want to hear from -- from Mr.  
15 Ball.

16 Mr. Ball, with respect to Mr. Childs' arguments on the not  
17 having addressed these -- these statutes, I'd like to hear -- in addition to  
18 what we've discussed, I'd like to hear what you think.

19 MR. BALL: Thank you, Your Honor.

20 THE COURT: It's my thought that there are only two parties  
21 that were defaulted, Mr. Bursey and Ms. Medina. So it may only apply --  
22 it only applies to them, but I'd like to hear what, you know, your reaction  
23 to that and what your thoughts are.

24 MR. BALL: Thank you, Your Honor.

25 Essentially, it's that not every argument is going to be

1 addressed in the order, understanding that we get to the same basis,  
2 dismissal of my client Precision Assets as Defendant and Counter  
3 Claimant. We get to the same basis based on those arguments. And  
4 while it may be a desire or even a perceived need for Plaintiff to have an  
5 exhaustive analysis in their order of statutes, I believe we get to the  
6 same place. And it's concerning, too, in a sense that, you know, we  
7 don't quite understand -- these additional arguments are not needed,  
8 and we get to the same place. I'll leave it at that.

9 THE COURT: Okay.

10 MR. BENEDICT: Your Honor, this is John Benedict, if I may  
11 add on behalf of my client, Acry.

12 THE COURT: Yes.

13 MR. BENEDICT: I think the Court has already determined  
14 that and the case law supports that the findings of fact and conclusions  
15 of law only pertain to the two parties that were the default prove-up,  
16 Medina and Bursey. What Mr. Childs, I think is mixing his arguments, is  
17 that the Court has found, in the motion for summary judgment, that  
18 Precision Assets was a bona fide purchaser and that there was no  
19 question of fact that established that. And the Court went through a  
20 number of reasons why that was true which are part of the transcript and  
21 part of the order on the summary judgment.

22 So the Court has -- the Court has addressed the BFP  
23 argument after, for the record, denying two motions where we tried one  
24 as a motion to dismiss as well as a later summary judgment. So it  
25 wasn't like the Court, you know, granted this out of the box. It was only

1 at the conclusion of discovery that the Court made a finding that  
2 Precision Assets was a bona fide purchaser for various reasons.

3 What Mr. Childs is doing now is raising an issue that was  
4 available to him at the summary judgment level, and he is trying to get  
5 the Court, in a motion for reconsideration context, in essence, to  
6 readdress something that was addressed properly in the summary  
7 judgment motion, by my review of things. And that is improper under the  
8 *Jolley Urga* case. There has not been an interim change in the law.  
9 That is not the basis that he's asked the Court to reconsider or to make  
10 a declaration of relief. Those statutes have been in place, and he has  
11 argued them throughout the case. He lost and he is taking a writ to the  
12 Supreme Court to state that he shouldn't have lost. But to say that the  
13 bona fide purchaser has not been addressed by the Court, is factually  
14 incorrect, and the record will bear that out.

15 THE COURT: Thank you very much.

16 MR. CHILDS: That's not -- that's not what I'm saying.

17 THE COURT: Mr. Childs, before you speak, now I'm going to  
18 call on you. Go ahead.

19 MR. CHILDS: No. I'm saying that the 111.025 and the  
20 111.175 statutes have not been addressed. Not that the bona fide  
21 purchaser hasn't been addressed; I acknowledge that. My point is that  
22 these two statutes overrule, but they apply, even if there is a bona fide  
23 purchaser. And there was a new fact that came about, after this finding  
24 of fact and conclusions of law was filed, about the fraudulent obtaining of  
25 the deed. And it was not -- and it was not appealed, so that's a final fact



1 now.

2 And the other -- that summary judgment order, it is an interim  
3 order. And later judgments control over earlier judgements. So I'm not  
4 saying that the bona fide purchaser wasn't adjudicated. My point is that  
5 111.025 and 111.175 apply even to bona fide purchasers; that's my  
6 point. And that has never been addressed, and I've asked it to be -- I've  
7 asked it to be addressed several times.

8 THE COURT: I'm sorry to delay this if you're on here --

9 MR. CHILDS: That's all I have.

10 THE COURT: -- waiting for your cases, but I would like to  
11 hear with -- I understand what you've just discussed with me, what you  
12 just discussed with this Court, Mr. Ball and Mr. Benedict, but I would like  
13 to hear what you -- your thoughts are on these statutes and what Mr.  
14 Childs is saying.

15 MR. BALL: Thank you, Your Honor.

16 If you look at both of those, they are directly in the context of a  
17 bona fide purchaser. And, again, I don't believe that the analysis needs  
18 to be so explicit as to interact with or discuss 025 and 175 within  
19 Chapter 111. It's a analysis that is already been determined by the  
20 Court. The Court has given a detailed ruling which is in the form of order  
21 at least in a minute order at a minimum. And to go through this because  
22 it's an additional argument is concerning. We already get there. And as  
23 Mr. Benedict pointed out, this is not the proper vehicle to do so. That  
24 argument was left at the disposal of Plaintiff in earlier motion practice.

25 THE COURT: Okay. Very good. Mr. Childs, I heard what you

1 have to say that we haven't specifically discussed 111.025, 111.175.  
2 Mr. Ball, I'd like you to prepare a very detailed order.

3 This Court denies Plaintiff's motion for declaratory relief. I do  
4 believe that this is -- I understand what Mr. Childs is saying, but I do  
5 believe this is an attempt, a second attempt at an order for  
6 reconsideration. It just keeps coming. But I would like you to analyze  
7 the statutes as well, and be very detailed about the entire background of  
8 this case and so forth. I'd like to be sure that you share that with all  
9 counsel and that Mr. Childs has a take a -- has a chance to take look at  
10 it as to form and content. And I'd like that -- usually its 14 days. It's  
11 going to be a little bit detailed. If it needs to be a little bit longer I  
12 understand. Okay.

13 MR. BALL: No problem. Understood, Your Honor.

14 THE COURT: Have a great day everyone and be safe out  
15 there.

16 MR. CHILDS: Thank you, Judge.

17 MR. BALL: Thank you, Your Honor.

18 THE COURT: You're very welcome.

19 MR. CHILDS: I'm not upset. I'm not upset. I want to be clear  
20 on the record. I'm just --

21 THE COURT: No, Mr. Childs.

22 MR. CHILDS: Thank you.

23 THE COURT: It's never anything personal, Mr. Childs.

24 MR. CHILDS: Thank you.

25 THE COURT: I think you realize in this Court, --

1 MR. CHILDS: Thank you.

2 THE COURT: -- I don't take things personally nor do I expect  
3 the attorneys to.

4 MR. CHILDS: Exactly.

5 THE COURT: That's not why I'm here.

6 MR. CHILDS: I know.

7 THE COURT: This is not a black robe thing. I respect  
8 everyone and just, you know, sometimes I have to make decisions that I  
9 don't like. Other times, -- but I really believe that what I've discussed  
10 with you and what we've discussed today is correct, and I'm -- and I'm  
11 glad you're not upset and neither am I. All right?

12 MR. CHILDS: Thank you.

13 THE COURT: So everyone, I do not have buttons to push  
14 with regard to being on the bench. It just doesn't happen.

15 MR. CHILDS: No problem.

16 THE COURT: Maybe it's because I was a therapist for five  
17 and-a-half years before I went to law school. Anyway, let's move on to  
18 the next case. I hope you all have a great day.

19 MR. BENEDICT: Thank you, Judge. You too. Thank you.

20 MS. MILLER: Thank you, Your Honor. You too.

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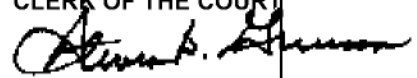
THE COURT: Thank you.

[Proceedings concluded at 10:42 a.m.]

\* \* \* \* \*

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

  
\_\_\_\_\_  
Stacey Ray  
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 JOHN DATTALA,

9 Plaintiff(s),

10 vs.

11 EUSTACHIUS BURSEY,

12 Defendant(s).

) CASE NO: A-19-794335-C

) DEPT. NO: XIV

13  
14 BEFORE THE HONORABLE ADRIANA ESCOBAR,  
15 DISTRICT COURT JUDGE

16 THURSDAY, DECEMBER 16, 2021

17 **RECORDER'S TRANSCRIPT OF HEARING RE:**  
18 **MOTION TO RECONSIDER**

19  
20  
21 (See appearances on page 2.)  
22  
23  
24

25 RECORDED BY: STACEY RAY, COURT RECORDER

Dattal v. Precision Assets et al

Case # 84762

Page 2021 of 2046

1 APPEARANCES VIA VIDEOCONFERENCE:

2  
3 For the Plaintiff(s): BENJAMIN B. CHILDS, ESQ.

4  
5 For Defendant  
Precision Assets: ZACHARY T. BALL, ESQ.

6  
7 For Defendant  
WFG National Title  
Insurance Company: CHRISTNA V. MILLER, ESQ.

8  
9 For Defendant  
Acry Development LLC: JOHN G. BENEDICT, ESQ.

1 **Las Vegas, Nevada; Thursday, December 16, 2021**

2 [Case called at 10:18 a.m.]

3  
4 THE MARSHAL: Page 4.

5 THE COURT: Okay. Page 4. This is John Dattala versus  
6 Eustachius Bursey. And let's start with, Mr. Childs, are you there?

7 MR. CHILDS: Yes. Benjamin Childs for the Plaintiff and Mr.  
8 Dattala is here too.

9 THE COURT: Okay.

10 [Indiscernible -- simultaneous speaking]

11 THE COURT: Good morning, Mr. Childs. I think I speak to  
12 you more than most attorneys these days. I think that they've -- they're  
13 actually sending me either this is -- I think one of this -- is on one case or  
14 we have many cases. I'm not sure.

15 MR. CHILDS: You're on like half my case load. I have like  
16 ten active cases and you have five of those.

17 THE COURT: It's random. I don't know what's going on.  
18 Okay. Anyway. So, Mr. Childs, good morning.

19 MR. CHILDS: Good morning.

20 THE COURT: Mr. Ball, I see you there. Good morning, Mr.  
21 Ball. How are you?

22 MR. BALL: Good. Thank you.

23 THE COURT: Okay. And who else do I have on this case?  
24 Mr. Benedict I see you. Good morning.

25 MR. BENEDICT: Good morning, Your Honor.

1 THE COURT: All right. And Ms. Miller, good morning. You're  
2 here on -- I guess I should make a proper record. Mr. Childs, you're  
3 here for Mr. Dattala. Mr. Ball for Precision Assets. Correct?

4 MR. BALL: Correct.

5 THE COURT: Mr. Benedict for Acry Development LLC. Ms.  
6 Miller for WFG National Title Trust Insurance Company. Good morning.

7 MS. MILLER: Good morning, Your Honor.

8 THE COURT: There's a couple -- let's see. Ms. Chapman's  
9 here on a different case. All right. This is Mr. Dattala's motion for  
10 reconsideration. Have I already heard this, Mr. Childs?

11 MR. CHILDS: No. The previous one was on regarding a in  
12 rem proceeding with Precision Assets.

13 THE COURT: Okay. No. I -- It's almost --

14 MR. CHILDS: That was on the --

15 THE COURT: -- I'm not -- I'm not a sarcastic person. I --  
16 I'm -- I -- but I was being a little bit facetious.

17 MR. CHILDS: Oh. Okay.

18 THE COURT: I feel like I'm reading the same thing over and  
19 over again. All right.

20 MR. CHILDS: Well, the basis --

21 THE COURT: Go ahead and make a record for the basis, Mr.  
22 Childs.

23 MR. CHILDS: Well, the basis -- the basis for the motion for  
24 reconsideration is the same. The law's the same.

25 THE COURT: Okay. Why don't you state that succinctly,



1 please.

2 MR. CHILDS: Well, they need -- well, now you're calling my  
3 bluff. Let me -- let me get in here. The -- it's a local rule about  
4 reconsideration and two point -- EDCR 2.24 and case law's, essentially,  
5 that you need either a new facts or --

6 THE COURT: Let me read it for you.

7 MR. CHILDS: Okay. I'm -- thanks.

8 THE COURT: Okay. Because I didn't get -- I don't see a lot  
9 of it there. One, is there is a manifest error of law or fact upon which the  
10 -- upon which the order is based and in this case it's WFG. Two, there's  
11 newly discovered or previously unavailable evidence. Three, there  
12 exists manifest injustice. Or four, there's an intervene change in  
13 controlling law. All right. And let me hear what you have to say about  
14 that. I've reviewed it. I just want you to make a record please.

15 MR. CHILDS: Okay. Well, obviously, there's a new fact  
16 because I went and got an affidavit from Mr. Bursey, which I filed on  
17 December 8<sup>th</sup>, the same day that I got the declaration. And he -- and  
18 this issue is whether Lillian Medina was an agent of WFG. That's the  
19 order that's being reconsidered. There was a summary judgment with a  
20 finding -- and I'm not gonna go over what happened prior, but the finding  
21 was that Lillian Medina was not an agent of WFG [indiscernible -- audio  
22 malfunction] there was no material facts creating an issue of fact for the  
23 trier of fact -- for the jury.

24 THE COURT: Okay. Thanks.

25 MR. CHILDS: So I went on December 8<sup>th</sup> -- Mr. Bursey's now

1 in the Clark County Detention Center, and he signed a declaration,  
2 which I filed, saying that Lillian Medina was representing that -- and I'll  
3 read it. She was representing WFG and was there on behalf of WFG.  
4 Ms. Medina had documents with her that she had been provided, and  
5 prepared, by WFG. And this was April 29<sup>th</sup>, 2019. So that's a new fact  
6 that's pretty clear there is a factual dispute.

7 And the real problem is that there was a finding of fact  
8 conclusions of law that was filed on October 15<sup>th</sup> that was served on  
9 everybody. The appeal time has run so this is a final fact. And it said,  
10 there's a finding of fact that Lillian Medina is and at all times was a  
11 resident of Clark County, Nevada. During all times relevant hereto was  
12 employed and or, or being the key word, the agent of WFG and was  
13 within her scope of employment or her [indiscernible -- audio  
14 malfunction] relationship in performing the acts described below. So, --

15 THE COURT: Okay.

16 MR. CHILDS: -- obviously, the prior summary judgment  
17 motion was an inconsistent finding of fact based on the October 15,  
18 2021 findings of fact, that there is an internally inconsistent and  
19 contradictory finding of fact which would mean there is -- there is a  
20 dispute of fact. So that needs to be addressed. And --

21 THE COURT: All right.

22 MR. CHILDS: -- determination of agency is a question of fact  
23 and I quoted that case. I can quote it --

24 THE COURT: No. I -- you made your record. Thank you very  
25 much. I'd like to hear from Counsel please. Ms. Miller.

1 MS. MILLER: Thank you, Your Honor. I'm not going to  
2 regurgitate what's in our opposition. It's substantially similar to the  
3 identical arguments that this Court considered and denied in Plaintiff's  
4 motion for reconsideration of the order in favor of Precision Assets. But  
5 what I would like to add, Your Honor, a couple things that are  
6 problematic about the reply, and I would ask that you disregard almost in  
7 its entirety at this point.

8 There are two Nevada Court of Appeal unpublished opinions  
9 that are cited and relied upon in the reply. And pursuant to Nevada Rule  
10 of Appellate Procedure 36, Subsection (c)(2), unpublished decisions of  
11 the Court of Appeals are not citable for any purpose. Because of that I'd  
12 ask that the Court disregard those citations and all of the arguments that  
13 relies on those citations.

14 Secondly, Your Honor, this declaration of Mr. Bursey, it's  
15 produced well after discovery closed. There's no explanation as to why  
16 this declaration could not have been obtained earlier. And more  
17 importantly the declaration and the statements about Ms. Medina's  
18 alleged representation that she's an employee of WFG, that's  
19 inadmissible hearsay. So at the summary judgment and following on a  
20 reconsideration of summary judgment, pursuant to NRCP 56, this Court  
21 really can only consider evidence that's admissible into the record.

22 This Court's already considered admissible evidence pursuant  
23 to deposition testimony from Ms. Medina directly stating that she's an  
24 independent contractor she's not an employee of WFG, nor is she an  
25 employee of Simple Signings that brought her on to notarize the

1 documents. So again, Your Honor, there's nothing there that warrants  
2 reconsideration.

3 As you noted with the four reconsideration factors, Mr.  
4 Bursey's declaration is not newly discovered evidence. It could've been  
5 obtained in the discovery period. It wasn't and this Court shouldn't  
6 tolerate inadmissible hearsay at the reconsideration stage well after  
7 discovery closed and after the summary judgment briefing. There's also  
8 no argument of a change in controlling law, there's no argument of  
9 manifest error or manifest injustice pursuant to the summary judgment in  
10 favor of WFG.

11 And lastly, Your Honor, the *LoMastro* decision that we cited in  
12 our opposition, controls here. And that expressly says that a default  
13 judgment obtained against a party cannot be used against that  
14 codefendant who has appeared in the litigation, who's answered the  
15 complaint and denied the factual allegations, and, also, presented  
16 admissible evidence contradicting and proving false those factual  
17 allegations. And, Your Honor, unless you have any questions for me, I  
18 don't have anything further.

19 THE COURT: No. I think you've made a very clear record,  
20 Ms. Miller. Is there anything you would like to add, Mr. Ball, Mr.  
21 Benedict?

22 MR. BALL: Nothing to add, Your Honor.

23 THE COURT: Okay. Mr. Benedict.

24 MR. BENEDICT: Thank you, Your Honor. Nothing to add.

25 THE COURT: Okay. Thank you very much. Mr. Childs,

1 quick --

2 MR. CHILDS: Yeah. Hearsay --

3 THE COURT: -- reply. Quick reply. Go ahead.

4 MR. CHILDS: -- hearsay of a party is admissible.

5 THE COURT: Okay. Here, let me just tell you, I have  
6 reviewed this thoroughly, I believe that -- actually she's much more  
7 eloquent than I am today. I -- I'm going to -- this Court denies Plaintiff --  
8 Mr. Dattala's motion for reconsideration. I do believe -- this Court  
9 believes that this declaration was, you know, to obtain this information or  
10 this evidence was discoverable, and it just comes at a very late time. I  
11 also agree with the analysis of the four factors that have just been  
12 represented by Ms. Miller.

13 And -- so I am -- I am going to adopt those factors because I  
14 want to keep moving. But, believe me, I've given every case thought.  
15 And also with the *LoMastro* decision.

16 And I'd like you please, Ms. Miller, to provide this Court with a  
17 very detailed -- very detailed order and ask -- please make sure that Mr.  
18 Childs has a chance to see it as to form and substance. And please  
19 provide that to this Court, Department 14, in Microsoft Word and also in  
20 PDF format.

21 This is -- I'm surprised that I even have this, frankly. You have  
22 a right to move forward on reconsideration, Mr. Childs, on behalf of your  
23 client, but I honestly think that your theory, while I appreciate unique  
24 theories, I think it's not -- there's not really a basis for that here. So  
25 that's the answer and I hope all of you have a great holiday season.

1 Okay.

2 MR. CHILDS: You too and I --

3 THE COURT: And be safe.

4 MS. MILLER: Thank you, Your Honor.

5 MR. BALL: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. BENEDICT: Happy Holidays, Judge.

8 THE COURT: I'm sorry. What did you say, Jerry?

9 MR. CHILDS: I want to note, on the record, that I didn't get to  
10 finish my reply. I was cut off. I don't --

11 THE COURT: Oh, Mr. Childs, go ahead. We're still here.

12 MR. CHILDS: Okay. Thanks.

13 THE COURT: I have Ms. Miller on. Just finish your reply, but  
14 you must -- you need to be succinct. I have a full calendar and I give  
15 you a lot of leeway, but you need to be much more succinct please. And  
16 don't make a face like I'm trying to be -- I'm a very --

17 MR. CHILDS: That's fine.

18 THE COURT: -- polite person with you. I'm always very  
19 professional. But I have a full calendar and I need to make sure we  
20 move forward, so you must be succinct. Go ahead and finish your reply  
21 please.

22 MR. CHILDS: An employee -- the -- whether Medina was an  
23 employee or not is not the issue, it's whether --

24 THE COURT: I --

25 MR. CHILDS: -- she was an -- all I'm asking is to finish my --

1 THE COURT: -- okay. Go ahead, make it. Although, I  
2 don't -- go on. Go on. Please finish your --

3 MR. CHILDS: Whether she was an employee or not is not the  
4 issue. The issue is whether she was an agent or not. That's the issue.  
5 And as to manifest injustice, I just point out that internally inconsistent  
6 findings of fact. That's all I -- that's all I wanted to say.

7 THE COURT: Okay. You've now -- you've made your reply.  
8 You have your -- and I think that's correct that you have your record --  
9 you have a record now. And it's still the same thing. Ms. Miller, you've  
10 already addressed that issue. All right. So please go ahead and move  
11 forward, and again, I hope you all have a great holiday season.

12 MR. CHILDS: Oh, you too, Judge.

13 THE COURT: Thank you. Okay.

14 MS. MILLER: Thank you. You too, Your Honor.

15 THE COURT: All right. Bye bye.

16 [Proceedings concluded at 10:56 a.m.]

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

24   
25 Stacey Ray  
Court Recorder/Transcriber

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JOHN DATTALA,  
Plaintiff(s),  
vs.  
EUSTACHIUS BURSEY,  
Defendant(s)

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

BEFORE THE HONORABLE ADRIANA ESCOBAR,  
DISTRICT COURT JUDGE  
THURSDAY, JANUARY 20, 2022

***RECORDER'S TRANSCRIPT OF HEARING RE:  
PLAINTIFF'S MOTION FOR DECLARATORY RELIEF***

(See appearances on page 2)

RECORDED BY: STACEY RAY, COURT RECORDER



1 APPEARANCES VIA VIDEOCONFERENCE:

2 For the Plaintiff(s): BENJAMIN B. CHILDS, ESQ.

3  
4 For Defendant Precision Assets: ZACHARY T. BALL, ESQ.

5 For Defendant WFG National  
6 Title Insurance Company: CHRISTINA V. MILLER, ESQ.

7 For Cross Claimant  
8 Precision Assets: JOHN G. BENEDICT, ESQ.

1 **Las Vegas, Nevada; Thursday, December 16, 2021**

2 [Case called at 10:22 a.m.]

3  
4 THE MARSHAL: From our 10:00 a.m. civil law and motion  
5 calendar, we will be calling page 4, case number A-19-794335-C, John  
6 Dattala versus Eustachius Bursey.

7 THE COURT: Okay. Let me just get there. All right. Very  
8 good. I'd like your appearances for the record. Mr. Childs, I see you.  
9 Good morning.

10 MR. CHILDS: Good morning. Benjamin Childs for the  
11 Plaintiff, 3946.

12 THE COURT: Okay. And Mr. Ball, go ahead, I see you as  
13 well.

14 MR. BALL: Thank you. Zach Ball, 8364 for Precision.

15 THE COURT: I don't know if I see anyone else. Is there  
16 anyone else present?

17 MR. BENEDICT: Yes, Your Honor.

18 MS. MILLER: Yes. Good morning, Your Honor.

19 THE COURT: Yes. Go on. Ms. Miller?

20 MS. MILLER: Sorry, Your Honor. Yes. Good morning, Your  
21 Honor. Christina Miller on behalf of WFG National Title, Bar number  
22 12448.

23 THE COURT: Okay. Very good. Thank you. And --

24 MR. BENEDICT: And good morning, Your Honor. John  
25 Benedict, 5581, on behalf of Precision Assets, Cross Claimant.

1 THE COURT: Good morning, Mr. Benedict. I feel like, aside  
2 from Mr. Childs, you're the other person that I see quite often here --

3 MR. BENEDICT: It's my pleasure.

4 THE COURT: -- because, I think, of this case. But anyway, --  
5 all right. So this is Plaintiff's motion for declaratory relief.

6 Mr. Childs, I have to tell you that I've reviewed this thoroughly,  
7 and I'm concerned that you're even filing this motion. But I want you,  
8 just for the record, you know how straightforward I am, please go on and  
9 -- and discuss -- well, we possibly discussed, I don't know, I don't want  
10 to exaggerate, three to four times before. Go on.

11 MR. CHILDS: Yeah. This is a case that's covered by statute  
12 and these statutes have never been addressed by the Court ever. It's  
13 11 -- 111.025 and 111.175, that a deed that's obtained by fraud is void  
14 as to that purchaser and all subsequent -- all subsequent purchasers.  
15 So there's the final conclusions of -- finding of fact, conclusions of law  
16 that the deed to the two subject properties were acquired by Bursey by  
17 fraud, and so all subsequent -- that deed to him and all subsequent  
18 deeds are void.

19 And then I just emphasize that later judgments control earlier  
20 judgments, 'cause their defenses or responses -- well, there was a  
21 summary judgment order, but that was before there were these final  
22 findings of facts, conclusions of law that was -- that were entered in, I  
23 think, October 30<sup>th</sup> or -- the date escapes me. But they also bring up  
24 that -- make an argument that Rule 11 -- strike that -- Rule 57 doesn't  
25 allow declaratory relief and that's obviously not true; I cited Rule 57.

1 And then I had a case just yesterday that was resolved by declaratory  
2 relief where in *Thorton versus Weston*, that could've been resolved by  
3 summary judgment, but it was resolved by a declaratory relief motion.

4 So I'm, frankly, just making a record to exhaust the remedies  
5 to make sure that everything's clear for review. And I'm -- it's crystal  
6 clear to me. This 111.025, just seems like there shouldn't even be an  
7 argument, at this point, but I can see what's happening. And so in my  
8 reply, I cited several other cases, from other courts, that this is just a  
9 normal thing. That if there's a void deed in the chain of title, you don't  
10 just keep on going and say, well, this person is a bona fide purchaser  
11 because they paid cash. It doesn't make any difference because there's  
12 a void deed in the chain of title.

13 So I agree with you, Judge, I don't think I need to beat it to  
14 death anymore. I just have -- want to make sure that it's clear; I've  
15 exhausted all remedies and made the record. Thank you.

16 THE COURT: Before we go on, I just want to remind you, Mr.  
17 Childs, that we spent the better part of a court day, almost a full court  
18 day, together with my staff, of course, in court, and you -- there were  
19 default judgments against Mr. Bursey and Ms. Medina for \$355,000.00 --  
20 five hundred and -- \$355,533.00 that you -- that your clients were  
21 awarded in compensatory damages, and \$1,066,599.00 in treble  
22 damages. And it appears that your clients have been well compensated  
23 for the relief that you -- that you requested and the relief that is proper  
24 under your request. But -- but we'll talk about that later.

25 Mr. Ball.

1 MR. BALL: Thank you, Your Honor.

2 I believe the Court's already properly stated and Mr. Childs, at  
3 the end of his argument, mentioned not to beat a dead horse, but yet  
4 here we are. This motion, if you look at the motion and reply and you  
5 compare it to the previous pleadings on file with the court, those -- they  
6 are the same or nearly identical arguments. Admittedly, somewhat  
7 refined but the same or identical. And yet here we are on a motion that  
8 has -- these arguments have already been ruled against by the court,  
9 and we're here today in a similar fashion. I can understand that a need  
10 to exhaust, but this is, you know, one bridge too far that we would  
11 submit. These arguments have already been ruled against, and we set  
12 forth all the legal reasoning why the court should deny them. And we  
13 request the Court --

14 THE COURT: I'd like you to make a record of that. I'd like  
15 you to make a record of the legal reasoning, please, Mr. Ball.

16 MR. BALL: -- I will do so, Your Honor.

17 There's three main reasons. Plaintiff cannot obtain the  
18 release sought without a proper summary judgment motion pursuant to  
19 Rule 56. I understand that's been argued against, by Mr. Childs, but we  
20 cited specific case law and reasoning as to why this -- why this is such a  
21 case and why it's procedurally in error even with a motion for summary  
22 judgment under Rule 56. This is already -- the Court's already ruled on  
23 this and that we should go forward with appellant remedies which  
24 Plaintiff has already sought.

25 Second, is that there's already been an election of remedies.

1 And as this Court's mentioned, there was a \$355,000 judgment in  
2 compensatory damages, treble damages in over a million, and we  
3 submit, at this point, that it can't -- double recovery is not possible. That  
4 election of remedies already exist. And, as you stated, Plaintiff has been  
5 well compensated at least in a judgment form. Collection is always a  
6 question going forward.

7 And secondly, or third point, Your Honor, these findings of  
8 fact, I think most important point, these findings of fact apply to  
9 Defendants Bursey and Medina only. There's specific case law on that.  
10 In the reply, it specifically states on page 6 of 8, lines 1 through 3, that  
11 counsel for Precision, Acrylic Development, and WFG were all present  
12 at the trial. Technically, that is correct. However, for these claims,  
13 Precision, being represented by myself in the specific claim we  
14 represent, were not present; and that's a continued representation in  
15 these pleadings that, you know, it's not correct. I wasn't present  
16 because the summary judgment had already been granted, and this was  
17 essentially a prove-up hearing which this Courts already mentioned and  
18 remembers well. The better part of a judicial day.

19 So based upon that, Your Honor, we submit that this motion,  
20 like the previous motion in nearly identical format just with a different  
21 setting of legal argument and rules, should be denied.

22 THE COURT: Okay. Thank you.

23 Mister -- Ms. Miller do you have anything to add? I know this  
24 isn't, necessarily, you know, your on-point issue, but anything to add?

25 MS. MILLER: No. Thank you, Your Honor. I'll just note very

1 quickly that on behalf of WFG, we did file a joinder to Precision Assets'  
2 opposition so I also join in Mr. Ball's argument to the Court this morning.

3 THE COURT: Okay. Thank you. And Mr. Benedict?

4 MR. BENEDICT: Your Honor, I'd like to correct my  
5 appearance to the extent this has anything to do with Acry; I'm  
6 appearing on behalf of Acry. My position is, Acry's been dismissed with  
7 summary judgment order and judgment. But just in case, as far as  
8 Precision as a Cross Claimant, we join in the arguments that've been  
9 made.

10 And I would just point out, to make the record as thorough as  
11 possible, this was also fully vetted -- the exact same issues were fully  
12 vetted on a motion for reconsideration which I believe is the appropriate  
13 method to have challenged the summary judgment order and not this  
14 vehicle.

15 THE COURT: We've already -- we've -- I'm sorry -- I believe  
16 we've already -- I've already heard a motion for reconsideration.  
17 Correct?

18 MR. BENEDICT: You have. You've heard a motion for --

19 MR. BALL: Correct, Your Honor.

20 MR. BENEDICT: -- reconsideration from Mr. Childs on this --

21 THE COURT: Yes.

22 MR. BENEDICT: -- very issue, and you denied it.

23 THE COURT: That is correct. All right. Thank you very  
24 much.

25 Mr. Childs.

1 MR. CHILDS: It's never been addressed. 111.025 and  
2 111.175, right in the motion hearing -- I have the transcript. I'm asking  
3 the Court -- you have -- if you're gonna make that order, you need to  
4 address those statutes, and they were never addressed. It's never -- it's  
5 never been addressed. And as to this *LoMastro* argument about we  
6 were at the trial but we left, *LoMastro* -- they're citing it for the exact  
7 opposite of what *LoMastro* says. And that's why, in my reply, I just  
8 changed the name from the name in the *LoMastro* case to Precision  
9 Assets; they were there and they had notice. So the finding of fact,  
10 conclusion of law is binding on them. So that's all I have, Judge. Unless  
11 you have some specific questions.

12 THE COURT: I do.

13 MR. CHILDS: Okay.

14 THE COURT: I want to hear -- I want to hear from -- from Mr.  
15 Ball.

16 Mr. Ball, with respect to Mr. Childs' arguments on the not  
17 having addressed these -- these statutes, I'd like to hear -- in addition to  
18 what we've discussed, I'd like to hear what you think.

19 MR. BALL: Thank you, Your Honor.

20 THE COURT: It's my thought that there are only two parties  
21 that were defaulted, Mr. Bursey and Ms. Medina. So it may only apply --  
22 it only applies to them, but I'd like to hear what, you know, your reaction  
23 to that and what your thoughts are.

24 MR. BALL: Thank you, Your Honor.

25 Essentially, it's that not every argument is going to be



1 addressed in the order, understanding that we get to the same basis,  
2 dismissal of my client Precision Assets as Defendant and Counter  
3 Claimant. We get to the same basis based on those arguments. And  
4 while it may be a desire or even a perceived need for Plaintiff to have an  
5 exhaustive analysis in their order of statutes, I believe we get to the  
6 same place. And it's concerning, too, in a sense that, you know, we  
7 don't quite understand -- these additional arguments are not needed,  
8 and we get to the same place. I'll leave it at that.

9 THE COURT: Okay.

10 MR. BENEDICT: Your Honor, this is John Benedict, if I may  
11 add on behalf of my client, Acry.

12 THE COURT: Yes.

13 MR. BENEDICT: I think the Court has already determined  
14 that and the case law supports that the findings of fact and conclusions  
15 of law only pertain to the two parties that were the default prove-up,  
16 Medina and Bursey. What Mr. Childs, I think is mixing his arguments, is  
17 that the Court has found, in the motion for summary judgment, that  
18 Precision Assets was a bona fide purchaser and that there was no  
19 question of fact that established that. And the Court went through a  
20 number of reasons why that was true which are part of the transcript and  
21 part of the order on the summary judgment.

22 So the Court has -- the Court has addressed the BFP  
23 argument after, for the record, denying two motions where we tried one  
24 as a motion to dismiss as well as a later summary judgment. So it  
25 wasn't like the Court, you know, granted this out of the box. It was only

1 at the conclusion of discovery that the Court made a finding that  
2 Precision Assets was a bona fide purchaser for various reasons.

3 What Mr. Childs is doing now is raising an issue that was  
4 available to him at the summary judgment level, and he is trying to get  
5 the Court, in a motion for reconsideration context, in essence, to  
6 readdress something that was addressed properly in the summary  
7 judgment motion, by my review of things. And that is improper under the  
8 *Jolley Urga* case. There has not been an interim change in the law.  
9 That is not the basis that he's asked the Court to reconsider or to make  
10 a declaration of relief. Those statutes have been in place, and he has  
11 argued them throughout the case. He lost and he is taking a writ to the  
12 Supreme Court to state that he shouldn't have lost. But to say that the  
13 bona fide purchaser has not been addressed by the Court, is factually  
14 incorrect, and the record will bear that out.

15 THE COURT: Thank you very much.

16 MR. CHILDS: That's not -- that's not what I'm saying.

17 THE COURT: Mr. Childs, before you speak, now I'm going to  
18 call on you. Go ahead.

19 MR. CHILDS: No. I'm saying that the 111.025 and the  
20 111.175 statutes have not been addressed. Not that the bona fide  
21 purchaser hasn't been addressed; I acknowledge that. My point is that  
22 these two statutes overrule, but they apply, even if there is a bona fide  
23 purchaser. And there was a new fact that came about, after this finding  
24 of fact and conclusions of law was filed, about the fraudulent obtaining of  
25 the deed. And it was not -- and it was not appealed, so that's a final fact

1 now.

2 And the other -- that summary judgment order, it is an interim  
3 order. And later judgments control over earlier judgements. So I'm not  
4 saying that the bona fide purchaser wasn't adjudicated. My point is that  
5 111.025 and 111.175 apply even to bona fide purchasers; that's my  
6 point. And that has never been addressed, and I've asked it to be -- I've  
7 asked it to be addressed several times.

8 THE COURT: I'm sorry to delay this if you're on here --

9 MR. CHILDS: That's all I have.

10 THE COURT: -- waiting for your cases, but I would like to  
11 hear with -- I understand what you've just discussed with me, what you  
12 just discussed with this Court, Mr. Ball and Mr. Benedict, but I would like  
13 to hear what you -- your thoughts are on these statutes and what Mr.  
14 Childs is saying.

15 MR. BALL: Thank you, Your Honor.

16 If you look at both of those, they are directly in the context of a  
17 bona fide purchaser. And, again, I don't believe that the analysis needs  
18 to be so explicit as to interact with or discuss 025 and 175 within  
19 Chapter 111. It's a analysis that is already been determined by the  
20 Court. The Court has given a detailed ruling which is in the form of order  
21 at least in a minute order at a minimum. And to go through this because  
22 it's an additional argument is concerning. We already get there. And as  
23 Mr. Benedict pointed out, this is not the proper vehicle to do so. That  
24 argument was left at the disposal of Plaintiff in earlier motion practice.

25 THE COURT: Okay. Very good. Mr. Childs, I heard what you

1 have to say that we haven't specifically discussed 111.025, 111.175.  
2 Mr. Ball, I'd like you to prepare a very detailed order.

3 This Court denies Plaintiff's motion for declaratory relief. I do  
4 believe that this is -- I understand what Mr. Childs is saying, but I do  
5 believe this is an attempt, a second attempt at an order for  
6 reconsideration. It just keeps coming. But I would like you to analyze  
7 the statutes as well, and be very detailed about the entire background of  
8 this case and so forth. I'd like to be sure that you share that with all  
9 counsel and that Mr. Childs has a take a -- has a chance to take look at  
10 it as to form and content. And I'd like that -- usually its 14 days. It's  
11 going to be a little bit detailed. If it needs to be a little bit longer I  
12 understand. Okay.

13 MR. BALL: No problem. Understood, Your Honor.

14 THE COURT: Have a great day everyone and be safe out  
15 there.

16 MR. CHILDS: Thank you, Judge.

17 MR. BALL: Thank you, Your Honor.

18 THE COURT: You're very welcome.

19 MR. CHILDS: I'm not upset. I'm not upset. I want to be clear  
20 on the record. I'm just --

21 THE COURT: No, Mr. Childs.

22 MR. CHILDS: Thank you.

23 THE COURT: It's never anything personal, Mr. Childs.

24 MR. CHILDS: Thank you.

25 THE COURT: I think you realize in this Court, --

1 MR. CHILDS: Thank you.

2 THE COURT: -- I don't take things personally nor do I expect  
3 the attorneys to.

4 MR. CHILDS: Exactly.

5 THE COURT: That's not why I'm here.

6 MR. CHILDS: I know.

7 THE COURT: This is not a black robe thing. I respect  
8 everyone and just, you know, sometimes I have to make decisions that I  
9 don't like. Other times, -- but I really believe that what I've discussed  
10 with you and what we've discussed today is correct, and I'm -- and I'm  
11 glad you're not upset and neither am I. All right?

12 MR. CHILDS: Thank you.

13 THE COURT: So everyone, I do not have buttons to push  
14 with regard to being on the bench. It just doesn't happen.

15 MR. CHILDS: No problem.

16 THE COURT: Maybe it's because I was a therapist for five  
17 and-a-half years before I went to law school. Anyway, let's move on to  
18 the next case. I hope you all have a great day.

19 MR. BENEDICT: Thank you, Judge. You too. Thank you.

20 MS. MILLER: Thank you, Your Honor. You too.

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THE COURT: Thank you.

[Proceedings concluded at 10:42 a.m.]

\* \* \* \* \*

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

  
\_\_\_\_\_  
Stacey Ray  
Court Recorder/Transcriber