

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

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OPENING BRIEF ON APPEAL

For Appellant JOHN DATTALA

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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ACRY DEVELOPMENT LLC and  
WFG NATIONAL TITLE INSURANCE COMPANY

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NRAP 26.1. DISCLOSURE

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

1. Appellant JOHN DATTALA is an individual and does not own or control any corporation.
2. The law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court are set forth below.  
Relief Lawyers LLC;  
Wright, Finlay & Zak, LLP;  
The Ball Law Group;  
The Law Offices of John Benedict;  
Hansen & Hansen, LLC;  
Benjamin B. Childs, Ltd.

1           3.     If litigant is using a pseudonym, the litigant's true name: n/a

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5 DATED this August 20, 2022

6 /s/ Benjamin B. Childs  
7 BENJAMIN B. CHILDS, ESQ.  
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## **JURISDICTIONAL STATEMENT**

The basis of appellate jurisdiction is NRAP 3A(b)(1), appeal after final judgment. Appeal was timely taken. The final judgment resolving all claims between all parties was filed May 10, 2022 with Notice of Entry of Order being filed and served by electronic service on May 11, 2022. [Joint Appendix “JA” Vol 1, 1878]. Petitioner John Dattala [Dattala] timely filed a Notice of Appeal on May 17, 2022 within 30 days pursuant to NRAP 4(a)(1). [JA Vol 1, 1887]

## **ROUTING STATEMENT**

The matter should be remain in the Nevada Supreme Court as it addresses matters of public policy in deciding if title to real property acquired by fraud or forgery can be transferred. It also involves direct conflict between statutes.

The case is presumptively assigned to Court of Appeals pursuant to NRAP 17(b)(5) judgment of less than \$250,000 in a tort case.

## **ISSUES PRESENTED FOR REVIEW**

- ISSUE 1. Is title to real property acquired by fraud or forgery void?
- ISSUE 2. Was there material evidence of that Lillian Medina was an agent of WFG NATIONAL TITLE INSURANCE COMPANY [WFG]?
- ISSUE 3. Did the Court abuse it's discretion by denying reconsideration of its decision regarding quiet title?
- ISSUE 4. Did the district court abuse it's discretion by denying reconsideration of its decision regarding agency?
- ISSUE 5. Did the Court abuse it's discretion by denying declaratory relief to Dattala?
- ISSUE 6. Resolving conflict between NRS 111.025 and NRS 111.175 (deeds obtained by fraud) and NRS 111.180 (bona fide purchaser statute).

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## **STATEMENT OF THE CASE**

The Complaint was filed May 7, 2019 [JA Vol 1, 1] when Dattala realized that in the preceding few weeks he had been swindled out of title to three properties, as he discovered afterward by Bursey [Bursey] as the buyer, with the help of notary Lilian Medina [Medina]. WFG National Title Insurance Company [WFG] described Medina as its “notary / signing agent”. [JA Vol 5, 1132:10] Dattala got ownership of one property back by Findings of Facts, Conclusions of Law and Judgment [FFCL] filed October 15, 2020 [JA Vol 7, 1552 - 1556]. He could do this because Bursey was prevented from selling it due to Dattala’s immediate recording of a lis pendens. Title to the other two Subject Properties, being 50 Sacramento Drive and 59 Sacramento Drive in Las Vegas, remained at issue in the case.

Just before trial, the Court granted summary judgment in favor of Precision Assets and Acry Development, LLC [JA Vol 7, 1698 - 1712 and Vol 8, 1890-1891] and also in favor of WFG. [JA Vol 7, 1718 - 1727] Subsequent express findings of material facts contained in the

FFCL filed October 15, 2021 preclude summary judgment but were ignored by the Court when raised [JA Vol 7, 1496-1531 and Vol 8, 1731 - 1779] and reconsideration of both summary judgment motions was denied. [JA Vol 8, 1826 - 1838 and 1860 - 1877]

Finally, Dattala's Motion for Declaratory Relief regarding title to the two remaining properties [JA Vol 7, 1597 - 1677] was denied. [JA Vol 8, 1842 - 1859]

## **STATEMENT OF FACTS**

In 2016, Dattala met Bursey in Las Vegas. Bursey was from Detroit. Bursey asked Dattala to consider selling three parcels to Bursey. In the latter part of 2018, Bursey represented to Dattala that: (1) Bursey's father had died (2) Bursey expected an inheritance from his father's estate (3) Bursey wanted to buy Dattala's three properties and would pay him when he received his inheritance (4) Bursey needed documents signed and notarized to hire a property management company for 59 Sacramento. [JA Vol 7, 1536:31 - 1537:26] Bursey's

representations were false and were made to induce Dattala to enter into sales agreements and to sign and have notarized a document, which signature page was swapped with a Deed of Reconveyance that Bursey recorded to make it appear that a \$150,000 Deed of Trust encumbering 50 Sacramento had been satisfied. [JA Vol 7, 1538:32 - 1539:6] Bursey defrauded Dattala “into signing a Quitclaim Deed for the 59 Sacramento Property”. [JA Vol 7,1540:2 - 3 and 1536:31 - 1537:26] Bursey forged Dattala’s signature [JA Vol 7,1539:13-18] Bursey’s fraud didn’t stop there. Bursey then immediately signed deeds and received payment from selling the two Subject Properties, facilitated by WFG. [JA Vol 7, 1540:24 - 1541:2] All of these actions happened between April 5 and May 2, 2019. [JA Vol 7, 1538:27 - 1539:28 and 1540:24 - 1541:2]

## **SUMMARY OF THE ARGUMENT**

The Court ignored it’s own factual findings in the October 15, 2021 FFCL , which were appealable and were not appealed, and thus are final.

Dattala was the victim of fraud and forgery. [JA Vol 7,1540:2 - 3, 1536:31 - 1537:26] and 1539:13-18] Nevada does not allow a thief to transfer title. This is based on unambiguous statutory authority enacted over a 150 years ago. The forged and fraudulently obtained deeds, and all subsequent deeds, are void.

As to WFG, Medina was expressly found by the Court to be the agent to WFG, that her actions were taken while acting as WFG's agent within the scope of her agency, that Dattala was within the calls of protected persons of NRS 240.120(1)(d), and that "WFG is liable for damages Dattala incurred as a result of Medina's negligence ...". [JA Vol 7, 1546:8-18] WFG itself described her as an "agent" [JA Vol 5, 1132:10] and the Court was directly pointed to that fact [JA Vol 9, 1910:7-11] but cavalierly dismissed WFG's themselves describing Medina as their "signing agent" as "substance over form" [JA Vol 9, 1910:23] Isn't that a jury question? Summary judgment should have been granted in favor of Dattala against WFG, not the other way around.

## **ARGUMENT**

### **A. STANDARD OF REVIEW**

The standard of review for issues regarding summary judgment is de novo. "This court reviews a district court's grant of summary judgment de novo." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Id. (quoting NRCP 56(c)). In reviewing an order granting summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Id.

The district court's factual findings are reviewed for substantial evidence and its legal conclusions are reviewed de novo. Weddell v. H2O, Inc., 128 Nev. 94, 101, 271 P.3d 743, 748 (2012).

Review of statutory interpretation is *de novo*. Liberty Mut. v. Thomasson, 130 Nev. 27, 30, 317 P.3d 831, 833 (2014) (citing Washoe Cnty. v. Otto, 128 Nev. 424, 430-31, 282 P.3d 719, 724 (2012)); Cromer v. Wilson, 126 Nev. 106, 109, 225 P.3d 788, 790 (2010) (“The construction of statutes is a question of law, which we review *de novo*.”).

Standard of review for a motion for reconsideration abuse of discretion. AA Primo Builders, LLC v. Washington, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). Krisch v. Traber, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018) holds “... a district court is free to revisit and reverse its own rulings upon request of a party,” Further, a district court "may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

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## B. QUIET TITLE

As to the quiet title and declaratory relief causes of action, titles to the two Subject Properties were obtained by fraud [JA Vol 7, 1537:13-25, 1538:27 - 6, and 1540:2-3] and forgery [JA Vol 7, 1539:7-12] and are therefore void pursuant to NRS 111.025 and NRS 111.175:

NRS 111.025 Conveyances void against purchasers are void against their heirs or assigns. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this chapter, as against purchasers, shall be equally void as against the heirs, successors, personal representatives or assigns of such purchaser

NRS 111.175 Conveyances made to defraud prior or subsequent purchasers are void. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

The Court awarded Precision Assets free and clear title to the two Subject Properties, finding it to be a bona fide purchaser pursuant to NRS 111.180. Acry Development LLC is Precision Asset's partner and had a derivative interest in 50 Sacramento as a purported lender.

NRS 111.180 Bona fide purchaser: Conveyance not deemed fraudulent in favor of bona fide purchaser unless subsequent purchaser had actual knowledge, constructive notice or reasonable cause to know of fraud.

1. Any purchaser who purchases an estate or interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property is a bona fide purchaser.
2. No conveyance of an estate or interest in real property, or charge upon real property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears that the subsequent purchaser in such conveyance, or person to be benefitted by such charge, had actual knowledge, constructive notice or reasonable cause to know of the fraud intended.

First, what does the statute mean that the conveyance is not “deemed fraudulent in favor of the bona fide purchaser”? In this case the fraud was committed by the preceding purchaser, Bursey, who was Precision Assets’ seller. Clearly within the specific definitions of NRS 111.025 and 111.175. It’s unclear what the phrase “deemed fraudulent in favor of the bona fide purchaser” even means, since the existence of a fraudulent or forged deed in the chain of title would NOT be in favor of the current purchaser. It would be the opposite, it would be against the subsequent purchaser.

Second, as set forth below, Precision Assets had “constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property”.

NRS 111.180 has been on the statute books since 1861. It was revised in 2013 to protect a situation where a home is foreclosed on, then sold to a new purchaser and there was a defect in the foreclosure process. The new version protects a purchaser who does not have “actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest” to the real property. It goes on to protect a bona fide purchaser unless he had “actual knowledge, constructive notice or reasonable cause to know of the fraud intended.”

The legislative history of the basis for the 2013 changes is in the record. [JA Vol 5, 1140 - 1142] The relevant portion is below.

**Assemblyman Frierson:**

Since Mr. Finseth is still there, because it has been such an important issue, and we just threw it out there as a little amendment, I think it is important we get something on the record about why we are doing this. Mr. Finseth, you and I have talked about bona fide purchaser before. **This is trying to address the notion that a home is foreclosed on, then sold to a new purchaser and something was wrong with the way the home was foreclosed; this protects the new purchaser who had no**

**inkling of any wrongdoing. We know the home belongs to the new purchaser, and any claims about the inappropriate or improper foreclosure would be between the lender and original homeowner. Is that the situation we are trying to address with this language?**

**Rocky Finseth:**

Mr. Frierson, you are correct.

The amendment was specifically passed to insulate foreclosure companies from liability to buyers at foreclosure sales.

Dattala identified twelve separate red flags placing Precision Assets on “constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property”. These were discussed in full, with supporting documentation, before the trial court. [JA Vol 5,1143 -

1146] Here is a non-exhaustive list of warning signs of which Movant was aware when it bought the properties.

- \* For 50 Sacramento

Purchase was by assignment of contract. [JA Vol 5, 1194 - 1196 and 1214 - 1219]

The Purchase Agreement to 50 Sacramento had been executed April 1, 2019, [JA Vol 5, 1219] before Bursey was the purported record owner of the property, although his purported ownership interest was acquired by fraud. Bursey recorded his fraudulent Quitclaim Deed to 50 Sacramento April 8, 2019. [JA Vol 6, 1341 - 1346] Notary Bonita Spencer expressly testified the documents Bursey recorded with her purported notary

of Dattala's signature were NOT the documents she notarized. [JA Vol 6, 1333:3 - 8] The Court made an express finding that the signature pages of those documents were attached to the Quitclaim Deed and Deed of Reconveyance without Dattala's knowledge.

[JA Vol 7, 1538:22-1539:5]

Preliminary Report dated 4/8/2019 stated that Dattala was the title owner [JA Vol 5, 1231-1232]

Preliminary Report dated 4/8/2019 stated the \$150,000 Deed of Trust in favor of Dattala. [JA Vol 5, 1235]

The property tax records were in the name of Dattala [JA Vol 5, 1199-1200], as was the sewer bill [JA Vol 5, 1198]

\* For 59 Sacramento

The property tax records were in the name of Dattala  
[JA Vol 6, 1261 - 1262], as was the sewer bill [JA Vol 6,  
1263]

There was a tenant in the 59 Sacramento Property [JA  
Vol 6, 1281 - 1282, 1286, 1287, 1288, 1289, 1290,  
1292 - 1296, 1297]

\* For Both Properties

There was no Real Property Disclosure Form provided  
for either property as required by NRS 113.130.

Completion and service of disclosure form "At least 10  
days before residential property is conveyed to a

purchaser” cannot be waived. Both properties are residential properties.

The timing is highly suspicious. Bursey was selling and conveying title by Grant, Bargain and Sale Deeds days after obtaining title by Quit Claim Deeds recorded by himself.

The totality of the circumstances surrounding the two property sales can be summarized as a rush sale with both Precision and WFG engaging in intentional non-investigation. Precision Assets was on constructive notice or reasonable cause to know Bursey had, or intended, to commit fraud on Dattala. Starting with Bursey obtaining Quitclaim Deeds with no warranty, recording them himself, then proffering Grant, Bargain and Sale deed only weeks later, to Bursey signing a sales contract before

he even recorded his fraudulent deed, to no compliance with NRS Chapter 113 disclosures, to purportedly satisfying a \$150,000 Deed of Trust by selling a house for \$73,540, less than half of that amount. [JA Vol 6, 1346]

Precision Assets chose to proceed with the purchase of properties being on “constructive notice or reasonable cause to know of the fraud intended” by Bursey, which fraud had just been perpetrated within the month, and with the assistance of Medina, WFG’s notary. WFG chose to insure the transactions, all without notifying Dattala. This was the subject of Precision Assets’ November 5, 2020 cross-claim against WFG [JA Vol 1, 155 -170] which was resolved May 11, 2022. [JA Vol 8, 1878 -1886]

The Nevada Supreme Court has never addressed the conflicts between the competing statutes. Dattala now has a

formal judgment in his favor that states positively that the deeds to Precision's seller were forged and/or obtained by fraud. The Court's ruling in favor of Precision Assets on the quiet title issue brings the conflict between the statutes to the fore.

#### 1. STATUTES ARE GIVEN PLAIN MEANING

Platte River Ins. Co. v. Jackson, 137 Nev. Adv. Rep. 82, 500 P.3d 1257, 1258 (Dec 23, 2021) reiterates black letter law of statutory interpretation. "In interpreting a statute, we begin with its plain language. Arguello v. Sunset Station, Inc., 127 Nev. 365, 370, 252 P.3d 206, 209 (2011)" id @ 1259 It goes on to state "We strive to the extent possible to interpret a statute in a matter

that avoids ‘unreasonable or absurd result[s]’ unintended by the Legislature.” id @ 1262

Even under the revised wording of NRS 111.180, given the numerous red flags before the purchase [JA Vol 5, 1143 - 1146] summary judgment was precluded as these were all issues of material fact. But the factual findings entered on October 15, 2021 eliminated any doubt about the existence of material facts precluding summary judgment because it’s now a fact that the deeds were obtained by Bursey from Dattala by fraud [JA Vol 7, 1536:31 - 1537:26 and 1540:2 - 3] and use of forged signatures. [JA Vol 7, 1539:13-18]

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## 2. SPECIFIC STATUTE CONTROLS

N.J. v. State (In re N.J.), 134 Nev. 358, 360, 420 P.3d 1029, 1031 (2018) states the general/specific canon.

“When two statutory provisions conflict, this court employs the rules of statutory construction and attempts to harmonize conflicting provisions so that the act as a whole is given effect.” State v. Eighth Judicial Dist. Court (Logan D.), 129 Nev. 492, 508, 306 P.3d 369, 380 (2013) (internal citations omitted). “Under the general/specific canon, the more specific statute will take precedence and is construed as an exception to the more general statute, so that, when read together, the two provisions are not in conflict, but can exist in harmony.” Williams v. State, Dep't of Corr., 133 Nev., Adv. Op. 75, 402 P.3d 1260, 1265 (internal citations and quotation marks omitted); see also Piroozi v. Eighth Judicial Dist. Court, 131 Nev. 1004, 1009, 363 P.3d 1168, 1172 (2015) (providing that “[w]here a general and a special statute, each relating to the same subject, are in conflict and they cannot be read together, the special statute controls” (internal quotation marks omitted)).

NRS 111.025 states “Conveyances void against purchasers are void against their heirs or assigns.” NRS 111.175 states “Conveyances made to defraud prior or subsequent purchasers are void”. The statutes plain and unambiguous and counsel found no reported cases citing them, despite having been the law since 1861. Not one case.

NRS 111.180 is Nevada’s bona fide purchaser statute.

Because NRS 111.025 and NRS 111.175 are statutes focusing specifically on the deeds obtained by fraud, they govern here. This statutory interpretation preserves the harmony of the three statutes. The alternative is that in every conceivable instance the purchase of stolen property gets to keep the stolen property because the perpetrator of the fraud is not going to publicize his criminal act. NRS 111.180 expressly gives the

purchaser, and title companies handling conveyances, a huge incentive NOT to investigate the background of title transactions. For the simple reason that investigation would trigger the “actual knowledge, constructive notice or reasonable cause to know of the fraud intended” circumstance in the statute. Just as in this case, Precision Assets and WFG did no investigation, and adopt the Sergeant Schultz “I know nothing” defense. Admittedly it’s a funny punch line from a 1960 television sitcom, but it’s not a legal defense.

This is why the twelve separate red flags Dattala identified defeats summary judgment [JA Vol 5, 1143 - 1146], and why judgment should be entered in Dattala’s favor on the title issues based on the express findings of fraud and forgery in the FFCL filed October 15, 2021. [JA Vol 7, 1532 - 1536]

The Court created inconsistent decisions which are irreconcilable. The Court simultaneously made a factual finding that Bursey's deeds to the two properties were forged or obtained by fraud, but that Precision Assets is nevertheless a bona fide purchaser and has clear title.

This is a clear cut case of an irreconcilable internal inconsistency in the ruling of the same court. This came about because of major legal errors. Both NRS 111.025 and NRS 111.175 are clear that title obtained by fraud, and all subsequent transfers, are void.

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### 3. VOID SALE DEFEATS A BONA FIDE PURCHASER

U.S. Bank v. Res. Grp., LLC, 135 Nev. 199, 205. 444 P.3d

442, 448 (2019), dealing with an HOA foreclosure case, states Nevada law as succinctly, “A void sale, in contrast to a voidable sale, defeats the competing title of even a bona fide purchaser for value.” Surely the same logic applies with a fraudulently obtained or forged deed.

Despite the existence of NRS 111.025, NRS 111.175 and NRS 111.180 dating back to the creation of Nevada as a state in 1861, this Court has never interpreted or applied the statutes in the context of a forged deed and an alleged bona fide purchaser.

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#### 4. THIEF CANNOT PASS TITLE TO PERSONAL PROPERTY

The issue of a thief passing no title to personal property has been resolved in Nevada by Alamo Rent-a-Car, Inc. v. Mendenhall, 113 Nev. 445, 937 P.2d 69 (1997). That holding is that a car thief who sold a car owned by Alamo to a Nevada resident by a forged certificate of title could not defeat the ownership rights of the defrauded party. A thief cannot convey good title even to an alleged good faith bona fide purchaser. Id. @ 451.

#### 5. OTHER STATE COURT AUTHORITY

The common sense principles stated in NRS 111.025 and NRS 111.175 are consistent with other state court decisions

which have ruled that a forged deed is void per se and does not pass title to even a good faith, bona fide purchaser. See, e.g. Faison v. Lewis, 32 N.E.3d 400, 402-3, 25 N.Y.3d 220, 202 (NY 2015) :

In Marden v Dorthy, this Court held that a forged deed was void at its inception, finding it to be a "spurious or fabricated paper" (160 NY 39, 47, 54 NE 726 [1899]), a forgery characterized by "the fraudulent making of a writing to the prejudice of another's rights" (id.). As Marden noted, a forged deed lacks the voluntariness of conveyance (see id. at 54). Therefore, it holds a unique position in the law; a legal nullity at its creation is never entitled to legal effect because "[v]oid things are as no things" (id. at 56).

The basic rule appears to be that forged deeds are a legal nullity and cannot pass title even to an alleged bona fide purchaser. Case examples include Lotspeich v. Dean, 211 P.2d 979, 983 (N.M.1949) (citing other appellate decisions); Vazquez

v. Deutsche Bank National Trust, 441 S.W.2d 783, 787 (TX App. 2014); WFG National Title Co.v. Wells Fargo Bank NA, 264 Cal. Rptr. 717, 724 (Cal.App. 2020).

Ironically, WFG is the same title company in the instant case. It tried to defend against a forged deed claim and lost in the California case. It's insured, Precision Assets, should also lose this case. It should lose because a policy of title insurance obligates the insurer to cover any losses or damages resulting from a forged deed. The Georgia Supreme Court so ruled in Fidelity National Title v. Keyingham Investments LLC, 702 S.E.2d 851 (Ga. 2010).

Maryland law distinguishes between a forged deed and a fraudulent deed. Nevada law in NRS 111.175 and 111.180 doesn't distinguish between forged and fraudulent deeds.

Scotch Bonnett Realty Corp. v. Matthews 11 A.3d 801, 417 Md.

570 (MD 2011) first adopts the rule that "As against the true owner, a right of property cannot be acquired by means of a forged written instrument relating to such property." quoting Unity Banking & Savings Co. v. Bettman, 217 U.S. at 135, 30 S. Ct. at 490, 54 L. Ed. at 698 (1910). The Scotch Bonnett Realty Corp. court goes on to state Maryland law regarding forged deeds as follows.

The Bankruptcy Court also recognized that, in Harding v. Ja Laur Corp., 20 Md.App. 209, 315 A.2d 132 (1974), the Court of Special Appeals concluded that Maryland law distinguishes between a forged deed and a deed obtained by false pretenses.

" The title of a bona fide purchaser, without notice, is not vitiated even though a fraud was perpetrated by his vendor upon a prior title holder. A deed obtained through fraud, deceit or trickery is voidable as between the parties thereto, [417 Md. 576] but not as to a bona

bona fide purchaser. A forged deed, on the other hand, is void ab initio. " Id. at 213-14, 315 A.2d at 135 (citations omitted).

The Harding court further said:

" A forger, having no title can pass none to his vendee. James [ Janes ] v. Stratton, 203 S.W. 386 (Tex.Ct.Civ.App.1918). Consequently, there can be no bona fide holder of title under a forged deed. A forged deed, unlike one procured by fraud, deceit or trickery[,] is void from its inception. The distinction between a deed obtained by fraud and one that has been forged is readily apparent. In a fraudulent deed an innocent purchaser is protected because the fraud practiced upon the signatory to such a deed is brought into play, at least in part, by some act or omission on the part of the person upon whom the fraud is perpetrated. He has helped in some degree to set into motion the very fraud about which he later complains. A forged deed, on the other hand, does not necessarily involve any action on the part of the person against whom the forgery is committed. So that if a person has two deeds presented to him, and he thinks he is signing one but in actuality, because of fraud, deceit or trickery[,] he signs the other, a bona fide purchaser, without notice,

is protected. **On the other hand, if a person is presented with a deed, and he signs that deed but the deed is thereafter altered e.g. through a change in the description or affixing the signature page to another deed, that is forgery and a subsequent purchaser takes no title."** Id. at 214-15, 315 A.2d at 136.3 See also Maskell v. Hill, 189 Md. 327, 55 A.2d 842 (1947). [emphasis added]

Id. @ 804

**"[A]ffixing the signature page to another deed..."** is what happened in this case. Bursey affixed a signature page from another document to the fraudulent Quitclaim Deed to 50 Sacramento and recorded it April 8, 2019. [JA Vol 6,1333:3 - 8 and JA Vol 6, 1341 - 1346] The Court made an express finding that the signature pages of those documents were attached to the

Quitclaim Deed and Deed of Reconveyance without Dattala's knowledge. [JA Vol 7, 1538:22-1539:5]

Nevada law is clearly that both deeds obtained by fraud and forged deeds are void under the plain language of NRS 111.025 and NRS 111.175. Void, not voidable.

## 6. QUIET TITLE IS AN IN REM PROCEEDING

Real estate is recognized by the law as unique. Dixon v. Thatcher, 103 Nev. 414, 416, 742 P.2d 1029, 1031 (1987) "... real property and its attributes are considered unique and loss of real property rights generally results in irreparable harm"

Quiet title actions are in rem. Chapman v. Deutsche Bank Nat'l Tr. Co., 129 Nev. 314, 302 P.3d 1103 (2013)

## 2. WFG LIABILITY

As to Medina being an agent of WFG, if summary judgment was granted at all it should have been in favor of Dattala. WFG itself described Medina as its agent [JA Vol 5, 1132:10] and this fact was pointed out to the Court. [JA Vol 9, 1905:7-16] The final, appealable factual findings in the October 15, 2021 FFCL are that “Medina at all relevant times was an employee or agent under the control of WFG” and **“was acting as WFG’s agent and was within the scope of her agency when performing the notarial acts described above** [JA Vol 7, 1548:6-13] The acts described in the paragraphs quoted above are of an ongoing fraud scheme perpetuated on Dattala which resulted in a loss which is found to be in the amount of \$370,000. Finally, “WFG is liable for damages Dattala incurred as a result of Medina’s

negligence under the doctrine of respondeat superior.” [JA Vol 7, 1546:17-18]

Burse’s December 8, 2021 declaration [JA Vol 8, 1817]

states :

“Notary Lillian Medina came to Dattala’s house on April 29, 2019. Ms Medina said she was representing WFG and was there on behalf of WFG. Ms. Medina had documents with her that she said had been provided and prepared by WFG.”

## 7. LAW OF AGENCY

The factual findings set forth above make WFG legally liable to Dattala for Medina’s acts. Agency is the fiduciary relationship arising when one person (the principal) manifests assent to another person (the agent) that the agent act on the principal's behalf and subject to the principal's control, and the agent

manifests assent or otherwise consents to act. Restatement (Third) of Agency § 1.01; see also Perez v. First Am. Tit. Ins. Co., 810 F. Supp. 2d 986, 992 (D. Ariz. 2011) ("Arizona has adopted the definition of 'agency' embodied in the Restatement (Third) of Agency."). Agency may be established through either actual or apparent authority. Restatement (Third) of Agency §§ 2.01, 2.02; see Goodman v. Physical Res. Eng'g, Inc., 229 Ariz. 25, 29, 270 P.3d 852, 856 (2011).

The essential characteristics of an agency relationship as laid out in the Restatement are as follows: (1) an agent or apparent agent holds a power to alter the legal relations between the principal and third persons and between the principal and himself; (2) an agent is a fiduciary with respect to matters within the scope of the agency; and (3) a principal has the right to

control the conduct of the agent with respect to matters entrusted to him. Restatement, Agency, 2d ed., §§ 12, 13, 14, pp. 57-60.

Under California law, "an agent is one who represents another . . . in dealings with third persons." Cal. Civ. Code § 2295. While actual agency is generally created by express agreement or ratification, agency can also be implied by the conduct of the parties. Van't Rood v. County of Santa Clara, 113 Cal. App. 4th 549, 562, 571, 6 Cal. Rptr. 3d 746 (2003) ("Agency is generally a question of fact."). The hallmark of an agency relationship is that one person agrees to act on behalf of another and subject to his control. See In re Coupon Clearing Serv., Inc., 113 F.3d 1091, 1099 (1997) (applying California law).

Black's Law Dictionary defines "agent" as "[s]omeone who is authorized to act for or in place of another; a representative."

Agent, Black's Law Dictionary (10th ed. 2014). Generally, “an agency relationship results when one person possesses the contractual right to control another's manner of performing the duties for which he or she was hired.” Hamm v. Arrowcreek Homeowners' Association, 124 Nev. 290, 299, 183 P.3d 895, 902 (2008).

Agency law typically creates liability for a principal for the conduct of his agent that is within the scope of the agent's authority. “To bind a principal, an agent must have actual authority . . . or apparent authority.” Simmons Self-Storage v. Rib Roof, Inc. 130 Nev. 540, 549, 331 P.3d 850, 859 (2014)

Apparent authority is “that authority which a principal holds his agent out as possessing or permits him to exercise or to represent himself as possessing, under such circumstances as to

estop the principal from denying its existence.” Myers v. Jones, 99 Nev. 91,93, 657 P.2d 1163, 1164 (1983); see also, Restatement, 3d, Agency, § 2.03 (2006). In other words, once the principal cloaks the agent with the apparent authority to act, the principal is estopped from later denying the actions of the agent.

Further, as pointed out by the United States Supreme Court, agencies can vary widely in scope and purpose. Daimler AG v. Bauman, 571 U.S. 117, 135, 134 S. Ct. 746, 759 (2014) (“Agencies, we note, come in many sizes and shapes: ‘One may be an agent for some business purposes and not others so that the fact that one may be an agent for one purpose does not make him or her an agent for every purpose.’ ” (quoting 2A C.J.S. Agency § 43 (2013) (footnote omitted))).

Finally, ratification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority. A principal can ratify by: (1) manifesting assent that the act shall affect the person's legal relationships; or (2) conduct that justifies a reasonable assumption that the person so consents. Obviously WFG ratified Medina's action because it closed the escrow associated with her fraudulent affidavits.

## PUBLIC POLICY ARGUMENT

The conflict between the statutes described above is ripe for decision and this case presents an opportunity for the court to clarify Nevada law that a thief passes no title, whether the thief stole personal property or an ownership interest in real property.

This conforms with the overwhelming weight of authority in other states, and is consistent with the clear statutes, NRS 111.025 and NRS 111.175, and other Nevada Supreme Court holdings regarding the bona fide purchaser statute, NRS 111.180.

The Court should expressly hold that a thief cannot transfer his interest to a bona fide purchaser, including interests in real estate.

Appellant repeats that NRS 111.180 expressly gives the purchaser, and title companies handling conveyances, a huge incentive NOT to investigate the background of title transactions and this is against public policy to bolster confidence in title and ownership of real estate.

## **CONCLUSION**

In this case Dattala was the victim of an ongoing criminal conspiracy involving fraud and forgery. The erroneous ruling of the trial court has resulted in him losing ownership of two of his properties, which should be returned to him.

The WFG insulation from liability is unexplainable. They describe Medina as their agent in their own interrogatory response and the Court knew it. The FFCL filed October 15, 2021 expressly finds that “Medina at all relevant times was an employee or agent under the control of WFG... and ... acting as WFG’s agent and was within the scope of her agency when performing the notarial acts described above”. [JA Vol 7, 1546:10-13] Summary judgment was precluded in favor of WFG against Dattala on the agency issue.

This Court should reverse and remand with instructions for the district court to (1) quiet title in favor of Dattala as to 50 Sacramento Drive and 59 Sacramento Drive and (2) enter judgment in favor of Dattala against WFG jointly and severally with Medina in the same amount set forth in the FFLC filed October 15, 2021. [JA Vol 7, 1532 - 1556]

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## ATTORNEY'S CERTIFICATE OF COMPLIANCE [NRAP Form 9]

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter

relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this August 20, 2022

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