IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA,

Appellant,

vs.

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

Respondents.

No. 84762

RESPONDENT PRECISION ASSETS, LLC'S ANSWERING BRIEF

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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 Justices of this Court may evaluate possible disqualification or recusal.

1. Precision Assets, LLC is a Nevada limited liability company and has no parent company or publicly held company that owns ten percent or more of its stock.

2. The Ball Law Group LLC represented Precision Assets, LLC before the District Court and before this Court.

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3. Claggett & Sykes Law Firm represents Precision Assets, LLC before this Court.

Dated this 9th day of November 2022.

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I. ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(5) because it involves a judgment of less than $250,000 in a tort case. The Court of Appeals should resolve this appeal because it involves the routine application of longstanding Nevada law, and Dattala does not cogently present any enumerated grounds for which this appeal should be retained by the Nevada Supreme Court. *See* NRAP 17(b).

II. ISSUES ON APPEAL

A. WHETHER APPELLANT HAS FAILED TO DEMONSTRATE THAT THE DISTRICT COURT ABUSED ITS DISCRETION BY DENYING HIS MOTIONS FOR REHEARING AND DECLARATORY RELIEF WHEN HE DOES NOT DISCUSS THE DISTRICT COURT'S REASONING, NOR EXPLAIN WHY THAT REASONING WAS INADEQUATE.

B. ALTERNATIVELY, WHETHER APPELLANT HAS FAILED TO DEMONSTRATE THAT THE DISTRICT COURT INCORRECTLY CONCLUDED THAT LONGSTANDING NEVADA LAW, CODIFIED IN NRS 111.180, PROTECTS INNOCENT PURCHASERS OF REAL PROPERTY WHO PAID VALUABLE CONSIDERATION WITHOUT KNOWING OF ANOTHER PARTY'S ALLEGED FRAUD.

III. STATEMENT OF THE CASE / SUMMARY OF ARGUMENT

Appellant John Dattala (Dattala) agreed to sell two real properties to Eustachius Bursey (Bursey), and Bursey agreed to sell the same two properties to Precision Assets (Precision). 3 Joint Appendix (JA) 570. When Precision completed the sale, records filed with the County—which had been purportedly signed by Dattala before a notary—showed that Bursey held legal title to the properties and Dattala had no interest in them. *Id*. at 630, 634, 710.

Dattala sued, claiming that Bursey still owed money for the properties and any document stating otherwise was allegedly fraudulent. 1 JA 182, 185. He sought the balance left on the properties from Bursey and title of the properties from Precision. The District Court granted summary judgment in favor of Precision, holding that Precision was protected under Nevada law as a bona fide purchaser (BFP) under NRS 111.180, and any fraud that Bursey may have committed needed to be resolved between Bursey and Dattala. 7 JA 1701.

The crux of Dattala's argument on appeal relating to Precision is that any fraudulent conveyance of property is void *ab initio* under NRS

111.175 and NRS 111.025, regardless of whether a party is a BFP. Appellant's Opening Brief (AOB) at 21. And because the District Court found that Bursey committed fraud after it granted summary judgment, Dattala maintains that the District Court was required to grant his motion for reconsideration and declare him the owner of the properties. *Id*. at 19.

But the District Court denied Dattala's motions for reasons unrelated to the merits of his underlying argument. Dattala makes no effort to address the District Court's actual reasoning, and therefore fails to demonstrate that the District Court abused its discretion as a matter of law.

Moreover, NRS. 111.180 specifically creates a statutory exception to the general rule that all fraudulent conveyances are void, protecting BFPs who lack any actual or constructive knowledge of another party's fraud. The District Court's post-summary judgment finding that Bursey committed fraud only applied to Bursey, and did not change the fact that Precision did not know about the fraud; therefore, the District Court did not abuse its discretion in denying Dattala's motions.

IV. STANDARDS OF REVIEW

"This court reviews an order granting summary judgment de novo." *Cuzze v. Univ. & Cmty. Coll. Sys.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Summary judgment is appropriate "when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

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 Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). This Court reviews a district court's decision whether to grant or deny reconsideration for an abuse of discretion, while reviewing purely legal questions raised in the motion de novo. *AA Primo Builders, LLC v. Washington,* 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

V. RELEVANT FACTUAL / PROCEDURAL BACKGROUND

A. DATTALA SELLS TWO PROPERTIES TO BURSEY.

Dattala owned multiple properties, some of which he rented out, and some of which he used to store tools, knick-knacks, and items he found in dumpsters. 2 JA 391, 458. Relevant here are two properties: 50 and 59 Sacramento in Las Vegas, Nevada.

According to Dattala, he met Bursey in 2018 and agreed to sell 50 Sacramento to Bursey for $150,000. 3 JA 570. Bursey put up $5,000 in earnest money; Dattala loaned Bursey the rest, with Bursey making monthly payments thereafter. *Id*. at 570-71. They recorded a Deed of Trust, which set out the terms of the arrangement. *Id*.

Dattala later agreed to sell 59 Sacramento to Bursey for $220,000. 3 JA 570. Bursey put up $10,000 in earnest money; according to Dattala, Bursey said he would pay the remainder once he received an inheritance. *Id*.[1]

Bursey subsequently agreed to sell 50 and 59 Sacramento to HCO Residential, a company that was not involved in the proceedings.

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[1]There were also discussions regarding a third property not at issue in this appeal.

B. BURSEY SELLS TWO PROPERTIES TO PRECISION.

Precision buys homes, renovates them, then sells them—what is commonly referred to in pop culture as "flipping" homes. Precision agreed to take assignment of the contracts on 50 and 59 Sacramento from HCO Residential. 3 JA 643, 699. Precision took out a loan from Acry Development, LLC (Acry) and contracted with WFG National Title Insurance Company (WFG) to hold escrow and insure title. *Id*. at 649.

When the sales were finalized, County records and other documents showed that Bursey held legal title to the properties. A Deed of Full Reconveyance had been recorded for 50 Sacramento stating that Bursey paid off debt secured by the Deed of Trust, as well as Quitclaim Deeds for both properties stating that Dattala sold his interest in the properties to Bursey. 3 JA 630, 634, 710. WFG also obtained notarized Affidavits of Grantor; these documents, which were purportedly signed by Dattala in the presence of a notary, expressly stated that Dattala had no rights in the properties and Bursey legally owned them. *Id*. at 641, 717. Bursey provided his own notarized affidavits indicating the same. *Id*. at 654, 656, 719, 722. WFG therefore released escrow and

recorded Precision's title ownership of the properties with the County. *Id*. at 662, 738.

C. DATTALA SUES MULTIPLE ENTITIES, INCLUDING PRECISION.

Dattala quickly sued Precision, Bursey, Acry, WFG, and several notaries. 1 JA 1 (complaint); 29 (first-amended complaint); 182 (second-amended complaint). His second-amended complaint, which is the operative pleading in this case, raised two relevant causes of action against Precision: (1) a quiet title action requesting an order that he—not Precision—owns the properties, and (2) a request for declaratory relief to the same. *Id*. at 192-93.

In his second-amended complaint, Dattala admitted that he sold the properties to Bursey: he claimed he sold 50 Sacramento for $150,000, and 59 Sacramento for $220,000. 1 JA 185-86. But Dattala claimed that Bursey never finished paying for the properties and any documents stating otherwise were fraudulent. *Id*. Regarding 50 Sacramento, Dattala alleged that Bursey induced him into signing various documents before a notary, then secretly attached the signature pages from those documents to the Deed of Reconveyance and Quitclaim Deed. *Id*. at 187-88. Regarding 59 Sacramento, Dattala admitted that

he signed the Quitclaim Deed, but alleged that Bursey somehow "tricked" him into doing so. *Id*. at 190.

D. THE DISTRICT COURT FINDS NO GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER PRECISION IS A BFP.

Precision answered Dattala's second-amended complaint, counter-claimed against Dattala, and took various other actions against the other parties named in Dattala's suit. 1 JA 226.

After discovery, Precision moved for summary judgment. 3 JA 576. In the motion, Precision claimed protection under Nevada law as a BFP pursuant to NRS 111.180, which states that a purchaser who buys a property for valuable consideration is protected from another party's fraud, unless the purchaser knew or should have known of the fraud. *Id*. at 585.

Precision explained that it purchased the properties in good faith after working with a title insurance and escrow company, which conducted records checks and obtained multiple notarized documents—all of which indicated that Bursey owned the properties. 3 JA 581-83. Precision further explained it did not know anything about the disagreement between Dattala and Bursey, and if Bursey violated his

contractual obligations to Dattala by failing to pay the agreed-upon price, or otherwise acted inappropriately, Dattala should recover from Bursey. *Id*. at 578-79.

Dattala opposed, arguing that there was a genuine issue of material fact precluding summary judgment. 5 JA 1135. Dattala argued that there were various "red flags" which gave Precision constructive notice or reasonable cause to know of his interest in the property and/or of Bursey's fraud, or at least reasonable cause to look closer. *Id*. at 1142.

Precision replied, explaining that it conducted the same inquiry that any purchaser of property would have performed, which revealed no defects. 6 JA 1399-40. Precision pointed out that most of the "red flags" Dattala discussed in his opposition were facts that WFG learned, which could not be imputed to Precision as a matter of law. *Id*. (citing *Huntington v. Mila, Inc.*, 119 Nev. 355, 359, 75 P.3d 354, 357 (2003)). Precision asserted that the other facts Dattala identified were completely immaterial and did not provide any reason to know of Dattala's supposed interest in the properties, let alone of any fraud. *Id*.

at 1396-97. After argument, the District Court granted summary judgment in favor of Precision against Dattala. 7 JA 1701.[2]

E. DATTALA OBTAINS A JUDGMENT AGAINST BURSEY FOR MORE THAN 1.4 MILLION DOLLARS, BUT STILL PURSUES PRECISION.

Dattala proceeded against Bursey and one of the remaining notaries. Bursey and the notary declined to participate, and Dattala received a default judgment against them. 7 JA 1574. In the order on the default, the District Court stated that Dattala's allegations against Bursey and the notary were deemed true as a sanction against them—including Dattala's allegation that Bursey procured his signatures through fraud. *Id.* at 1583. After a "prove-up" hearing, the Court awarded Dattala $355,533 (the remaining balance on the amount Bursey agreed to pay), plus more than one million dollars in treble and punitive damages that far exceeded the value of the properties—roughly 1.4 million dollars in total. *Id.* at 1594.

Dattala filed a motion for reconsideration of the order granting summary judgment to Precision, 7 JA 1439, a supplement to that

[2]The District Court also granted WFG's motion for summary judgment against Dattala. 7 JA 1720. Dattala has appealed that order and WFG filed a separate answering brief, which Acry joined.

motion, *id*. at 1557, and a motion for declaratory relief, *id*. at 1597. Broadly, he argued in those filings that the order granting summary judgment conflicted with the District Court's finding that Bursey committed fraud. *See, e.g.*, *id*. at 1568, 1608. After argument, the District Court denied Dattala's motions. 8 JA 1848, 1864.

Dattala appealed. He raises the following claim in his opening brief:

> 1. Is title to real property acquired by fraud or forgery void?
>
> 2. Was there material evidence that Lillian Medina was an agent of WFG National Title Insurance Company [WFG]?
>
> 3. Did the District Court abuse its discretion by denying reconsideration of its decision regarding agency?
>
> 4. Did the Court abuse its discretion by denying declaratory relief to Dattala?
>
> 5. Resolving conflict between NRS 111.125 and NRS 111.175 (deeds obtained by fraud) and NRS 111.180 (bona fide purchaser statute).

AOB at 2.

VI. LEGAL ARGUMENT

More than 150 years ago, Nevada lawmakers chose to protect innocent purchasers who paid valuable consideration for property without knowing about any defect in the title. The Nevada Legislature strengthened those protections more recently by making clear that a BFP who does not know of another party's fraud takes title unaffected by that fraud. Accordingly, the District Court correctly found that Bursey's alleged fraud—even if proven—did not prevent Precision from claiming protection as a BFP.

Dattala, nevertheless, argues that this Court should reverse the District Court's rulings on his motions for reconsideration and declaratory relief and have him declared as owner of the properties. Although he acknowledges that NRS 111.180 appears to protect Precision on its face, he attempts to undermine the statute by asserting that it conflicts with other statutes, Nevada Supreme Court rulings on different areas of law, and authority from other states. But general principles of appellate review require this Court to apply the plain language of controlling statutes. That plain language clearly protects

Precision and requires Dattala to proceed against the person who allegedly defrauded him—Bursey.

In fact, Dattala has already obtained a judgment for more than 1.4 million dollars against Bursey, far exceeding the respectively paltry value of the properties. The District Court held that Dattala could not obtain both the purchase price of the properties from Bursey and the title to the properties from Precision. Dattala fails to address this issue on appeal, and fails to address the other reasons that the District Court rejected his motions. For the reasons explained throughout, this Court should affirm the lower court, including any other reasons supported by the record. *See Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981) ("If a decision below is correct, it will not be disturbed on appeal even though the lower court relied upon wrong reasons.") (citations omitted).

A. DATTALA FAILS TO DISCUSS THE REASONS THE DISTRICT COURT DENIED HIS MOTIONS, AND FAILS TO DEMONSTRATE THAT THE DISTRICT COURT ABUSED ITS DISCRETION.

Dattala asserts that the District Court abused its discretion when it denied his motion for reconsideration of the order granting summary judgment and his motion for declaratory relief. AOB at 2. But while

Dattala focuses on the merits of his underlying argument regarding the interplay between various statutes, he fails to discuss—let alone rebut—the actual reasons that the District Court gave for denying his motions. Dattala, therefore, waived the right to assert that the District Court's reasoning amounted to an abuse of discretion. *See Powell v. Liberty Mut, Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that "[i]ssues not raised in an appellant's opening brief are deemed waived.")

1. Dattala fails to address the District Court's conclusion that he failed to meet the standard for reconsideration.

A district court may grant reconsideration when a party presents substantially different evidence, or the prior decision was clearly erroneous. *Masonry & Tile,* 113 Nev. at 741, 941 P.2d at 489. Below, Dattala tried to meet that standard by arguing that the District Court found that Bursey committed fraud after it granted summary judgment in Precision's favor. On appeal, Dattala asserts that the District Court improperly "ignored" its finding that Bursey committed fraud and failed to reconcile the clear conflict between the orders. AOB at 4-5, 23.

Dattala does not accurately describe the basis of the District Court's denial of his motion for reconsideration. The District Court did not "ignore" its finding that Bursey committed fraud. Rather, the District Court explained that its finding of fraud was a sanction against Bursey for failing to participate in the proceeding, which was binding against Bursey but not Precision. 8 JA 1866.[3] Accordingly, the District Court concluded that Dattala "did not identify or introduce any evidence that is new or substantially different from the evidence that was previously introduced[,]" or establish that the prior order was clearly erroneous. *Id*. at 1867.

Dattala does not address the District Court's conclusion that reconsideration was not warranted because its finding against Bursey applied only to Bursey due to his default. Nor does Dattala meaningfully attempt to argue that the District Court's denial of his motion for reconsideration amounts to an abuse of discretion. Instead,

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[3]As the District Court explained more fully in the order denying declaratory relief, entry of a default against one codefendant whose answer is stricken does not preclude an answering codefendant from contesting liability. 8 JA 1847, citing *LoMastro v. Am. Family Ins. Group*, 124 Nev. 1060, 1067 n.8, 195 P.3d 339, 344 n.8 (2008). Dattala does not discuss *LoMastro* in his opening brief, nor explain why the decision does not apply under the circumstances.

Dattala simply ignores the District Court's reasoning and improperly attempts to convince this Court that the District Court refused to consider his argument altogether. Due to Dattala's failure to assign error to these issues, this Court should consider the District Court's reasoning on this point as unchallenged. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

2. Dattala fails to discuss the District Court's conclusion that his motion for declaratory relief was procedurally improper.

As to Dattala's motion for declaratory relief, the District Court denied it on the basis that it was procedurally improper. Dattala raised a cause of action seeking declaratory relief in his second-amended complaint. The District Court concluded that he was required to seek partial summary judgment on that cause of action pursuant to Rule 56 of the Nevada Rules of Civil Procedure, rather than belatedly raise the issue in a standalone motion after summary judgment was granted against him. 8 JA 1849.

The District Court gave another reason for denying Dattala's motion, which Dattala also fails to discuss. The District Court concluded that Dattala engaged in an election of remedies by obtaining a money

judgment against Bursey, thus waiving the right to pursue Precision for title to the properties. 8 JA 1847 (citing *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 289, 89 P.3d 1009, 1017 (2004) (discussing the election of remedies doctrine)); *see also Second Baptist Church of Reno v. First Nat'l Bank of Nev.*, 89 Nev. 217, 220, 510 P.2d 630, 632 (1973) (providing that election of remedies is a defense where there are two or more remedies that are inconsistent with each other, and the plaintiff chooses one or more of them).

As the District Court explained, granting the motion would allow Dattala to recover the purchase price of the properties from Bursey *and* title to the properties from Precision—a quintessentially impermissible double recovery. *See Barbe v. Villeneuve*, 505 So. 2d 1331, 1334 (Fla. 1987) (when the plaintiff received a default judgment against a defrauding party for a yacht's purchase price, he waived the right to seek title to the yacht from its true owner—even if the damage award

was uncollectable);[4] *Treglia v. Zanesky*, 788 A.2d 1263, 1270-71 (Conn. App. 2001) (holding that the plaintiff could not "seek both monetary compensation and quiet title in separate causes of action against different defendants"). Again, Dattala does not discuss the District Court's holding on this point at all, let alone assert that the District Court erred in its finding of waiver based on the election of remedies.

On this issue alone, the Court should affirm the District Court because Dattala failed to challenge the ruling in this Court, and the District Court's election of remedies ruling completely bars Dattala's ability to acquire title to the properties since he has already obtained a judgment against Bursey, thereby, electing his remedy.

3. Dattala waived the right to challenge the District Court's reasoning.

By failing to address the reasons the District Court denied his motions, Dattala waived the right to argue that those reasons were

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[4]Like in *Barbe*, Dattala's theories for relief against Bursey *and* Precision are factually inconsistent: obtaining the purchase price of the properties from Bursey necessarily means Dattala *did* sell the properties to Bursey, whereas obtaining title to the properties from Precision necessarily means Dattala *did not* sell the properties. By obtaining a default judgment for the purchase prices against Bursey, Dattala has affirmed that he sold the properties to Bursey. He is therefore engaged in an election of remedies and is estopped from seeking the properties from *Precision*.

insufficient. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. At a minimum, Dattala's failure to discuss the bases of the District Court's rejection of his motions necessarily means he fails to demonstrate that the District Court abused its discretion. *See Lyft, Inc. v. Eighth Jud. Dist. Ct.*, 137 Nev., Adv. Op. 86, 501 P.3d 994, 1002 (2021) (defining an abuse of discretion as "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule") (alteration in original). While Precision maintains that the District Court did not abuse its discretion in denying Dattala's post-summary judgment motions, Precision should not be required to rebut arguments that Dattala failed to cogently raise. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Accordingly, this Court should affirm the denial of Dattala's motions.

B. THE DISTRICT COURT CORRECTLY APPLIED LONGSTANDING NEVADA LAW PROTECTING BFPs WHO LACK KNOWLEDGE OF ANOTHER PARTY'S FRAUD.

If this Court opts to consider the merits of Dattala's argument raised in his motions for reconsideration and declaratory relief, it should reject that argument and uphold Nevada's longstanding protections for BFPs who lack knowledge of another party's fraud.

In 1861, Nevada codified the basic legal concept that a party who pays valuable consideration for property, without knowledge of another party's interest in that property, takes title as a BFP. Curtis Hillyer, Compiler and Annotator, NEVADA COMPILED LAWS 1929 §1522 (1930) (NCL). Nevada law protects BFPs in cases where another party committed fraud, unless the BFP was "privy" to the fraud. *Id.* This Court has acknowledged that a BFP can take title to property even when fraud is alleged. *See generally Buhecker v. R.B. Peterson & Sons Constr. Co.*, 112 Nev. 1498, 1501, 929 P.2d 937, 939-940 (1996) ("Since neither Petersen nor Leader had actual or constructive notice of the fraud, we conclude that both were bona fide encumbrancers for value."); *see also Allen v. Webb*, 87 Nev. 261, 269, 485 P.3d 677 (1971).

The Nevada Legislature reaffirmed these principles in 2013. 2013 Nev. Stat., Ch. 400 § 3.5, at 2173. As amended, NRS 111.180 makes clear that a conveyance which might otherwise be fraudulent will not be deemed fraudulent in favor of a BFP, unless the BFP knew or should have known about the fraud.

Here, the District Court found that there was not a genuine issue of material fact as to whether Precision was a BFP, nor whether

Precision lacked knowledge of any alleged fraud pursuant to NRS 111.180. The District Court therefore granted summary judgment in Precision's favor. Although Dattala disagrees with that ruling, he does not challenge it on appeal. He presents a purely legal question: he argues that NRS 111.180 conflicts with other statutes—NRS 111.025 and 111.175—and because those other statutes supposedly control, NRS 111.180 must be discarded as superfluous.

1. Nevada law set out an easy-to-understand scheme that protects BFPs who lack knowledge of another party's' fraud.

In Nevada, a reviewing court "must afford a statute its plain meaning[,]" *Saticoy Bay LLC Series 9641 v. Fannie Mae*, 134 Nev. 270, 272, 417 P.3d 363, 366 (2018). "If a statute's language is plain and unambiguous, we enforce the statute as written, without resorting to the rules of construction." *R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 514 P.3d 425, 429, Nev., Adv. Op. 55 (2022) (quoting *Smith v. Zilverberg*, 137 Nev. 65, 72, 481 P.3d 1222, 1230 (2021)). But if the plain meaning of various statutes conflict when read together, then a court must construe the statutes in a way that harmonizes them and avoids the conflict. *Beazer Homes Nev., Inc. v. Eighth Jud. Dist. Ct.*, 120 Nev.

575, 586, 97 P.3d 1132, 1140 (2004). This Court "avoid[s] statutory interpretation that renders language meaningless or superfluous." *In re George J.*, 128 Nev. 345, 348, 279 P.3d 187, 190 (2012) (citation and internal quotation marks omitted).

Here, the statutes at issue are all entirely consistent and can be easily read to set out a clear statutory scheme that protects BFPs in situations exactly like the one presented.

> NRS 111.025 states:
> **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 purchasers.
>
> NRS 111.175 states:
>
> **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.

And NRS 111.180 states:

> **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 benefited by such charge, had actual knowledge, constructive notice or reasonable cause to know of the fraud intended.

The plain language of these statues is unambiguous, whether read in isolation or together. In short, NRS 111.175 and NRS 111.025 state that a fraudulent conveyance is void to a party and its assigns. But NRS 111.180 creates an exception to those statutes: it states that a BFP is protected—*even in cases of fraud*—unless the BFP knew or should have known about the fraud.

Dattala attempts to manufacture a conflict between the statutes

by asserting that NRS 111.180 is a general statute, whereas NRS 111.025 and NRS 111.175 are more specific, which means they control. *See State, Tax Comm'n v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 388, 254 P.3d 601, 605 (2011) ("A specific statute controls over a general statute."). But Dattala has it backward. By their clear, unambiguous language, NRS 111.025 and NRS 111.175 set out general rules that fraudulent conveyances are void, and NRS 111.180 creates a statutory exception to those rules by explaining that they do not apply in cases involving a BFP unless the BFP had notice of the fraud.[5]

Because the statutes are not ambiguous and do not conflict whether read in isolation or together, this Court does not have to dig deeper. But the Legislative history of these statutes further supports the logical conclusion that NRS 111.180 creates a statutory exception to the other statutes.

The earlier version of NRS 111.175 (NCL §1522) was entitled

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[5]Dattala asserts that NRS 111.025 and 111.175 are more specific because they are specifically about deeds obtained by fraud, whereas NRS 111.180 is about BFPs generally. AOB at 21. This argument is meritless; the statues are all included in NRS Chapter 111 (Estates in Property Conveyancing and Recording), and all involve conveying property; moreover, NRS 111.180's title makes clear that it addresses BFPs in circumstances of fraudulent conveyances.

"fraudulent conveyances; when void," and the earlier version of NRS 111.180 (NCL §1523) was entitled "when fraudulent." (emphases added). §1522 stated that every fraudulent conveyance was void, but §1523 stated that "no such conveyance shall be deemed fraudulent . . . unless it shall appear that the grantee . . . was privy to the fraud intended." *Id*.

The word "such," as used in §1523, "is an adjective meaning of the character, quality, or exten[t] previously indicated or implied[.]" *First Fin. Bank, N.A. v. Lane*, 130 Nev. 972, 976, 339 P.3d 1289 (2014) (internal quotation marks omitted). So, the phrase "no such conveyance" in §1523 referred back to the conveyances described in §1522, outlining an exception to the prior statute. *Id*. at 975, 339 P.3d at 1291 (the phrase "such amount" is a limitation that applied to the last antecedent in the preceding section).

In sum, the historic and modern versions of the statutes all make clear that a conveyance which would otherwise be deemed fraudulent (and void) is not deemed fraudulent (nor void) in favor of a BFP, unless the BFP knew or should have known about the fraud. This reading is consistent with other legal schemes in existence around the time §1522

and §1523 were enacted:

> Conceding the deed to have been procured through fraud and imposition, it was, nevertheless, effectual to pass her estate in the lands and to vest the legal title in her grantees. So long as it remained in them it was liable to be defeated, because of the fraud; but whenever any subsequent, innocent, bona fide purchaser for value acquired it, without notice, it thereupon became in his hands an indefeasible title and estate, unaffected with the vice of the original transfer.

Cogel v. Raph, 24 Minn. 194, 196 (1877); *see generally Anderson v. Roberts*, 18 Johns. Cas. 510, 524 (N.Y. 1820) ("[The provision] says that when a bona fide purchaser appears, the original deed shall not be void; though it would have been before.").

There is no reasonable argument that the statutes conflict. Read together, they set out a series of easy-to-understand rules that logically build off one another: NRS 111.025 and NRS 111.075 set out a general rule that fraudulent conveyances are void, and NRS 111.180 creates an exception for BFPs in certain circumstances.[6]

Dattala's contrary interpretation is not only illogical, it would also

[6]Some states combine language from NRS 111.175 and 111.180 into one statute, and make explicitly clear that the latter portion is an exception. *See, e.g.*, Minn. Stat. § 513.08.

require this Court to read NRS 111.180 out of existence. *Cf Harris Assocs. v. Clark Cnty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 535 (2003) (recognizing that no part of a statute should be rendered meaningless). This Court should instead give effect to the plain language of the statutes, as doing so is the only way to promote harmony between them while giving each statute independent meaning.

2. This Court should decline Dattala's invitation to rewrite Nevada's statutes.

Dattala's other challenges to the statute lack merit and can be easily resolved against him.

Dattala first directs this Court to authority from other jurisdictions, which holds that a fraudulent deed is void and a bona fide purchaser cannot take title to a void deed. AOB at 26-29. But Dattala does not explain whether the statutes in those states include language specifically protecting BFPs in circumstances of fraud, as Nevada does. *See id.* And because the plain language of NRS 111.180 is clear, this Court is required to apply it regardless of how other jurisdictions might handle the issue.

Dattala also points out that, in other areas of the law, this Court

has expressly acknowledged that BFPs do not take title when a sale is later deemed void. AOB at 24-25 (citing *Alamo Rent-a-Car, Inc. v. Mendenhall*, 113 Nev. 445, 937 P.2d 69 (1997)); *U.S. Bank v. Res. Grp., LLC*, 135 Nev. 199, 205, 444 P.3d 442, 448 (2019). But this Court's decision in *Alamo Rent-A-Car* involved the sale of chattel under NRS 104.2403(1), which includes a specific limitation on good faith purchasers that is not included in NRS 111.180. This Court's decision in *U.S. Bank* was based on various statues regarding HOA foreclosure sales. While this Court held in *U.S. Bank* that a void sale will defeat the title of a BFP, NRS 111.180 states that a conveyance of property is not fraudulent and thus is not void unless the BFP knows of the fraud.

Dattala's last attack on the statute is that this Court should set it aside as a matter of public policy. AOB at 38. According to Dattala, applying the plain language of NRS 111.180 would permit BFPs to steal properties by intentionally blinding themselves to another party's theft, and therefore this Court should interpret the statutes in a way that protects property owners over BFPs. To be clear, Dattala is asking this Court to purposefully read the statutes in a way that creates a conflict in order to advance his preferred policy agenda. This is the exact

opposite of what courts are supposed to do, and this Court should refuse to set aside every principle of statutory construction in favor of judicial lawmaking.

To the extent Dattala argues that the plain language of NRS 111.180 leads to an absurd result, he is mistaken. Before our nation was founded, and continuing thereafter, lawmakers disagreed on whether a deed procured by fraud should be void for all purposes and all parties, or whether there should be an exception for subsequent purchasers for value who acted in good faith. 23 Am Jur 2d Deeds § 172 ("When a deed is procured by the grantee under circumstances of fraud... Some hold that protection will not be accorded to innocent purchasers from such a grantee; other courts take the view that the deed may be given effect in equity in order to protect innocent purchaser."). Nevada chose to protect subsequent purchasers, but under strict conditions: a subsequent purchaser is only protected if she paid actual value for the property, did not have actual or constructive knowledge of another party's interest in the property, and did not have actual or constructive knowledge of another party's fraud.

Despite Dattala's suggestion to the contrary, the District Court's

interpretation of NRS 111.180 does not benefit thieves at the expense of innocent property owners—it simply respects the Legislature's deliberate policy choice about which of two equally innocent parties to protect. Similarly, Dattala's argument that this Court should ignore NRS 111.180 and change the law to protect him over Precision would amount to this Court discarding the Legislature's deliberate policy choice. This Court should decline to do so.

C. IF THIS COURT CONCLUDES THAT DATTALA CHALLENGES THE DISTRICT COURT'S DECISION GRANTING SUMMARY JUDGMENT TO PRECISION, IT SHOULD AFFIRM.

Although Dattala states that there were genuine issues of material fact as to whether Precision had reason to know of Bursey's fraud, he does not raise a claim that the District Court erred when it found otherwise, AOB at 2 (listing his claims on appeal),[7] nor request that this Court remand for a trial on the issue, *id*. at 41 (prayer for relief). In fact, Dattala expressly argues that there *are no genuine issues of material fact* based on the Court's post-summary judgment rulings, and therefore the District Court abused its discretion by denying his

[7]In contrast, Dattala does raise a claim that the District Court erred when it granted summary judgment in favor of WFG. AOB at 2.

post-summary judgment motions. AOB at 19. In short, Dattala's opening brief solely presents the legal question of whether NRS 111.180 conflicts with other statutes—not the factual question of whether Precision satisfied the prerequisites of that statute.

To the extent this Court disagrees, Precision maintains that the District Court appropriately granted summary judgment in its favor.

1. The nonmoving party cannot defeat summary judgment by relying on speculation or conjecture.

The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. *Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. *Id.*

While this Court construes the pleadings and other proof in a light most favorable to the nonmovant, the nonmovant must do more than merely show a mere theoretical doubt. *Wood*, 121 Nev. at 732, 121 P.3d at 1031. Rather, the nonmovant must produce sufficient evidence "such that a rational trier of fact could return a verdict for the [nonmovant]." *Id.* at 731, 121 P.3d at 1031. And, "[a]rguments of counsel are not

evidence and do not establish the facts of the case." *Jain v. McFarland*, 109 Nev. 465, 475-476, 851 P.2d 450, 457 (1993) (citations omitted).

2. Dattala fails to demonstrate a material issue of genuine fact.

Dattala identifies what he describes as multiple suspicious "red flags" that, if probed, would have given Precision "constructive notice[8] or reasonable cause to know" that Bursey committed fraud. AOB at 16. But this Court has held that the nonmovant "is not entitled to build a case on the gossamer threads of whimsey, speculation, and conjecture." *Wood*, 121 Nev. at 732, 121 P.3d at 1031 (internal quotation marks omitted). And that is all Dattala offers: he does not provide any explanation as to how the facts he identifies were suspicious, why they should have prompted a deeper inquiry, what that deeper inquiry would have looked like, or how that deeper inquiry would have given Precision

[8]A party has constructive notice of facts that a reasonable records search would have revealed. *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 499, 471 P.2d 666, 669 (1970). Here, County records established that Bursey held title to the properties in question. *See*, *e.g.*, NRS 106.210 (explaining that a recorded Deed of Trust operates as constructive notice of contents to all persons).

any notice that Bursey defrauded (or "tricked") him.[9] Simply listing various factors without providing any context falls far short of demonstrating a genuine issue of material fact. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."). Indeed, many of Dattala's arguments are supported by the benefit of his hindsight. But, he does not provide any evidence of Precision's knowledge of fraud at the time it purchased the properties.

Even assuming otherwise, Dattala fails to fully appreciate that there were signed, notarized, and recorded documents establishing that Bursey held legal title to the properties. A BFP only loses protection if it had *reasonable* cause to know of a party's fraud. But it was completely

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[9]Moreover, Dattala fails to explain whether Precision knew of these facts, as opposed to WFG. *See Buhecker,* 112 Nev. at 1500, 929 P.2d at 939 ("[N]either the information contained within the escrow documents nor the information known to the escrow agent should be imputed to Petersen through Executive."); *Huntington*, 119 Nev. at 359, 75 P.3d at 357 (a title insurance company's knowledge is not imputed to the party for which it conducted a title search). And although Dattala argues that WFG (and thus Precision) should have inquired further, he ignores that WFG *did* inquire further, and obtained signed and notarized Affidavits of Grantor, wherein Dattala again disclaimed any interest in the property. 3 JA at 641, 717

reasonable for Precision to trust that signed and notarized documents were accurate and legitimate. *See In re Marsh v. Fleet Mortg. Grp.*, 12 S.W.3d 449, 453 (Tenn. 2000) ("A creditor or purchaser who examines a deed of trust should be able to assume that if it contains an acknowledgment to which a notary's seal is affixed, then it has been properly authenticated and is valid, that is, free from apparent forgery or fraud."). Dattala points to nothing in the record which remotely suggests that Precision had "reasonable cause" to know that Bursey enlisted a notary to assist him in his supposed fraud. *Cf. Bowman v. Century Funding, Ltd.*, 627 S.E.2d 73, 76 (Ga. Ct. App. 2006) (holding that the trial court did not err when it granted summary judgment because "[e]ven assuming [a document was fraudulent], however, this defect is not apparent from the face of any of the deeds, all of which are signed, witnessed, and notarized.").

At its core, Dattala's argument against summary judgment is that Precision should have anticipated that Bursey and a notary were involved in a "criminal conspiracy," and could have unraveled that conspiracy and learned of their fraud had Precision done more. *See* NRS 240.155; 240.175 (criminal penalties for notaries). But Nevada law

requires Dattala to "do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered[,]" *Wood*, 121 Nev. at 732, 121 P.3d at 1031, and does not allow Dattala to avoid summary judgment by relying on speculation and conjecture. Dattala fails to demonstrate that the District Court erred in concluding that there was no genuine issue of material fact.

VII. CONCLUSION

Despite obtaining a 1.4-million-dollar judgment against the person who he claims defrauded him, Dattala continues to pursue Precision for title to properties for which it paid valuable consideration, even though Precision had no reason to know that Bursey deceived him into signing over title to the properties before Bursey finished paying for them. This Court should reject Dattala's request for a windfall against an innocent party, especially given that Dattala has now ratified the transfers of the properties to Bursey by obtaining a default judgment against him for the alleged purchase price.

Dattala has obtained all the relief to which he is entitled under Nevada law, and his arguments to the contrary rest on misrepresenting the District Court's rejection of his arguments and misstating Nevada law. Accordingly, this Court should affirm.

Dated this 9th day of November 2022.

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CERTIFICATE OF COMPLIANCE

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 I prepared this brief in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook font.

I further certify that this brief complies with the page – or type volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 6,954 words; or

☐ does not exceed _____ pages.

Finally, I hereby certify that I have read this 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 a reference to the page and volume number, if any, of the transcript or appendix where the court will find the matter relied on to support every assertion in the brief.

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

Dated this 9th day of November 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **RESPONDENT PRECISION ASSETS, LLC'S ANSWERING BRIEF** with the Supreme Court of Nevada on the 9th day of November 2022. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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