

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA,

Appellant,

vs.

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

Respondents.

No. 84762

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Elizabeth A. Brown
Clerk of Supreme Court

MOTION FOR LEAVE TO MODIFY CAPTION

Respondent, Precision Assets (“Precision”), moves this Court for leave to modify the caption in this appeal which incorrectly refers to Precision as a “limit liability company,” even though Precision is a domestic corporation. The District Court recognized in its May 5, 2021 minute order that the title company incorrectly listed “Precision Assets, LLC” as opposed to “Precision Assets” given that Precision is a corporation. *See* Exhibit 1. The correct domestic corporation designation is also reflected in the Nevada Secretary of State entity page for Precision. *See* Exhibit 2.

Accordingly, Precision respectfully requests that this Court modify its caption to remove the LLC designation from Precision's name, which would be consistent with the modified caption used in this motion.

Dated this 5th day of December 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MOTION FOR LEAVE TO MODIFY CAPTION** with the Supreme Court of Nevada on the 5th day of December 2022. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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/s/ Anna Gresl

Anna Gresl, an employee of
CLAGGETT & SYKES LAW FIRM

EXHIBIT 1

EXHIBIT 1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property**COURT MINUTES****May 05, 2021**

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

May 05, 2021 3:00 AM Minute Order

HEARD BY: Escobar, Adriana **COURTROOM:** Chambers

COURT CLERK:
 Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Defendant Avi Segal s Motion to Dismiss Second Amended Complaint or, in the Alternative, Motion for Summary Judgment (Motion), which Plaintiff opposed, was scheduled for hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on May 4, 2021. Pursuant to Administrative Order 21-03 and preceding administrative orders, this matter may be decided after a hearing, decided on the pleadings, or continued. In an effort to comply with Covid-19 restrictions, and to avoid the need for hearings when possible, this Court has determined that it would be appropriate to decide this matter based on the pleadings submitted. Upon thorough review of the pleadings, this Court issues the following order:

Nevada Rule of Civil Procedure 12(b)(5) provides for dismissal of a cause of action for the failure to state a claim upon which relief can be granted. A complaint should be dismissed under NRCP 12(b)(5) only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228 (2008). Hence, in analyzing the validity of a claim the court is to accept plaintiff s factual allegations as true and draw all inferences in the Plaintiff s favor. Id.

Nevada is a notice-pleading jurisdiction and liberally construes pleadings to place into issue matters that are fairly noticed to the adverse party. *Chavez v. Robberson Steel Co.*, 94 Nev. 597, 599 (1978).

Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c).

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 that the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005).

NRS 86.213 provides:

1. Every person, other than a foreign limited-liability company, who is purporting to do business in this State as a limited-liability company and who willfully fails or neglects to file with the Secretary of State articles of organization is subject to a fine of not less than \$1,000 but not more than \$10,000, to be recovered in a court of competent jurisdiction.
2. When the Secretary of State is advised that a person is subject to the fine described in subsection 1, the Secretary of State may, as soon as practicable, refer the matter to the district attorney of the county in which the person's principal place of business is located or the Attorney General, or both, for a determination of whether to institute proceedings to recover the fine. The district attorney of the county in which the person's principal place of business is located or the Attorney General may institute and prosecute the appropriate proceedings to recover the fine. If the district attorney or the Attorney General prevails in a proceeding to recover the fine described in subsection 1, the district attorney or the Attorney General is entitled to recover the costs of the proceeding, including, without limitation, the cost of any investigation and reasonable attorney's fees.
3. In the course of an investigation of a violation of this section, the Secretary of State may require a person to answer any interrogatory submitted by the Secretary of State that will assist in the investigation.
4. The Secretary of State may adopt regulations to administer the provisions of this section.

NRS 86.361 provides: All persons who assume to act as a limited-liability company without authority to do so are jointly and severally liable for all debts and liabilities of the company.

Defendant Segal argues that based on the Second Amended Complaint's (SAC) misapplication of NRS 86.213(1) and the law-of-the-case doctrine, Mr. Segal must be dismissed from this litigation. Segal argues that Plaintiff's allegations regarding Segal's personal liability is unfounded.

Plaintiff alleges: Pursuant to NRS 86.213(1) Defendant AVI SEGAL [Segal] acted in Clark County, Nevada as PRECISION ASSETS, LLC, purporting to be a Nevada limited-liability company, without authority and Segal is therefore named as a Defendant herein. SAC, 2.

Defendant Segal is correct that this Court determined that the title company's preparation and recordation of Precision Assets, LLC as opposed to Precision Assets was akin to scrivener's error given that Precision Assets is a corporation and no limited liability form of the entity exists. However, this finding was limited in relation to this Court's denial of Plaintiff's request to add Precision Assets, LLC as a defendant to this case. This Court permitted Plaintiff to add Defendant Segal as a defendant pursuant to NRS 86.361. Yet, Plaintiff did not cite NRS 86.361 in its SAC. Although Nevada is a notice-pleading jurisdiction, a party cannot be subject to notice of a claim that is not in the complaint. Additionally, Defendant Segal correctly argues that NRS 86.213 does not create a private right of action.

Based on the forgoing, this Court GRANTS Defendant Segal's Motion and dismisses Plaintiff's complaint as against Defendant Segal without prejudice. This DENIES Segal's Motion as to entering summary judgment in favor of Segal.

Counsel for Defendant Segal is directed to prepare a proposed order that incorporates the substance of this Minute Order, including findings of fact and conclusions of law. Plaintiff must approve as to form and content.

Counsel must submit the proposed order within 14 days of the entry of this minute order. EDCR 1.90(a)(4).

All parties must submit their orders electronically, in both PDF version and Word version, until further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption.

CLERK'S NOTE: A copy of this Minute Order was distributed to the following parties by e-mail, Lisa Cox, lcox@wrightlegal.net, Aaron Lancaster alancaster@wrightlegal.net, Joel Hansen efile@hansenlawyers.com, Benjamin Childs ben@benchilds.com, Dale Kleven lawdocs@hrlnv.com, Dale Kleven dale@hrlnv.com, John Benedict john@benedictlaw.com, Brian Dziminski brian@dziminskilaw.com, Angelyn Cayton Angelyn@benedictlaw.com, Igor Makarov igor@benedictlaw.com, Jacqueline Gaudie jacqueline@benedictlaw.com, Thomas Fronczek, toby@relieflawyersnv.com, Dale Kleven legaldocs@relieflawyersnv.com, Kim McGowan kimm@relieflawyersnv.com, Bonita Spencer bonitafontainespencer@yahoo.com, Kyle Dziminski kyle@dziminskilaw.com, Office Admin office.admin@benedictlaw.com, Eustacius Bursey ebursey87@icloud.com, and Zachary Ball zball@balllawgroup.com. 5/5/2021 sa

EXHIBIT 2

EXHIBIT 2

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

PRECISION ASSETS

Entity Number:

E0018452011-0

Entity Type:

Domestic Corporation (78)

Entity Status:

Active

Formation Date:

01/12/2011

NV Business ID:

NV20111030079

Termination Date:

Perpetual

Annual Report Due Date:

1/31/2023

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

AVI SEGAL

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

1120 N TOWN CENTER DR , STE 220, Las Vegas, NV, 89144, USA

Mailing Address:

Individual with Authority to Act:

Fictitious Website or Domain Name:

OFFICER INFORMATION

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
President	AVI SEGAL	1120 N Town Center Dr Ste 220, Las Vegas, NV, 89144, USA	02/10/2022	Active
Director	AVI SEGAL	1120 N Town Center Dr Ste 220, Las Vegas, NV, 89144, USA	02/10/2022	Active
Secretary	EYAL KARBAN	8215 S EASTERN AVE #265, Las Vegas, NV, 89123, USA	01/27/2021	Active
Treasurer	EYAL KARBAN	8215 S EASTERN AVE #265, Las Vegas, NV, 89123, USA	01/27/2021	Active
Director	EYAL KARBAN	8215 S EASTERN AVE #265, Las Vegas, NV, 89123, USA	01/27/2021	Active

CURRENT SHARES

Class/Series	Type	Share Number	Value
	Authorized	1,000	1.000000000000
Page 1 of 1, records 1 to 1 of 1			
Number of No Par Value Shares:			
0			
Total Authorized Capital:			
1,000			
Filing History Name History Mergers/Conversions			

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