CASE NO. 84762

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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JOHN DATTALA

Appellant

vs.

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

Respondents

REPLY 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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NEVADA RULES OF CIVIL PROCEDURE

THE ONLY ISSUE ON APPEAL IS APPLICATION OF THE LAW

The findings of fact are final and have not been appealed. Only the law is reviewed on appeal.

QUIET TITLE ISSUE

The law is crystal clear. Once there is a void deed in an owner's chain of title, all subsequent deeds are void. Precision Assets received a void deed because it's grantor had obtained title by fraud.

> 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.

Precision Assets' seller, Eustachius Bursey [Bursey] created, and recorded, fraudulent real estate documents without John Dattala's [Dattala] knowledge or consent. Bursey was a thief.

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 succinctly, "A void sale, in contrast to a voidable sale, defeats the competing title of even a bona fide purchaser for value."

This is consistent with settled Nevada law that a thief passes no title. There is a case resolving this black letter law as to personal property, holding that a thief cannot convey title to a car even if the purchaser is innocent. The policy of the law is to prioritize the victim of the theft. Alamo Rent-a-Car, Inc. v. Mendenhall, 113 Nev. 445, 937 P.2d 69 (1997). There has never been a case in Nevada as to a thief not conveying title to

real property, likely because NRS 111.025 and NRS 111.175 are so clearly written.

Further, the decision in Buhecker v. R.B. Peterson & Sons Constr. Co., 112 Nev. 1498, 929 P.2d 937 (1996), cited in Precision Assets' Answering Brief page 20 and 33, does NOT hold that the interest of a bona fide purchaser trumps the language of NRS 111.025 and 111.175 as these statutes are not mentioned in the decision. The instant fact pattern is that Bursey obtained recorded title documents by fraud, thus making his ownership void pursuant to those statutes. That being said, the red flags extensively set forth in Dattala's Opening Brief beginning on page 13 clearly did impart constructive notice to Precision Assets.

The Allen v. Webb, 87 Nev. 261, 485 P.2d 677 (1971) decision cited cited in Precision Assets' Answering Brief on page 20 likewise is

inapplicable as the holding in that case was that reasonableness of conduct, indeed the existence of constructive fraud itself, is a a question of fact precluding summary judgment. In both of these cases the property owners signed the documents prepared by the perpetrator. They discovered later that they had been defrauded.

Again, in the instant case there ARE factual findings that Bursey obtained his title by fraud, so those facts have been established.

The instant case being one of first impression, the Court should issue a published opinion consistent with those statutes.

The deeds to Precision Assets' grantor, Defendant Eustacious Bursey, were obtained by fraud. On the 50 Sacramento Drive property, Mr. Bursey had switched the signature page from a different document and used it to record the fraudulent deed he recorded April 8, 2019. [JA Vol

7,1538:22 - 31; 1539:19-26; 1541:16-18] to obtain record title to 50 Sacramento in his name. Bursey also recorded a fraudulent reconveyance of Dattala's existing deed of trust encumbering title to this property. [JA Vol 7, 1538:22 - 1539:5] WFG recorded a deed seven days later from Mr. Bursey vesting record title in "Precision Assets, LLC, a Nevada Limited Liability Company". [JA Vol 5, 1171 - 1175]

On the 59 Sacramento Drive property Bursey made false statements to Dattala to induce Datttala to enter into sales agreements [JA Vol 7, 1536:31 - 1538:21] and conspiring to perpetuate the fraud with WFG's notary [JA Vol 7, 1539:13-18].

The specific findings of fact referenced above were made by District Court Judge Adriana Escobar, are final, and were not appealed. So the fact is that Precision Assets was a grantee to the two deeds to the two

Subject Properties, which deeds had been obtained by fraud and forged documents. This is in addition to Bursey recording the fraudulent reconveyance [JA Vol 7, 1538:22 - 1539:5] making it appear that 50 Sacramento was free and clear of a $150,000 deed of trust [JA Vol 2, 346 - 362] when he had only sold it for $95,000 April 15, 2019 [JA Vol 5, 1171 - 1175].

No amount of legal writing, transfer of ownership, nor any other attempt to obfuscate the facts, changes that fact that Precision Assets' ownership interest of the Subject Properties was entirely obtained from two deeds obtained from Bursey, who had obtained his purported ownership interest through deeds which were obtained by fraud. The statutes and case law are clear, consistent and strict that a thief obtains no title.

ACRY ONLY HAS A DERIVATIVE INTEREST

As a lender Acry Development, LLC [Acry] has only a derivative claim through Precision Assets.

PRAYER FOR RELIEF ON THE QUIET TITLE ISSUES

Precision Assets and Acry waived their right to move to alter or amend the findings, or to appeal. They took no action and the findings are conclusive.

The case should be remanded with instructions to enter judgment in favor of Dattala on the quiet title as the owner of the subject properties, 50 Sacramento and 59 Sacramento Las Vegas, Nevada 89110 from April, 2019, subject to no claims of either Precision Assets or Acry, and subject to no claims of any of subsequent owners,

SUMMARY JUDGMENT SHOULD HAVE BEEN ENTERED IN FAVOR OF DATTALA

WFG National Title Insurance Company's [WFG] Answering brief is absurd. WFG's own unprompted, self-chosen words describe Medina as its "signing agent". [JA Vol 5, 1132:10] Notary Lilian Medina [Medina] was expressly found by the trial 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 class 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] That is a question of fact for the jury.

Nevada law has been well settled for over 60 years that credibility of witnesses is a genuine issue of material fact. See Short v. Hotel Riviera, 79 Nev. 94, 378 P.2d 979 (1963) (holding "a trial court should not pass upon the credibility of opposing affidavits, unless the evidence tendered by them is too incredible to be accepted by reasonable minds."); Lincoln Welding Works v. Ramirez, 98 Nev. 342, 647 P.2d 381 (1982) (citing Short); and Borgerson v. Scanlon, 117 Nev. 216, 19 P.3d 236 (2001)(holding "...a district court cannot make findings concerning the credibility of witnesses or weight of evidence in order to resolve a motion for summary judgment.")

Dattala's Exhibit 1 at trial, if necessary, would be WFG's description of Medina as their "signing agent", thus requiring WFG to try to dance

around their own description to convince the trier of fact that their own words cannot be relied upon. This is a contested issue of fact and it was an error of law to grant summary judgment in favor of WFG. Since WFG described Medina as their agent, summary judgment should have been granted in favor of Dattala against WFG, not the other way around.

WFG'S NON-DELEGABLE DUTY

WFG had a non-delegable duty as it had EXCLUSIVE control over the sales escrow for the two Subject Properties. Raymond C. Green, Inc. v. United Gen. Title Ins. Co., 2013 R.I. Super. LEXIS 113 (Super. Ct. June 17, 2013), involving a title company's liability for its agent, holds that a principal is liable for an agent's actions (1) on the ground of his being subject to a nondelegable duty; or (2) in respect to work that by its very

nature is likely to cause harm unless proper precautions are taken.

Likewise, Kleeman v. Rheingold, 81 N.Y.2d 270, 598 N.Y.S.2d 149, 614 N.E.2d 712 (1993),involving a law firm's duty to their client, held that in such fact pattern, the law firm is under a specific nondelegable duty and is responsible for the actions of even an independent contractor to whom the performance of the duty is entrusted. In that case it was a process server.

PRINCIPAL RESPONSIBLE FOR ACTIONS OF IT'S AGENT

A fundamental point of agency law is that a principal is responsible for actions of its agent. Huckabay Props. v. NC Auto Parts, Ltd. Liab. Co., 130 Nev. 196, 204, 322 P.3d 429, 434 (2014) expressly holds as follows :

> ... an attorney's act is considered to be that of the client in judicial proceedings when the client has expressly or impliedly authorized the act. Restatement (Third) of The Law Governing Lawyers §§ 26, 27 (2000 & Supp. 2013); see Pioneer Inv.

> Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 396-97, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993) (noting that in a representative litigation system, "clients must be held accountable for the acts and omissions of their attorneys").

Nevada law typically holds a principal responsible for any negative consequences of its agent's actions. See e.g. NC-DSH, Inc. v. Garner, 125 Nev. 647, 218 P.3d 853 (2009) (stating that, ordinarily, the sins of an agent are visited upon his principal, not the innocent third party with whom the dishonest agent dealt). A principal may be bound by its agent's actions even when the principal had no reason to know of its agent's misconduct. Homes Sav. Ass'n v. Gen. Elec. Credit Corp., 101 Nev. 595, 708 P.2d 280, 283 (Nev. 1985). This is true even when the agent "acts for his own motives and without benefit to his principal." Id. Such is the case here and the attempt by WFG to obfuscate this settled legal principle is absurd.

WFG LIABLE FOR ACTIONS OF ITS ATTORNEY

Along the same line of legal reasoning, the attorney-client relationship is a quintessential principal-agent relationship. C.I.R. v. Banks, 543 U.S. 426, 427, 125 S. Ct. 826, 160 L. Ed. 2d 859 (2005). In this relationship, the client retains ultimate control over the underlying claim and its settlement, while the attorney makes tactical decisions to further the client's interests. See Id. Because WFG voluntarily choose its attorney, it cannot escape the consequences of its own attorney's acts or omissions, even if it influences the outcome of a case. See Link v. Wabash R.R. Co., 370 U.S. 626, 633-34, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962) (holding that dismissal of a client's case because of his counsel's unexcused conduct was not an unjust penalty on the client).

WFG waived it’s right to move to alter or amend the findings, or to

appeal. They took no action and the findings are conclusive. WFG had legal remedies consisting of (1) motion to alter or amend judgment (2) motion for reconsideration (3) motion for nunc pro tunc order (4) NRCP 60(b) motion (5) original writ application (6) appeal.

Again, the acts of WFG's attorney bind WFG.

WAIVER

a. KNOWLEDGE AN ESSENTIAL ELEMENT TO FIND WAIVER

Knowledge is an essential element of waiver. A party cannot waive something unknown to him. Santino v. Glens Falls Ins. Co. 54 Nev. 127, 139, 9 P.2d 1000, 1012 (1932) WFG was represented by competent legal counsel throughout this case, and its attorneys had knowledge of WFG's legal rights.

The effect of its lawyer's actions bind the client. Given the agency issue in the instant case, it is an interesting logical twist that WFG is also bound by the actions of its lawyer during litigation under agency principles. This is just as it is bound by the actions of Medina as its agent in the underlying transaction. Towery v. Ryan, 673 F.3d 933, 941 (9th Cir. 2012) sets forth the law clearly.

> A federal habeas petitioner — who as such does not have a Sixth Amendment right to counsel — is ordinarily bound by his attorney's negligence, because the attorney and the client have an agency relationship under which the principal is bound by the actions of the agent. See Coleman v. Thompson, 501 U.S. 722, 753, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) ("Attorney ignorance or inadvertence is not 'cause' [for excusing procedural default] because the attorney is the petitioner's agent when acting, or failing to act, in furtherance of the litigation, and the petitioner must 'bear the risk of attorney error.'" (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986))); see also Maples, 132 S. Ct. at 922 ("Negligence on the part of a prisoner's postconviction attorney does not qualify as 'cause' . . . because the attorney is the prisoner's agent, and under 'well-settled

> principles of agency law,' the principal bears the risk of negligent conduct on the part of his agent." (quoting Coleman, 501 U.S. at 753-54)); cf. Holland, 130 S. Ct. at 2564 (holding that "a 'garden variety claim' of attorney negligence" "does not warrant equitable tolling" of the one-year statute of limitations governing federal habeas petitions (quoting Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990))); Gonzalez, 545 U.S. at 532 n.5 (observing that a habeas petitioner's Rule 60 motion "based on the movant's own conduct, or his habeas counsel's omissions, . . . ordinarily does not go to the integrity of the proceedings," and thus is subject to the bar on second or successive habeas petitions).

The Supreme Court of Nevada has addressed the treatment of attorney-client relationships infrequently, and has outlined only a few circumstances when they should be treated differently than traditional agent-principal relationships. See NC-DSH, Inc. v. Garner, 125 Nev. 647, 218 P.3d 853, 860 (Nev. 2009) (stating that, when the question is whether a settlement agreed to by the attorney binds the client, attorney-client relationships are treated differently than other agent-principal relationships); Passarelli v. J-Mar Dev., Inc., 102 Nev. 283, 720 P.2d 1221,

1223 (Nev. 1986) (holding that a court may vacate a judgment on account of an attorney's excusable neglect).

Mill-Spex, Inc. v. Pyramid Precast Corporation, 101 Nev. 820, 710 P.2d 1387(1985) was a landlord/tenant case wherein the landlord sued to collect rent due and the tenant counterclaimed for damages arising from the landlord's failure to make necessary repairs. The Nevada Supreme Court held that the renewal of the lease by the lessee "does not, in itself, constitute a waiver of its right to seek damages." id @ 1388. The court stated, "A waiver is the intentional relinquishment of a known right. A waiver may be implied from conduct which evidences an intention to waive a right, or by conduct which is inconsistent with any other intention than to waive the right." id @ 1388 [citations omitted]. The Nevada Supreme Court had earlier stated the Mill-Spex requirement that the party being

charged with waiver must be aware of the right asserted to be waived in order for waiver to apply in State Board of Psychological Examiners v. Norman, 100 Nev. 241, 679 P.2d 1263 (1984).

Waiver has been defined as "the intentional relinquishment of a known right." Mahban v. MGM Grand Hotels, 100 Nev. 593, 596, 691 P.2d 421, 423 (1984). "[W]aiver may be implied from conduct which evidences an intention to waive a right, by conduct which is inconsistent with any other intention than to waive the right." Id. A determination of whether there has been a waiver is usually a question best reserved for the trier of fact. Id.

A waiver is the voluntary and intentional relinquishment of a known right, claim, or privilege. Brookhart v. Janis, 184 U.S. 1, 16 L.Ed 2d 314, 86 S. Ct. 1245 (1966). Waiver is a voluntary act and implies election by a

person to dispense with something of value or to forego some right or advantage which a person could have demanded and insisted upon. Voluntary choice is the very essence of waiver. It implies a conscious choice by the party to dispense of something of value, or to forego some right or advantage which he might, at his option, have demanded or insisted upon.

b. OPPOSING PARTY MUST BE PREJUDICED

Dattala must have been misled to his prejudice. The Nevada Supreme Court has defined a waiver as "an intentional relinquishment of a known right." Parkinson v. Parkinson, 106 Nev. 481, 482, 796 P.2d 229, 231 (1990). "While a waiver may be the subject of express agreement, it may also ‹be implied from conduct which evidences an intention to waive a

right, or by conduct which is inconsistent with any other intention than to waive a right.'" Id. (internal citation omitted).

Melahn v. Melahn, 78 Nev. 162, 379 P.2d 213 (1962) was a divorce action wherein the Nevada Supreme Court discussed the equitable affirmative defense of waiver. "[T]he intention to waive must clearly appear, Afriat v. Afriat, 61 Nev. 321, 117 P.2d 83, 119 P.2d 883 (1941), and the party relying upon the waiver must have been misled to his prejudice." [string cite omitted]

Clearly Dattala was prejudiced. Despite the clear findings of Medina's agency, which findings were unappealed, a summary judgment order was entered IN FAVOR of WFG exonerating it from the liability created by Medina's actions.

Summary judgment would only be appropriate in favor of WFG if

there are no questions of material fact and all inferences are in favor of Dattala as the non-moving party. The reality is that there is no issue of material fact CONTRADICTING the clear findings of Medina's agency.

PRAYER FOR RELIEF AGAINST WFG

The case should be remanded with instructions to enter judgment against WFG in favor of Dattala in the same amount as the judgment against Medina, $355,533 compensatory damages plus $1,066,599 punitive damages, for a total judgment of $1,422,132, [JA Vol 7, 1554] with interest accruing from the date of service of the summons and complaint [NRS 17.130(2)]. subject to an award of attorney fees and costs upon timely motion.

CONCLUSION

Respondents stating what “purportedly” happened is absurd. There are final, unappealed factual findings made by the district court. The deeds at issue, and the reconveyance of Dattala’s $150,000 deed of trust, were fraudulent. Badges of fraud, also known as red flags, were conveyed to the district court, and ignored.

The district court was given numerous opportunities to correct the mistake and avoid this appeal. It NEVER addressed NRS 111.025 and/or NRS 111.175. Given that this is a case of first impression, this court should issue a published opinion clarifying that those statutes reinforce the universally accepted law that a thief conveys no title. Dattala is the owner of both property located at 50 Sacramento Drive and 59 Sacramento Drive Las Vegas, NV.

Further, judgment should be entered against WFG in favor of Dattala in the same amount as the judgment against Medina, $355,533 compensatory damages plus $1,066,599 punitive damages, for a total judgment of $1,422,132, with interest accruing from the date of service of the summons and complaint [NRS 17.130(2)]. subject to an award of attorney fees and costs upon timely motion.

If this Court is not inclined to directly grant the relief sought, the summary judgments should be reversed and the case remanded for trial.

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:

This brief has been prepared in a proportionally spaced typeface using Wordperfect in proportionally spaced typeface using Arial font, 14 point type.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(A), it is :

[xxx] Proportionately spaced, has a typeface of 14 points or more and contains 3,610 words [less than 7,000 words].

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 December 22, 2022

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