

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA

Appellant

vs.

PRECISION ASSETS and
ACRY DEVELOPMENT LLC and
WFG NATIONAL TITLE INSURANCE COMPANY}

Respondents

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APPELLANT'S SUPPLEMENTAL AUTHORITY

Dattala supplements his briefing with supplemental authority
pursuant to NRAP 31(e).

PRECISION ASSETS WAS UNDER A DUTY OF INQUIRY

The legal proposition is that Precision Assets was under a duty of
inquiry when it purportedly purchased the two subject properties, 50 and 59
Sacramento Drive, from Bursey. Appellant identified twelve red flags in
his Opening Brief on page 22.

Further, NRS 111.180 , Nevada's bona fide purchaser statute set

forth below, acknowledges that buyers have a duty to investigate and inquire by using the phrase "constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property".

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.

CONTROLLING CASE LAW ON BONA FIDE PURCHASER

Addressing the requirements to be a bona fide purchaser, this court has acknowledged that a buyer has a duty of inquiry as follows :

It has been noted by one commentator that "notice may be inferred from slight circumstances when it is shown that the

purchaser and the vendor, who has made a prior conveyance or encumbrance of the same property, are intimately associated in business, or intimately related by blood or connected by marriage.” 8 Thompson, *supra* § 4326, at 462. The same commentator has noted: “In order to be able to wrap around himself the cloak of a bona fide purchaser the buyer must be acting in good faith. He must not be in collusion with the seller. Such a proposition is axiomatic.” 8 Thompson, *supra* § 4313, at 367.

Even if the assertions by Fredericks and Valdez as to the timing of the express notice to Valdez are credited, however, Valdez would not qualify as a bona fide purchaser without notice if, prior to the payment of consideration and the transfer of legal title, she was under a duty of inquiry. Such duty arises

when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights. He is said to have constructive notice of their existence whether he does or does not make the investigation. The authorities are unanimous in holding that he has notice of whatever the search would disclose.

Allison Steel Mfg. Co. v. Bentonite, Inc., 86 Nev. 494, 498, 471 P.2d 666, 668 (1970), quoting 4 Casner, *supra* § 17.11, at 565-66.

It is undisputed that from mid-June, 1975, until the time of the motion for summary judgment, appellant was in sole and exclusive possession of the property in question. It is also undisputed that on or about October 27, 1975, respondent Valdez visited the house, and that from that date, prior to the marriage as well as to the transfer of legal title, she had actual notice of appellant's residence on the property.

This court, in an early case regarding implied, or “inquiry” notice, recognized that

As a general rule the authorities declare that

open, notorious, and exclusive possession and occupation of lands by a stranger to a vendor's title, as of record, at the time of a purchase from and conveyance by such vendor out of possession, is sufficient to put such purchaser upon inquiry as to the legal and equitable rights of the party so in possession, and such vendee is presumed to have purchased and taken a conveyance from the vendor with full notice of all legal and equitable rights in the premises of such party in possession and in subordination to these rights; and this presumption is only to be overcome or rebutted by clear and explicit proof on the part of such purchaser, or those claiming under him, of diligent, unavailing effort by the vendee to discover or obtain actual notice of any legal or equitable rights in the premises in behalf of the party in possession.

Brophy M. Co. v. B. & D. M. Co., supra, 15 Nev. at 109. (Refusing to apply rule to possession by prior grantor.) Accord, Keck v. Brookfield, 409 P.2d 583 (Ariz.App. 1965); Sheerer v. Cuddy, 24 P. 713 (Cal. 1890); J. R. Garrett Co. v. States, 44 P.2d 538 (Cal. 1935). See also 4 Casner, supra § 17.12; 8 Thompson, supra § 4332.

As suggested in Brophy, a “purchaser put upon inquiry may rebut the presumption of notice by showing that he made due investigation without discovering the prior right or title he was bound to investigate. The question whether he has made due inquiry is one of fact, to be investigated by the jury. . . .” 8 Thompson, supra § 4326, at 451.

...

We conclude, therefore, that viewing the evidence in the light most favorable to appellant, respondent Valdez was not entitled to the protection of the recording act. It is not clear that Valdez was either a purchaser for value or that she was without notice of the prior conveyance. Consequently, the summary judgment must be reversed. It is so ordered and the case is

remanded for a full hearing on its merits.

Berge v. Fredericks 95 Nev. 183, 188-190, 591 P.2d 246,248-250 (1979)

Berge has been cited favorably as controlling Nevada law by United States District Judge Jones in Nationstar Mortg., LLC v. Hometown W. II Homeowners Ass'n, No. 2:15-cv-01232-RCJ-NJK, 2016 U.S. Dist. LEXIS 88768, pages 20-21 (D. Nev. July 7, 2016) as follows.

... The general BFP rule in Nevada is:

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.

Nev. Rev. Stat. § 111.180(1). Even assuming the issue were whether SFR had notice not only of the DOT but also of the legal possibility that the DOT might survive the HOA foreclosure sale, SFR was not an innocent purchaser in this regard, as admitted by Kelso. Even without the admitted actual notice of the potential defect in the title, SFR was on inquiry notice of the continuing vitality of the DOT, especially considering that the sale price was a tiny fraction of the value of

the Property and it knew the winning bidder was to take a trustee's deed without warranty. See Berge v. Fredericks, 95 Nev. 183, 591 P.2d 246, 249-50 (Nev. 1979); 11 Thomas, supra, § 92.09, at 163 ("Persons who knew about or could have discovered the existence of prior adverse claims through reasonable investigations should not be protected."). And any inquiry to the HOA or its agent alone was insufficient as a matter of law. See id. (noting that "reliance upon a vendor, or similar person with reason to conceal a prior grantee's interest, does not constitute 'adequate inquiry'").

CITATION TO OPENING BRIEF THAT IS BEING SUPPLEMENTED

Pages 12 - 16, 19 and 22 of Appellant's Opening Brief

discusses why Precision Assets is not a bona fide purchaser,

Appellant notes the "numerous red flags" and cited to the trial court

record where 12 of the red flags were noted. Appellant notes the

requirement for Precision Assets to make an investigation on page

22. Inquiry is a synonym for the word investigation.

/s/ Benjamin B. Childs, Sr.

BENJAMIN B. CHILDS, Sr.ESQ.

NEVADA BAR # 3946

Attorney for Appellant

CERTIFICATE OF SERVICE

APPELLANT'S SUPPLEMENTAL AUTHORITY was served through the Nevada Supreme Court File and Serve system to opposing counsel at filing on January 9, 2023. Electronic service is in lieu of mailing.

/s/ Benjamin B. Childs, Sr.

BENJAMIN B. CHILDS, Sr.ESQ.
NEVADA BAR # 3946