

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (RENO)

| | | |
|------------------------------|---|--------------------------|
| IN RE: | . | Case No. 16-50644-btb |
| | . | |
| | . | Chapter 15 |
| PATRICK CANET and | . | |
| JAZI GHOLAMREZA ZANDIAN, | . | |
| | . | |
| Debtors. | . | |
| | . | |
| FRED SADRI, as Trustee for | . | Adv. No. 17-05016-btb |
| the Star Living Trust, dated | . | |
| April 14, 1997, SATHSOWI | . | |
| T. KOROGHLI, as Managing | . | |
| Trustee for Koroghli | . | |
| Management Trust, and | . | |
| RAY KOROGHLI, as Managing | . | |
| Trustee for Koroghli | . | |
| Management Trust, | . | |
| | . | |
| Plaintiffs, | . | |
| | . | |
| v. | . | |
| | . | |
| JED MARGOLIN and | . | 300 Booth Street |
| JAZI GHOLAMREZA ZANDIAN, | . | Reno, NV 89509 |
| | . | |
| | . | Wednesday, June 13, 2018 |
| Defendants. | . | 2:15 p.m. |
| | . | |

TRANSCRIPT OF PARTIAL MOTION FOR SUMMARY JUDGMENT WITH
CERTIFICATE OF SERVICE FILED BY YANXIONG LI ON BEHALF OF
RAY KOROGHLI, SATHSOWI T. KOROGHLI, FRED SADRI [39]; MOTION FOR
SUMMARY JUDGMENT AGAINST CROSS-CLAIMANT PATRICK CANET WITH
CERTIFICATE OF SERVICE FILED BY MATTHEW D. FRANCIS ON BEHALF OF
JED MARGOLIN [23]; OPPOSITION AND COUNTER MOTION FOR SUMMARY
JUDGMENT WITH CERTIFICATE OF SERVICE FILED BY
JEFFREY L. HARTMAN ON BEHALF OF PATRICK CANET [34]
BEFORE THE HONORABLE BRUCE T. BEESLEY
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES CONTINUED.

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1 (Proceedings commence at 2:15 p.m.)

2 THE COURT: And then, we have Sadri v. Margolin,
3 17-05016.

4 MR. HARTMAN: Jeff Hartman on behalf of Patrick
5 Canet, Your Honor.

6 MR. ZORIO: Good afternoon, Your Honor. Arthur Zorio
7 on behalf of Jed Margolin.

8 MR. LI: Good afternoon, Your Honor. Michael Li on
9 behalf of Star Living Trust and Koroghli Management Trust, and
10 just for the record, Your Honor, those are the only entities or
11 persons that I'm appearing on behalf of today because those are
12 the only persons for which the motions today involve.

13 THE COURT: Okay. So this is about -- oh, I'm sorry.

14 MR. FRANCIS: Your Honor, Matthew Francis on behalf
15 of Jed Margolin from the Brownstein Law Firm.

16 THE COURT: Okay. This is about as confusing a case
17 as I've ever had, so -- let's see, the first matter I have is
18 the motion for partial summary judgment.

19 Mr. Hartman.

20 MR. HARTMAN: Well, the original motion for summary
21 judgment was filed by Mr. Steven.

22 THE COURT: I'm sorry, go ahead. No, go ahead,
23 I'm --

24 MR. ZORIO: We filed a motion for summary judgment.
25 Mr. Hartman --



1 MR. HARTMAN: That's right, I'm sorry. The complaint
2 was filed by Sadri. The motion was filed by Margolin.

3 THE COURT: Okay. Sorry.

4 MR. ZORIO: Everyone will get there.

5 THE COURT: As I said, this is confusing.

6 MR. ZORIO: Would you like me to proceed?

7 THE COURT: Yes, please.

8 MR. ZORIO: Okay. Would you like me at the podium,
9 Your Honor, or --

10 THE COURT: I'd prefer you go to the podium, but if
11 it's cumbersome with the stuff, you can keep it there.

12 MR. ZORIO: We filed a -- first of all, I want to be
13 efficient with the time. If you have specific questions, I'd
14 be happy to answer them before I just give a presentation and
15 --

16 THE COURT: Well, let me -- the motion for summary
17 judgment, here is my read of it, and please feel free to
18 correct me if I've got this wrong. There were some parcels
19 sold at a sheriff's sale, and basically, there was a deficiency
20 in that process because it didn't comply with N.R.S.
21 17-point-something, which required the actually filing of a
22 declaration as a requirement. It's a relatively recent
23 requirement. It came in October of 2011. But as I read this,
24 and please feel free to challenge me if you think I'm
25 incorrect, I don't think the sale was proper if this wasn't



1 complied with.

2 Now, I do understand that there's case authority in
3 Nevada which talks about, you know, when the -- if it's a
4 sheriff's sale, when the bid goes in, that transfers the
5 property, but it appears to me if you have case law that is, in
6 part, superseded by a statute, that that may or may not be --
7 that probably is not the case any longer. So one of the things
8 I thought about doing was referring this to the Supreme Court
9 to decide for us. I don't know how people feel about that, but
10 it occurs to me that maybe they're the ones who need to decide
11 that issue.

12 MR. ZORIO: The thought had occurred to under Rule 5
13 of Nevada Rules of Appellate Procedure. Your Honor certainly
14 has the authority sua sponte to do that to certify the
15 question. I agree that the procedural -- the procedure here is
16 a little bit confusing, and let me back up just a little bit.

17 THE COURT: Sure.

18 MR. ZORIO: I'll certainly address that because I
19 think that's one of the seminal issues that were brought in the
20 motion for partial summary judgment, that Sadri Koroghli
21 parties, their trust, filed.

22 The motion for summary judgment that we filed,
23 however, was related to Mr. Canet's cross-claim against
24 Mr. Margolin. And Mr. Canet's cross-claim against Mr. Margolin
25 only alleges two legal issues. One, it seeks to void transfers



1 made of properties in Washoe County. Those transfers were made
2 April 3rd, 2015, greater than 13 months before the petition for
3 Chapter 15 was filed on May 19th, 2016. There's been no legal
4 authority provided to support that those transfers should be
5 voided, and there was no response to our claim that they are
6 proper and therefore cannot be voided under the Bankruptcy Code
7 in Canet's response to our motion for summary judgment.

8 Additionally, Canet's cross-claim claims that there
9 was a violation of the automatic stay by recording a sheriff's
10 deed in Clark County --

11 THE COURT: But that's incorrect.

12 MR. ZORIO: It's a ministerial act.

13 THE COURT: Yeah, it's a ministerial act. It doesn't
14 -- it's not a violation of the stay.

15 MR. ZORIO: And again, there was no opposition to
16 that particular argument in Mr. Canet's opposition to our
17 motion for summary judgment. Instead, what Mr. Canet did is
18 Mr. Canet brought a countermotion, which we feel is improper
19 under Local Rule 7056(e) because it presents new claims and new
20 arguments that were not raised in the motion for summary
21 judgment, and furthermore, claims that were not made in the
22 cross-claim. In addition, Mr. Canet has conceded that he's
23 never issued initial disclosures under Rule 26, never responded
24 to requests for production, never responded to interrogatories.
25 So therefore, we've never been informed of these new



1 contentions being made by Mr. Canet until --

2 THE COURT: And he is not here.

3 MR. ZORIO: Well, Mr. Hartman represents Mr. Canet.

4 THE COURT: I'm sorry, okay.

5 MR. ZORIO: Yeah. Sorry, I'm referring to the
6 parties, Your Honor, instead of counsel.

7 THE COURT: That's fine.

8 MR. ZORIO: Okay. So, you know, the first we saw
9 that Mr. Canet was going to make those claims was in the
10 improper counter-motion. Now, we responded to that
11 counter-motion. That counter-motion makes the claim, as Your
12 Honor was beginning to discuss, that an affidavit was not filed
13 pursuant to N.R.S. 17.1504, and the contention is that voids
14 the sale. And they're also claiming that it invalidates the
15 lien.

16 However, there are several problems with that
17 construction. N.R.S. 17.150 says specifically that upon
18 recording the judgment, quote, "it becomes a lien." And I
19 have --

20 THE COURT: I have the statute in front of me, so
21 what portion are you looking at?

22 MR. ZORIO: Sure. N.R.S. 17.150(2).

23 THE COURT: Starting "a transcript of the original"?

24 MR. ZORIO: It starts:

25 "A transcript of the original docket or an abstract



1 or a copy of any judgment" --

2 -- which is what we have here --

3 -- "or decree of a district court of the State of
4 Nevada or the district court or other court of the
5 United States in and for the District of Nevada, the
6 enforcement of which has not been stayed on appeal,
7 certified by the clerk of the court where the
8 judgment or decree was rendered" --

9 -- and here's the important two clauses, Your Honor --

10 -- "may be recorded in the office of the county
11 recorder in any county, and when so recorded it
12 becomes a lien upon all the real property of the
13 judgment debtor not exempt from execution in that
14 county."

15 The statute clearly, unambiguously states the lien is
16 -- comes into existence upon recording the judgment. Very
17 clear. That's what the statute says.

18 Now, in 2011, Your Honor's absolutely correct,
19 section 4 of this statute was added. Now, the legislature
20 knows how to make a condition precedent to something being
21 established. The legislation knows how to say, in order to
22 perfect a lien, you must do one, two, three, four, five.
23 Certainly, we see it in mechanic's lien statutes. It's a very
24 complicated statute, and it states specifically what has to be
25 done for that lien to be perfected.



1 In this particular statute, N.R.S. 17.150 makes it
2 crystal clear in section 2, the lien is effective upon
3 recording the judgment. Again, the language, "when so
4 reported, it becomes a lien upon all the real property of the
5 judgment debtor not exempt from execution in that county."

6 Section 4 does say what it says. It says: In
7 addition to recording the information described in section 2, a
8 judgment creditor who records a judgment or decree for the
9 purpose of creating a lien upon the property of the judgment
10 debtor pursuant to section 2 shall record at that time an
11 affidavit. It does say that, Your Honor. But nowhere in this
12 statute does it say that that's a condition precedent to
13 establishing a lien. Section 2 clearly, unambiguously, without
14 question, says recording a judgment establishes it as a lien.

15 THE COURT: So what does the failure to file the
16 affidavit do?

17 MR. ZORIO: The legislature left that open, Your
18 Honor. Now, I've looked at the legislative history, and
19 frankly, I don't think it's very helpful to either party
20 looking at the legislative history.

21 THE COURT: I didn't see anything in the legislative
22 history that persuaded me one way or the other, but --

23 MR. ZORIO: Right . In legislative history, it talks
24 about the mortgage crisis and that, you know, say, they record
25 a judgment and there's five John Smiths in the county and, you



1 know, you get the wrong guy and you foreclose on the property.
2 This was intended to make sure you got the right property when
3 you foreclose. Here, there's no contention whatever. You
4 know, the purpose of the statute is to make sure you foreclose
5 on the wrong property [sic] or establish the lien on the right
6 property, then the purpose of the statute isn't effective in
7 this case. We've got the right property. There's no
8 contention that we've got the wrong property.

9 You know, and beyond what is stated in the minutes
10 for legislative history, you know, perhaps one could claim that
11 this establishes a basis for punitive damages if someone
12 commits the tort of slander of title and executes a lien on the
13 wrong property, knowingly failing to comply with the statute.
14 But when it comes to the validity of the lien, whether a lien
15 comes into existence is clearly stated in section 2. It's
16 unambiguous. And the legislature has the power, authority, and
17 the knowledge how to change the circumstance of when a lien
18 comes into being. It didn't do that. And we must, therefore,
19 presume that section 2 means what it always has meant since the
20 legislature did not change it.

21 May I get some water, Your Honor? Apologize.

22 THE COURT: Oh, sure. Please.

23 MR. ZORIO: And again, this is an important issue of
24 Nevada law. If Your Honor believes it's something that you
25 would like to certify, certainly, like I said, Nevada Rules of



1 Appellate Procedure, I think it's subsection (b), allows the
2 Court -- 5(b) would allow the Court sua sponte to certify that.

3 THE COURT: Well, the only problem with that is I've
4 certified two or three matters there. A couple of them came
5 back, and they gave out clarification, and one of them came
6 back and gave no clarification at all and answered a question
7 which hadn't been asked. So maybe I could send it to them and
8 call one of the justices and say, here, here's what you'd have
9 to look at, but I don't know if that's effective or not.

10 MR. ZORIO: I understand, Your Honor. I can say that
11 the issue has been addressed by the appellate court, but I
12 can't discuss the opinion because it's not published.

13 THE COURT: This issue has been discussed?

14 MR. ZORIO: Yeah.

15 THE COURT: I have copies of it, but I don't want to
16 present it to the Court as precedential value. The Nevada
17 Rules of Appellate Procedure prohibit that.

18 THE COURT: Give Mr. Hartman a copy. Give me a copy.
19 I'll mark this as an exhibit.

20 THE CLERK: Exhibit 1, Your Honor.

21 THE COURT: Okay. Exhibit 1 for this hearing.

22 MR. ZORIO: May I approach, Your Honor?

23 THE COURT: Yes, please. Thanks

24 (Counsel and clerk confer)

25 THE COURT: Give one to these gentlemen over here if



1 you have one.

2 (Counsel and clerk confer)

3 THE COURT: So counsel, give one to these gentlemen
4 over here who've done lots of work on this if you have an
5 extra.

6 MR. ZORIO: I think I have another copy in my --

7 THE COURT: Well, if you don't, well, then we'll just
8 make them give it back, and that would be good.

9 MR. ZORIO: I do have another copy, Your Honor.

10 THE COURT: Okay.

11 MR. ZORIO: This is the Secured Holdings, Inc. v.
12 Eighth Judicial District Court of Nevada case, (Nev. Ct. App.
13 July 11, 2017). And if you look at the bottom of the first
14 page of the printed opinion where it says, turning to
15 petitioner's 17.150(4) argument.

16 (Pause)

17 THE COURT: Okay, thank you.

18 MR. ZORIO: And moving to the next set of contentions
19 by Mr. Canet, again, we believe the countermotion for summary
20 judgment should not be considered for violating the local rule.
21 However, the other contentions are that notices of the sale
22 were not appropriate under N.R.S. 21.130, N.R.S. 21.075, and
23 21.076.

24 THE COURT: And why is that?

25 MR. ZORIO: The sheriff's office apparently did not



1 comply with every single notice provision of the statute. And
2 our contention, as we've stated in the briefs, is that's not
3 our problem. Mr. Jed Margolin did not sell these properties.

4 THE COURT: He bought them.

5 MR. ZORIO: He bought them. The sheriff sold these
6 properties. N.R.S. 21.140(1) says, quote: "Any officer
7 selling without the notice presented by N.R.S. 21.075, 21.076,
8 and 21.130" --

9 THE COURT: Gets fined \$500, I think.

10 MR. ZORIO: -- "forfeits \$500 to the aggrieved party,
11 in addition to the party's actual damages."

12 THE COURT: So your contention is there were no
13 actual damages because it was -- nobody got hurt. Nobody else
14 bid at it.

15 MR. ZORIO: Well, the -- my recollection of the
16 record, Your Honor, is the notices were all published in
17 newspapers.

18 THE COURT: Right.

19 MR. ZORIO: So, you know, fair notice was given to
20 anybody who wanted to bid, and there's been no contention that
21 the bid was invalid, you know, was too low or somehow
22 fraudulently done. But our contention is more than that. The
23 aggrieved party -- here, the debtor and, allegedly, Sadri and
24 Koroghli parties -- have no way to void the transfers based
25 upon the sheriff's selling the properties and not giving proper



1 notice. Again, that's the sheriff's liability. And there are
2 cases on point discussing essentially the same statute that we
3 have, and I've discussed these in the briefs. That's the
4 Nixon v. Triber case, where the Idaho Supreme Court held that
5 you cannot claim sheriff's sale of property and failing to give
6 notice of the sale invalidates the sale. The remedy -- in
7 fact, the court in that case says the exclusive remedy is to go
8 after the sheriff pursuant to Idaho's analog to N.R.S. 21.104.
9 And I can filter back into the papers if you want the Idaho
10 code, Your Honor.

11 THE COURT: No, that's fine. I mean, it's a similar
12 thing. They want to put that -- the sheriff's department, the
13 legislature does, apparently, for not doing the sale properly.

14 MR. ZORIO: Well, what it does is it protects the
15 purchaser of the property, and if the --

16 THE COURT: Them, too, but -- yeah.

17 MR. ZORIO: Right. So if the sheriff -- again, this
18 is the sheriff selling the property. It's not Mr. Margolin.

19 THE COURT: It's the sheriff.

20 MR. ZORIO: Right. So the sheriff is keenly aware of
21 whether or not the sheriff did the proper notices, and the
22 statute is crystal clear that it is the sheriff's office that
23 is liable to the aggrieved party for failing to give the proper
24 notice and going forward with the sale.

25 And the Nevada statute seems also to be almost right



1 on, especially the \$500 part, which is interesting, with the
2 statute that exists in California, where the California Supreme
3 Court held in Smith v. Randall -- it's 6 Cal. 47, 50 (1856) --
4 saying again, the sheriff's sale and not giving proper notice
5 of the sale is not a reason to invalidate the sale. Rather, the
6 exclusive remedy is to go after the sheriff for any damages
7 claim.

8 The only other contention made by Mr. Canet in the
9 inappropriate crossmotion is that Mr. Zandian still has his
10 rights of redemption. We go at some length to discuss that
11 Mr. Zandian was very well aware of the sales of property. He
12 was represented by counsel at the time. He attempted to
13 prevent the writ of execution from going forward. We cited
14 that he was represented all the way through, I believe, January
15 of 2016, when his counsel was provided leave to withdraw. And,
16 you know, these sales took place in April of 2015. He also
17 filed a notice of inability to pay his debts in June of 2014.

18 And so, Your Honor, I'll conclude on that point. If
19 you have any other questions for me with regard to our motion
20 and Mr. Canet's countermotion, I'll be happy to address them.
21 And I'll let my adversary talk about his motion, and then if I
22 can respond to his contentions.

23 THE COURT: Okay. Is it Mr. Hartman?

24 MR. HARTMAN: Thank you, Your Honor. So I understand
25 Mr. Zorio's argument. I can't agree with it in its entirety.



1 The provision in paragraph 4 regarding the affidavit
2 of judgment of the judgment creditor is designed to provide
3 information for noticing purposes. And in the case that I
4 cited in the brief, which was the Pawlik v. Deng decision, the
5 Supreme Court talks extensively about the rights that are being
6 protected and those things that go to notice. And I think that
7 the distinction that I must draw is that it may be that Section
8 1 allows the lien to stand, but I think failure to comply with
9 the provisions of 4, specifically as a result of the affidavit,
10 makes the ultimate transfer of the deed void because of the
11 lack of the notice that the affidavit is designed to provide.

12 So I don't want to take the Court's time to go
13 through the Pawlik v. Deng decision, but that was one that was
14 entered by the Supreme Court is March of this year, I believe
15 it was. And although I don't have firsthand knowledge of how
16 the rules work, I think decisions from the court of appeals are
17 specifically not subject to being cited to the Court. I don't
18 know that because I don't practice in state court, but I think
19 that's --

20 THE COURT: Well, I don't either, and I don't exactly
21 understand the jurisdiction of the appellate court. We've only
22 had it for, what, two years or something like that, and --

23 MR. HARTMAN: Right. So I'm not sure that the
24 Secured Holdings decision says exactly what they say it does
25 because I haven't had time to study it, and I don't know



1 whether or not it's even subject to being part of the citation.

2 But the information that's included in subsection 4
3 of 17.150 obviously is designed for trying to give appropriate
4 notice, and the Pawlik decision certainly contemplates that
5 when talking about the two prongs of the analysis, if you will,
6 in that case. The statute, number -- or the case, number one,
7 says, we recognize that a statute must be construed as to give
8 meaning to all of its parts and language, and it should not be
9 read in a manner that renders a part of the statute
10 meaningless.

11 The noticing portion, I think, is part of the strict
12 compliance requirement of applying the statute, and that's why
13 I believe that even -- my contention on behalf of Mr. Canet in
14 that issue is that the lien can remain valid, but I don't
15 believe the execution sale should stand. And it may be that
16 that's an issue that has to be certified to the Supreme Court.

17 THE COURT: Let me ask both of you this. My guess is
18 this, and I'm not trying to tell you what I'm going to decide,
19 but I'm guessing that whatever I decide, somebody's going to
20 appeal. And -- which is fine. I have no problem with that.
21 But probably less expensive for your clients and at least
22 arguably quicker than going through an appeal. It might make
23 sense to send it to the Supreme Court. I don't -- I mean,
24 that's something I thought about. I don't know, you probably
25 thought about it, too. Does that make more sense, and if you



1 guys want to caucus and talk about that when you're finished
2 into it, I would be interested in doing that. But --

3 Yes?

4 MR. LI: Your Honor, may I have sort of my two cents
5 on this issue?

6 THE COURT: Oh, certainly, yes.

7 MR. LI: And then --

8 THE COURT: I'm not deciding. I'm just throwing this
9 out here. I'm not cutting anybody off.

10 MR. LI: And then, let's see if Your Honor changes
11 your mind after that because I believe there's a couple things
12 that weren't exactly accurate. I'd like to just correct the
13 record for you.

14 THE COURT: Okay, no. I'm not trying to cut you off.

15 MR. HARTMAN: Now, the other thing has to do with the
16 redemption rights. And I know this is sort of an esoteric
17 argument, but the Ninth Circuit case that I cited, which is
18 Bialack (phonetic), which goes back to when -- right after the
19 act went by the wayside and the code was coming into effect,
20 says that the trustee in the case succeeds to the rights of
21 redemption. And if the -- if there was a defect in the notice
22 in connection with this execution sale that cut off any rights
23 of redemption, I think that that would be inappropriate and
24 also, in my estimation, a potential violation of the automatic
25 stay. That issue probably needs to be fleshed out a little bit



1 more, but I think that if the Court -- how the Court ultimately
2 rules on the primary issue, which is the 17.150 argument, that
3 will determine how the rest of these things may fall out.

4 So other than that, do you have any questions?

5 THE COURT: I really don't.

6 MR. HARTMAN: Thank you.

7 THE COURT: Why do you give me these difficult cases?

8 MR. HARTMAN: Pardon?

9 THE COURT: I said, why do you give me these
10 difficult cases, I guess is my question.

11 MR. HARTMAN: Well, you picked the job.

12 THE COURT: Yes, sir.

13 MR. LI: Is it my turn?

14 THE COURT: Yes.

15 MR. LI: My answer to that will be, well, because of
16 Your Honor's brilliance, and so -- and I think Your Honor is
17 well equipped with everything presented to really resolve this
18 issue as to the void lien. And just to kind of very, very
19 quickly -- the uncitable rule, while I understand may not
20 exactly apply in this Court, that's in ADKT 504. That's an
21 administrative order. And what it essentially says is that any
22 court of appeals decisions that are unpublished are not
23 citable. And so if Your Honor wishes us to supplement that --

24 THE COURT: No, no, that's fine. I --

25 MR. LI: Absolutely.



1 THE COURT: I was sort of generally aware of that,
2 but --

3 MR. LI: Okay. So --

4 THE COURT: I can't cite you the ADKT, but --

5 MR. LI: And my iPad isn't cooperating fully.

6 THE COURT: No problem, take your time.

7 MR. LI: I apologize.

8 THE COURT: Do you need a plug? Would that help
9 or --

10 MR. LI: No, I don't. Okay. There we go. All
11 right.

12 So it is our position, Your Honor -- and first of
13 all, we filed a motion for partial summary judgment, and the
14 gist of what we're asking the Court to do is to issue an order
15 saying that the trusts have two-thirds' undivided interest in
16 the nine properties, free and clear of Mr. Margolin's lien.
17 Well, this issue arose because we discovered, through various
18 filings, including a objection to the Chapter 15 petition that
19 was filed in the underlying case, that Mr. Margolin had been
20 taking the position that the trust never had an interest at the
21 time that -- or did not have an interest at the time that
22 Mr. Margolin executed his judgment against the property.

23 That became an issue for us. What happened was we
24 filed an adversary. We did try to resolve it. And with all
25 due respect -- and I understand that Mr. Zorio and Mr. Francis



1 was not the attorney that was handling this case from the
2 beginning. It was actually Mr. Adam McMillen, who is no longer
3 -- my understanding is no longer with the office of
4 Brownstein & Hyatt. And so I had reached out to Mr. McMillen
5 to try to resolve this issue and confirm that there's no
6 challenge to the trusts' interest. He wasn't agreeable, and he
7 filed an answer essentially saying that Mr. Margolin, in fact,
8 had all the interest in the property. If you take a look at
9 the prayer that's filed in the answer in this adversary
10 proceeding, it's abundantly clear from that.

11 So we're here today, and we're here asking the Court
12 to issue a order confirming our two-thirds interest based on
13 one of two reasons: Either Mr. Margolin's sale is invalid --
14 and really, the only reason we're asking this Court to
15 invalidate the sale is based on the failure to comply with
16 17.150(4). Alternatively -- and as --

17 THE COURT: Let me ask you this. I mean, the
18 contention that's being made is that 17.150(4) is really a
19 notice provision, but doesn't have teeth in it, particularly.
20 Did your client -- well, I mean, since it wasn't filed, your
21 client didn't receive notice. Did your client have notice
22 otherwise?

23 MR. LI: I don't have that information, Your Honor.
24 And my client basically -- based on my conversations with the
25 client, and as a matter of fact, based on the position that



1 Mr. Margolin's taking right now, there shouldn't be notice to
2 my clients because my clients aren't affected by the sale.
3 That's the position --

4 THE COURT: Because they have a -- okay.

5 MR. LI: That's the position they have now taken
6 through their opposition. It is that all they sold was the
7 Chapter 15 debtors' interest, and so my client wasn't entitled
8 to notice if all they were executing against was the Chapter 15
9 debtors' interest.

10 THE COURT: And that would be the one-third interest,
11 basically.

12 MR. LI: That would be the one-third interest, Your
13 Honor. And so getting back to the void versus valid sale
14 issue. The requirements under subsection 4, Your Honor,
15 actually came about in a 1995 amendment. In 1995, the
16 legislature added the requirement that the judgment creditor
17 who records a judgment or decree shall record, at that time, an
18 affidavit stating the name and address of the judgment debtor,
19 the judgment debtor's driver's license number, the state of
20 issuance, the judgment debtor's Social Security Number, and the
21 judgment debtor's date of birth, if known to the judgment
22 creditor. If any of the information is not known, the
23 affidavit must include a statement of fact.

24 Moving forward, in 2007, the legislature made a
25 limited change to that. All they did was, being concerned



1 about the privacy issue of having to have a judgment debtor's
2 Social Security Number in a publicly recorded document --

3 THE COURT: Seems like a problem.

4 MR. LI: Right. They changed it so that only the
5 last four digits would be required. That's how they amended
6 the statute then.

7 Then, fast-forward to 2011 by SB 186 and keeping in
8 mind that the sale here took place in April 2015, that then
9 means the sale was operating under this amended statute. The
10 amendment to the language was to make clear that this
11 information has to be in the judgment or the affidavit.
12 Mr. Margolin makes the issue here as being whether or not he
13 has to record -- or he had to record an affidavit. That's not
14 really the issue, Your Honor.

15 To be clear, the issue is whether or not you have to
16 include the information under subsection 4 in either the
17 affidavit or the judgment itself. And, Your Honor, I submit to
18 you that you do. It's clear from the statute. The language in
19 the statute, as amended, says that in addition to recording the
20 information described in subsection 2, subsection 2 provides
21 essentially a form requirement.

22 What do you have to do to create a valid lien?
23 Subsection 2 tells us, first, it has to be one of the three
24 instruments prescribed. And if you choose to do it by a
25 judgment, it has to be certified and the judgment has to not



1 be stayed on appeal, okay. Second, you have to record it in
2 the county recorder's office.

3 Well, what do we have to include in the judgment?
4 Sub (2) doesn't tell us about the content of the judgment. At
5 most, it can be interpreted as, well, we expect the judgment to
6 be what it is, findings, conclusions, an order from the Court
7 as to what the relief is. And then, you go to sub 4, okay.
8 Here's the information that we need to include in the judgment
9 or the affidavit. I don't care where you include it. It has
10 to be in there somewhere. "for the purpose of creating a lien"
11 -- by the way, that's language that was added in 2011. So we
12 have -- in addition to recording the information described in
13 sub 2 -- that's 2011 language -- we have for the purpose of
14 creating a lien upon the real property of the judgment debtor
15 pursuant to sub 2 -- that's 2011 language.

16 And then, in addition to personal identification
17 numbers, such as the driver's license number or the Social
18 Security Number, in 2011, the legislature says that, we're
19 concerned about you just recording this in the county
20 recorder's office, okay, so here's what you have to do if
21 you're trying to assert a lien against real property. If the
22 lien is against the real property, which the judgment debtor
23 owns at the time of the affidavit a judgment is recorded, the
24 assessor parcel number and the address of the real property and
25 a statement that the judgment creditor has confirmed that the



1 judgment debtor is the legal owner of that real property.
2 That's additional statements, information that has to be in the
3 judgment or the affidavit or whatever is recorded in order to
4 create a lien.

5 Temporally, when you look at the language in sub 2
6 and in sub 4, when you consider the temporal requirement, I
7 have to record this at the same time, concurrently,
8 contemporaneously, okay. So it doesn't make sense to say that
9 I can record a judgment that's automatically a lien and then
10 later record the information, although the information in sub 4
11 says that you shall, judgment creditor, record at the time of
12 the judgment.

13 THE COURT: Okay. Show me where that is. I'm sorry.

14 MR. LI: Okay. So --

15 THE COURT: Looking at sub 4.

16 MR. LI: A judgment creditor who records a judgment
17 or decree shall record, at that time, an affidavit of judgment
18 stating --

19 THE COURT: Okay, thank you.

20 MR. LI: -- the information. And by the way, that's
21 not amended language, Your Honor. That was true at the time
22 that this additional affidavit requirement was added to the
23 statute by the Nevada legislature in '95. Then, it said, the
24 judgment creditor who records a judgment shall record, at that
25 time, an affidavit stating, et cetera, okay. So we do agree



1 plain language applies here.

2 And the way to reconcile sub 2 and sub 4 so that
3 they're read harmoniously is very obvious from the language of
4 the statute itself. One provides that you have to record a
5 judgment. The other provides that, well, in addition to
6 whatever information you have in the judgment, here's the
7 additional information that you have to include in order -- for
8 the purpose of creating a lien.

9 There's one case -- and as Mr. Hartman and --
10 opposing counsel is not making the representation that they've
11 sent this or they've used it in their briefs, but there's one
12 case that was cited by Mr. Margolin on this issue, and it's the
13 Leven case. In Leven, the Nevada Supreme Court was looking at
14 17.214, which is the statute that was used to renew a judgment.
15 What was the issue there? The issue there was, does the
16 judgment creditor have to strictly comply with the statute with
17 respect to three acts: filing the renewed judgment, serving the
18 renewed judgment, and recording the renewed judgment, okay.
19 The court said, yes, you have to timely file and serve, and as
20 to recording, yes, if the original judgment is recorded. The
21 original judgment, by the way, was recorded in '96. The court
22 decided that strict compliance actually is required with a
23 statute like this.

24 So while we're not -- I'm not positing to the Court
25 that Leven applies to what -- our analysis here, if it were to



1 apply, the analysis in Leven favors the position of voiding the
2 lien because there's no disputed fact here, Your Honor, that
3 other than the judgment debtor's name, none of the information
4 under sub 4 is included in the judgment itself.

5 And in our position, we believe Alcove -- and that's
6 at 331 B.R. 885, starting at page 894. That's a Ninth Circuit
7 Appellate -- excuse me, bankruptcy appellate panel decision
8 from the Ninth Circuit. The issue there was whether or not the
9 Chapter 7 debtor can challenge the judgment creditor's -- the
10 validity of the judgment creditor's lien. The court wasn't
11 looking at N.R.S. 17.150(4), as we are here today. However,
12 the court was looking at, essentially, an identically worded
13 statute that -- in California Civil Procedure Code 697.310.

14 The court noted that based on the California case law
15 and based on the plain language of that statute and the fact
16 that it's undisputed in that case, that the debtor's Social
17 Security Number wasn't included in the affidavit or the
18 judgment or the mechanism, the document that's used to create
19 the lien, we conclude that the judgment did not create a lien.
20 We think the facts in Alcove is exactly on point. We think the
21 Court should find that very persuasive.

22 The only other thing I'll mention about the void or
23 valid sale issue is just from glancing at, like -- the
24 distinction I'm trying to make, Your Honor, is we're not trying
25 to say that just because you don't record an affidavit, then



1 that voids the sale because it's possible that you could have
2 recorded the information in the judgment itself, okay. And all
3 Secured Holdings says is that, well, there's no affidavit, but
4 we don't find that to be necessarily a fatal defect in the
5 lien. That's great, but the opinion doesn't say anything about
6 what was actually included in the judgment itself.

7 So to the extent that Your Honor even finds this
8 helpful is -- well, it's not helpful, Your Honor. It's not
9 persuasive. It doesn't contain sufficient information for Your
10 Honor to resolve this issue.

11 Alternatively, if Your Honor, at the end of the day,
12 finds that despite missing all of that information, that that
13 is still a valid lien and the sale is valid, the parties don't
14 dispute and Your Honor may issue an order as a matter of law
15 confirming that the trust had two-third undivided interest in
16 the property.

17 With that said, unless Your Honor has any questions,
18 I will go ahead and submit the rest on my briefs.

19 THE COURT: Thank you very much.

20 Reply.

21 MR. ZORIO: Thank you, Your Honor. First, I take my
22 obligations very seriously to the Court. I did say that I
23 didn't mention the case. I said I can't cite it. It's an
24 unpublished opinion from the Nevada Court of Appeal and I can't
25 cite it.



1 THE COURT: I'm not going to do anything with it.

2 MR. ZORIO: So I -- and I didn't want that to be
3 misunderstood. You know ,there was some discussion about what
4 the Nevada Rule of Appellate Procedure is. I was very clear
5 when I started that presentation, Your Honor, that I'm not
6 citing to it, can't rely on it.

7 THE COURT: It will not, in any way, affect what I
8 decide.

9 MR. ZORIO: Thank you, Your Honor. As reply to oral
10 argument goes, unfortunately, I might be a little disjointed.
11 I apologize.

12 THE COURT: Go ahead.

13 MR. ZORIO: It was just stated to you that, you know,
14 perhaps the affidavit doesn't have to be filed if the
15 information is in the judgment. Well, that kind of dissolves
16 the whole argument that the Sadri and Koroghli parties are
17 making to you, saying you have to strictly comply with the
18 statute, because section 4 says it has to be an affidavit made
19 on personal knowledge. That's not going to be in the judgment.
20 So it doesn't make -- those arguments don't make much sense.

21 You know, it's interesting, as we've pointed out in
22 our brief, that the September 25th, 2017 stipulated judgment
23 that was recorded by the Sadri and Koroghli parties was not
24 accompanied by an affidavit, but yet they're coming to this
25 Court and saying an affidavit is necessary in order to create a



1 lien. We have never stated that we've satisfied Section 17.150
2 by recording a judgment. That's never been our position. Our
3 position is, in order to perfect the lien and have a valid
4 sale, you don't need that affidavit.

5 And counsel reminded us that N.R.S. 17.150 has been
6 amended three times, three times, and yet the legislature has
7 never said that in order to create a lien, you must file the
8 affidavit. They've left section 2 the same. The statement of
9 the renewal statute, the renewal statute specifically requires
10 conditions precedent to renewing the judgment. Saying that
11 strict compliance with the renewal statute also was an argument
12 that applies to Section 17.150 doesn't make a lot of sense
13 because 17.150(2) -- and I'll quote from the Leven v. Frey
14 case, the case that has been cited with regard to the renewal
15 judgment. In that very case at 123 Nev., page 403, 168 P.3d
16 715 (2007) -- so that is after section 4 was added in '95 --
17 the Supreme Court says:

18 "NRS 17.150(2) creates a lien on a debtor's real
19 property in a particular county when a judgment is
20 recorded in that county."

21 Leven v. Frey did not say, in order to create a lien
22 on debtor's property, you have to record the lien and the
23 affidavit. It didn't say that because the statute doesn't say
24 that.

25 THE COURT: I'm sorry, what was the case cite again?



1 MR. ZORIO: Sure, Your Honor. It was Leven,
2 L-E-V-E-N, versus Frey, F-R-E-Y.

3 THE COURT: That's 123 Nev. at 403? Is that what it
4 was?

5 MR. ZORIO: 123 Nev. 399, pinpoint cite is 403.

6 THE COURT: Okay, thanks.

7 MR. ZORIO: Do you want the Pacific, as well?

8 THE COURT: No.

9 MR. ZORIO: Counsel for Sadri and Koroghli is coming
10 to this Court saying that, well, we had to fight over whether
11 they have two-thirds interest because there was initial
12 position that Margolin owned 100 percent. That was the initial
13 position, and it changed. And, Your Honor, there was
14 discussion about settlement negotiations with Mr. McMillen,
15 trying to resolve the issue. Let me present you the truth of
16 the fact of what occurred earlier this year.

17 THE COURT: You probably ought not tell me what's
18 happened in settlement.

19 MR. ZORIO: Well, Your Honor, they're saying that,
20 well, we discussed with Mr. McMillen to not have to go forward
21 with this. We've filed an adversary complaint because they
22 wouldn't concede that we have two-thirds, and now they're
23 conceding we have two-thirds. We've been trying to resolve
24 this case and -- you know, for months, we've said, you can have
25 the two-thirds, but they've decided to go forward with this



1 motion. Why is very curious.

2 Once we conceded, and we have in our papers, that
3 they have the two-thirds interest, there's no longer a case in
4 controversy. But yet, what do they want to do? They want to
5 proceed to try and invalidate the sales and the liens. Why? They
6 got what they need. They got what they want. There's no
7 additional case in controversy there, Your Honor. They don't
8 have standing to assert that the liens are invalid or the sales
9 are void. It seems odd. Are they trying to make the argument
10 for Mr. Sadri? We don't know. Your Honor's seen the file
11 here. There's some interesting things that have gone on that
12 have been put in the record.

13 But the important thing to know is with regard to the
14 motion for partial summary judgment, we've conceded that the
15 record indicates they have two-thirds interest. They can have
16 their two-thirds interest. They can have that declaratory
17 relief. Their alternative is moot.

18 THE COURT: Let me ask you this.

19 MR. ZORIO: Yes, Your Honor.

20 THE COURT: Does everyone concede that we're only
21 talking about a one-third interest?

22 MR. ZORIO: Yes.

23 THE COURT: Counsel?

24 MR. LI: Yes, Your Honor.

25 THE COURT: Mr. Hartman?



1 MR. HARTMAN: Yes.

2 THE COURT: Okay. So the two-thirds are gone, okay.

3 MR. LI: Your Honor, I'd like to qualify that just,
4 you know, one little respect because --

5 THE COURT: That's fine. Go ahead.

6 MR. LI: -- because Mr. Francis --

7 MR. ZORIO: Zorio.

8 MR. LI: I apologize, sorry.

9 MR. ZORIO: No worries.

10 MR. LI: First time I've met him. Mr. Zorio reminded
11 me of the stipulated judgment. And as a matter of fact, we
12 cited in our brief the case of Rosina v. Trowbridge. That's on
13 page 8 of our motion for summary judgment.

14 THE COURT: What's the case cite?

15 MR. LI: That's 20 Nev. 105, 121 and 17 P. 751, 759.
16 It is a old case. And also, Your Honor, we cited Northern
17 Mining Corporation v. Trunz, the citation being 124 F.2d 14,
18 18, and Tonopah Banking, which is Nevada Supreme Court case,
19 31 Nev. 295, 103 P. 230, 231.

20 THE COURT: That's an old case.

21 MR. LI: Yeah, that is a very old case, Your Honor.
22 And unfortunately, I didn't locate through my research any
23 better case. That essentially says that when you have an
24 execution sale, the doctrine of caveat emptor applies. What
25 that means in this context is that the sale -- the interest



1 that was acquired as such sale is subject to any rights and
2 equities of third parties which are capable of being enforced
3 against the judgment debtor. It is our position that we have
4 the two-thirds interest free and clear. And additionally, if
5 this Court finds that Mr. Margolin's sales are valid and he has
6 one-third interest of the three parcels that were sold, those
7 are subject to the stipulated judgment pursuant to this
8 doctrine and these cases.

9 Your Honor, unless Mr. Zorio can refresh my memory, I
10 don't remember any briefing in opposition to this. So --

11 MR. ZORIO: As I understood the contention regarding,
12 in their brief, any interest Margolin acquired through his
13 execution sales must be subject to the rights of plaintiff and
14 the stipulation for final resolution that might be enforced
15 against Zandian. As I understood that, Your Honor, because the
16 entire thing we're talking about here is two-thirds interest
17 that they're claiming, was not that we be subject to the
18 personal claims that are in that stipulated judgment.
19 Certainly, personal obligations to pay one another according to
20 that stipulated judgment are not covenants that run with the
21 land. They are not covenants that are going to bind a
22 successor to the property. And if that's an argument that
23 they're now making, Your Honor, you know, we can subsequently
24 brief that, but that's not an issue that I saw raised here.

25 THE COURT: I don't think we need to brief it. And



1 we're talking about Margolin's interest, period, which is
2 one-third.

3 MR. ZORIO: I believe that's it, Your Honor. Again,
4 I want to make our position clear. If it's Sadri and
5 Koroghli's contention that Mr. Margolin is subject to, you
6 know, the stipulated judgment where they say they're going to
7 pay each other -- Mr. Zandian, Sadri, Koroghli, they're going
8 to pay each other money, we strongly object to any order saying
9 we're subject to that because we cannot be subject to that.
10 That is not a condition running with the land. We have not
11 agreed to be subject to that. And that's not something that
12 was raised in the briefs. They've never said that if
13 Mr. Margolin gets these properties, he's going to owe X, Y, Z
14 in their motion for summary judgment. And if that's going to
15 be considered by the Court, then I certainly would like the
16 opportunity to brief that.

17 THE COURT: And if they have claims against
18 Mr. Margolin, they can file a proof of claim in this
19 bankruptcy.

20 MR. ZORIO: Margolin is not the debtor.

21 THE COURT: Oh, I apologize.

22 MR. ZORIO: That's okay, Your Honor.

23 THE COURT: They can -- I am not deciding this issue.
24 I'm deciding this issue, not whether there are other claims
25 against Mr. Margolin.



1 MR. ZORIO: Right.

2 THE COURT: I'm not deciding those.

3 MR. ZORIO: That's my understanding, Your Honor. I
4 think the only issue that we're discussing is whether or not
5 they get the two-thirds and we get the one-third, and I
6 think --

7 THE COURT: That's what we're talking about. That's
8 it.

9 MR. ZORIO: And that's it.

10 THE COURT: Okay. All right. Anything further?
11 Have a seat, sir.

12 MR. LI: May I have some reply time, Your Honor?

13 THE COURT: Sure. Let him finish, though.

14 MR. HARTMAN: And I'd like some, as well, Your Honor.

15 THE COURT: I understand.

16 MR. LI: And I --

17 THE COURT: No, no, let him finish.

18 MR. ZORIO: Yeah. Since this is probably my last
19 time up, Your Honor, just in conclusion, our motion for summary
20 judgment was not substantively replied to by Canet, and it
21 should be granted. The cross-claim against Margolin should be
22 adjudicated in favor of Margolin and dismissed on the merits as
23 a matter of law. Again, the countermotion that Canet brought
24 is procedurally improper, and we believe that the sales were
25 valid, the liens are valid, and we've already discussed these



1 issues. Thank you, Your Honor.

2 THE COURT: MR. Hartman?

3 MR. HARTMAN: I'll let Mr. Xi [sic] go first.

4 THE COURT: Counsel, go ahead.

5 MR. LI: I will be extremely brief, Your Honor. I
6 apologize.

7 THE COURT: No, no. No reason to apologize.

8 MR. LI: The -- Mr. Zorio's argument confused me a
9 little bit because he seems to be now attributing us as relying
10 upon the Leven case. We're not saying Leven applies. We
11 believe Leven doesn't apply. And really, there's no other
12 authority in Mr. Zorio's opposition that supports their
13 interpretation. And as a matter of fact, that citation, that
14 singular statement essentially is dicta in Leven because,
15 again, the issue there was the interpretation of an entirely
16 different statute about renewing the judgment. And so we don't
17 believe Leven applies. We believes Alcove is exactly on point,
18 and the Court should find that very persuasive, although
19 understanding that Nevada law applies to this issue, and we
20 simply don't have any at this point.

21 So with that said, just very briefly, I believe our
22 motion for summary judgment adequately addressed the fact that
23 -- it's our position, as well, that whatever interest
24 Mr. Margolin obtained, that will be subject to the stipulated
25 judgment. I found it very surprising that Mr. Margolin is



1 comparing our stipulated judgment to his default judgment,
2 which is a lien, which no one disputes is a lien, and liens run
3 with the land. And at the same time, he's saying that, well,
4 no, it's not a lien, it doesn't run with the land. This is a
5 contractual obligation. And so I find those inconsistent.

6 So with that said, I'll -- like I said, Your Honor, I
7 believe, in conclusion, that the parties don't dispute that my
8 clients' two-thirds interest in the nine parcels, that should
9 be decided as a matter of law. And also, with respect to the
10 validity of the sale, we believe that the sale is invalid.
11 Thank you.

12 THE COURT: Thank you.

13 Mr. Hartman.

14 MR. HARTMAN: Your Honor, first, procedurally, the --
15 in my paper on behalf of Mr. Canet, it was styled as an
16 opposition to the Margolin motion for summary judgment and
17 counter. And in the paper, I said, from my perspective, the
18 issues were essentially the same, and that comes down to the
19 very simple question of whether or not there was compliance
20 with 17.150 in its entirety. And so I think that we've
21 certainly fully fleshed out the issues.

22 Both Sadri and Koroghli and me, on behalf of Canet,
23 take the position that you -- as was stated, you have to -- the
24 filing of the affidavit and the language in subpart 4 says that
25 it basically has to be filed contemporaneously. And that



1 information that would be contained in that affidavit is
2 designed to provide the appropriate notice. And although
3 Mr. Zandian may have had the notice that Mr. Zorio referred to,
4 we're standing in the shoes of Mr. Canet at this point. And I
5 believe he's entitled to take the position that there wasn't
6 compliance with the statute.

7 So with that, if the Court would require any
8 supplemental briefing from either Mr. Zorio or -- from me and
9 Mr. Zorio, I'd be happy to provide that. I haven't had time to
10 converse with Mr. Canet, obviously, with respect to certifying
11 the matter to the Supreme Court.

12 THE COURT: And I understand that. And I just kind
13 of threw it out there because --

14 MR. HARTMAN: Well, no, it's --

15 THE COURT: It's a realistic issue.

16 MR. HARTMAN: It's a realistic issue. So with that
17 said, I'll sit down.

18 THE COURT: So here's what I'm going to do. I'm
19 going to -- I hate taking stuff under advisement, but this is,
20 by far, in a long time, the most convoluted case I've had. And
21 that's not any of your fault. That's kind of the process that
22 went through to get us all here.

23 I'm going to order a transcript of this. I'm going
24 to review this. If you decide you wish to have it sent to the
25 Nevada Supreme Court, you don't offend me if you do that. They



1 then get to figure this out. But I'll start working on it
2 later this week, and we'll see where we get. So -- but just
3 let me know in the next several days if you want it to be
4 referred to the Supreme Court.

5 MR. HARTMAN: Sure.

6 THE COURT: Okay?

7 MR. HARTMAN: Thank you, Your Honor.

8 THE COURT: Gentlemen, thank you very much.

9 MR. ZORIO: Thank you, Your Honor.

10 MR. LI: Thank you, Your Honor.

11 THE COURT: We'll be in recess.

12 THE CLERK: All rise.

13 (Proceedings concluded at 3:19 p.m.)

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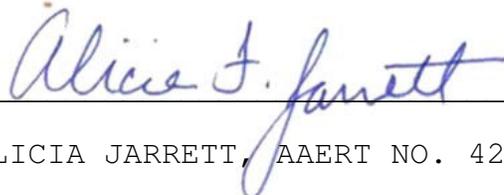
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C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



ALICIA JARRETT, AAERT NO. 428
ACCESS TRANSCRIPTS, LLC

DATE: June 21, 2018



