

SEP 07 2018

Nye County Clerk
Deputy

Veronica Aguiar

1 Case No. CV36740
2 Dept. 1

3 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
4
5 **IN AND FOR THE COUNTY OF NYE**

6 JABLONSKI ENTERPRISES, LTD., a Nevada entity,
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8 Plaintiff,
9
10 vs.
11 SUMMA, LLC, a Nevada Limited Liability Company;
12 DOES 1 through 10; ROES 1 through 10,
13 Defendant(s).

Case No.: CV36740
Dept. No.: 1

14 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

15 This matter having come on for a non-jury trial before this Court on March 14, 2018
16 and March 15, 2018. Plaintiff Jablonski Enterprises, Ltd., was represented by its counsel Lisa
17 Rasmussen, Esq., and Defendant Summa LLC, was represented by its counsel Clayton P.
18 Brust, Esq. of the law firm Robison, Obison, Sharp, Sullivan & Brust.

19 The Court having read and considered the pleadings filed by the parties; having
20 reviewed the evidence admitted during the trial; and having heard and carefully considered the
21 testimony of the witnesses called to testify, and the oral and written arguments of counsel, with
22 the intent of deciding all claims before this Court, the Court makes the following findings of
23 fact and conclusions of law:

24 **FINDINGS OF FACT**

25 1. This quiet-title matter concerns title to fifty-eight (58) mining claims (referred
26 to as "Mining Claims" or the "Claims") in Nye County that were originally held by the Estate
27 of Mark Eden (the "Eden Estate"). The specific claims at issue are set forth in Exhibit 1 to
28 Plaintiff's Complaint.

2. Sara Pess was married to Mark Eden. Prior to 2010, Sarah Pess ("Pess") was

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES





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the appointed personal representative of the Eden Estate in a probate action filed in Clark County, Nevada.

3. Nicholas Jablonski ("Jablonski") lived with Pess and acted on her behalf pursuant to a Power of Attorney.

4. Pess died on May 28, 2010.

5. Jablonski did not inform the Clark County Probate Court of Pess' death.

6. At the time of her death, Pess as personal representative of the Eden Estate, was represented by George Carter, Esq. ("Attorney Carter" or "Carter"). Attorney Carter also did not inform the Clark County Probate Court of Pess' death. It is unclear whether Carter was aware that Pess had passed away.

7. George Novelli ("Novelli") was an acquaintance of Jablonski's. Novelli met Jablonski several years before Pess' death. Novelli is the trustee of the Novelli Revocable Trust (the "Novelli Trust").

8. Sometime prior to Pess' death, Jablonski and Novelli entered into an agreement in which Jablonski and Novelli would obtain the mining claims from the Eden Estate by using Jablonski's connection with Pess to have the Mining Claims transferred to Jablonski and/or Novelli.

9. Plaintiff Jablonski Enterprises, Ltd. ("Jablonski Enterprises, Ltd.") produced a Memorandum of Understanding demonstrating that Jablonski's agreement with Novelli was formed as early as April 2010. For reasons unknown to this Court, Jablonski Enterprises, Ltd. attached an email dated March 17, 2011 to the back of the April 2010 Memorandum of Understanding in which Jablonski and Novelli agree to split everything they received from the Eden Estate 50/50. In light of the testimony and other evidence in this case, this Court finds the Memorandum of Understanding and attached email as confirming proof that Jablonski and Novelli entered into a scheme to obtain the Mining Claims from the Eden Estate prior to Pess' death.

10. On or about June 4, 2010, seven days after Pess' death, and without a new



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personal representative of the Eden Estate having been appointed, Attorney Carter filed a Petition to Approve Purchase Agreement of Estate Assets. The Petition asked the Clark County Probate Court to approve the sale of the Eden Estate Mining Claims to the Novelli Trust for \$345,000. The Clark County Probate Court rejected the petition because the price was too low and ordered that the Mining Claims be sold at public auction on June 18, 2010.

11. Defendant Summa, LLC ("Summa") is the nominee in interest of First American Silver Corporation ("First American Silver").

12. At the June 18, 2010 public auction, Novelli, as trustee of the Novelli Trust, outbid First American Silver. The Novelli Trust promised to pay the Eden Estate \$1,350,000 for the Mining Claims.

13. On June 21, 2010, the Eden Estate transferred the 58 Mining Claims to the Novelli Trust through a quitclaim deed. The quitclaim deed was recorded on August 26, 2010. At the time the Mining Claims were transferred, no new personal representative for the Eden Estate had been appointed. Rather, the quitclaim deed was signed by Attorney George Carter.

14. The Novelli Trust never paid the full \$1,350,000 purchase price for the Mining Claims to the Eden Estate. Rather, Novelli paid \$400,000 as earnest money, which was distributed to creditors of the Eden Estate.

15. Novelli wrote a check for the remaining \$940,000 due for purchase of the Mining Claims and gave that check to Attorney Carter. For some unknown reason, Attorney Carter then gave the check to Jablonski and asked Jablonski to return the check to Novelli. The Eden Estate never received the remaining \$940,000 that was due for the sale of the Mining Claims.

16. On August 31, 2010, the Novelli Trust transferred the Mining Claims to Silver Circle Group, an Arizona corporation owned by Novelli, through a quitclaim deed. This quitclaim deed was recorded on September 10, 2010.

17. On May 10, 2011, Silver Circle Group transferred seven (7) of the fifty-eight (58) Mining Claims to Fairway Industries, LLC, through a quitclaim deed. This deed was



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recorded on May 26, 2011.

18. The members of Fairway Industries, LLC are Jablonski Enterprises, Ltd. (“Jablonski Enterprises”) (directly or through its wholly owned entity, Dornicky Group) and Novelli. Jablonski Enterprises was the majority owner of Fairway Industries, LLC.

19. In April 2011, First American Silver began to suspect something was amiss with the sale of the Mining Claims. First American Silver moved the Clark County Probate Court to amend its order approving the sale of the Mining Claims to the Novelli Trust. First American Silver also filed a complaint against Pess, because in April 2011, First American Silver was unaware that Pess had died on May 28, 2010.

20. The Clark County Probate Court held a hearing on June 17, 2011. At the hearing, Attorney Carter and Jablonski testified. At the June 17, 2011 hearing, the Clark County Probate Court learned, for the first time, that Pess died on May 28, 2010, prior to the purported sale and transfer of the Eden Estate Mining Claims to the Novelli Trust. The Clark County Probate Court removed Attorney Carter and Jablonski from further involvement with the Eden Estate and appointed a public administrator.

21. While the litigation proceeded in Clark County Probate Court regarding the validity of the Eden Estate’s June 2010 transfer of the Mining Claims to the Novelli Trust, Novelli and Jablonski began trying to take the Mining Claims from each other.

22. On July 10, 2011, Fairway Industries, LLC quitclaimed seven (7) mining claims to Silver Circle Group. Novelli, as Manager for Fairway Industries, LLC., signed this deed. This quitclaim deed was not recorded until October 31, 2011.

23. On September 21, 2011, Jablonski, as Manager of Fairway Industries, Inc., attempted to quitclaim all of the Mining Claims to Jablonski Enterprises, Ltd. This September 21, 2011 quitclaim deed was recorded on October 24, 2011 and was signed by Jablonski as Managing Member of Fairway Industries, Inc.¹

¹ Jablonski described himself as Manager of Fairway Industries, Inc. but it appears he meant Fairway Industries, LLC. There is no legal entity by the name of Fairway Industries, Inc. registered with the Nevada Secretary of State.



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24. The Articles of Incorporation for Jablonski Enterprises, Ltd. were signed on September 21, 2011, the same date as the quitclaim deed, but were not filed with the Nevada Secretary of State until September 27, 2011. Jablonski was the sole owner of Jablonski Enterprises at the time of the September 27, 2011 Secretary of State filing.

25. In April 2012, Novelli initiated a quiet title action in the Fifth Judicial District Court, Department 1, Case No. CV33607, on behalf of Silver Circle Group. He named Fairway Industries, LLC and Fairway Industries, Inc. as defendants.

26. Novelli proceeded to act as both plaintiff (owner of Silver Circle Group) and defendant (member of Fairway Industries) before this Court. He successfully obtained a judgment quieting title in the Mining Claims in Silver Circle's favor on July 17, 2012. He recorded the judgment that same date.

27. When Jablonski discovered that Novelli had improperly acted on behalf of Fairway Industries to quiet title in Silver Circle, Jablonski Enterprises moved to set aside the judgment on the ground that Jablonski was the only member of Fairway Industries with authority to issue a deed.

28. This Court was faced with the limited issued of who, as between Silver Circle and Jablonski Enterprises, had superior title. Because Jablonski was the majority owner of Fairway Industries, this Court found in favor of Jablonski Enterprises and restored the parties to their status quo prior to Novelli obtaining quiet title to the Mining Claims.

29. In the 2012 quiet title action initiated by Novelli, this Court did not address, and was not asked to consider, whether the original transfer from the Eden Estate to the Novelli Trust was valid. This Court did not address, and was not asked to consider, the validity of any transfers in the chain of title aside from the transfers between Silver Circle Group and Fairway Industries.

30. On May 3, 2013, the Clark County Probate Court held a hearing on the validity of the original transfer of the Mining Claims from the Eden Estate. The Clark County Probate Court expressed its frustration that it had been "taken for a ride" by Novelli and Jablonski.



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31. On June 17, 2013, the Clark County Probate Court rescinded the Eden Estate's sale of the mining claims to the Novelli Trust and ordered that the Mining Claims be sold at public auction. The Clark County Probate Court allowed the Eden Estate to retain any monies that had been paid by Novelli and/or Jablonski.

32. The Clark County Probate Court specifically forbid Jablonski, Fairway Industries, and Jablonski Enterprises from participating in the auction.

33. Jablonski filed a petition to set aside the Clark County Probate Court's order excluding him from participating in the auction. His petition was denied.

34. First American Silver was the successful purchaser of the Mining Claims at the Eden Estate auction.

35. Jablonski objected to the sale of the Mining Claims on the ground that he was a bona fide purchaser because he allegedly paid \$36,000 for the Mining Claims. Jablonski's objection was denied by the Clark County Probate Court.

36. The Clark County Probate Court entered its Order Confirming the Sale of Estate Property to First American Silver on September 19, 2013. Jablonski never moved to set aside the Clark County Order, nor did he appeal it.

37. Following the sale, Summa became First American Silver's designee to receive the Mining Claims. The Eden Estate quitclaimed the Mining Claims to Summa.

38. Summa recorded its deed to the Mining Claims on January 21, 2014.

39. When Summa attempted to record its title in Nye County, however, the Nye County Assessor at that time, Shirley Matson ("Matson"), rejected the filing due to a de minimis clerical error.

40. Summa filed a petition for a writ of mandate in this Court, Case No. CV36339, directing the clerk to transfer title to the Claims to Summa.

41. Matson is no longer in public office. Matson did not have authority to determine title, and if she had a question about title, she should have directed it to the Nye County Recorder's Office. Tellingly, upon losing re-election, Matson was found to have

1 violated her oath of office and ethical responsibilities by an independent investigation
2 commission²

3 42. The writ action was dismissed pursuant to a settlement between Nye County
4 and Summa.

5 43. Jablonski Enterprises then filed this quiet title action, seeking to quiet title to
6 the Claims in Jablonski Enterprises on the ground that Jablonski Enterprises is a bona fide
7 purchaser for value.

8 CONCLUSIONS OF LAW

9 1. To qualify as a bona fide purchaser, Jablonski Enterprises must prove that it
10 purchased the Claims in (a) good faith, (b) for valuable consideration, and (c) without notice of
11 the issues involving the Eden Estate. Berge v. Fredericks, 95 Nev. 183, 186, 591 P.2d 246,
12 247 (1979). Jablonski Enterprises does not meet any of these requirements.

13 2. Jablonski Enterprises did not purchase the Mining Claims in good faith. A
14 subsequent purchaser with notice, actual or constructive, of potential problems in the chain of
15 title is not a purchaser in good faith. Huntington v. Mila, Inc., 119 Nev. 355, 357, 75 P.3d 354,
16 356 (2003). This includes notice that a prior interest may be void. See 25 Corp. v. Eisenman
17 Chem. Co., 101 Nev. 664, 675, 709 P.2d 164, 172 (1985) (holding that a subsequent purchaser
18 was not a bona fide purchaser in good faith because it was aware that its predecessor in
19 interest's claims "may have been void" at the time of the transfer).

20 3. Jablonski Enterprises was aware that there were potential problems in the chain
21 of title because Jablonski was the sole owner, officer, and director of Jablonski Enterprises at
22 all times when Jablonski Enterprises alleges it acquired title to the Mining Claims. See In re
23 Stat-Tech Sec. Litig., 905 F. Supp. 1416, 1422 (D. Colo. 1995) ("Generally, the acts and
24 knowledge of an agent are imputed to a principal."); Reynolds v. Snow, 197 N.Y.S.2d 590,
25 598 (N.Y. App. Div. 1960) ("Generally, an agent's knowledge, and even fraud, is imputed to
26 his principal[.]").
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28 ² This Court is particularly troubled by the fact that Matson admits she took public records when she left office.





1 4. Jablonski did not act in good faith regarding the purchase of the Mining Claims
2 from the Eden Estate. The evidence at trial demonstrated that Jablonski and Novelli entered
3 into an agreement in which they would work together to get the Mining Claims from the Eden
4 Estate for a fraction of their value.

5 5. Jablonski was also aware that the transfer of the Mining Claims to Novelli from
6 the Eden Estate was void. Jablonski knew, but did not tell anyone, that Pess had died. Once
7 Pess died, the Eden Estate no longer had any ability to transfer assets because there was not a
8 live personal representative with authority to act on behalf of the estate.

9 6. Carter, as Pess's attorney, did not have authority to act on her behalf as personal
10 representative of the Eden Estate once she died. "Generally, counsel cannot act on a deceased
11 client's behalf." Brass v. State, 129 Nev., Adv. Op. 53, 306 P.3d 393, 394 (2013). There must
12 be a duly appointed personal representative of the decedent. Id. The record is unclear whether
13 Carter knew that Pess had died. Regardless, there is no evidence before this Court that Carter
14 represented any personal representative of Pess.

15 7. There is no evidence before this Court that Jablonski was ever appointed as a
16 personal representative of Pess. Even if he had been, Jablonski would not have had authority
17 to act on behalf of the Eden Estate. See Leopold v. Leopold, 552 S.W.2d 276, 278-79 (Mo. Ct.
18 App. 1977) (holding that when an executor of a decedent's estate dies, "[t]he personal
19 representative of the named executor" does not become the decedent's personal
20 representative).

21 8. The only evidence before this Court that Jablonski had authority to act on
22 behalf of Pess was that Jablonski possessed a power of attorney. However, his power of
23 attorney terminated when Pess died on May 28, 2010. See NRS 162A.270(1)(a); NRS
24 162A.270(2)(d).

25 9. Absent a live personal representative, the Eden Estate had no power to transfer
26 the Mining Claims in June 2010. See, e.g., Gee v. Estate of Charles Jewett, 211 Cal. Rptr. 3d
27 137, 140 (Ct. App. 2016) ("An 'estate' is not a legal entity" (Internal quotations
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omitted)); Ellis v. Cohen, 982 A.2d 1130, 1133 (Conn. App. Ct. 2009) (“An estate is not a legal entity.”).

10. Because it is not a legal entity, the Eden Estate did not have title to the Mining Claims. Pess was the only individual who had authority to transfer title to the Mining Claims. *See* NRS 143.140; *see also* Dennis v. Edwards, 831 A.2d 1006, 1013 (D.C. Ct. App. 2003) (“The personal representative of a decedent is vested with legal title to all property, both real and personal, owned by the decedent at the time of [his] death.” (Internal quotations and alterations omitted)). It was not until June 2011, one year *after* Pess’ death, that the public administrator was appointed to replace Pess. Thus, there was no successor personal representative at the time the Mining Claims were first transferred to the Novelli Trust.

11. The Mining Claims were transferred to the Novelli Trust by a quitclaim deed. Quitclaim deeds only convey the interest held by the *grantor* of the deed at time the conveyance is made. Brophy Min. Co. v. Brophy & Dale Gold & Silver Min. Co., 15 Nev. 101, 107 (1880). The quitclaim deed from the Eden Estate to the Novelli Trust was not signed by a duly authorized representative of the Eden Estate. Thus, the quitclaim deed did not transfer any title to the Mining Claims to the Novelli Trust.

12. Jablonski was aware that there may have been issues in the transfer of title of the Mining Claims from the Eden Estate because of Pess’ death. Jablonski did not act in good faith. His actions and knowledge are imputed to Jablonski Enterprises.

13. Jablonski Enterprises also did not purchase the Mining Claims for valuable consideration. Berge, 95 Nev. at 186, 591 P.2d at 247. This Court does not find Jablonski’s deposition testimony that he paid \$25,000 for the Mining Claims to be credible.

14. Jablonski Enterprises claims that it paid valuable consideration to purchase the Mining Claims from Fairway Industries. However, the evidence before this Court demonstrates that: (1) the \$25,000 was not paid to Fairway Industries but to a third-party that was a creditor of the Eden Estate; (2) the \$25,000 was not paid by Jablonski Enterprises, but by an entity named the Dornicky Group; (3) the \$25,000 was paid before Fairway Industries ever



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had any interest in the Mining Claims as the payment was made in April 2011, but the deeds to Fairway Industries were admitted to have occurred in May 2011; (4) there is no debt owed by Jablonski or Jablonski Enterprises for the \$25,000; and (5) there is no other evidence that Jablonski Enterprises ever tendered any money to any entity for an interest in the Mining Claims.

15. Finally, Jablonski Enterprises had notice of the issues involving the Eden Estate. As set forth above, Jablonski was aware that there was a defect in title due to Pess' death. Jablonski was aware that the validity of the transfer was being disputed. Jablonski participated in the Clark County litigation disputing the validity of the transfer of the Mining Claims from the Eden Estate. He also knew that the Clark County Probate Court rescinded the sale of the Mining Claims from the Eden Estate to the Novelli Trust. Jablonski knew that he was banned from participating in the subsequent auction of the Mining Claims. Further, Jablonski knew, at all times, that he did not have clear title to the Mining Claims. Jablonski's knowledge is imputed to Jablonski Enterprises, of which Jablonski was the sole agent, officer, director and owner.

16. This Court does not find credible Jablonski Enterprises' argument that it relied on Shirley Matson, the former Nye County Assessor, to determine its chain of title. Similarly, this Court does not find Matson's testimony credible. An assessor does not determine title of record. That is the province of the county recorder. Any assessor who has a question regarding title should contact the county recorder. In this case, Matson should have consulted the Nye County Recorder's Office.

17. Regarding the credibility of Matson, it is public record that an independent ethics investigation found Matson to have violated her oath of office and ethical obligations after she left office. This Court is extremely troubled by Matson's deposition testimony that she retained public records upon exiting office. This Court does not accord Matson's testimony any weight and does not find Jablonski Enterprise's reliance upon Matson's statements to be credible.



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18. This Court further finds that Novelli Trust is not a bona fide purchaser for value, such that it could have passed good title to Jablonski. Novelli, as trustee, clearly was a participant in the scheme with Jablonski to obtain the Mining Claims from the Eden Estate without paying their actual value. The evidence has established that Novelli only paid \$400,000 for the Mining Claims, and that the remaining \$940,000 was never paid to the Eden Estate. The evidence presented in this case has also established that Novelli knew about the defects in the chain of title.

19. Jablonski Enterprises was not a bona fide purchaser of the Mining Claims. Accordingly, this Court can only quiet title in favor of Jablonski Enterprises if it finds that Jablonski Enterprises somehow acquired valid title to the Mining Claims in any of the various transfers. This Court concludes that Jablonski Enterprises did not.

20. All of the deeds in Jablonski Enterprises' chain of title are quitclaim deeds. Because the Eden Estate did not transfer any interest to the Novelli Trust, the Novelli Trust did not transfer any interest to the Mining Claims to Silver Circle Group. Silver Circle Group did not transfer any interest to Fairway Industries, and Fairway Industries did not transfer any interest in the Mining Claims to Jablonski Enterprises.

21. This Court's prior order in the prior quiet title action between Silver Circle Group and Fairway Industries did not vest valid title to the Mining Claims in Jablonski Enterprises. This Court was only asked to determine who, as between Silver Circle, Fairway Industries and Jablonski Enterprises, had the authority to execute a deed from Fairway Industries. This Court did not determine whether the prior transfers from the Novelli Trust, Eden Estate and Silver Circle Group passed valid title to the Mining Claims to Fairway Industries and/or Jablonski Enterprises. All that Jablonski Enterprises obtained as a result of this Court's order was the right to whatever the quitclaim deed from Silver Circle Group transferred to Fairway Industries and that Fairway Industries transferred to Jablonski Enterprises. Those deeds transferred no interest in the Mining Claims.

22. Furthermore, any interest the quitclaim deeds did convey was voided when the

1 Clark County Probate Court rescinded the original transfer of the Mining Claims from the
2 Eden Estate to the Novelli Trust in June 2013.

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4 23. When the Clark County Probate Court rescinded the sale of the Mining Claims
5 to the Novelli Trust, title to all of the Mining Claims was fully restored in the Eden Estate
6 because the sale to the Novelli Trust was treated as if it never happened. Bergstrom v. Estate
7 of DeVoe, 109 Nev. 575, 577, 854 P.2d 860, 862 (1993) (holding that when a contract for sale
8 is rescinded, it is treated as being void from inception).

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10 24. Because all subsequent transfers from the Novelli Trust were to entities that
11 were either owned or controlled by Novelli and Jablonski, none of these entities qualify as
12 bona fide purchasers for value that would validate the transfer of title in spite of the rescission.

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14 25. Accordingly, this Court finds that Jablonski Enterprises never had any interest
15 in the Mining Claims from its chain of title.

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17 **IT IS HEREBY ORDERED THAT:** title to the Mining Claims be quieted in favor of
18 Summa. **IT IS FUTHER ORDERED THAT:** the Notice of Pendency (Lis Pendens) is
19 hereby cancelled. A cancellation has the same effect as expungement of the original notice.

20 NUNC PRO TUNC to March 15, 2018.

21 DATED this 7th day of September, 2018.

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KIMBERLY A. WANKER
DISTRICT COURT JUDGE

CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 7th day of September 2018, she mailed copies of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT** to the following:

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DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



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