

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

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MAX ZWEIZIG,	)	Clackamas County
	)	Circuit Court
Plaintiff,	)	
	)	Case No. 19CV01547
vs.	)	
	)	No. A175781
TANYA ROTE and TIMOTHY ROTE,	)	
NORTHWEST HOLDING, LLC,	)	
	)	
Respondents.	)	

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*TRANSCRIPT OF PROCEEDINGS ON APPEAL*

BE IT REMEMBERED that the above-entitled matter came on regularly for trial before the Honorable ULANDA L. WATKINS, Judge of the Circuit Court, Tuesday, March 9, 2021, at the Clackamas County Courthouse, Oregon City, Oregon.

APPEARANCES

For the Plaintiff:

Anthony V. Albertazzi, OSB #960036  
Albertazzi Law Firm  
296 SW Columbia Street, Suite B  
Bend, OR 97702  
541-317-0231  
a.albertazzi@albertazzilaw.com

(Appearances continued on next page)

APPEARANCES

For Defendants Tanya Rote and Northwest Holding, LLC:

Brooks M. Foster, OSB #042873  
Chenoweth Law Group  
510 SW 5<sup>th</sup> Avenue, 4th Floor  
Portland, OR 97204  
503-221-7958  
bfoster@chenowethlaw.com

Benjamin R. Scissors, OSB #204428  
Mark C. Cogan PC  
1500 SW 1st Avenue, Suite 780  
Portland, OR 97201  
503-985-8869  
bscissors@coganlawoffice.com

For Defendant Timothy Rote:

Timothy Rote, Pro se

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WITNESS INDEX

FOR THE PLAINTIFF:

None

FOR THE DEFENDANT:

None

EXHIBIT INDEX

FOR THE PLAINTIFF:

Offered

Received

None

FOR THE DEFENDANT:

Offered

Received

None

1 OREGON CITY, OREGON; TUESDAY, MARCH 9, 2021

2 -000-

3 (Call to Order of the Court at 9:11 a.m.)

4 THE COURT: Good morning, everyone. This is  
5 Judge Watkins. We are here in 19CV01547. And can I have  
6 everyone who's on WebEx, can you identify yourself and who  
7 you're representing or who you are?

8 MR. FOSTER: Good morning, Your Honor, can you  
9 hear me?

10 THE COURT: I can.

11 MR. FOSTER: Thank you, Your Honor. I'm Brooks  
12 Foster. I'm here today, representing Tanya Rote, and also  
13 represent Northwest Holding, LLC in this action.

14 THE COURT: Okay, thank you, Mr. Foster.  
15 I see you talking but I can't hear you.

16 MR. ROTE: I'm Timothy Rote here, Your Honor.

17 THE COURT: Good morning, Mr. Rote.

18 MR. ROTE: How are you today?

19 THE COURT: Good.

20 MR. ALBERTAZZI: Good morning, Your Honor, can  
21 you hear me now?

22 THE COURT: I can. Mr. Albertazzi?

23 MR. ALBERTAZZI: Yes, good morning. I had some  
24 trouble with the video connection this morning, so I  
25 apologize for that. I just tried to connect any way I

1 could.

2 THE COURT: Understood.

3 MR. ALBERTAZZI: I represent, representing Max  
4 Zweizig, the Plaintiff.

5 THE COURT: Okay. And I see Mr. Zweizig. Good  
6 morning, sir.

7 MR. ZWEIZIG: Good morning, how are you doing,  
8 Your Honor?

9 THE COURT: Good morning. I'm doing great. And  
10 there's another gentleman that I can see but I can't hear.

11 MR. FOSTER: That's my colleague, Ben Scissors.  
12 He's going to be observing the hearing, and I understand he  
13 may need to leave before it's over due to another  
14 appointment.

15 THE COURT: Understood. Well, welcome,  
16 Mr. Scissors.

17 Okay, guys, so this morning is our dispositive  
18 motions. I have two motions before me. Let's deal with  
19 what I think is the easier motion first, and that is the  
20 motion that is titled Petition for Pretrial Order that was  
21 filed by Mr. Albertazzi.

22 Mr. Albertazzi, is there anything that you wanted  
23 to add to your motion, or are you just standing by what you  
24 filed?

25 MR. ALBERTAZZI: Your Honor, there is one

1 argument I'd like to add.

2 THE COURT: Certainly.

3 MR. ALBERTAZZI: As far as the authority for  
4 this, I'm looking at this statute regarding the powers of  
5 the court for contempt. And it seems to indicate initially  
6 here that it is for actions or things that happened in the  
7 presence of the Court.

8 THE COURT: Uh-huh.

9 MR. ALBERTAZZI: And this is a difficult  
10 situation, because of course everything is remote now, and  
11 the idea of presence, I think, has been somewhat expanded.  
12 And I do think that what Mr. Rote had been doing is  
13 impairing the integrity of the Court and the dignity of the  
14 Court, and it's happening online. And it's happening in a  
15 lot of different ways. And I just wanted to stress that if  
16 there's a concern about the Court, well, I can't control  
17 things that aren't in my presence, that the Court consider  
18 that this -- that it really is affecting the dignity of  
19 this Court.

20 So other than that, I think I've set forth the  
21 legal arguments here, my authorities. I've provided two  
22 declarations, one at the outset and then one supplemental  
23 that we did. I do have my client on the line here. If  
24 there are questions or if the Court is inclined to take any  
25 testimony on this, he's certainly prepared to do that. So

1 other than that, I don't have anything to add.

2 THE COURT: Okay. Mr. Scissors or Mr. Foster, do  
3 you intend to chime in on this motion, or no?

4 MR. FOSTER: No, Your Honor. My representation  
5 today is limited to the summary judgment motion.

6 THE COURT: Okay. So Mr. Rote, I did read your  
7 reply, and is there anything that you wanted to add or  
8 supplement that isn't already written in your reply?

9 MR. ROTE: Yes, Your Honor. I'm a little  
10 confused by the petition after the reply declaration, which  
11 appears to me to want to modify the initial petition  
12 request for an employment contract owned by Zweizig's  
13 former employer, NDT and now owned by me, and some email  
14 correspondence, also part of discovery of NDT and now also  
15 owned by me.

16 Mr. Zweizig makes some representations as to a  
17 protective order and doesn't provide a protective order to  
18 support his claims. So I'm not sure if his reply  
19 declaration was intended to modify the original petition or  
20 to supplement it. It appeared to be modifying it. But all  
21 of these documents have been filed in multiple cases in the  
22 9th Circuit, U.S. District Court of Oregon and elsewhere.

23 And I would argue in the alternative to  
24 Mr. Albertazzi is that the continuing solicitation by  
25 Mr. Zweizig, asking any court to suppress what I believe is

1 my free speech right, is a compromise to the Court; it's  
2 asking for bias. And I gave that argument very clear  
3 elsewhere. I openly praise courts when I believe they're  
4 right, and I critique if I think they're wrong, and I --

5 THE COURT: You're not alone in that respect. I  
6 think we're pretty used to that. We get that response from  
7 everyone.

8 MR. ROTE: I'm sure you do. I'm sure you're  
9 pretty thick-skinned. You have to be to be a judge.

10 THE COURT: Absolutely.

11 MR. ROTE: So I don't think I've done anything  
12 that is contrary to my absolute rights, and what I did in  
13 response was to outline a particular case that I thought  
14 was right on point. And so I'll reset my argument on those  
15 points, Your Honor.

16 THE COURT: Okay. Well, Mr. Albertazzi, I have  
17 to tell you that I was pretty surprised by the petition.  
18 What it appears you're seeking is a, some sort of  
19 injunction or restraining order. But that's not what  
20 you've requested as outlined. It's titled Petition for  
21 Pretrial Order, and I really was not able to find any legal  
22 support for that under any statute or case law or anything  
23 that I'm aware of. And so unfortunately, while I  
24 understand how distressing the allegations or the stuff  
25 that's posted on social media may be, Mr. Zweizig, and I'm



1 not trying to diminish how that may affect you or how it  
2 makes you feel, there really isn't a legal basis for this  
3 Court to basically, I don't know, muzzle Mr. Rote. There's  
4 no legal support for this petition for pretrial order. And  
5 the Court is bound by the law.

6           So Mr. Rote's denial is correct. He has a First  
7 Amendment right, and there really isn't any evidence that  
8 he is affecting any potential juror. And those are issues  
9 that we will deal with when we start to select our jury.  
10 We in fact, ask them questions, do you know any of the  
11 parties? Do any of the parties look familiar? Do you know  
12 any of the witnesses? Have you read anything about this  
13 case? Do you have any particular feelings about this case?  
14 Do you have any biases that would prevent you from being a  
15 juror in this case? And we kind of examine all of those  
16 things during the voir dire process. And we screen jurors.  
17 Who admit now? I mean, obviously there are some jurors  
18 that will never reveal their bias, but that's the role of a  
19 good lawyer, is to dig into jurors and to find out, like  
20 who is the most appropriate juror for this case and why,  
21 and to reveal and uncover any particular bias or issue that  
22 may make a potential juror not appropriate to sit on our  
23 jury and weed them out. And you get to exclude so many  
24 jurors through challenges.

25           So the petition for pretrial order is denied.

1 There is no basis for me to grant it. I will stress,  
2 Mr. Rote, that we want to try this case in the courtroom  
3 and not on social media, okay?

4 MR. ROTE: Understood, Your Honor.

5 THE COURT: All right. Now we're moving on to  
6 the motion for summary judgment. And I did read the  
7 response, the original motion for summary judgment, what  
8 should be the amended but it's called Defendant's Reply in  
9 Support of Motion for Summary Judgment Post-Discovery and  
10 Defendant's Reply in Support of Motion for Summary  
11 Judgment -- there's two titled that. I read all of those.  
12 And so who wants to go first? Mr. Scissors?

13 MR. FOSTER: Your Honor, if it please the Court.

14 THE COURT: Oh, Mr. Foster's on.

15 MR. FOSTER: I represent Tanya Rote, as I said  
16 earlier, and she's one of the movants seeking summary  
17 judgment asking the Court to dismiss Zweizig's remaining  
18 claim. The chief authorities in there are to the Sunriver  
19 property.

20 THE COURT: Yep.

21 MR. FOSTER: The prior Judge, Judge Van Dyk, did  
22 deny summary judgment twice in 2019 as to the Sunriver  
23 property. And I don't know if Your Honor has had a chance  
24 to review the transcripts, but they were provided into the  
25 record by *Pereau* (phonetic), and I did review them. I

1 think they make it very clear that in the initial denial,  
2 the Judge intended to allow the Plaintiffs to conduct its  
3 summary. And that was the argument of Plaintiff's counsel  
4 at that time, and the Judge's reasoning made that clear.

5 We also know that was his intent based on his  
6 ruling on the second motion for summary judgment, where he  
7 didn't chastise or penalize Mr. Rote at all or any of the  
8 defendants for coming back with some new evidence that they  
9 thought would be dispositive. And he said that there was a  
10 reasonable basis, enough of a reasonable basis for the  
11 motion, even though he disagreed with it and denied it.

12 THE COURT: Right.

13 MR. FOSTER: We are now past the close of  
14 discovery, and it's almost two years from that second  
15 summary judgment decision. So we also have a new judge in  
16 Your Honor, and you have an opportunity to take a fresh  
17 look at the case and decide whether it should proceed to  
18 trial. This is also a way to narrow the issue and educate  
19 the Court and prepare for trial. So there's a lot of value  
20 in going through this summary judgment process, now that  
21 we're at the close of discovery.

22 And there's certainly no rule that I'm aware of  
23 that forbids a party from filing another motion for summary  
24 judgment after the close of discovery based on new  
25 argument, some new permutations, some new evidence, and

1 asking the Court to take a fresh look at it. In fact, we  
2 know from the *Superbilt* case that trial judges have very  
3 broad discretion to revisit any pretrial order and  
4 reconsider it, change it, re-rule on it as part of their  
5 role as a trial judge in deciding the case and bringing it  
6 to conclusion.

7           So I would encourage the Court to see this  
8 summary judgment proceeding as valuable to the Court and  
9 the parties, and if in fact this Court's opinion is that  
10 the movants have shown as a matter of law an undisputed  
11 fact that they are entitled to summary judgment, then they  
12 are in fact entitled to that, and they should receive  
13 summary judgment, and I would be pleased to kind of explain  
14 to Your Honor with just a few statutes and a few evidence  
15 documents on the record why I think they are entitled to  
16 summary judgment. Does Your Honor have any questions  
17 before I proceed to do that?

18           THE COURT: The question that I have is what is  
19 the new evidence that wasn't presented to my colleague that  
20 would be the basis for summary judgment? Everybody has  
21 outlined the appropriate standard, which is -- as you know,  
22 it's pretty low. It's just no genuine issue. And while I  
23 appreciate that my colleague was saying, hey, it's really  
24 hard to get a summary judgment before you've even conducted  
25 discovery, which it is, because you have no idea what

1 evidence the other side may produce, but it simply requires  
2 an affidavit or a declaration saying, this is the evidence  
3 that will be presented at trial to overcome a summary  
4 judgment.

5           So what is the new evidence that would knock out  
6 any material issue that a jury -- any material issue of  
7 fact that a jury would observe? I mean, because what I've  
8 seen from what Mr. Rote wrote was basically like, here's  
9 their evidence, Judge; here's my evidence. We've done  
10 discovery. They don't have anything better than before we  
11 conducted discovery. Their evidence is still super weak,  
12 and here's how strong my evidence is.

13           And so there is no way that when this goes to  
14 trial, I'm not going to prevail. But as counsel knows,  
15 that is not the standard. That simply means there is in  
16 fact a material issue for a jury to decide. The jury's  
17 role is to decide who has the stronger evidence and whether  
18 the Plaintiff can meet their burden. That's not the  
19 summary judgment time. Does that make sense, Mr. Rote,  
20 what I'm saying? You're saying, Judge, here's their  
21 evidence. Here's my evidence, which shows their claims are  
22 nonsensical. There's no way their claims can go forward.  
23 And now we've done discovery, now I'm able to see they  
24 don't have anything extra to support their claim.

25           So my claims -- my evidence is still strong to

1 show their claims are ridiculous; therefore, I win summary  
2 judgment. That's not the standard.

3 So my question to you, counsel is, knowing the  
4 standard isn't really about looking up the evidence and  
5 deciding, who's the stronger, what is the new evidence that  
6 overcomes the no material issue for a jury?

7 MR. FOSTER: Thank you, Your Honor. It's an  
8 excellent question. Your Honor said that if there's any  
9 affidavit in opposition, then summary judgment should be  
10 denied. That's sometimes true, but it's actually not  
11 always the case. We know, for example, that construction  
12 of a contract is part of the role of the judge, and it's  
13 generally done at summary judgment, unless another party  
14 can create a specific question of fact about the  
15 authenticity of the contract or maybe a subsequent  
16 modification or something like that. So the Court plays an  
17 important gatekeeping role in deciding what, if any,  
18 questions of fact must be tried.

19 THE COURT: Agreed.

20 MR. FOSTER: Now, as to the prior decision, just  
21 to review what occurred in those proceedings, Judge Van Dyk  
22 in the first proceeding, I believe that he was giving the  
23 Plaintiff an opportunity to get evidence to oppose summary  
24 judgment and therefore being very reluctant to grant it.  
25 And he then said in the second hearing that there was a

1 question of fact about the intent to hinder, delay, or  
2 defraud predators. He suggested that was the ultimate  
3 question of fact that could not be decided as a matter of  
4 law and undisputed fact of summary judgment.

5 But you notice, Your Honor, he did not -- at no  
6 time did he say nobody should be coming to me again for  
7 summary judgment after the close of discovery. At no time  
8 did he say, I'm going to grant summary judgment to Mr.  
9 Zweizig, dismissing an affirmative defense or deciding any  
10 portion of the case and it's over. So it all remains open  
11 for this Court to decide.

12 Now, I believe the question of was it already  
13 decided or not should not be limited to is there any new  
14 evidence? There is new evidence in the record now before  
15 the court, and Mr. Rote detailed that. It does include  
16 objective, authenticated, undisputed evidence, including  
17 balance sheets, tax returns, documents that the response  
18 treats fairly dismissively, but in fact they're highly  
19 relevant, undisputed documents. And that's what makes for  
20 a summary judgment determination. If the movant files  
21 documents and doesn't just rely on their oral testimony  
22 saying, take my word for it, I saw the light, it was red.  
23 And if they have a photograph showing the light was red,  
24 the Court should treat that as an undisputed fact unless  
25 the other party meets their burden to show that there is a

1 genuine issue of material fact related to that objective  
2 evidence.

3           So the burden shifting has occurred based on the  
4 record before this Court, and it's sort of disappointing to  
5 me, Your Honor, that in response did not actually respond  
6 to the merits of the motion. And fortunately we have oral  
7 argument so that Your Honor can hear from the parties and  
8 any remaining arguments they have. But I'm here today to  
9 help focus the Court on, of all the evidence presented --  
10 and I agree that at some level when I review the motion and  
11 the supporting materials, it does include a lot of  
12 evidence. And some of it could probably be subject to  
13 different inferences.

14           And I believe Mr. Rote, he wanted to make sure  
15 that Your Honor, being -- not having heard the prior  
16 motions, didn't get the benefit of a complete record. Then  
17 there was a question by Judge Van Dyk about where was the  
18 record at? So it seemed that he was concerned about making  
19 a decision on an incomplete record. But as an attorney  
20 who's been practicing in civil litigation in Oregon for  
21 about 15 years, I usually try by the time I get to oral  
22 argument, to focus everybody in on just a couple of  
23 documents

24           THE COURT: Right.

25           MR. FOSTER: So I'd like to do that. I'd like



1 you to just give me the opportunity, if I can, Your Honor,  
2 to try to convince to you that this is a case that summary  
3 judgment is appropriate.

4 THE COURT: Okay.

5 MR. FOSTER: And even if you disagree, I believe  
6 this will be valuable because it will help frame the issues  
7 for trial, Your Honor.

8 THE COURT: Agreed.

9 MR. FOSTER: So first let's start with Plaintiffs  
10 Zweizig's claim. The first claim for relief is entitled  
11 Fraudulent Transfer.

12 THE COURT: Right.

13 MR. FOSTER: And it very clearly and concisely  
14 alleges that the center of her property was transferred by  
15 and Tim Rote and NWH for "less than reasonably equivalent  
16 value." So it acknowledges that is an essential element of  
17 the claim. The second claim is entitled Insider Fraud, and  
18 it alleges the property was transferred to Tanya Rote with  
19 "actual intent to hinder, delay or defraud Plaintiff." And  
20 so we'll see in a second, however, that even that claim of  
21 actual intent, which may sound like a difficult standard to  
22 decide at summary judgment because it's a subjective mental  
23 state.

24 THE COURT: Uh-huh.

25 MR. FOSTER: But we'll see there's another

1 statute that actually expressly says that claim is subject  
2 to an affirmative defense if there's evidence of reasonably  
3 equivalent value that it transfer in good faith. And we're  
4 going to see in in the documents, the clear, unequivocal  
5 objective documents show as a matter of undisputed facts  
6 that a reasonably equivalent value was conferred at the  
7 time of the transfer of ownership of Tim Rote's interest in  
8 the property, Tim Rote being the debtor. He's the relevant  
9 debtor. So reasonably equivalent value was given in  
10 exchange for the transfer of the property and it was all in  
11 good faith. That all happened in 2012.

12 But again, Your Honor, I will focus us and now on  
13 the exact statute and document at issue, and I believe  
14 you're going to see, this motion and these arguments do not  
15 depend on you taking Mr. Rote's oral testimony for what it  
16 states. These arguments rely on objective documents, that  
17 his authenticity is not in dispute.

18 THE COURT: Okay.

19 MR. FOSTER: The first relevant statute is ORS  
20 95.240, based on two subsections. Each subsection uses the  
21 term reasonably equivalent value. So whether Your Honor,  
22 95.240(1) or (2), and Your Honor is opening the statute --  
23 I really appreciate you doing that. I was wondering if  
24 there was a way I could just show this on my screen, but  
25 I'm not aware of that.

1 THE COURT: I'm with you.

2 MR. FOSTER: So I'm glad you're already clicking  
3 on it. Excuse me, Your Honor?

4 THE COURT: I'm with you.

5 MR. FOSTER: Okay, so (1) says, in pertinent  
6 part: "A transfer made by a debtor is fraudulent if the  
7 debtor made the transfer or incurred the obligation without  
8 receiving a reasonably equivalent value in exchange." So  
9 this statute does not provide a claim against a transfer  
10 that was for a reasonably equivalent value, period, end of  
11 story. That's dispositive.

12 Let's look at subsection (2). This says in  
13 pertinent part: "A transfer made by a debtor is fraudulent  
14 if the transfer was made to an insider for other than a  
15 present, reasonably equivalent value." And again, we see  
16 it espouses an element is whether the transfer was for a  
17 reasonably equivalent value.

18 Now, I will refer the Court to ORS 95.230(1).

19 THE COURT: Okay.

20 MR. FOSTER: It quotes the related statute. This  
21 says -- and by the way, Your Honor, the complaint is not  
22 cite-specific statutory claims for relief, so  
23 unfortunately, it's necessary to kind of check each box  
24 here.

25 This says in pertinent part: "A transfer made or

1 obligation incurred by a debtor is fraudulent if the debtor  
2 made the transfer or incurred the obligation: (a) With  
3 actual intent to hinder, delay, or defraud any creditor of  
4 the debtor, or (b) Without receiving a reasonably  
5 equivalent value in exchange." So we see two prongs. And  
6 one of them, and it's an or, it's an or between them. But  
7 now we'll look at ORS 95.270(1). This creates a defense --  
8 against, that's 95.270(1), Your Honor.

9 THE COURT: Yep, right there.

10 MR. FOSTER: This expressly cross-references  
11 95.230(1)(a), the intent to hinder, delay provision, and it  
12 says that "a transfer is not voidable under ORS  
13 95.230(1)(a) as against a person who took in good faith and  
14 for a reasonably equivalent value."

15 Now, I'm going to show, Your Honor, I'm going to  
16 intend to show that in 2012 when the property was  
17 transferred from Tim Rote to Northwest Holding, which is  
18 the only transfer from the debtor at issue here, Your  
19 Honor, that the documents show as a matter of law and  
20 undisputed facts, it was for reasonably equivalent value  
21 and it was in good faith.

22 THE COURT: Okay.

23 MR. FOSTER: So let's run through the documents.  
24 Mr. Zweizig contends the 2017 quitclaim recording from Tim  
25 Rote to NWH was a fraudulent transfer. We know this from

1 their filing. The quitclaim states it was given for \$0 in  
2 consideration. Now, that might suggest at face value that  
3 NWH should not give reasonably equivalent value, that it  
4 got something for nothing, or it got more than it paid for.  
5 But we now have the documents showing in fact it was quite  
6 the opposite.

7 I'm going to refer Your Honor to the 2012 asset  
8 contribution agreement, which is attached to the  
9 declaration in support of the motion. I'd be happy to give  
10 Your Honor a minute to find that. If you want, I'll give a  
11 moment to get reference to it.

12 THE COURT: Yes, looking for it.

13 MR. FOSTER: Okay, thank you, Your Honor.

14 THE COURT: It is not attached. Was it filed?

15 MR. FOSTER: So this was attached to the  
16 declaration filed in support of the motion for summary  
17 judgment as Exhibit 4, I believe -- Tim, is that correct?  
18 Can I ask Tim to speak up here and just help me make sure  
19 I'm referring to the right part of the record?

20 MR. ROTE: Your Honor, Exhibit 2 and Exhibit 3  
21 are the contracts. The OTA is Exhibit 2, the contribution  
22 agreement is Exhibit 3, and the 2012 tax return and balance  
23 sheet is Exhibit 4, found --

24 THE COURT: I'm trying to find those under --  
25 Sam, am I missing it? Do you see the exhibits?

1 MR. FOSTER: Your Honor, I pulled my copy up. It  
2 was filed on January 25, and it's attached to the  
3 declaration of Timothy Rote and Exhibit in Support of  
4 Motion for Summary Judgment Post-Discovery.

5 THE COURT: Okay.

6 THE CLERK: The declaration, January 25, it's  
7 taking forever to open.

8 THE COURT: Well, why is it not popping -- I have  
9 the motion the 21st, then the 28th.

10 THE CLERK: Yeah, and then the motion for the  
11 28th. Oh, it's like 276 pages.

12 MR. FOSTER: Your Honor, is there any way that I  
13 can show my screen? I don't see that option in my menu.

14 THE COURT: We have been able -- see, I'm on --  
15 oh, this one? That declaration?

16 THE CLERK: I don't think it's 2019.

17 THE COURT: Well, I don't see another one. We  
18 have had the ability to share screen. I'm sorry, I am not  
19 the tech person, so I can't instruct you on how that  
20 happens.

21 THE CLERK: I can read to the presenter.

22 MR. FOSTER: I think it would also be reasonable  
23 for me to just describe the evidence, because I've  
24 simplified this down quite a bit.

25 THE COURT: All right.

1 MR. FOSTER: Your Honor will obviously have a  
2 chance to review it --

3 THE COURT: Can you see it, Sam?

4 MR. FOSTER: -- at any time and --

5 THE CLERK: February 2021.

6 MR. FOSTER: You know, I know you've read the  
7 paper, so you're no stranger to the record that I'm going  
8 to give you. But I definitely simplified this down quite a  
9 bit so that you don't have to go digging all around, at  
10 tons of different documents. It's actually just a few  
11 specific documents section.

12 THE COURT: Okay, found it -- sorry. Okay, so  
13 there are quite a few pages. It is Exhibit number 2?

14 MR. FOSTER: So the declaration might be 276  
15 pages long.

16 THE COURT: It is.

17 MR. FOSTER: But I will refer the Court to  
18 Exhibit 3 to that, which --

19 THE COURT: And this is 2 -- okay.

20 MR. FOSTER: Here we go. So this begins on Page  
21 31 of the declaration PDF, and it is labeled as Exhibit 3,  
22 Page 1. There are some other exhibits based on it, Your  
23 Honor, but they're on the furthest bottom right area. It  
24 says Exhibit 3. And this is the asset contribution  
25 agreement.

1 THE COURT: Okay. Yeah, there are lots of  
2 Exhibit C Page --

3 MR. FOSTER: Yeah, I believe there are some prior  
4 exhibits there, Your Honor. So again, the exhibit stamps  
5 that correspond to the declaration are the ones on the very  
6 bottom right-hand corner of the page.

7 THE COURT: Okay.

8 MR. FOSTER: And so if you look at those --  
9 against, it's Page 31 of 276 of my PDF.

10 THE COURT: Okay, I'm there.

11 MR. FOSTER: And it's labeled Exhibit 3.

12 THE COURT: I'm there. Okay.

13 MR. FOSTER: Okay, so if you look down at Article  
14 1, Section 1.1, Contribution of Assets.

15 THE COURT: Yup.

16 MR. FOSTER: This says "(Indiscernible) that Tim  
17 and Tanya Rote, TCR and TR, agree to and do hereby  
18 contribute, transfer undersign to NWH, and NWH does accept  
19 all of TCR's and TR's right, title and interest as of the  
20 closing date in and to the assets of Sunriver set forth on  
21 Schedule 1.1."

22 So what we have here is a contract that transfers  
23 rights. As we look down at Schedule 1.1, it is the first  
24 page after this contract. It is entitled "Buyers final  
25 closing statement." And down on the bottom right corner,



1 written in pen is the number 1.1. And it is labeled  
2 Exhibit 3 Page 6. There we see the buyer's final closing  
3 statement identifying the assets by its address in  
4 Sunriver. This is the Sunriver property. It lists the  
5 purchase price paid by Tim Rote. And so what this does is  
6 it clearly shows Tim was transferring all right, title and  
7 interest to NWH, in the property. Now, these documents are  
8 predicated, that's not in dispute, and it's up to the Court  
9 to construe the contract, of the legal determination.

10 THE COURT: But -- okay, so here's my question.

11 MR. FOSTER: Okay.

12 THE COURT: Isn't this --

13 MR. FOSTER: I want to pause in case you had a  
14 question, okay.

15 THE COURT: So isn't --

16 MR. FOSTER: Yeah, we --

17 THE COURT: Is it -- I do have a question --  
18 isn't this interpretation of this very issue a question of  
19 material fact? Isn't it the jurors' role to decide whether  
20 or not this is a fraudulent transfer? That's the whole  
21 question. They're to look at these documents and they're  
22 to make a decision on whether the Plaintiff has met their  
23 burden. It's not my role to look at the documents and say,  
24 well, they look valid. Because they do; I'm not disputing  
25 that at all. But it is not my role at a summary judgment

1 to say, ah, there's nothing for the jury to decide, because  
2 in fact you're proving the very point that there is  
3 something for the jury to decide. They have to take a look  
4 at all of these documents, and they have to decide, has the  
5 Plaintiff met their burden? Was this a fraudulent  
6 transfer? Was it for zero dollars, or was it for  
7 \$530,165.96? That's the role of the jury, is it not?

8 MR. FOSTER: Your Honor, if the case proceeds to  
9 trial, the jury will be instructed as to certain undisputed  
10 issue and will be asked to decide the issues of fact about  
11 if there's a genuine issue of material fact.

12 THE COURT: Right.

13 MR. FOSTER: Summary judgment requires the  
14 opposing party to actually identify a genuine issue of  
15 material fact. If the only witness says the light was red  
16 and the movant doesn't have any evidence otherwise, it is  
17 not necessary to impanel a jury to decide whether that is  
18 what happened or not. Okay, that is an undisputed fact.  
19 Now --

20 THE COURT: I agree with you.

21 MR. FOSTER: There may be a case where that  
22 witness is so impeachable that the jury might disbelieve  
23 them. And so I would just go one step further, and  
24 distinguish this from that sort of case, because without  
25 asking Your Honor to decide whether anybody's telling the

1 truth, we're asking Your Honor to interpret the plain  
2 language in a contract, and that is part of the role of the  
3 judge, even if we go to a jury trial. And it's not clear  
4 to me at all that this will be a jury trial. I didn't see  
5 any request for a jury trial in the pleadings.

6 THE COURT: That's my understanding --

7 MR. FOSTER: And --

8 THE COURT: -- is that this was a jury trial.

9 MR. FOSTER: Well, okay, I guess that remains to  
10 be determined, Your Honor, but the fact -- the only thing  
11 that remains, summary judgment is determined based on the  
12 law and whether there are any genuine issues of material  
13 fact.

14 THE COURT: Right.

15 MR. FOSTER: So I would challenge my esteemed  
16 colleague, Mr. Albertazzi, to tell us, what is the dispute  
17 about whether this contract did in fact transfer ownership  
18 of the property in 2012?

19 THE COURT: Okay, let's --

20 MR. FOSTER: Now, we know that --

21 THE COURT: Let's let him answer.

22 MR. FOSTER: -- the quitclaim was recorded in  
23 2017. That's another undisputed fact.

24 THE COURT: Mr. Albertazzi?

25 MR. FOSTER: So there are many undisputed facts

1 in this case, Your Honor, and there's no need to impanel a  
2 jury if those facts, combined with the applicable law,  
3 decide the case.

4 THE COURT: And I would agree with you,  
5 Mr. Foster, but what I have before me right now, I'm seeing  
6 that it can be interpreted either way, and if it can be  
7 interpreted either way, there is an issue of fact. So  
8 let's have Mr. Albertazzi speak to that very question that  
9 you just posed to him. Mr. Albertazzi?

10 MR. ALBERTAZZI: Yes, Your Honor. There's a  
11 reason that -- when Judge Van Dyk heard this previously, he  
12 was looking at the declaration of Tanya Basauri that was  
13 filed, where in her declaration, she provided a copy of the  
14 general warranty deed, which is recorded with Deschutes  
15 County, on -- this was recorded 8/2 of '18, transferring  
16 the summary of property from Northwest Property to Tanya  
17 Rote for \$0.0. That was the document that he looked at.

18 I believe he also looked at the transfer  
19 agreement that Mr. Foster was representing. So he looked  
20 at those things, and he said, well, there's a question of  
21 material fact here. Because here on one side I've got a  
22 deed, and on the other side I've got this agreement that  
23 happened. So the fact there, it seems like the jury could  
24 look at that agreement, and they could look at this deed,  
25 and the jury would have to decide, well, which one is it?

1 Because it says Mr. Rote signed the deed.

2 THE COURT: That's where I'm at, Mr. Foster.

3 MR. ALBERTAZZI: And it said general  
4 consideration, so --

5 THE COURT: That's exactly where I'm at,  
6 Mr. Foster, that I have these competing documents. And so  
7 I have this issue. For a summary judgment, it has to be no  
8 issue, not, eh -- it can be interpreted either way. And so  
9 I'm tending to side with Mr. Albertazzi here. We have  
10 these valid, legal documents; we have this declaration that  
11 compete. And so that is going to be an issue that a jury  
12 is going to have to decide. That's material to this claim.  
13 I'm not speaking to how strong it is or either document,  
14 but the whole point is there does appear to be a material  
15 issue that a jury would have to decide, and so that gets us  
16 past summary judgment on that part, the fraudulent  
17 transfer.

18 So unless you all have something else, I think we  
19 should move to the insider fraud. And I don't know how I'm  
20 going to be able to look at the intent of Mr. Rote by  
21 documents, but --

22 MR. FOSTER: Well, Your Honor, let me just make  
23 sure I make my argument clear and that you've had a chance  
24 to fully consider it.

25 THE COURT: Okay.

1           MR. FOSTER: I have not heard any argument from  
2 Mr. Albertazzi -- I challenged him, point blank, to  
3 identify evidence that the 2012 contract did not in fact do  
4 what it said. And those are words of meaning. He doesn't  
5 say anything authentic. He hasn't said it wasn't from  
6 2012. He hasn't said any of that. He doesn't have any  
7 evidence challenging it. In a contract case, it is the  
8 role of a judge to instruct the jury as to the meaning of  
9 the contract and what it says. So the jury will absolutely  
10 not be, and it should not be deciding what the 2012  
11 contract says or what that means or what it did. We know  
12 here that the contract said that Tim Rote transferred all  
13 right, title and interest to NWH.

14           THE COURT: That's --

15           MR. FOSTER: You don't need to balance any  
16 evidence. It is very unequivocal on its face. That is for  
17 the Court to consider. So I would suggest that Your Honor  
18 would not be asking the jury to decide whether that  
19 contract transferred the property. That's the -- that's  
20 the judge's role to (indiscernible) the contract unless  
21 there's a very special case in which the -- the nonmoving  
22 party, the opposing -- the opponent of apposition creates  
23 some specific issue of fact about that contract. It's  
24 authenticity or whether there's some modification of it  
25 later and there's been no argument of that here, Your

1 Honor.

2 THE COURT: I understand that's your --

3 MR. FOSTER: And -- and I --

4 THE COURT: I understand that's your position,  
5 Mr. Foster but -- and I'll have Mr. Albertazzi speak for  
6 himself.

7 MR. FOSTER: Your Honor, I can't -- I'm sorry,  
8 Your Honor, I can't hear you.

9 THE COURT: I said I understand. Is that better?

10 MR. FOSTER: Yeah, thank you.

11 THE COURT: No? Yes?

12 UNIDENTIFIED FEMALE SPEAKER: Yes.

13 THE COURT: You -- can you hear guys hear me?  
14 Okay. I said I understand that your position is that there  
15 is a contract and this is a contracts case. As I  
16 understand what Mr. Albertazzi just said. This is not an  
17 interpretation of a 2012 contract. That there are  
18 different documents out there that lead the issue for the  
19 jury to decide is not interpreting a 2012 contract. But,  
20 in fact, interpreting whether there was a fraudulent  
21 transfer and that there are very different documents.  
22 There are several, at least two documents that deal with  
23 the issue of whether or not this was a fraudulent transfer.

24 There's a contract. There's a declaration and  
25 there are several other documents. And so it's not simply

1 just interpreting whether the 2012 contract is valid or not  
2 but it's, in fact, deciding was this transfer valid or  
3 fraudulent.

4 Mr. Albertazzi, I'll have you speak to the 2012  
5 contract if you could, please.

6 MR. ALBERTAZZI: Yes. Well, I -- you know, this  
7 is a contract that Mr. Rote created on his own with -- with  
8 Mrs. Rote. How would we know -- how would we be able to  
9 tell or have evidence that that's a fake? Where I could  
10 come in and say, oh, no, I have a witness that was standing  
11 there and you really didn't sign that or this is an  
12 inauthentic document.

13 Of course, there's no way to prove that. Well,  
14 that's why the statute it talks about a transfer. What is  
15 a transfer under 95.200? A transfer is every mode of  
16 disposing or parting with an asset or an interest in an  
17 asset. So perhaps the contract that Mr. Foster's been  
18 talking about is a mode. Well, certainly another mode is  
19 recording a deed. So it really doesn't matter that I --  
20 that -- that I could come forward with evidence and say  
21 that contract that Mr. Rote submitted to the Court is a  
22 fake and it didn't really happen. That's -- that -- that's  
23 one point I wanted to make.

24 The other is, for purposes of fraudulent transfer  
25 for the timing of when that transfer happens, specifically,



1 in 95.250, it talks about when a transfer is made with  
2 respect to real estate it -- it is -- when it is perfected.  
3 Meaning when it is recorded. So why are we talking about  
4 this unrecorded private agreement between the spouses? Has  
5 nothing to do with this case.

6 MR. FOSTER: Your -- Your Honor, if I may respond  
7 to that?

8 THE COURT: Absolutely.

9 MR. FOSTER: This is why I started out by going  
10 over the statute that show that the legislature did not  
11 intend the Fraudulent Transfer Act to be brought against a  
12 transfer for recent equivalent value. Okay. We -- we went  
13 over four different prongs of the statute. Three of them,  
14 that was the dispositive issue. The other one it was that  
15 plus good faith and I'll -- I'll be happy to address that  
16 additional good faith element based on the undisputed fact.

17 It's interesting, however, that -- and so, Your  
18 Honor, that's why the 2012 contract is of the utmost  
19 importance because it shows reasonably equivalent value.  
20 It documents that. And it does that where it says that Mr.  
21 Rote, if I may refer you to the specific provision, under  
22 consideration, Section 2.1 says, "NWH agrees to and does  
23 hereby accept and assume -- assume liabilities and shall  
24 credit to TCR, that's Tim Rote his equity in the center of  
25 her property."

1           So he had a contractual right. He traded his  
2 equity in the property. He traded a property subject to  
3 any liability in exchange for a contractual right to have  
4 credited to his capital account in NHW that exact amount  
5 dollar for dollar.

6           So if that isn't as a matter of law reasonably  
7 equivalent value, I don't know what is. Trading a dollar  
8 for a dollar is reasonably equivalent value. It says right  
9 there. "Shall credit to TCR his equity." It said he had a  
10 right to that.

11           THE COURT: Okay. Where does it say the equity?  
12 It says contribution of assets and assumption of liability.

13           MR. FOSTER: Section -- Section 2.1  
14 consideration, Your Honor.

15           THE COURT: Oh. 2 point.

16           MR. FOSTER: The very bottom line of the page.  
17 Exhibit 3, page 1.

18           THE COURT: Yep. I'm there.

19           MR. FOSTER: It says, "shall credit to TCR his  
20 equity in the -- in the center of her property." And so  
21 know when the -- so -- so I think what this shows is that  
22 the 2012 contract not only was a transfer, but it also gave  
23 reasonably equivalent value. It gave up a right. It gave  
24 back a right and the exact same monetary value.

25           Now Mr. Albertazzi, argued that he doesn't have

1 any evidence that this was an inauthentic 2012 contract and  
2 I believe that is a -- is an admission against his client's  
3 interest in this proceeding because they're the nonmovant.  
4 If they think there's an issue about authenticity, it's  
5 their burden to show that. He said that he doesn't have  
6 that evidence. We've been through discovery.

7 So the Court will -- is duty bound I respectfully  
8 submit to conclude that this contract for summary judgment  
9 purposes is authentic. That it's not -- there's no genuine  
10 issue about the document's authenticity.

11 Now I'd like to proceed to look at the remainder  
12 of this analysis, Your Honor.

13 THE COURT: Okay.

14 MR. FOSTER: What about the 2017 quitclaim? We  
15 know that does, in fact, say (indiscernible) and  
16 consideration. First of all, invalidating a valueless  
17 transfer would be a meaningless gesture and that there was  
18 no windfall to Northwest Holding in 2017. Why? Because  
19 we've just established it already had ownership of the  
20 property by right under the 2012 contract. And it gave  
21 equity in -- it gave capital account credit in exchange for  
22 that equity. The -- you know, what did Mr. Rote have at  
23 the time of the 2017 quitclaim? He had nothing of value.  
24 That is not based on a he said/she said proposition. It's  
25 based on the plain terms of the 2012 contract.

1           He gave up all his right, title and interest  
2 subject to the liabilities associated with the property.  
3 And he gave up everything he had in Northwest Holding and  
4 in exchange he got the value of his equity in capital  
5 account. So what did he have in 2017? It's  
6 (indiscernible) with law that a quitclaim does not  
7 represent to the receiver -- to the transferee that  
8 anything of value is being exchanged. And in this case, we  
9 have proof that that, in fact, did not happen.

10           That there was no value given with the quitclaim.  
11 It was simply a recording -- now, Mr. Albertazzi's very  
12 astute in point out that the statute dates the date of the  
13 transfer to the date of perfection and the public record.

14           THE COURT: Uh-huh.

15           MR. FOSTER: But that's only for statute of  
16 limitations purposes, Your Honor. That is very clear in  
17 the statute he -- he quoted and cited. For statute of  
18 limitations purposes, the date of the transfer is the 2017  
19 quitclaim deed. But for determining whether there is  
20 reasonably equivalent value as a matter of law and  
21 undisputed fact, you look at and construe the 2012  
22 contract.

23           So what about the question of good faith? Well,  
24 the -- as -- as the contribution agreement says that  
25 Northwest Holding would take the property subject to

1 liability. And, in fact, we know that it took the property  
2 subject to the mortgage that was on the property. And  
3 that's shown throughout additional documents submitted into  
4 the record, balance sheet, tax return. Again, to challenge  
5 my colleague, Mr. Albertazzi to point to a piece of  
6 evidence in the record that calls into question whether  
7 Northwest Holding actually assumed the liability of the  
8 mortgage.

9           And if it did as we've shown then the transfer in  
10 2012 could not have been to hinder, delay or frustrate or  
11 defraud creditors. Instead, it was subject to the known  
12 liability. Is the transfer subject to creditor? Subject  
13 to the mortgage that was placed on the property and then  
14 paid by Northwest Holding.

15           The mortgage was on the books for years before  
16 Mr. Zweizig brought a claim against Tim Rote. And this is  
17 another reason why we can conclude that there was good  
18 faith. Based on the 2012 contract, it clearly states its  
19 purpose was to set up a rental business at a property that  
20 Tanya would operate and that Tim would -- where Tim would  
21 own the property. And it does that on -- it does that in  
22 clear terms and it does that with respect to the mortgage.

23           And it even says, Your Honor, this is very true.  
24 It even said that Tim Rote has a duty to quitclaim the  
25 property in the future. And I would refer Your Honor to

1 Section 2.3. This is one of the last critical statute --  
2 or sorry, contractual provisions I'd ask the Court to -- to  
3 consider in deciding this motion.

4 THE COURT: And that's --

5 MR. FOSTER: That the two points that he clearly  
6 says in the last sentence that TRC agrees -- that Tim Rote  
7 agrees to quitclaim title to NWH if NWH is unable to  
8 refinance the assumed debt within three years of the date  
9 of agreement. What's that saying is if unless NWH has  
10 already refinanced and -- and cleared the mortgage and put  
11 title into its name in the public record, then Tim Rote  
12 will quitclaim the property to it after three years.

13 That agreement and that right for NWH to received  
14 that quitclaim existed over three years before Mr. Zweizig  
15 brought him claim against Tim Rote and almost six years  
16 before he obtained his judgment. So how could -- where's  
17 the evidence, Your Honor. Again, my -- the nonmovant.  
18 Where is the evidence creating a genuine issue of material  
19 fact as to whether that promise to quitclaim was intended  
20 to frustrate, hinder, delay or defraud a creditor, any  
21 creditor?

22 THE COURT: Let's --

23 MR. FOSTER: What creditor was there? What  
24 creditor was identified as of 2012 that was -- that was  
25 defrauded by this, Your Honor.

1 THE COURT: Okay.

2 MR. FOSTER: It was absolutely in good faith.  
3 There's no evidence to dispute that.

4 THE COURT: I would like to have Mister --

5 MR. FOSTER: Now, what about the 28 --

6 THE COURT: I would like to give Mr. Albertazzi  
7 the opportunity to respond to that. Mr. Albertazzi?

8 MR. ALBERTAZZI: Okay. So also in Ms. -- Ms.  
9 Basauri's declaration in the prior summary judgment motion,  
10 she submitted an online listing for the Sunriver property  
11 showing that it had been recently listed for \$850,000. Had  
12 a mortgage of about 300 -- \$400,000. So there was  
13 significant value there.

14 Now -- and there was a significant amount of  
15 equity. So I have that. I also have Mr. Zweizig's  
16 declaration about when he got his judgment and how long he  
17 had been into litigation with Mr. Rote. So those two  
18 things together, certainly there was a huge amount of value  
19 transferred with that -- with that quitclaim deed. I mean,  
20 whether there was a contract before, the fact is that until  
21 that deed was recorded, it really didn't cut off the rights  
22 of creditors.

23 When it was recorded, there was a tremendous  
24 amount of value that went there and there was no -- there  
25 was no declaration or no affidavit that, oh, I gave more

1 value besides that. So once again, this is all the same  
2 evidence that Judge Van Dyk looked at these documents. So,  
3 you know, I -- I -- I think it's just an issue of fact for  
4 the jury on -- on both of these. Whether there was actual  
5 fraud, whether there was intent or on the constructive  
6 fraud claim. So I don't have anything to add besides that.

7 THE COURT: Well, here's the -- here's the issue  
8 that I'm having. On the one hand, there is no motion for  
9 reconsideration in Oregon law. You all know that. I am  
10 not going to go line by line through the transcript of the  
11 hearing that occurred before my colleague to determine if  
12 the exact same evidence and the exact same arguments were  
13 presented to him and therefore that is what he used to make  
14 his overall ruling. That would be inappropriate. So what  
15 I am left with is at this point trying to determine based  
16 on what has been presented to me, this Court, not what was  
17 presented to Judge Van Dyk, whether there is a material  
18 issue of genuine fact.

19 I have one attorney arguing there is this  
20 contract. There is no dispute. This is a valid contract.  
21 This contract shows clearly that there was value. This  
22 contract shows clearly that there was an agreement to file  
23 a quitclaim deed within three years. Long before plaintiff  
24 received his judgment. So therefore, Judge, there's no  
25 possibility that this could be fraud.



1           And now I'm asking you, Mr. Albertazzi, what is  
2 there against that argument that this could be fraud. If I  
3 take this contract as authentic and I haven't heard  
4 anything otherwise, then what evidence is there at all that  
5 would go to a jury to say, okay, despite this contract,  
6 there is still an issue of material -- a material element  
7 dealing with whether or not this transfer was made  
8 fraudulently to frustrate and everything else that the  
9 statute requires.

10           What do I have? What am I left with?

11           MR. ALBERTAZZI: Well, I would -- I would respond  
12 to that. I mean, we have the recording of the subsequent  
13 date.

14           THE COURT: That said 00.

15           MR. ALBERTAZZI: We -- I think that the jury  
16 could certainly make an inference that if you had this  
17 contract going way back when and the deed was never  
18 recorded that, you know, perhaps that wasn't a real  
19 contract. I mean, that's certainly a reasonable inference  
20 the jury could make.

21           The other would be the jury could take a look at  
22 the circumstances of all the litigation and when that --  
23 when the quitclaim deed was recorded. Those two things put  
24 together could certainly lead you -- lead a jury to  
25 believe, well, you know, I know that the plaintiff can't

1 prove that that contract is a fake and that it was  
2 contrived just for these purposes. But looking at the  
3 circumstances we can draw a reasonable inference that  
4 perhaps it was because of the timing of what happened here  
5 and because of the value of the property at the time the  
6 quitclaim deed was recorded.

7           When people bring fraudulent transfer cases, of  
8 course, they look at the public records.

9           THE COURT: Right.

10           MR. ALBERTAZZI: And to determine whether they  
11 can do that. And if -- I mean, that's -- that's what  
12 happened here. So I -- I think there's ample evidence.  
13 That this is a matter for the jury to determine.

14           THE COURT: And when you say ample evidence,  
15 okay, talk to me like I'm a juror. Well, how is the timing  
16 important? If this contract says within three years if  
17 they are -- TCR agrees that if the quitclaim title to NWH  
18 is unable to refinance the assumed debt within three years  
19 of the date of this agreement that they will give them a  
20 quitclaim title.

21           So this -- now, obviously, I don't know when this  
22 is drawn up. Are you going to -- is there going to be  
23 someone that's going to come in that is going to look at  
24 this contract and look at the date where it's signed  
25 10/31/12 and say based on the ink and the paper, it's clear

1 to me this really wasn't signed back -- it says 2012 but it  
2 was really signed in 2019, Judge, and we know that because  
3 it was printed on this type of paper and this type of paper  
4 was only available as late or as early as 2019?

5 Or we can tell by deciphering the signatures and  
6 the ink. And by the ink we can tell that this was really  
7 signed in 2019 even though it says 2012. Or someone that's  
8 going to say, you know, I'm very good friends with the  
9 Rotes and we had many discussions over dinner and they  
10 talked about when they were going to make this contract and  
11 say that it was signed in 2 -- like what evidence is there  
12 that if one takes this contract as authentic and true that  
13 it's still a fraudulent transfer because this contract was  
14 made for the sole purpose of fraud and not at a -- for a  
15 reasonable value?

16 MR. ALBERTAZZI: Well, I think this came up when  
17 I took the -- the Rotes' depositions where I specifically  
18 asked did you tell anybody about this contract. Does  
19 anybody know about it? Was it provided to anybody? And  
20 yes, that's the type of evidence that we would bring up.  
21 You know, of if -- if -- if you did this, and did it way  
22 back when, was anybody else there. Well, no, there wasn't.  
23 Does anybody else know about it? Did you tell anybody else  
24 about it? I mean, somebody could -- it -- with -- with  
25 something like this, if -- if the Court would grant summary

1 judgment because I can't prove that a document that's been  
2 presented was signed on that date and is really an  
3 authentic document and not just something contrived post-  
4 litigation, I mean, that's -- there's no way anybody could  
5 prevail on a fraudulent transfer case.

6           Somebody could just after the fact draw up this  
7 document. They will see here it is. We had this  
8 agreement. It was way back when. And there is value and  
9 you can't prove it's not authentic. That's not the way it  
10 works. We -- we have other evidence here and -- and all of  
11 that comes in.

12           THE COURT: And that -- I guess that's what I'm  
13 getting to. What is the other evidence other than when it  
14 was recorded the quitclaim deed that says this is enough  
15 that a jury can make that determination on whether there is  
16 a material issue as to whether this was a fraudulent  
17 transfer even if --

18           MR. ALBERTAZZI: I think just --

19           THE COURT: -- I take this as authentic.

20           MR. ALBERTAZZI: Right. Just -- just the delay  
21 in actually transferring the title, there's certainly an  
22 inference that could be had there. There -- why didn't the  
23 quitclaim deed get recorded? Well, he forgot about it.  
24 That's what he said in his deposition or it was -- it  
25 escaped him. Well, why --

1 THE COURT: And when was it recorded? You all  
2 tell me.

3 MR. ALBERTAZZI: Let me see.

4 THE COURT: Mr. Rote, are you not joining us  
5 anymore visually? Did we lose Mr. Rote? Oh.

6 MR. ROTE: Nope, I'm here, Your Honor.

7 THE COURT: Okay.

8 MR. ROTE: I -- I was afraid you might catch me  
9 drinking a cup of coffee so I went off video.

10 THE COURT: Ah. See if we were in court, you  
11 wouldn't get that benefit of drinking coffee and watching  
12 TV.

13 MR. ROTE: I -- I -- I know. I know, Your Honor.  
14 I'm watching not TV. I'm paying (indiscernible). April  
15 2017 was when the quitclaim was -- was transferred and --

16 THE COURT: Thank you.

17 MR. ROTE: -- the house was -- yeah.

18 THE COURT: Okay.

19 MR. ROTE: House was put up for sale.

20 THE COURT: And when was the judgment? When did  
21 Mr. --

22 MR. ROTE: Judgment was November of 2018.

23 THE COURT: Okay. So it was still before the --  
24 the judge. Oh, but when -- let's see. You all were in  
25 litigation for quite some time but you didn't get the

1 judgment until November of '18.

2 MR. FOSTER: Your Honor?

3 THE COURT: Yes.

4 MR. FOSTER: I -- I'm very sorry. Can I request  
5 a short recess? Is that -- is that possible?

6 THE COURT: Certainly.

7 MR. FOSTER: Would you mind?

8 THE COURT: How long do we need? Five, ten  
9 minutes?

10 MR. FOSTER: I -- I think ten minutes would  
11 probably be fine. I would appreciate it.

12 THE COURT: All right. Everybody we're going to  
13 be in recess for ten minutes. Take a comfort break. Now,  
14 you can drink your coffee, Mr. Rote.

15 MR. ROTE: Thank you, Your Honor.

16 (Recess taken from 10:14 a.m. to 10:29 a.m.)

17 THE COURT: Okay. We're back on the record,  
18 19CV0157, Zweizig v. Rote and Northwest Holding, LLC. And  
19 as we took a comfort break, the dates that were provided by  
20 Mr. Rote were that it was recorded April 2017 and the  
21 judgment was granted November of 2018.

22 MR. ALBERTAZZI: Right. Your Honor, I believe I  
23 was speaking and I wanted to just continue.

24 THE COURT: Yep.

25 MR. ALBERTAZZI: Okay.

1           So with regards to the agreement over the break,  
2 this is called asset contribution agreement, and I was  
3 trying to find where this first appeared in the record and  
4 it appeared in the amended declaration of Timothy Rote with  
5 supporting documents. It was filed in the court May 5th  
6 and this was -- what had happened is, as I understand it, I  
7 was not the attorney there.

8           Mr. Rote had lost on summary judgment. He then  
9 comes back and says, oh wait a minute, I've got new  
10 evidence, and he submits this declaration and attached to  
11 it is the asset contribution agreement, which starts at  
12 page 8 of that document.

13           As far as I know, I don't -- I didn't review the  
14 transcripts, but I know Judge Van Dyk declined, or denied  
15 this motion based on new evidence. So I wanted to make  
16 sure the Court understood that, that we're not talking  
17 about anything new here.

18           I think what -- what Mr. Foster is saying is,  
19 well you haven't been able to dispute the authenticity of  
20 this document, and --

21           THE COURT: He'd definitely saying that.

22           MR. ALBERTAZZI: He's saying that. And I'm  
23 saying that, well let's say that I cannot prove that this  
24 is a fake or it's contrived. Well, I still think the jury  
25 could infer with the sequence of events in the subsequent

1 recording, that no, this is not dispositive of the  
2 transfer.

3 And you know, frankly that's -- that's what  
4 the -- that's what Judge Van Dyk said also. He said, you  
5 know, get some more discovery, or get something different.  
6 For instance, I mean maybe there was actual money that  
7 changed hands or something.

8 THE COURT: Right.

9 MR. ALBERTAZZI: Maybe there was a document where  
10 they could prove this happened, but something that, you  
11 know, but it didn't happen. And I mean when we're dealing  
12 with intent and fraudulent transfers, of course -- you  
13 know, it's -- we think, or Plaintiff believes, based on the  
14 facts and circumstances and the timeline, that a jury could  
15 certainly come to the conclusion that, yes this was a  
16 fraudulent transfer.

17 THE COURT: And that's why I asked about the  
18 dates because I would agree with you, if -- if we have a  
19 trans -- if we have a judgment that is 15, and then we have  
20 a transfer that is after judgment, I think hands down no  
21 issue.

22 But I have -- that's why I asked about the dates.  
23 But I have --

24 MR. ALBERTAZZI: Oh --

25 THE COURT: -- this recording in '17 and I have



1 this judgment that isn't until November of '18, way beyond  
2 12 months after. So --

3 MR. ALBERTAZZI: Right.

4 THE COURT: -- when you said -- earlier you said,  
5 well judge a jury could infer based on the timing that  
6 there's still something fraudulent about this, that's why I  
7 asked about the dates.

8 MR. ALBERTAZZI: Oh --

9 THE COURT: Based on the dates --

10 MR. ALBERTAZZI: Okay, I --

11 THE COURT: -- how could a jury infer that the  
12 transfer was fraudulent based on this timing?

13 MR. ALBERTAZZI: Well, I guess -- and I could  
14 respond to that, that the date the judgment was entered was  
15 very long after the jury rendered its verdict and everybody  
16 knew what was going on.

17 And I wanted to pull up -- I'm going to ask --  
18 Mr. Zweizig had -- there was a declaration here and I'm  
19 trying to pull that up -- in the initial motion, in  
20 response to the initial motion where -- where he talks  
21 about that.

22 THE COURT: Can anyone tell me the date that the  
23 jury rendered the verdict?

24 MR. ALBERTAZZI: Mr. Zweizig if you know that  
25 offhand, please let us know.

1           MR. ZWEIZIG: I'm looking around Your Honor. I  
2 don't know that offhand, but I definitely want to say that  
3 I will be offering testimony during this trial, and I think  
4 we've talked about an awful lot of things here, and this is  
5 sounding like it's a trial to me, and I would request that  
6 the Court definitely give me, you know, a jury trial on  
7 this.

8           There's an awful lot of evidence, you know, that  
9 we do have, and I don't know if it's incredibly to have us  
10 proffer that evidence now, giving Mr. Rote a possible  
11 chance to fabricate more evidence --

12           THE COURT: And I completely --

13           MR. ZWEIZIG: And I believe -- and without making  
14 an accusation, I will tell you that my belief is that that  
15 is going on, you know, that's all I'll say about that.

16           THE COURT: And Mr. Zweizig, I understand what  
17 you're saying, and a summary judgment does not require that  
18 you show your hand, and I'm certainly not asking for that.

19           The problem that I'm having is that your lawyer  
20 has to show that there is a material issue of fact for a  
21 jury and right now what I have -- I started this morning  
22 thinking, okay there must be -- I don't know all of the  
23 evidence, you all know this case much better than me, and  
24 I'm not supposed to know all the evidence. This is, I  
25 understand, going to be a jury trial.

1           At this stage, all I'm determining is if there's  
2 something to go to this jury, and when I started this  
3 hearing, I understood that there were lots of contrary  
4 documents, and if there are contrary documents to the very  
5 issues of the case, the things that you all are asking the  
6 jurors to decide, the material issues, then this goes to a  
7 jury, summary judgment is denied.

8           But my role here is a gatekeeper and now I'm  
9 understanding, at least we're still on the very first  
10 issue, which is fraudulent transfer. You know how your  
11 complaint has like several different -- so we're still on  
12 the first issue.

13           MR. ZWEIZIG: Understood.

14           THE COURT: So as I understand it, as we've  
15 gotten through the morning, they're -- I'm learning that  
16 there really aren't contrary documents on this issue of  
17 fraudulent transfer.

18           The argument that I've heard so far this morning  
19 is, there is a contract, there is no dispute from anyone  
20 that this is a valid contract. And under this contract  
21 there was valuable consideration in that the date of the  
22 transfer was long before your judgment.

23           And so now I'm left with -- I'm not asking your  
24 lawyer to sh -- you know, show his hand and tell me all,  
25 everything that he has, so that the other side can prepare,

1 certainly not. I'm just looking for what material issue is  
2 there, if I take this contract as valid, and that's why I  
3 was asking about the date, because your lawyer's response  
4 was, "Well Judge, a jury can infer, based on the timing,  
5 that this is fraudulent."

6 And so I said okay when is the timing; when was  
7 it recorded; when did you get your judgment; and if you got  
8 your judgment long after it was recorded, but that's --  
9 right now that's my next question is when did the jury  
10 render its verdict. Because if it was transferred after  
11 the jury rendered its verdict then I would agree with your  
12 lawyer; there could be an inference and there would be an  
13 issue of material facts.

14 So can someone please tell me the date that the  
15 jury rendered the verdict?

16 MR. ALBERTAZZI: So Your Honor, I can tell you  
17 that the complaint was filed in federal court from which  
18 this judgment comes on December 24th of 2015.

19 THE COURT: Right.

20 MR. ALBERTAZZI: Now looking at -- the jury found  
21 for Mr. Zweizig on January 17th, 2018; that's on his  
22 declaration.

23 THE COURT: Okay. April --

24 MR. ALBERTAZZI: In our -- and in our response to  
25 this summary judgment motion, because we thought it was the

1 same thing, we incorporated, you know, the previous  
2 materials that had been filed.

3 So the judgment, and I don't know why it would  
4 take so long it -- that it would take literally a year, or  
5 more than a year. Well, oh no, not quite a year --

6 THE COURT: Eleven months.

7 MR. ALBERTAZZI: -- to get a judgment put in.

8 MR. ZWEIZIG: There were a lot of motions filed  
9 in the case, you know, by Mr. Rote, and it held up some  
10 things in order to get that done, is my suspicion about why  
11 that is.

12 I mean I have, you know, (indiscernible), you  
13 know, material things that I think would be questions of  
14 fact, should I be mentioning them? I will if you want me  
15 to.

16 THE COURT: Well, I'm not trying -- I know that  
17 you have counsel, and so hopefully you and your lawyer have  
18 talked about what it is you want to share and what it is  
19 you don't want to share, but we're trying to get past  
20 summary judgment here, and for you to get past summary  
21 judgment you have to show that there are material issues of  
22 fact, something for a jury to consider on the very issues  
23 that you are alleging.

24 And so on the fraudulent transfer, knowing that  
25 the verdict was rendered January of '18, I still have the

1 recording April of '17, but I have the lawsuit started back  
2 in 2015, a jury could look at the timing of the transfer,  
3 the only problem -- the only problem that you have is we  
4 still have a contract from 2012.

5           So in terms of being able to infer from the  
6 timing whether there is a fraudulent transfer, that's very,  
7 very, very light, but that would be -- a jury could infer  
8 that -- I'm -- you know, that's going to be tough at a  
9 trial --

10           MR. ZWEIZIG: Yeah, (indiscernible) -- I'm sorry,  
11 Your Honor. I did not mean to cut you off.

12           THE COURT: No, go ahead.

13           MR. ZWEIZIG: We -- I guess -- evidence -- I  
14 have evidence to support that for sure.

15           THE COURT: Okay.

16           MR. ZWEIZIG: Mr. Rote tried to use the property  
17 to gain a loan at the time he was not supposed to be in  
18 control of it and we have documentation that should satisfy  
19 Mr. Foster's red-light issue on that.

20           THE COURT: Oh.

21           MR. ZWEIZIG: Also, the mortgage that Mr. Rote  
22 had expressly for bid using the property as a VRBO, so it  
23 was done in bad faith at some point. There's some intent  
24 there --

25           THE COURT: Oh.

1 MR. ZWEIZIG: -- to do something that is not  
2 allowed, and I would consider that, at least a yellow light  
3 for Mr. Foster.

4 THE COURT: Okay.

5 MR. ZWEIZIG: We have, you know, something; we  
6 have evidence; we have a case is what I would really like  
7 to convey to you; that I feel is very strong; I feel we're  
8 going to win it, of course, or believe me, I would not go  
9 through all this effort. I would not put up with what's  
10 going on the internet.

11 I would just drop this whole thing if I didn't  
12 feel that this was, not only something in my best interest,  
13 but in the best interest of, you know, not setting some  
14 sort of limit on what a rich person can do to a person.  
15 This has been tough and I think I have a very good case for  
16 this or I wouldn't bring it.

17 THE COURT: And I appreciate that. I'm just  
18 trying to find out whether there is a material issue for a  
19 jury, and so those pieces of information, that's very  
20 helpful to know that in the mortgage on this property it  
21 says it cannot be utilized as a VRBO; that's important  
22 information.

23 And also that there would be evidence that Mr.  
24 Rote, after the transfer, after the date of this signing,  
25 tried to take a loan out on the property. That would also

1 be important information, so those two things are actually  
2 kind of what I was asking your lawyer for, to present a  
3 material issue of whether this is, in fact, a fraudulent  
4 transfer.

5 Mr. Brooks (sic), do --

6 MR. ZWEIZIG: I appreciate that.

7 THE COURT: Mr. Brooks --

8 MR. FOSTER: Yes, Your Honor.

9 THE COURT: -- kind of got me with that, that  
10 information that evidence would, if presented to a jury  
11 would be enough to get past whether there's a material  
12 issue for a fraudulent transfer.

13 MR. ZWEIZIG: And I promise you it's not all the  
14 evidence that we have, Your Honor.

15 THE COURT: And I'm not asking you to share all  
16 your cards; that's not necessary; we're just going through  
17 the claims to see if there is a material issue.

18 MR. ZWEIZIG: Understood. Thank you.

19 MR. FOSTER: Your Honor, may I jump in here and  
20 respond to that?

21 THE COURT: Please, Mr. Foster.

22 MR. FOSTER: So first of all, I think I need to  
23 state for the record as a moving party categorically object  
24 to the introduction -- attempt to introduce evidence by  
25 hearsay statements and not through admissible means as



1 summary judgment.

2           The evidence is supposed to be in the record,  
3 it's supposed to submitted in opposition of the motion, and  
4 then we have an opportunity to reply. And here we've just  
5 heard multiple representations from Mr. Albertazzi and his  
6 client tag teaming the argument and talking about evidence  
7 that may promise the judge they have and will be able to  
8 present at trial.

9           And unfortunately that is not how summary  
10 judgment is to be decided, Your Honor, so we firmly object  
11 to consideration of any representations or descriptions  
12 about the evidence, any testimony by opposing counsel, or  
13 any attempt by his client to supplement the record through  
14 his hearsay statements here today.

15           THE COURT: And let me respond -- let me ask.  
16 Were those items, that you just referenced, are those  
17 things that are in your declaration, or are those things  
18 that have already been submitted in the record as an  
19 exhibit?

20           MR. ZWEIZIG: Without looking, Your Honor, I'm  
21 not aware of that. Maybe my attorney can answer that, I  
22 don't know. But they are both public records. The deed of  
23 trust is public record and the other document -- or -- or  
24 yeah, deed of trust is public record and the other document  
25 that I mentioned to you is public record. The Rotes would

1 certainly be aware of these documents.

2 THE COURT: But have they been submitted in this  
3 case by either side, as an exhibit, or referenced, or  
4 shared in discovery?

5 MR. ZWEIZIG: I believe they were shared in  
6 discovery.

7 MR. FOSTER: I'm not sure of that, Your Honor.

8 THE COURT: Mr. Albertazzi --

9 UNIDENTIFIED SPEAKER: Right now, that I see it,  
10 I'm not sure.

11 MR. ALBERTAZZI: I'm looking right now, Your  
12 Honor. This was the previous motion, previous two motions  
13 were handled by someone else, and I'm look for -- at some  
14 point there's -- the trust deed, the actual trust deed  
15 itself, with those provisions in it was filed with the  
16 Court. And that's what makes it difficult is that -- I'm  
17 sorry. Okay.

18 I see here that there is a trust deed referred to  
19 in -- I'm looking at a doc -- at a document here -- or in  
20 our response, excuse me -- a response in opposition to  
21 Defendant's motion for summary judgment, which we filed on  
22 February 12th.

23 THE COURT: And it references the -- both of the  
24 documents that your client just --

25 MR. ALBERTAZZI: And I --

1 THE COURT: -- spoke about?

2 MR. ALBERTAZZI: I want to point to this, just so  
3 I -- make sure I'm very clear.

4 Let's see here.

5 The quitclaim deed -- okay, that's the Basauri  
6 declaration. Northwest assumed the mortgage, but did pay  
7 monetary consideration for it. Okay.

8 I don't see that the --

9 Well, let's see here.

10 I don't see that the trust -- oh excuse me.

11 The Basauri declaration, Exhibit E -- and I'm  
12 going to look at that. And I believe it's on there, but  
13 before I say that I want to make sure I see it.

14 (Pause)

15 THE COURT: Ma'am, I wish there was a way that I  
16 could click on -- like when it references the Basauri  
17 declaration, I could click on the declaration and pull it  
18 up.

19 UNIDENTIFIED SPEAKER: Yep.

20 UNIDENTIFIED SPEAKER: I came from litigation in  
21 California where the attorneys hyperlinked -- they put  
22 hyperlinks in their briefs and I -- I foresee a day when  
23 that will be the standard, Your Honor.

24 THE COURT: Well actually we can do that in DR  
25 cases; it's really nice; their exhibits we can just click

1 on it and it pulls up the exhibit.

2 UNIDENTIFIED SPEAKER: Your Honor, while I --  
3 I'll be happy to --

4 MR. ALBERTAZZI: I think I've --

5 UNIDENTIFIED SPEAKER: If it helps, the deed of  
6 trust is mentioned in Timothy's affidavit and Mr. Rote's  
7 affidavit. So the deed of trust is mentioned there.

8 THE COURT: Okay.

9 MR. FOSTER: And Your Honor, can I just speak to  
10 the substance of these argument as well? I'm -- I presume  
11 they could potentially correct any omission in the record  
12 if Your Honor would allow it. And I'm going to try to  
13 explain why these items of evidence are legally  
14 (indiscernible).

15 THE COURT: Okay.

16 MR. FOSTER: Okay?

17 The first one is this trust deed that allegedly  
18 limits what can be done with the property and how it can be  
19 used. And the argument for that somehow is evidence that  
20 the 2012 transfer is (indiscernible) I don't believe to be  
21 (indiscernible) any genuine dispute.

22 But the 2012 transfer contract was somehow in bad  
23 faith. I don't really see the connection, Your Honor, the  
24 bad faith, the -- the good faith standard, which is only  
25 relevant to one of the four different types of fraudulent

1 transfer claims authorized by statute, is set up in  
2 opposition to actual intent to hinder the (indiscernible)  
3 creditors.

4           So good faith can only be understood in  
5 opposition -- in -- in contravention of that. And so why  
6 would it be somehow intended to defraud creditors, such as  
7 Mr. Zweizig, who was no -- was not a creditor until 2018,  
8 to transfer the property to NWH, subject to a mortgage, and  
9 the mortgage has the limitations on the use of the  
10 property.

11           That mortgage, I believe, the trustees will also  
12 confirm, there were no intended third-party beneficiaries.  
13 It's not enforceable by Mr. Zweizig. He has no standing to  
14 enforce it. He has no standing to complain if the mortgage  
15 company allowed it to be used as a VRBO, even if that could  
16 have been a default. Parties to contracts do that all the  
17 time. They don't enforce all their rights, and there's  
18 what's known as an efficient breach. It's when a party  
19 breaches a contract, but it doesn't cause any harm, so  
20 nobody's cares.

21           (Indiscernible) -- I don't know if this is true,  
22 Your Honor, because I haven't seen this -- this alleged  
23 trust deed, but let's just play with that. Let's just say  
24 it's true. So what? Why is that legally relevant at all  
25 to either the 2012 transfer that predated the claim by Mr.

1 Zweizig by over three years was actually intended to hinder  
2 or defraud a creditor.

3           If NWH was assuming the mortgage, and in fact it  
4 was paid in full, and there's no dispute that it was --  
5 that it was ever -- that that mortgage company ever took  
6 any loss on this, how are the terms of that mortgage  
7 relevant to the intent behind the 2012 contract?

8           And you know, this is -- also addresses the point  
9 we briefly touched on earlier about what is the date of the  
10 transfer. If we gave the transfer to the date of the  
11 recording, and I appreciate Your Honor's attempt to create  
12 a precise timeline.

13           Now, interestingly, if the judgment had been  
14 entered, (indiscernible) Mr. Zweizig, before the quitclaim  
15 was recorded, I don't think we would be here today.

16           There might be an interesting case about whether  
17 NWH was a good faith transferee for value that  
18 (indiscernible) was a bona fide purchaser and held priority  
19 over the quit -- over the judgment.

20           But in fact that didn't happen. What we saw was  
21 that the transfer was documented in 2012 by contract; it  
22 was not recorded. But we're assessing the reasonably  
23 equivalent value exchange and it was to be at the time of  
24 the transfer. So that value was documented in the 2012  
25 contract in the form of capital account credit, and we're

1 accepting the good faith or intent, actual intent, to  
2 hinder and defraud a creditor as of the time of the  
3 transfer, the 2012 contract.

4           And both predate even the claim by Mr. Zweizig  
5 let alone the jury verdict or the judgment. So I really  
6 question whether the trust deed has any relevance. I  
7 question whether these arguments raised -- you know, we've  
8 been in this case for several years. When we entered  
9 discovery, we have a summary judgment motion, and we have a  
10 Plaintiff who is saying that they have evidence that  
11 apparently, they didn't put in the record.

12           But you know, the question is not whether they  
13 could provide evidence at trial, it is their burden --

14           THE COURT: Uh-huh.

15           MR. FOSTER: -- to show a genuine issue -- I see  
16 Your Honor nodding. I won't -- I won't repeat this too  
17 much.

18           Can I just make my final comments? Just a few  
19 more final comments to kind of wrap this up, if I -- if it  
20 please the Court?

21           THE COURT: Well, can I ask you --

22           MR. FOSTER: So first of all --

23           THE COURT: Can I ask you one question, Mr.  
24 Foster? I would like you to address --

25           MR. FOSTER: Yes.

1 THE COURT: -- the issue that they would present  
2 evidence that Mr. Rote, after the transfer, tried to either  
3 get a loan on the mortgage or in some way get money off of  
4 that property that was already allegedly transferred.

5 Would that not show, was this really transferred?  
6 Wouldn't that go to the question of whether there was a  
7 material issue of fact on whether this transfer was  
8 legitimate or not, despite there being a contract? If  
9 there's evidence that, after this valid contract no one's  
10 disputed, that Mr. Rote, not Ms. Rote or the entity, tried  
11 to take a mortgage out.

12 Would that not show that there really wasn't a  
13 transfer? Maybe a transfer --

14 MR. FOSTER: Well, I believe you're -- you're  
15 assuming for the purpose of this hypothetical that --

16 THE COURT: Uh-huh.

17 MR. FOSTER: -- Mr. Rote tried to get a  
18 mortgage --

19 THE COURT: Yep.

20 MR. FOSTER: -- and he didn't. But if he tried  
21 and he didn't get it, then I would say what relevance is  
22 that? Anybody can try to get mortgage and not get it on  
23 any property.

24 But, you know, let's just -- let's imagine he  
25 did. Let's imagine Mr. Rote took out a mortgage in his



1 name. Under the 2012 contract, so that he would quitclaim  
2 the property in the future, but it said that NWH was taking  
3 the property subject to liability.

4 So it'd be perfectly consistent with that  
5 contract for Mr. Rote to take out a mortgage on the  
6 property and then have that -- that loan assumed by NWH.  
7 And that could be done without prejudice to any creditor  
8 because Mr. Rote would be personally guaranteeing the  
9 mortgage of a property owned by NWH.

10 And yet, you know this is a heck of a  
11 hypothetical, Your Honor, because I don't have the alleged  
12 document, I can't assess it, we haven't had the opportunity  
13 to reply to it.

14 So you know, if you're -- I mean, I've had  
15 proceedings that had to be extended, and it ended up a good  
16 thing because the parties actually got summary judgment and  
17 the judge was willing to work a little further and make  
18 sure that they knew what the status of the case was and  
19 what the issues were that needed to be presented at trial.

20 So, you know, we could do that here. You know,  
21 we could have a surresponse and a surreply, but I  
22 absolutely need to have an opportunity to reply to any  
23 specific evidence and not just operate on a hypothetical.  
24 It's one thing to say, you know, assume one simple fact,  
25 but we're talking about a whole fact pattern here.

1           So I just respectfully suggest that that might be  
2 grounds to extend the proceedings and not grounds to deny  
3 the motion today, Your Honor.

4           THE COURT: Got you.

5           MR. FOSTER: Well, and -- and you know, and I  
6 guess I ought to -- I ought to make sure you understand I'm  
7 not waiving the argument that it's their burden --

8           THE COURT: I --

9           MR. FOSTER: -- we shifted it to them. We're  
10 here today to decide this and they should have done that.  
11 And in fact, I would object to any request for further  
12 briefing on this, but I -- I understand that the Court  
13 could overrule the objection.

14           No, just a couple of final comments.

15           I would like to draw the Court's attention to a  
16 document that is new evidence in the record that was  
17 adduced in discovery --

18           THE COURT: Okay.

19           MR. FOSTER: -- that Plaintiffs had a full  
20 opportunity to (indiscernible) whatever witnesses he wanted  
21 about it, and I don't think we need this, Your Honor,  
22 because I think the contract is clear and it's a legally  
23 scrutable document.

24           But you know, an opposing party has some right to  
25 reasonable inferences in their favor --

1 THE COURT: Uh-huh.

2 MR. FOSTER: -- and it's the -- I think it's the  
3 art of summary judgment to decide -- where a judge decides  
4 what's reasonable and what's just speculation.

5 THE COURT: Right.

6 MR. FOSTER: Or what is an immaterial dispute of  
7 facts.

8 THE COURT: Right.

9 MR. FOSTER: And you know, I contend that that  
10 2012 contract, if it's authentic, and it says what it says,  
11 which is -- we've proven -- then let's -- let's -- you can  
12 stop there.

13 But if you look at Exhibit 4 to the declaration  
14 of Tim Rote and -- and I believe you'd probably have that  
15 open, we referred to it earlier, this is the 50th page out  
16 of 276, and this is a 2012 tax return for Northwest Holding  
17 Company. This return shows the unreasonableness of  
18 speculating about whether the transfer happened. It  
19 absolutely corroborates the transfer.

20 THE COURT: In what way?

21 MR. FOSTER: I don't need we need it, but --  
22 What's that, Your Honor?

23 THE COURT: In what way?

24 MR. FOSTER: Does Your Honor have it open?

25 THE COURT: I'm still trying to --

1 Sam (phonetic), can you help me hold that --

2 (Court and clerk confer)

3 MR. FOSTER: Your Honor, it's on the bottom  
4 right; it's marked Exhibit 4, page 8, and at the top it  
5 says, "Depreciation and amortization."

6 (Court and clerk confer)

7 THE COURT: All right, I'm there.

8 MR. FOSTER: Okay. So Your Honor, this -- this  
9 document; again this a piece of subjective (indiscernible).  
10 It's authenticity has not been put in dispute.

11 THE COURT: Okay.

12 MR. FOSTER: It's from 2012, and yeah, Mr. Rote  
13 has authenticated it in his declaration, and what it shows  
14 at the top left, name shown on return Northwest Holding  
15 Company, LLC.

16 THE COURT: Yep.

17 MR. FOSTER: Below that is says 8825 Sunriver.  
18 There's no dispute that there was only one Sunriver  
19 property owned by -- yeah, involved in the case, or owned  
20 by anybody here. Okay. So --

21 THE COURT: Okay.

22 MR. FOSTER: -- this is the property in question  
23 and what's really important here, because if you look down  
24 at the schedule at the bottom under Section B, the title  
25 says, "Assets placed in service during 2012 tax year."

1 THE COURT: Yep.

2 MR. FOSTER: Using the general depreciation  
3 system, you see residential rental property, Row H, month  
4 and year placed in service 10/12 --

5 THE COURT: Uh-huh.

6 MR. FOSTER: -- okay, October 2012 corresponding  
7 to the October date of the asset contribution agreement.  
8 To the right of that, (indiscernible) depreciation is  
9 425,000. This shows that the 2012 counter was not a  
10 fabrication, unless Mr. Rote had a crystal ball and could  
11 foresee all that he would do in the future to deceive his  
12 creditors by setting it up in a 2012 tax return. I mean,  
13 you have to be conspiracy theorists to reach that  
14 conclusion.

15 It is, Your Honor, not a reasonable inference  
16 that can be drawn against (indiscernible) summary judgment  
17 proceeding in the absence of any specific evidence that  
18 support it.

19 Now, just a couple of last comments, Your Honor.

20 Again, I think we need to look briefly at the  
21 2018 deed from Northwest Holding's (indiscernible).

22 THE COURT: What page is that on?

23 MR. FOSTER: Oh, well actually I don't -- I'm  
24 sorry, I don't have it referenced here, Your Honor. There  
25 was a 2018 deed. It -- what we really -- what I really

1 want to talk about is the statute.

2 So when we when over the statute, you saw that  
3 every single one, we read four different sections, about  
4 what constitutes a fraudulent transfer.

5 THE COURT: Right.

6 MR. FOSTER: Every single one requires a transfer  
7 to be from a debtor. Now, what do you do if you bring in a  
8 claim for fraudulent transfer and there have been  
9 downstream transfers between non-debtors? Well, one of the  
10 remedies alleged in the complaint is a lien that will  
11 follow that property.

12 THE COURT: Uh-huh.

13 MR. FOSTER: So if the transfer was fraudulent in  
14 2012, or that didn't happen and the transfer in 2017 was  
15 for less than equivalent value, then maybe there's a right  
16 to a lien on the property as a form of remedy. And then  
17 the subsequent owner shall be necessary parties, because  
18 they're subject to the lien.

19 THE COURT: Uh-huh.

20 MR. FOSTER: That's all. That's the only way you  
21 can get the 2018 transfer into this case. That transfer  
22 cannot be a fraudulent transfer because NWH has never been  
23 a debtor of Mr. Zweizig, and neither has Tanya, by the way,  
24 but it's only the transfer or debtor status that allows a  
25 transfer to be deemed invalidated as a fraudulent transfer.

1           This is -- that is not -- that is a pure matter  
2 of law, Your Honor, it is a pure question of law, it is  
3 painfully apparent on the face of the statute. So this is  
4 why I didn't argue this first. Okay. Because if there is  
5 to be a lien as one of the remedies for a legitimate  
6 fraudulent transfer claim arising from the 2012 contract,  
7 then the downstream owners could be subject to the that  
8 remedy.

9           But their transfers are not fraudulent transfers  
10 as a matter of law and undisputed fact because there is no  
11 evidence that NWH has ever been a debtor of Mr. Zweizig.

12           So to summarize, Your Honor, in 2012 Tim Rote  
13 bought the property. Then he transferred all of his right,  
14 title, and interest by written contract to NWH in exchange  
15 for a right to have his capital account in that company  
16 credited for the amount of equity he has in the property.

17           That transfer was for reasonably equivalent  
18 value.

19           It was also in good faith, because it predated  
20 the 2015 claim of Zweizig. Now, there's -- just as an  
21 aside, there's been some argument that litigation among the  
22 parties predated that claim. That's not really accurate,  
23 Your Honor, as stated in Mr. Zweizig's response, there was  
24 litigation by Mr. Zweizig against some other, one of our  
25 other companies, that he alleges were owned by Mr. Rote.

1           But I -- I'm telling Your Honor, that is not --  
2 that is not a claim against Mr. Rote, and he was -- he  
3 bought this property in his personal capacity, there's no  
4 evidence that any party or business entity that was  
5 involved a prior litigation by Zweizig, had any interest in  
6 this property. Okay.

7           So it's really irrelevant that there may have  
8 been prior litigation involving one of Mr. Rote's companies  
9 and Mr. Zweizig.

10           But, yeah, the good faith is apparent by the  
11 timing of the 2012 transfer and the lack of any claim by  
12 Mr. Zweizig against Mr. Rote at that time, and it's  
13 apparent by the fact that NWH assumed the liability and  
14 assumed the mortgage. It's apparent by the fact that that  
15 mortgage, and all the debts of the property were, in fact,  
16 paid in 2018 when the property was transferred out of NWH  
17 to Tanya. There's no dispute about any of that.

18           And so there's no evidence that the 2012 contract  
19 was for anything less than reasonably equivalent value, and  
20 that it was not in good faith. As a matter of law and  
21 undisputed facts, none of the Available Transfer Act claim  
22 can apply to the 2012 asset (indiscernible) agreement,  
23 which was not a fraudulent transfer.

24           Meanwhile the 2017 quitclaim was a transfer of no  
25 value and it was actually performance of an obligation Tim



1 Rote already contracted to assume; again, shown clearly in  
2 the 2012 contract that said he would quitclaim the property  
3 after three years if NWH had not already taken record title  
4 to it.

5 And the 2017 quitclaim was also in good faith  
6 because of that contract provision. The intent of the  
7 parties has to be determined as of the 2012 contract.

8 Finally, the 2018 deed for Northwest Holding to  
9 Tanya could not have been a fraudulent transfer because  
10 there was no debtor -- a debtor was not the transferer of  
11 that deed.

12 I rest my (indiscernible), Your Honor.

13 THE COURT: Okay.

14 Mr. Albertazzi, your response. I'm looking at --

15 MR. ALBERTAZZI: Okay, so --

16 THE COURT: -- apparently the new piece of  
17 evidence that wasn't presented at the argument, the summary  
18 judgment argument before my colleague, is this 2012 tax  
19 return for Northwest Holding LLC.

20 MR. ALBERTAZZI: Well, I -- under that -- that  
21 document is from Mr. Rote. It was not produced in the  
22 prior summary judgment hearings and he's now producing --  
23 he's producing it now.

24 I don't think it makes any difference because we  
25 just have to look at the facts as they are to see whether a

1 jury could draw rea -- a reasonable inference.

2 THE COURT: And I'm with you, but so far --

3 MR. ALBERTAZZI: Okay.

4 THE COURT: -- I'm trying to understand how this  
5 doesn't support the contract.

6 MR. ALBERTAZZI: The tax return itself --

7 THE COURT: Correct.

8 MR. ALBERTAZZI: -- I -- I mean, I guess it would  
9 support that a contract was sign -- I don't what it would  
10 support or not. I mean, it just supports that that's what  
11 he filed on his taxes.

12 THE COURT: Okay. But it backs up -- it has --  
13 it lists the property; it list that it's shown that it's  
14 held by Northwest Holding.

15 Are you saying that -- like this wasn't filed in  
16 2012, this isn't a legitimate return for Northwest Holding?  
17 Because that would be the only way that this doesn't  
18 completely back up and support the 2012 contract, which  
19 knocks out any issue of fraud, unless like Mr. Foster was  
20 arguing, he would -- Mr. Rote would really have to think  
21 far in the future and think like, hey if I'm ever sued, and  
22 there is a judgment that comes up against me, I'd better,  
23 in 2012 transfer this property now to ward off any  
24 potential judgment in five years.

25 MR. ALBERTAZZI: Well, and I -- I appreciate

1 that, but I think that the evidence -- I do agree that  
2 the -- that that return would support that, you know, that  
3 agreement, or that that agreement really happened.

4 But as stated in the prior summary judgment  
5 motion, and where we presented my prior counsel, Taryn  
6 Basauri, objected to that and provided evidence in her  
7 declaration, she's saying that -- she talks about the  
8 judgment in November '18. We now know that -- that the  
9 jury rendered its verdict in January of '18.

10 THE COURT: Right.

11 MR. ALBERTAZZI: Debtor quitclaimed his interest  
12 in the property in April of '17. We learned -- she says,  
13 my office learned that the property was quitclaimed to a  
14 wholly-owned -- to a company wholly owned by the debtor at  
15 the time of the transfer. So when that '17 transfer  
16 happened, it was to a company wholly owned by Mr. Rote.

17 She says, my office further learned that the  
18 judgment debtor added his wife Tanya Rote as an owner of  
19 the company -- owner of the company holding the property.  
20 So the wife was then added. We then learned that after the  
21 jury rendered a verdict and before judgment was entered,  
22 the company transferred property to the judgment debtor's  
23 wife via deed that recited zero of monetary consideration.

24 THE COURT: Right.

25 MR. ALBERTAZZI: And so that -- that's

1 essentially what we have.

2 THE COURT: And now -- and that's what I  
3 understood. But now we have evidence that that's not true.  
4 It wasn't after the jury rendered a verdict and that it was  
5 transferred five, six years prior to the judgment. And so  
6 while it appeared prior to discovery that those things were  
7 true. That it's questionable. It was transferred after  
8 the -- your client received his judgment. We now have a  
9 tax return that supports a contract that was -- that's  
10 valid on its face because I don't have any evidence that  
11 it's not. That it was signed way back in 2012.

12 So the things in her declaration are no longer  
13 true.

14 MR. ALBERTAZZI: Well, they're talking about --

15 THE COURT: Those were the suspicions before  
16 discovery.

17 MR. ALBERTAZZI: Well, you're talking about --  
18 well, the -- the fact is that when Mr. Zweizig was in  
19 federal court arguing his case, that property was not  
20 titled the way it is now. That that changed. And what was  
21 in the public record is really what matters. And that's  
22 why the statute says that's when the transfer occurs. And  
23 a transfer can happen. Maybe they transferred it in 2012  
24 but then to perfect that transfer, well, you have to record  
25 the deed. And the statute talks about any mode of a

1 transfer. And --and recording of a quitclaim deed  
2 certainly finalizes it. And so that's the date I'm looking  
3 at.

4 THE COURT: The day that it was recorded.

5 MR. ALBERTAZZI: Yes. Because any -- I mean,  
6 so -- so that's what we're looking at and the -- if you're  
7 talking about a -- a husband and wife and a solely owned  
8 company here. That the jury could say, well, you know,  
9 that maybe he had more control over this than -- than he's  
10 saying. And that's the point of it. That any disposition  
11 of an asset by any mode is -- is a transfer.

12 So that's really what this case is about and --  
13 and I think that's the way -- why it was decided the way it  
14 was before. And clearly the statute of limitations doesn't  
15 apply. So that -- that's really what we're saying and  
16 it's -- it's a matter of intent that -- that that  
17 particular deed being recorded.

18 Okay so if we didn't have this lawsuit and we  
19 didn't have this judgment, well, then why record that deed.  
20 And the answer is, well, I forgot to record it. It slipped  
21 -- it slipped by me. Well, that -- that's a thing for the  
22 jury to decide.

23 THE COURT: Well, I appreciate the arguments from  
24 all. I am all about making sure that people have access to  
25 justice and that everyone has their day in court. And

1 courts are here for disputes to be resolved if they can't  
2 be resolved outside of court.

3 I also have to follow my oath as a gatekeeper and  
4 with the issue of summary judgment, I really can't rely  
5 upon the record that was made before my colleague. I have  
6 to rely upon the record that is made before me. This  
7 record is the one that a Court of Appeals would look at and  
8 say what was Judge Watkins thinking. Why did she make the  
9 decision that she made? What was the reasoning behind her  
10 decision? What were the arguments that were presented to  
11 her? What law was she following?

12 And they're certainly not going to listen to this  
13 transcript and then go and listen to the transcript before  
14 Judge Van Dyk to decide whether I was appropriate or not in  
15 my decision. So the problem -- and I understand the  
16 limitation that you have, Mr. Albertazzi is that you  
17 weren't the lawyer in -- and actually, neither was Mr.  
18 Brooks (sic). Neither of you were the lawyers that argued  
19 the original summary judgment so you're both stepping in  
20 like I, new, to this argument.

21 The record that I have before me is whether there  
22 is a material issue of fact and the burden unfortunately is  
23 yours, Mr. Zweizig. It's not the burden of Mr. Rote. He's  
24 the one that brought the -- the summary judgment motion as  
25 he has every right to under the statute. But it's based on

1 the record that's before me and it's viewed in a manner  
2 most favorable to the adverse party. And if I'm --

3 THE PLAINTIFF: I understand that.

4 THE COURT: And --

5 MR. FOSTER: I'm sorry.

6 THE COURT: And so that's the problem that I'm  
7 having. The adverse party has the burden of producing  
8 evidence on any issue that it raises to show that you all  
9 would have the burden at trial. They don't have the burden  
10 at trial. You have the burden at trial to prove your  
11 claims.

12 MR. FOSTER: And I believe we can satisfy that,  
13 Your Honor. NWH could not have owned the property as a  
14 term of their contract and I have a document right in front  
15 of me that says, you know, the -- the lis pendens that was  
16 used by opposing counsel to try and force a settlement. A  
17 lis pendens interfered with my ability to borrow money for  
18 counsel.

19 This a document from Mr. Rote, you know, saying  
20 that the lis pendens interfered with his ability to borrow  
21 money. The lis pendens was only on that Sunriver property  
22 which he is claiming is not in his control. There are  
23 plenty issues of fact here, Your Honor.

24 THE COURT: But the issue -- the material issue  
25 is whether the transfer was fraudulent. That's the

1 material issue that we're all agreeing to, correct? Not --

2 THE PLAINTIFF: I understand that.

3 THE COURT: -- other action.

4 THE PLAINTIFF: But he was a debtor. He was a  
5 debtor to me for a very long time. I mean, since somewhere  
6 in 2012 or before. I'm not sure I would have to look it up  
7 but. And he was also very aware that the litigation  
8 against him was asking for an awful lot of money and he was  
9 probably in a pretty bad position as proven by how that  
10 litigation turned out. It was the highest award in -- in  
11 Oregon history to that time.

12 THE COURT: But what evidence do I have that this  
13 is a fraudulent transfer? The evidence that I've gotten  
14 this morning that we can all agree that the only thing I've  
15 seen is that there is a valid contract from 2012. There's  
16 a tax return also from 2012 that no one has disputed in  
17 terms of when it was actually filed. No one is telling me  
18 that, yes, it says 2012 but it was filed much, much later.  
19 After the 2018 judgment.

20 So I have a tax return that supports a October  
21 2012 transfer. I have a 2012 transfer which talks about  
22 doing a quitclaim deed within three years. All of this is  
23 done long before your judgment. I don't have anything on  
24 the record, guys. I -- everything that you have said, Mr.  
25 Zweizig would have been extremely helpful to show there was



1 a fraudulent transfer.

2           And it is your burden in a summary judgment to  
3 say, Judge, we -- here is the evidence that we would have  
4 at a trial that we would present to a jury which would  
5 present a question of fact. And I started this morning  
6 thinking that there were said documents and now I'm left  
7 with I don't have any other documents. All I have is a  
8 valid 2012 contract. I don't have any evidence that  
9 contract is a fraud, authenticated, signed after the date  
10 in question. Was made up in response to the summary  
11 judgment motion.

12           I have a tax return that supports that 2012  
13 contract. No evidence that it was subsequently filed after  
14 a judgment. That I have evidence that it was maybe shared  
15 in discovery after the fact but I don't have any evidence  
16 that it's not authentic and it wasn't actually filed. It's  
17 certainly something that could've been verified, you know,  
18 with the IRS. It's a tax filing.

19           And so I'm left with really no proof that it was  
20 a fraudulent. I mean, I have your lawyer telling me,  
21 Judge, a jury could speculate and look at the timing and be  
22 suspicious. That's true. But that's -- that doesn't  
23 create a material issue of fact. Suspicion and speculation  
24 and what they might think about evidence that you'll  
25 possibly present, that doesn't get me past the summary

1 judgment.

2           What should have been filed in response to the  
3 summary judgment motion is all of the evidence that you're  
4 telling me now that you have that would show -- that would  
5 support fraudulent transfer. It doesn't require that you  
6 tip your hand and tell me everything. It just requires  
7 some issue of material fact and I don't have that on this  
8 record.

9           I don't --

10           THE PLAINTIFF: Well, I think -- I think I've  
11 presented that to you, Your Honor. And, you know,  
12 unfortunately, my journey here to try and access the Court  
13 correctly has been greatly hindered by Mr. Rotes' actions  
14 against me, against my attorney. I had to get my attorney  
15 in here up to speed as quick as possible.

16           And what I would ask is that, you know, those  
17 actions not be rewarded by denying me my day in court. You  
18 said to me here today that, you know, I said some things to  
19 you and I've shown you some things even that, you know,  
20 would create, you know, materials of fact.

21           THE COURT: If they had been filed, correct.

22           THE PLAINTIFF: There are --

23           THE COURT: I -- I'm agreeing with you.

24           THE PLAINTIFF: I understand.

25           THE COURT: But they weren't. And they

1 weren't -- they're not before me. I don't have the  
2 documents that you referenced. You and your lawyer looked  
3 for those to see if those were filed. They were not.  
4 Unfortunately --

5 THE PLAINTIFF: I --

6 THE COURT: -- it requires -- the law requires  
7 that you support any claim that you file and there are  
8 certain ways that you have to do that. And I am so sorry,  
9 that this --

10 THE PLAINTIFF: Oh, I fully understand.

11 THE COURT: -- results in you --

12 THE PLAINTIFF: But these particular documents,  
13 the two that I think are very strong to -- to show what  
14 we're trying to show are documents that are both authored  
15 and signed and in public record by Mr. Rote. These are  
16 things publicly accessible.

17 THE COURT: And okay.

18 THE PLAINTIFF: So I think even if we were to go  
19 to trial, we would be able to bring those in even if we  
20 had -- had never produced them.

21 THE COURT: And let's say that we do.

22 THE PLAINTIFF: Of course we would do it in the  
23 counsel. What's that?

24 THE COURT: Let's say that we do. Let's say that  
25 we bring in the document that says under the mortgage

1 agreement it says you can't have a VRO. Let's say we have  
2 that one. And then the other that I -- I think you talked  
3 about was Mr. Rote trying to take out a mortgage on the  
4 property that he transferred in 2012. That's the other  
5 document that we're talking about, Mr. Zweizig?

6 Okay. So let's say --

7 THE PLAINTIFF: Yeah.

8 THE COURT: Let's say that we have those two.  
9 How does that get us around the fact that we have a 2012  
10 signed, authenticated transfer contract as well as a tax  
11 return? Now contract, one thing. But now we have a tax  
12 return also from 2012 that completely 100 percent supports  
13 the contract and shows that contract is, in fact, valid.  
14 Was made in October of 2012. Lists the very property that  
15 we are talking about. It validates that contract 100  
16 percent.

17 THE PLAINTIFF: I understand that.

18 THE COURT: How do we get around that?

19 THE PLAINTIFF: Well, I -- unfortunately, I have  
20 seen many different tax returns within these cases. Mr.  
21 Rote is a CPA and I fully agree with anyone that would say  
22 it would be our extreme burden to try and prove that they  
23 weren't what they appeared to be.

24 THE COURT: Yep.

25 THE PLAINTIFF: I assure you we would try to do

1 that.

2 THE COURT: But we don't have that. If you had  
3 that today then we would be in good shape. But all I have  
4 now is supposition and I can't let supposition go to a  
5 jury. There has to be a material issue of fact. And while  
6 I -- I appreciate that you know much more about this case  
7 and that you and Mr. Rote have a history and the two of you  
8 don't really care for each other and there's a long history  
9 of litigation, that's not really what I have to consider.

10 And I'm not trying to be dismissive of your  
11 feelings or what you believe in terms of whether. But you  
12 haven't provided -- basically, what you and your lawyer are  
13 telling me is, Judge, we don't -- we can't really prove  
14 that the contract's not valid. I can't really prove that  
15 the tax return isn't valid. Mr. Rote's timing and when he  
16 provided it was after the first summary judgment which is  
17 what he argues, which is new evidence and that would be  
18 correct. It would be new evidence.

19 But we can't really trust him, Judge. We know so  
20 many things about him. He's a CPA. I've seen lots of tax  
21 returns. Well, if you had a tax return that contradicts  
22 this tax return, that would be evidence that would show a  
23 material. But you haven't presented that. You're both  
24 just telling me trust me, Judge, we'll be able to throw a  
25 bunch of things at the jury and make them suspicious and

1 question the timing and wonder, hmm, why would he transfer  
2 this property.

3           But even the timing isn't suspicious based on the  
4 timeline that you all have presented to me this morning. I  
5 understand that the complaint was filed in '15. The  
6 transfer was recorded in April of '17. Your verdict wasn't  
7 until January of '18. And so even the timing isn't  
8 suspicious. The timing doesn't -- the jury -- it's not a  
9 material issue that even the timing doesn't create a  
10 material issue I guess is what I'm trying to say.

11           Had the transfer occurred after or even within a  
12 month or two months of when you received your jury verdict,  
13 I would completely agree with you. We would -- it would  
14 not be an issue. It would be pretty darn obvious and  
15 pretty suspicious. And yes, it would be a material issue.  
16 But based on the record that you all have presented to me  
17 today, there -- I don't see it. I'm so sorry.

18           THE PLAINTIFF: Okay. If -- if I could ask, Your  
19 Honor, I -- I am sorry that I monopolized the floor. I  
20 don't know if my attorney had anything left to say. If --  
21 if you could just give him the opportunity, I would  
22 appreciate that and I'm sorry that I busted in here.

23           THE COURT: No, it -- it's fine. You don't have  
24 to apologize. You are a party to the case and you are well  
25 within your rights to talk. In terms of being able to give

1 your attorney more time, that's not something that I'm able  
2 to do. Today was the day for dispositive motions. We  
3 created this timeline, guys, way back when we met and we  
4 talked about the date that things would happen. So today  
5 is the day that all parties were expected to bring their  
6 evidence, to file their motions, to make their arguments.  
7 And for me to decide --

8 THE PLAINTIFF: I'm sorry, I didn't -- I did not  
9 mean -- I'm very sorry. I did not -- I did not mean in the  
10 future. I -- I meant today.

11 THE COURT: Oh, okay. Yeah, certainly.

12 THE PLAINTIFF: Mr. Foster has spoken and then I  
13 spoke. I didn't know if Mr. Albertazzi had anything more  
14 to bring.

15 THE COURT: Oh, I understand what you're saying.  
16 Okay. Yeah, Mr. Albertazzi, is --

17 THE PLAINTIFF: Sorry.

18 THE COURT: No, I get it. Is there anything else  
19 that you wanted to say based on the evidence before me?  
20 That's kind of where I'm at right now?

21 MR. ALBERTAZZI: All right. I just wanted -- I'm  
22 not going to belabor this. I wanted to make a couple  
23 things clear just for the record. That the tax return  
24 argument was made at the motion for summary judgment based  
25 on new evidence and I -- I think I argued that but I just

1 wanted to make that clear. And that that motion was  
2 denied.

3 I made the point that when someone makes a motion  
4 for summary judgment, they're supposed to include all  
5 affidavits or all supporting materials. And that should --  
6 that was -- that should've been done in the prior motion.  
7 With regards to timing, I just wanted to clarify that the  
8 transfer to Tanya Rote occurred after the jury verdict and  
9 prior to the entry of the judgment. So those are the --  
10 just the points I wanted to emphasize that I think are in  
11 the record and other than that, I don't have anything  
12 additional to say.

13 THE COURT: Okay. And I'm curious about that  
14 last statement to Tanya Rote. So you're saying the  
15 transfer -- the 2012 agreement, NWH transfer is not a  
16 transfer that would give Tanya Rote all of the liabilities  
17 and assets and equity?

18 MR. ALBERTAZZI: Right. I -- I just don't think  
19 that that was a complete transfer. I think that -- So that  
20 was the argument I was trying to make.

21 THE COURT: Understood. Okay.

22 Well, Mr. Zweizig, I'm very, very sorry. I'm --  
23 I really believe that people deserve their day in court.  
24 Unfortunately, you and your lawyer were not able to  
25 demonstrate that there is a material issue of fact for the



1 jury other than possibly speculating and/or, you know,  
2 being curious or suspicious about timing. You were not  
3 able to overcome the 2012 documents that were provided by  
4 Mr. Rote and argued by Mr. Brooks (sic). So the summary  
5 judgment is granted.

6 Mr. Brooks (sic), I will expect you to draft the  
7 judgment and provide it to counsel for signature and I will  
8 sign it upon receipt.

9 MR. FOSTER: Thank you, Your Honor. Understood.

10 THE COURT: Everybody stay safe and be well.

11 THE PLAINTIFF: Thanks, Your Honor.

12 (Proceedings adjourned at 11:30 p.m.)

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CERTIFICATE OF TRANSCRIBER

I, Nicole Horton-Ellis, court-approved transcriber, certify that the foregoing is a full and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

\_\_\_\_\_  
/s/

Nicole Horton-Ellis  
Weber Reporting  
7590 East Gray Road, Ste 202  
Scottsdale, AZ 85260  
800.406.1290

Date: May 12, 2021