

Appendix A

California Supreme Court Case
#5253005

Denied 9-9-2020

SUPREME COURT
FILED

SEP 9 2020

Court of Appeal, Third Appellate District - No. C087168

Jorge Navarrete Clerk

S262871

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

DAVID NILSSON et al., Plaintiffs and Respondents,

v.

ANTHONY BATOR, Individually and as Trustee, etc., et al., Defendants and Appellants.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix B

Appellants opening brief
this brief was included because
the opinion of the court indicated
Appellant cited no authorities.

IN THE COURT OF APPEAL COURT OF THE STATE OF
CALIFORNIA THIRD APPELLATE DISTRICT
NO. CO87168

DAVID NILSSON, TRUSTEE OF THE NILSSON FAMILY REVOCABLE
TRUST, OLYMPIC INVESTMENTS LLC, HOME TICKET VENTURES, INC.
OROFINO VENTURES LLC

Plaintiffs and Appellee

VS

ANTHONY J. BATOR; BATOR MINING, NORTH AMERICAN
CONSERVATION TRUST; ANTHONY J. BATOR EXECUTIVE TRUSTEE OF
NORTH AMERICAN CONSERVATION TRUST; IRENE BATOR, TRUSTEE OF
NORTH AMERICAN CONSERVATION TRUST AND DOES 1 THROUGH 20
INCLUDED

Defendants and Appellant

ON APPEAL FROM SUPERIOR COURT OF SISKIYOU COUNTY (CASE NO.
SCSC-CVMS 2015 - 0122-1)

HONORABLE KAREN DIXON
PRESIDING JUDGE

APPELLANTS OPENING BRIEF

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APPELLANTS PRO PER

State of California

Court of Appeal

Third Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

California Rules of Court, rules 8.208, 8.490(I), 8.494(c), 8.496(c), or 8.498(d)

Court of Appeal Case Caption;

David Nilsson trustee for the Nilsson Family Revocable Trust, Olympic Investments LLC, Home Ticket Ventures Inc. Orofino Ventures LLC (appellee)

v

Anthony J. Bator; Bator Mining, North American Conservation Trust, Anthony Bator executive Trustee North American Conservation Trust, Irene Bator Trustee North American Conservation Trust (appellant)

Court of Appeal case Number; CO87168

Please check here if applicable;

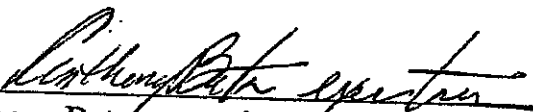
() There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

(What entities are involved is unknown. Mr. Nilsson flips assets around fraudulently to gain advantage over his adversaries)

Anthony Bator	Individually
Anthony Bator Executive trustee	Trustee for North American Conservation Trust

Irene Bator Trustee	Trustee for North American Conservation Trust
Bator Mining	Bator operating entity
North American Conservation Trust	Property owner
David Nilsson	Contracting entity
Nilsson Family Revocable Trust	Alleged holder of assets
Home Ticket Ventures INC.	Original contracting party
Olympic Investments LLC	Nilsson asset
Orofino Ventures	Nilsson asset

December 12, 2018 , California


 Anthony Bator executive trustee North American Conservation Trust



 Irene Bator trustee North American Conservation Trust

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INTRODUCTION

A) This suit is about the illegal removal of a gold mine property and gold mining equipment in violation of contractual obligations, Constitutional violations and violations of California statutes.

B) Statement of Related Cases

The primary defendant, Anthony Bator, is currently in prison. He has been accused and convicted of multiple crimes that never occurred. The conviction is on direct appeal and a Writ of habeas Corpus will be filed before the end of 2018.

The prosecution of Mr. Bator is retaliatory prosecution. The Siskiyou County legal community, led by Christine Winte, deputy district attorney, willfully and wrongfully violated the law by illegally removing Raylene Bator from her birth family. The Bator family is suing that legal community for violating the law and operating outside of their jurisdiction in the taking of the Bator child. See Appellate brief in *Case No. CO84483* currently before the California Court of appeals for the Third Appellate District.

The Bator family initiated a suit holding the defendants in *Case No. CO84483* supra civilly liable for the taking of their child. The Bator family seek criminal prosecution of these criminals for their illegal acts.

Christine Winte responded to the actions of the Bator family by falsely alleging Criminal actions by Anthony Bator and by violating dozens of Bator's rights. Mr. Bator was charged, subjected to a highly unfair trial and convicted.

The Bator child was illegally removed from the Bator family in August of 2011. In September of 2011, the Bator family began the process of holding the Siskiyou County authorities liable for their illegal acts. As the Bator family moved the action forward that legal community retaliated by alleging false charges against Mr. Bator. Christine Winte's testimony from 2011 until Mr. Bator's conviction in 2017 Contradicts what she repeatedly testified to before government agencies. Ms. Winte repeatedly perjured herself.

After an Administrative Hearing in an appeal to the Siskiyou County Superior Court (with a visiting judge) the Bator family prevailed in having the court conclude the child was removed illegally. See Judge Erwin's opinion in *Case No. SCCVPT 13 – 1526*. See also *In Re Guardianship of Christian G (2011) 195 Cal App 4th 581*.

This is the legal environment Mr. Bator and the Bator family has had to conduct these legal affairs in.

Three of the five judges in Siskiyou County are defendants in *CO84483*. One judge recused himself because he shared an office with Ms. Winte for ten years; and the fifth judge is Judge Karen Dixon.

Judge Karen Dixon is not impartial. Judge Dixon was at times at Mr. Bator's criminal trial as a member of the audience.

Judge Dixon either does not understand the law or does not believe it applies to

her.

Contracts Mr. Bator and Mr. Nilsson entered mean nothing in Judge Dixons courtroom; or Judge Dixon simply does not understand the terms of Bator et al's and Nilsson et al's contracts.

Mr. Bator believes Judge Dixon has operated to willfully damage the Bator family because the Bator's are seeking justice regarding the illegal taking of the Bator child.

Because of the injury to the Bator family, the economic hardship created by Mr. Nilsson et al's breaches, Mr. Nilsson has used these hardships to unjustly enrich himself.

STATEMENT OF THE FACT PART A

The Bator family entered the mining business in the 1980's after becoming advocates of a gold based currency.

The Bator family has spent hundreds of thousands of dollars on locating a mining property the Bator family intended to develop as a family business.

In 2004, North American Conservation Trust acquired the mine property and Anthony Bator owned the company that would mine the gold.

The Bator family began the project with the intention of running the project solely as a family project and proceeded to do so. Unfortunately, the Bator family ran out of money before completing the project.

Mr. Bator chose to sell some mining equipment that was not necessary to operate

a hard rock mine.

Mr. Nilsson came to visit California to examine that same placer mining equipment he was interested in purchasing for a placer mine he owned here in California.

Mr. Nilsson did not purchase the trammel for sale but expressed an interest in actively entering the mining business.

Mr. Bator informed Mr. Nilsson the status of the mine and Nilsson expressed an interest in participating (not loaning Bator et al money) with Mr. Bator to enter the mining business.

Mr. Nilsson expressed his desire to take advantage of being in the mining business and in the security of owning gold given the possible financial collapse resulting from the poor economic and political practices of the country.

Mr. Bator is an avid constitutionalist. He believes in a limited republican form of government with individual liberty and self determination, as well as being responsible for your actions.

Because of Mr. Bator's view of this countries economic and political policy he has become a target of the bureaucrats that promote that faulty political and economic policy. Mr. Bator is not in prison for committing a crime. He is in prison because of his political beliefs.

Mr. Bator expressed his beliefs and intentions with Mr. Nilsson. Mr. Nilsson understood Mr. Bator's beliefs and chose to take advantage of them by seeking to

participate in the Bator et al venture.

Mr. Nilsson acknowledged the distinct advantage that could be had by operating in the manner advocated. To enter the mining business is normally so capital intensive that few individuals would ever be able to capitalize getting started.

Both parties expressed the condition that had to exist for them to participate in the project with each other.

The conditions that had to exist before either party entered into any agreement were clearly established and clearly articulated in the contracts.

The mandatory terms Mr. Bator and Mr. Nilsson agreed to abide by;

Mr. Bator and North American Conservation Trust would NOT put the property up for collateral under any condition.

Mr. Bator would not put equipment up for collateral.

Mr. Bator required a salary to permit him to continue to bring the property into production.

Mr. Bator had to operate the mine as a sole proprietor. As a person who only risked his own life Mr. Bator was able to avoid interstate mine and safety standards which add substantial expense to development.

Both parties agreed to pay off the only mortgage on the mine property and have North American Conservation Trust hold the mine unencumbered.

Both parties agreed the only way out their mutual contractual obligations was to complete the mill and extract gold from the ore each party owned.

Both parties agreed to agree about the method of production and the spending of Mr. Nilsson et al's money his entities invested.

Mr. Nilsson expressed his concerns over purchasing equipment and Mr. Bator selling that equipment and absconding with the money and for selling the mine and absconding with the money.

Both parties worked these issues into the Ore Purchase and Processing agreement putting both parties, Bator and Nilsson on equal terms (in return and authority) on making profits and choices about what had to be done at the mine property. Both parties could succeed or both parties could fail. Now, Mr. Nilsson chooses to allege Mr. Bator is responsible for Nilsson's own choices.

Mr. Nilsson represented himself as a venture capitalist, a specialist in raising capital; and seeking higher returns for taking risks. Returns are high because the concept of being a venture capitalist accompanies the commitment to accomplish and finish goals. In the contracts between the parties here the contracts call for completion of the processing mill. The contracts identify that Mr. Nilsson purchased gold bearing ore. Mr. Nilsson's failure to fund the mill kept his ore from being processed. He made the decisions that caused the delays in completing the mill. Mr. Nilsson's failure to pay Bator's salary caused Bator's financial problems. Mr. Nilsson engineered the incompleteness of the mill. Because of his actions, he now attempts to enrich himself by attempting to take over this project clearly violating the intent of the parties. Judge Dixons prejudices against Mr. Bator has permitted this fraudulent attempt to take

North American Conservations Trust's property and Bator's company.

These issues were addressed in The Ore Purchase and Processing Agreements.

It was Mr. Nilsson who chose to create multiple contracts for his benefit allegedly for tax purposes.

The first contract North American Conservation Trust, Nilsson et al and Anthony Bator entered into was between North American Conservation Trust, Anthony Bator and Nilsson's company Home Ticket Ventures.

The contract called for Home Ticket Ventures to pay off the only mortgage that existed on the mine property and that the parties agreed to hold the property unencumbered.

Plaintiffs exhibit 5 clause 21(a) clearly states Home Ticket Ventures was to pay off the only existing mortgage on the mine. This is a benefit of North American Conservation Trust entering into a contract with Home Ticket Ventures Inc.

Nilsson's companies purchased 46,840 tons of gold bearing ore. Ore is rock that has gold that can be processed economically. The ore Nilsson purchased at approximately \$10 per ounce is valued at \$1,200 per ounce after processing and recovery. A total value of over \$13,000,000.00. This is how Nilsson would make a profit. But Mr. Nilsson had to fully fund the mill and to have it operating to make any money. The Ore had to be crushed to the consistency of talcum powder or finer, and the gold extracted. The block of ore on North American Conservation Trusts property has been identified and mapped. The block of ore has 120,000,000.00 of gold in that block

of ore.

Using traditional business models a company that makes a 20% net profit is considered a well run company. North American Conservation Trust and Anthony Bator made an agreement in which Mr. Nilsson was sold enough gold bearing ore to net out 50% of the profits that were projected from the \$120,000,000.00 block of ore on North American Conservation Trust (hereafter NACT) property.

The Ore Purchase and processing Agreements clearly states that Nilsson's companies were purchasing Ore; not equipment and not holding a mortgage.

NACT guaranteed the gold bearing ore Nilsson et al purchased would average .25 ounces of gold per ton. The guarantee warrants that if the gold ore processed, if it did not average a minimum of .25 ounces per ton, Bator, the processor, and NACT, the seller of the ore, would increase the number of tons sold to bring the yield of gold sold would average .25 ounces per ton for each ton sold to Mr. Nilsson et al.

Once the mill was complete, Mr. Nilsson et al no longer faced any risk. His \$13,000,000.00 would be the reward for funding the mill.

Mr. Nilsson implies Mr. Bator and NACT gave Mr. Nilsson an unconditional guarantee. What did the contract sell...gold bearing ore. A guarantee can only be applied to the product of what was sold.

Bator and NACT will not guarantee his car will get 28 miles to the gallon. His car is not part of the contract or the guarantee . The only guarantee they have given is the value of the ore Nilsson et al has purchased.

The Ore Purchase and Processing Agreements call for Mr. Nilsson to fund the completion of a gold processing mill. Clause 1(b) page 3 of these agreements and Clause F of The Ore Purchase and Processing Agreements.

After the completion of the gold processing mill, Mr. Bator, the processor would Process Mr. Nilsson et als ore using the revenue generated from the ore owned ny NACT processing costs per ounce of gold average \$1,000.00 per ounce.

No processing of ore could occur until after the mill was complete. No one's ore not NACT's ore, not Nilsson's ore.

NACT, Anthony Bator and Nilsson et al were in the same position. Nothing could happen until Nilsson fulfilled his commitment to fund a complete operating mill.

This suit is an attempt by Nilsson et al to hold Bator and NACT liable for the decisions Nilsson made for his artificial entities, Nilsson alleges NACT and Bator breached The Ore Purchase and Processing Agreements and failed to complete an operating gold recovery mill.

The question Nilsson refuses to address, and demonstrates Mr. Nilsson's fraudulent intent is that Bator could not operate without Mr. Nilsson's approval. The Ore Purchase and Processing Agreement's clearly state that all decisions regarding how Mr. Nilsson et al's money would be spent was to be by both parties. Bator et al and Nilsson et al.

The Ore Purchase and Processing Agreements under Recital Clause F states:

Subject to the final approval in writing of both parties after certain critical tests

are performed on the ore....

Further the contract states;

"may be amended from time to time during the terms of this agreement"

Further page 15 Clause 38 states;

"seller, processor and purchaser hereby agree to work together in good faith to amend this agreement in a timely manner and mutually acceptable terms and conditions such that the original intent and objectives of the agreement are amended in a legal and enforceable manner to fulfill the purposes set forth herein"

Ore Purchase and Processing agreements page 7 Clause 10 line (ii);

"seller has full right, power authority to execute this agreement and to sell and transfer ownership of the ORE."

Not a loan; Not a mortgage; Not a lien on equipment.

Mr. Nilsson makes NO statement about his duties under the contract other than the false conclusion that he honored all of his obligations.

Nilsson's company Home Ticket Ventures Inc. failed in its obligation to pay off the mortgage Nilsson et al alleges Mr. Bator are in default upon.

Nilsson company Home Ticket Ventures inc breached the contract, not fulfilling its obligations under Home Tickets contract with North American Conservation Trust and Anthony Bator to pay off the only mortgage that existed at the mine property; pursuant to plaintiffs exhibit # 5 Clause 21(a):

now the same alleged mortgage, contractually bound to be paid off by Home Ticket Ventures is being used to 'foreclose' on North American Conservation Trusts property. This note formally owned by Sandra Payne and Judith Ward "paid off" by Home Ticket Ventures Inc. ends up in the possession of another of Nilsson's unregistered companies, "Olympic Investments" who alleges North American Conservation Trust is in breach of contract. Home Ticket Ventures was Contractually bound to pay off the alleged mortgage. For Olympic Investments to allege NACT is in default is fraud.

Mr. Nilsson maneuvered circumstances to create a situation so he could steal the property. Judge Dixon does not comprehend the scheme Mr. Nilsson has employed to unjustly enrich himself; or her prejudice against the Bator family overcame her obligations to rule justly according to contractual obligations and the rule of law.

Judge Dixon wrongfully awarded judgement to Nilsson et al. any breaches Mr. Bator may have made are a direct result of Mr. Nilsson's failure to fulfill his contractual obligations.

Mr. Nilsson alleged he fulfilled all of his contractual obligations; simply not true.

At first, Bator believed the breaches by Nilsson were Mr. Nilsson et al having financial challenges of his own. Bator and Nilsson made The Ore Purchase and Processing Agreements because Mr. Bator had run into financial

difficulties. But, as time proceeded, Nilsson was scheming to increase the value of his portion at the mine while denying Bator the means to pay Bator's living and travel expenses. Nilsson then alleges Bator was in breach of his obligations and Nilsson could attempt to take the entire project. As Mr. Nilsson expressed he was having financial difficulties, the parties agreed to reduce Bator's salary from \$120,000.00 per year to \$24,000.00 per year, a bare minimum to survive.

Amongst the things that demonstrated Nilsson et al was being less than straight forward was:

- 1) Nilsson quit paying Bator any money to cover any of Bator's expenses.
- 2) At the time, Mr. Nilsson expresses his inability to pay Bator's living expenses Nilsson et al purchases a \$35,000.00 dump truck. That money was needed to pay off the mortgage, complete the mill, and pay Bator's living expenses. Mr. Nilsson proceeded to do what he wanted to do, increasing the value of the mine while causing difficulties for Bator enabling Nilsson to file this suit.

Bator already had a dump truck that was adequate for running during start up and dump trucks are available all over the country and require no lead time to acquire.

- 3) Concurrently, with # 1 and # 2, Mr. Nilsson purchases a 2300 gallon fuel truck. Bator had to fix it and paid to pick it up from Portland, Oregon. The

fuel truck tied up another \$7,000.00 that was not needed for a fuel truck at that time. That money was necessary to complete the mill, pay the mortgage that Nilsson failed to pay off; and should have been used to assist Bator with his living expenses. As with the dump truck, it was not necessary at the time. It was purchased and fuel trucks are available anytime with no lead time necessary for fabrication.

- 4) Concurrently, with #1, 2 and 3, Mr. Nilsson purchased \$5,000.00 worth of breaker bars that would be necessary when the mill was in production. The lack of capital for the purpose of finishing the mill continued as Mr. Nilsson continued to breach The Ore Purchase and Processing Agreements.
- 5) Concurrently, with # 1, 2, 3 and 4, Mr. Nilsson failed to pay off the remaining mortgages as agreed to in Exhibit # 5 with Home Ticket Ventures.

The Ore Purchase and Processing Agreements, exhibit # 5 page 15,
Exhibit A Clause 38;

"Further assurance, seller, processor and purchaser hereby agree to work together in good faith to amend this agreement in a timely manner and on mutually acceptable terms and conditions such that the original intent and objectives of this agreement are amended in a legal and enforceable manner to fulfill the purpose set forth herein."

And Exhibit 5 Clause F;

"subject to final approval of both parties after certain critical tests are

performed on the ore."

Mr. Bator informed Mr. Nilsson of the difficulties he was having because of Mr. Nilsson's failure to fund and that as a result the project was not moving capital. Mr. Nilsson failed to perform in "his expert field" raising venture capital. Mr. Nilsson failed. Mr. Nilsson was well informed of additional parties involved in making this project happen. He is fraudulently attempting to seize property he has no attachment to.

Mr. Nilsson et al acknowledged the participation of additional parties putting up specific equipment for use at the mine.

Anders Karlsson put up a significant sum of money to acquire floatation cells for the recovery of fine gold. These floatation cells are valued at 1.2 million dollars. Mr. Nilsson knew of Mr. Karlsson and of Mr. Karlsson's investment attachment of that equipment.

As has been demonstrated thus far, Mr. Nilsson's next attempt is to get the floatation cells.

Next, Mr. Nilsson approached Mr. Bator suggesting that he had been approved for an SBA loan that he will provide for the money to install the floatation cells. Nilsson presents a 'Note' to Bator to procure Bator's signature again to gain some form of attachment.

Again, Mr. Nilsson fails in his effort to raise money pursuant to all his obligations and promises.

The appellants believe these facts should be presented to the tier of facts. Judge Dixon, without justifying her conclusions, or providing any specific reasons as to why, dismissed the appellants Cross Complaint in violation of settled law (infra) about assuming the truth of facts presented in a suit in which opposing party attempts to have dismissed by demurrer.

After Mr. Bator was arrested *Case No. CO085265* Mr. Nilsson visited Mr. Bator in jail and informed Mr. Bator that Bator had to renegotiate the contracts. Instead of honoring his obligations, Mr. Nilsson finally fulfilled his obligation to pay off the mortgage owned by Sandra Payne (exhibit 5 Clause 2(a) which was behind because of Mr. Nilsson's willful failure to pay the mortgage earlier as well as his failure to pay Bator's living expenses for a substantial period of time. Both are affirmative defenses. The failure to pay happened long before Mr. Bator's arrest. Nilsson is indirectly responsible for Mr. Bator's arrest.

Mr. Nilsson's use of Nilsson's companies to acquire the property owned by North American Conservation Trust demonstrates his fraudulent intentions. When it was advantageous to Mr. Nilsson to pay off the mortgage, the money to pay off the mortgage, money was readily available. Not to fulfill his obligations to North American Conservation Trust and to Anthony Bator but to unjustly reward himself by taking or attempting to take the property in violation of the terms of the contract.

As acknowledged by the title of all the agreements, they are titled, 'Ore Purchase and Processing Agreements'. They are not loans. They are not mortgages. They are

not title to equipment or property. These agreements put Nilsson et al into the mining business by purchasing unprocessed ore.

Mr. Nilsson has produced a Deed of Trust alleging a 'Note' that he alleges has existed on the property since the Deed was filed. The Deed of Trust identifies the 'Note' associated with the deed of Trust. No Note that Mr. Nilsson et al can use to take the property, real or personal exists.

No UCC-1 encumbering the equipment allegedly attached by Nilsson et al exists or ever existed. And, the UCC that existed on a small part of the equipment years ago, no longer exists.

Mr. Nilsson is committing fraud sanctioned by Judge Dixon because Judge Dixon is prejudice against Mr. Bator and the Bator family.

The next issue that needs to be addressed regarding Mr. Nilsson obligations under The terms of The Ore Purchase and Processing agreements;

Default;

Defined in The Ore Purchase and Processing Agreements Exhibit A line (1)

"Purchasers exclusive right to use mill in event of default."

This was entered into the contract to compel the complete mill and prohibit any taking of the mill and property in any default circumstances. The contract calls for the delivery of gold. The only way to get the gold is to complete the mill by processing the ore.

The Ore Purchase and Purchasing Agreements exhibit A page 4(b)

This compels the contract, the mill completion and compels production of gold.

This is the intent of the contracts.

When Mr. Nilsson et al receives their allotment of gold, they leave. The property and the equipment releases Bator without any further obligations on Bator, the Bator family or North American Conservation Trust.

Mr. Bator and NACT would never have contracted for less.

THE PLAINTIFFS ALLEGATIONS

The contract favors the defendants and the defendants believe that given the terms all parties agreed to in The Ore Purchase and Processing Agreements, there is no way for the plaintiffs to prevail in this suit.

Although Griffith has falsely alleged that Mr. Bator has failed to answer Interrogatories and Admissions and Griffith has sought terminating sanctions and/or Bator from explaining and defending the intent of the contracts executed by NACT, Anthony Bator and Nilsson et al, Griffith willfully deceives the court.

Judge Dixon has dismissed, upon the request of attorney Griffith, that NACT and Anthony Bator's Cross Complaint be dismissed by demurrer, Judge Dixon dismissed the suit without cause (see infra).

Attorney Griffith has repeatedly alleged Mr. Bator has not answered Interrogatories and Admissions. This is an absolute lie. Mr. Bator answered the Interrogatories and admissions at least four times. In Griffiths request for terminating sanctions, Griffith

inadvertently provided some of the answers Mr. Bator responded to while at the same time Griffith is alleging he did not receive them.

Because of Griffiths lies about not receiving Mr. Bator's responses, Mr. Bator was compelled to have two witnesses sign affidavits that they observed and confirmed the answers and admissions sought by Griffith were sent to Griffith and the mail sent to Griffith was traced and delivery and acceptance by Griffiths office was confirmed.

After this elaborate necessity, a necessity because of Griffith lies, Mr. Griffith alleged he did not receive Bator's responses again until Bator supplied to the court the evidence referred to above.

Griffith then changed his story suggesting Mr. Bator's answers were inaccurate.

Mr. Bator's answers were 100% accurate. Unfortunately for Griffith, Bator's answers are 100% true and do not support Griffiths allegations and demonstrate it was Nilsson who breached the contracts.

This suit, these contracts are a big deal. When this mine is operating, the value of the project will easily exceed 100,000,000.00 not in gold value, in what can happen with good management and operations begin.

Mr. Nilsson's greed has overcome his honor.

Mr. Nilsson et al could not prevail in this case without a judge who appears unwilling to enforce the contracts or the law.

Mr. Nilsson et al could not prevail in this case without a judge who is prejudice against the defendants. (See statements of related cases).

THE LAW

PART B

Judge Dixons conclusions have no foundation in the law. Her conclusions have no foundations in the contracts and Judge Dixons conclusions have no foundation in common sense.

It appears as though Judge Dixons desire to punish the Bator family for suing her coworkers outweighs any sense of justice.

Mr. Bator identifies the intent of the contracts as agreed to by the participants of that contract.

Plaintiff, David Nilsson et al, filed suit against NACT and Anthony Bator on September 23, 2015. NACT and Anthony Bator immediately filed a cross complaint against David Nilsson et al.

David Nilsson's companies Nilsson Family Revocable Trust, Olympic Investments LLC, Home Ticket Ventures Inc. Orofino Ventures LLC are artificial entities. None of these companies are registered to do business in the State of California. They are not registered with the Secretary of the State. There is no information recorded with the state to identify who to serve when filing suit against any of these companies.

The unregistered artificial entities have no standing in the Courts of California to enforce a collection action in the State of California pursuant to *section 2203 of the California Corporation Code*;

(a) Any foreign corporation which transacts intrastate business and which does not hold a valid certificate from the Secretary of State may be subject to a

penalty of twenty dollars (\$20) for each day that unauthorized intrastate business is transacted; and the foreign corporation, by transacting unauthorized intrastate business, shall be deemed to consent to the jurisdiction of the courts of California in any civil action arising in this state in which the corporation is named a party defendant.

(b) The penalty established by subdivision (a) of this section shall be assessed according to the number of days it is found that the corporation has been willfully doing unauthorized intrastate business. Prosecution under this section may be brought, and the money penalty recovered thereby shall be paid, in the manner provided by Section 2258 for a prosecution brought under that section. The amount of the penalty assessed shall be determined by the court based upon the circumstances, including the size of the corporation and the willfulness of the violation.

(c) A foreign corporation subject to the provisions of Chapter 21 (commencing with Section 2100) which transacts intrastate business without complying with Section 2105 shall not maintain any action or proceeding upon any intrastate business so transacted in any court of this state, commenced prior to compliance with Section 2105, until it has complied with the provisions thereof and has paid to the Secretary of State a penalty of two hundred fifty dollars (\$250) in addition to the fees due for filing the statement and designation required by Section 2105 and has filed with the clerk of the court in which the action is pending receipts showing the payment of the fees and penalty and all franchise taxes and any other taxes on business or property in this state that should have been paid for the period during which it transacted intrastate business.

And Section 17708.07(a) of the California Corporation Code;

17708.07.

(a) A foreign limited liability company transacting intrastate business in this state shall not maintain an action or proceeding in this state unless it has a certificate of registration to transact intrastate business in this state.

Mr. Nilsson has participated in the decisions regarding the operations of the mine. He has never acted as a lender. He has continuously made decisions regarding many multiple of decisions regarding day to day operations.

Further, it is impossible for these companies to be served in the State of California or know the exact person responsible to receive service or responsible for their actions.

Upon close examination of the actions of these companies their continued fraud

becomes very obvious.

Mr. Bator is not responsible for their fraudulent actions; the Bator's are these companies victims.

As stated in Statement of the Facts Part A, a contract clearly exists.

Examination of the most fundamental statutes appear to be necessary because Judge Dixon appears to believe they do not exist or they do not apply to her jurisdiction. only Judge Dixon can answer that question of her logic.

The Constitution of the United States Article I, Section 10 states;

No state shall enter into any treaty, alliance or confederation; grant Letters of Marquis and reprisal; own money; omit bills of credit, make anything but gold or silver a tender In payment of debts; pass any Bill of Attainder, ex post facto of law, or law impairing the obligation of contracts, or grant title of nobility.

Judge Dixon, ultra vires, is operating to negate a contract which clearly the plaintiffs have clearly breached and committed fraud in attempting to gain title to NACT and Anthony Bator property.

CALIFORNIA CIVIL CODE DIVISION 3
OBLIGATIONS PART 2 CONTRACTS

Section 1439 states;

"Before any party to an obligation can require another party to Perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself, and must be able and offer to fulfill all conditions concurrent so imposed upon him in the like fulfillment of the other part..."

See *Wilson Zirb* 15 Cal App 2d 526

Silver v Bank of America National Trust and Savings Association
47 Cal App 2d 639

Peterson v Montgomery Holding Co.
Cal App F 3d 1949
89 Cal App 2d 890

"Before any party to an obligation can require party to perform any act under it, he must fulfill all conditions precedent thereto imposed on himself"

Pay Corp of America v Leach
177 Cal App 2d 632
2 Cal Rptr 425

In order for plaintiff to be able to enforce defendants obligations under a contract, plaintiff must allege either performance of the conditions precedent or an excuse.

Daum v Supreme Court of Sutter County
228 Cal App 2d 283
39 Cal Rptr 443

Mr. Nilsson et al allege they performed to the contract. If Judge Dixon read any of contract it would be glaringly obvious Mr. Nilsson did not fulfill his obligations and is lying. Further, when Bator et al attempted to present further evidence of Nilsson breaches, Judge Dixon ordered the evidence removed from the court.

"Allegations that a party performed conditions precedent imposed on him is essential part of his action.

Lewis v Foppiano
150 Cal App 2d 752
310 P 2d 656

And if the plaintiff choses to allege he fulfilled his obligation he should not commit perjury when he makes that allegation.

"If performance of a condition will not be followed by performance"

of a promise which is conditional it is useless for intended purposes and it is therefore unnecessary to perform condition."

Thwaites v John Hancock Mut Life Insurance Co
47 F Supp 737

Mr. Nilsson failed to fund completion of the mill, and pay Mr. Bator's salary as agreed. Mr. Nilsson failed to fund the mill yet he believes he should be able to receive gold from a complete mill. Mr. Nilsson breached the contract.

"A party complaining of the breach of contract is not entitled to recover herefore unless he has fulfilled his own obligations."

Gonsales v Hodgson
38 Cal 2d 91 237 P 2d 656

"The burden of proof is upon the plaintiff to show damages, and there can be no damages to him under a breach of contract unless he is ready willing and able to perform his part"

Helson v American Hawaiian S.S. 9th
279 F 72 1922
260 U.S. 732
43 S. Ct. 93

And what does the contract state if there in fact was a default (there is not) a default.

Civil Code Section 1556 states;

"All persons are capable of contracting except minors, persons of unsound mind and persons deprived of civil rights."

Mr. Bator and the Bator family have not been deprived of their civil rights.

California Civil Code section 1565 states;

"Consent of the parties to contract must be;

- 1) Free
- 2) Mutual; and

3) committed to each to the other

Mr. Nilsson and Mr. Bator agreed to the terms of the contract. Mr. Nilsson would fund a complete mill and his only recourse was to take over control of the mill and receive 80% of the gold until 'his' ore was processed.

Civil Code section 1567 states;

"A apparent consent is not real or free when obtained through...3. Fraud"

Civil Code section 1571 states;

"Fraud is either actual or constructive."

Civil Code 1572 states;

"actual fraud, written the meaning of this chapter, consists in any of the following Acts, committed by a party to the contract, of this his convenience, with intent To deceive another party thereto, or to induce him to enter the contract."

- "4. A promise made without any intention of performing; or
5. Any other act fitted to deceive."

Civil Code section 1573 states;

"Constructive fraud consists;

1. In any breach of duty which without an actually fraudulent intent Gains an advantage to the person in fault, or any one claiming under him, By misleading another to his prejudice, or to the prejudice of any one Claiming under him."

The Bator's allege actual fraud. Years of Mr. Nilsson conniving demonstrates his intention from the beginning of the project.

Civil Code 1574 states:

"Actual fraud is always a question of fraud."

NACT and Anthony Bator demanded a jury trial. Judge Dixon dismissed their claims.

There was no justification for Judge Dixon's dismissal.

Civil Code 1575 states;

"Under influence consists

- 1) In the use, by one in whom confidence is reposed by another, or who holds a real or apparent authority over him of such confidence or authority for the purpose of obtaining an unfair advantage over him;
- 3) In taking a grossly and unfair advantage of another's necessities or distress."

Mr. Nilsson demonstrated his intent by continuously denying Bator what Bator was dues and then seeking concessions for paying to Bator what Bator was due.

Civil Code 1580 states;

"consent is not mutual unless the parties all agree upon the same thing in the same sense. But in certain cases defined by this chapter in Interpretation, they are to be deemed so to agree without regard to fault."

Mr. Nilsson agreed with the terms of the agreement he put his signature to. He now Has buyers remorse which Bator et al are not responsible for.

Civil Code 1583 states;

"Consent is deemed to be fully communicated between the parties
As soon as the party accepting a proposal has put his acceptance
In the cause of transmission to the proposer in conformity to the last
Section."

Civil Code 1584 states;

Performance of the conditions of the proposal, or the acceptance of
The consideration offered with a proposal is an acceptance of the proposal.

Nilsson et al endorsed the contracts and performed accordingly.

Civil Code 1585 states;

"An acceptance must be absolute and unqualified, or must include in
Itself an acceptance of the character which the proposer can
Separate from the rest, and which must include the person accepting.
A qualified acceptance is a new proposal.

Nilsson et al accepted and acted upon The Ore Purchase and Processing
Agreements as they are written and as proposed.

Civil Code 1586;

“A proposal may be revoked at any time before its acceptance. is communicated to the proposer, but not afterward.”

Nilsson years later, has chosen the course of his actions; he is attempting to revoke the contract; Not an acceptable option.

Civil Code 1595 states;

“The object of a contract is the thing which is agreed, in the part of the party receiving the consideration to do or not to do.”

The Ore Purchase and Processing Agreement call for a complete mill and Mr. Nilsson operation of the mill in the event of default. Mr. Nilsson has breached The Ore Purchase and Processing Agreements.

Civil Code 1597 states;

“Everything is deemed possible except that which is impossible in the nature of things.”

There is nothing impossible in any of the terms of the contracts.

Civil Code 1636 states;

“A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, as far as the same is understandable and lawful.”

Civil Code 1638 states;

“The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.”

Civil Code 1640;

“When through fraud, mistake or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and erroneous parts of the writing disregarded.”

There is nothing in the written contract that fails to express the real intention of the parties. Mr. Nilsson is simply attempting to change the terms after accepting the contract as written.

Civil Code 1641 states:

“The whole of a contract is to be taken together, so as to give effect to every party if reasonably practicable, each clause helping to interpret the other.”

Civil Code 1643 states;

“A contract must receive such an interpretation will make it legal, Operative, definite, reasonable and capable of being carried into Effect if it can be done without violating the intentions of the parties.”

Nilsson et al's ignores the intention of the contract giving himself benefits that do Not exist; violating the contract.

Civil Code 1647 states;

“A contract may be explained by reference to the circumstance under which it was made and the matter to which it relates.”

Judge Dixon ruled against Bator et al without reference to the contract. absolute disregard for the intent of the contracts.

Civil Code 1648 states:

“However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.”

Mr. Nilsson's interpretation of the contracts do not exist. Nilsson's interpretation is not part of any contract Bator et al entered.

Civil Code 1575 states;

“Undo influence consists;

- 1) In the use by one whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him."
- 3) In taking a grossly oppressive and unfair advantage of another's necessities or distress."

After Mr. Bator worked out having float cells to the property, Mr. Nilsson attempted to gain an edge over the floatation cells. He attempted to renegotiate the terms of the contracts and end up with property he has no claim against or benefit he has no right to. Fraud and undue influence as Mr. Bator is struggling to complete the entire project.

Code of Civil Procedure section 33:

"A prosecuting attorney, in his or her discretion may assist in the civil resolution of a violation of an offense described in Title 3 (commencing with section 450) of Part 1 of the Penal Code in lieu of filing a criminal complaint."

In Siskiyou County the district attorney does not attempt to assist in a fraudulent breach of contract, the assistant district attorney steals your child, get caught in violating the law and then, to save her and her coconspirators, charges the victim with crimes that never happened.

The dismissal of Bator's cross complaint is unwarranted and in violation of settled case law as expressed by the courts; the California Supreme Court, the federal courts and The United States Constitution.

PART C ADDITIONAL CASE LAW AND ERRORS

Judge Dixon is compelled to follow these established judicial standards.

These mandated actions are listed as errors made by Judge Dixon in her ruling against Mr. Bator

GENERALLY

Pursuant the Constitution of the United States, Amendment # 7 the rules of the common law apply in all proceedings in all courts of this land. See also Article I section 10 (supra)

The California Constitution was adopted in 1872. *California Civil code 22.2* acknowledges the common law is the law of the land. The Code of Civil Procedure also acknowledges the common law section 1899-unwritten law defined;

“Unwritten law defined. Unwritten law is the law not promulgated and recorded, as mentioned in 1896, but which is nevertheless observed and administered in the courts of the country. It has no certain repository, but is collected from the reports of the decisions of the courts and treatises of learned men. (enacted 1872)

ERROR # 1

Defendant/cross complainant has repeatedly supplied to the court and Judge Dixon, decisions regarding the established procedures to be observed in the judge's rulings. Judge Dixon has not followed established common law principles in her decisions in this case.

ERROR # 2

A trial court must chose some remedy to safeguard a prisoner litigants rights of meaningful access to the courts to prosecute or defend against a civil action-threatening

his or her interests in cases where the prisoners civil action is bona fide and his or her access to the courts is being impeded.

(choice # 1) Appropriate remedies to secure a prisoners meaningful access to court in a civil action include the deferral of the action until the prisoner is released;

Hoversten v. Superior Court 74 Cal App 4th 636
88 Cal Rptr 2d 197 (2nd Dist. 1999)
Wantuch v. Davis 32 Cal App 4th 786
39 Cal rptr 2d 47 (2nd Dist. 1995)

(choice # 2) The transfer of prisoner to court

Hoversten v Superior Court (supra)

(choice # 3) The utilization of depositions in lieu of personal appearance.

Hoversten v Superior Court (supra)

(choice # 4) The appointment of counsel for the prisoner.

Hoversten v Superior Court (supra)

(choice # 5) The holding of the trial in prison.

Hoversten v Superior Court (supra)

(choice # 6) The conducting of conferences or pretrial proceedings by telephone.

Jameson v Dista 179 Cal App 4th 672
101 Cal Rptr 3d 345 (4th Dist. 209)

Hoversten v Superior Court (supra)

Wantuch v Davis (supra)

(choice # 7) The use of closed circuit television or other modern electronic media.

Hoversten v Superior Court (supra)

Wantuch v Davis (supra)

ERROR # 3

Defendant Anthony Bator has requested the court to correct its Order denying request for reconsideration purportedly because Anthony Bator failed to cite *Code of Civil Procedure section 1008*. Herein Bator cites *Code of Civil Procedure 1008*.

However, this is putting form above substance. See Error # 10,11,12, 13, 14, 19, 21, 22, and 23, 27.

The request for reconsideration was based upon long established principles of law.

Herein citing the United States Supreme Court in *Ex Parte Lange* 18 Wall 163;

"The general principle asserted as applicable to both civil and criminal cases that the judgements, orders and decrees of the courts of the country are under their control and decrees of the courts of this country are under their control during the term at which they are made, so they may be set aside or modified as law and justice may require."

Bator is not an attorney. Bator is sure Esquire Griffith and his staff are far more familiar with civil procedure than the defendant/cross plaintiff. However, two people, David Nilsson and Anthony Bator are each and alone acutely aware of the details of the contracts that they entered. This far, the court in not adjudicating this case based upon the

merits of the issues but on superficial issues or correctable procedure. This violates the objectives of the California Justice System as stated in Ludgate Ins. Co. v Lockheed Martin Corp (infra) and many other California Cases.

ERROR # 4

The court has failed in its duties to protect the defendants (and prisoners) due process rights. To permit the pre-trial conferences to proceed only with the presence of the defendant/cross plaintiff.

Judge Dixon failed to compel the sheriff to do any of the mandated procedures specified in Error # 2 and requiring a hearing in a demurrer. *Medix Ambulance Service Inc. v. Superior Court* (infra) states that a motion for demurrer a hearing is mandated.

ERROR # 5

Regarding the parties to this suit, because of the failure of the court to compel Bator's appearance and the courts failure clearly state its findings if in fact any findings have been made, Bator is unaware of who is or who is not a party to this suit.

Bator filed a cross complaint against David Nilsson. Proof of service has been entered as evidence in this case. David Nilsson has failed to appear. Esquire Griffith has not responded to the allegation against David Nilsson. He has responded to and for the parties controlled by David Nilsson. Mr. Nilsson's companies are not registered in the State and there is no way to effect service. His suit should be dismissed.

If a party fails to respond to a complaint or demurrer or otherwise, a default judgement may be entered against him or her. *California Code of Civil Procedure section 585, 586.*

David Nilsson has not responded to either the case complaint or the amended cross complaint. Defendant Bator believes the court has failed in its duty to enter and Entry of Default judgement against David Nilsson or dismiss this suit.

ERROR # 6

David Nilsson and Anthony Bator entered into a series of contracts that put David Nilsson into the mining business. The resulting contracts were the Ore Purchase and Processing Agreements. These arguments were worked out in detail between two parties, Anthony Bator and David Nilsson. David Nilsson then, as though a dealer, delegated these agreements to companies for tax and liability purposes. Bator alleges, as a result of dealing with David Nilsson for a number of years that this arrangement, the additional companies was done so that David Nilsson could pretend to have independent interests to help him fraudulently take Bator's property when the date and time he felt he could most beneficially take this very valuable property.

David Nilsson should be an essential party to this suit. *Code of Civil Procedure section 389 (a) and (b)* or the suit should be dismissed.

Judge Dixon fails to comprehend the contracts herein and or is unwilling to investigate the issues of the case to understand the issues articulated by the defendants in

their cross complaint.

ERROR # 7

What is a demurrer?

A demurrer tests the sufficiency of the pleadings as a matter of law.

A demurrer admits all facts properly pleaded no matter how unlikely or improbable.

Kerivan v Title Ins. & Trust Co. 147 cal App 3d 225
195 Cal Rptr 53 (2d dist) 1983

Schifano v City of Los Angeles 31 Cal 4th 1074
Cal rptr 3d 457, 79 P. 3d 569

Defendant/cross plaintiff believes he very sufficiently articulated the basis for his cross complaint, most certainly in the opposition to Plaintiff/cross defendants demurrer.

Judge Dixon has declined to admit all the facts pleaded by the defendant/cross plaintiff. Defendant/cross plaintiffs believe Judge Dixon has not even considered them in any light.

This has resulted in Judge Dixon inappropriately sustaining plaintiff/cross defendant demurrer

ERROR # 8

A demurrer for uncertainty must specify how and why the pleadings are uncertain and must include reference to the page and line numbers where the uncertainty appears.

Fenton v Groveland Community Service dist. 135 Cal App 3d 797,

185 Cal Rptr 7581 (5th Dist. 1982)

Judge Dixon inappropriately sustained the demurrer without the specific deficiencies being alleged to exist denying the defendant/cross plaintiff his due process rights.

ERROR # 9

A demurrer "defendant demurs on all the following grounds" will subject the demurrer to being overruled unless all the grounds exist.

Butler v Wyman 128 Cal App 736, 18 P, 2d (1st Dist. 1933)

Judge Dixon was provided the necessary information to overrule the demurrer.

Judge Dixon is putting form above substance in the granting demurrer of defendant/cross plaintiff cross complaint. This contradicts the finding of the Supreme Court of the State of California.

ERROR # 10

Non meritorious demurrers, both special and general, are subject to sanctions. Furthermore, sanctions may be granted when the demurring party forces an unnecessary hearing by refusing to stipulate to minor corrections of the complaint.

Ellis v Roshei Corp 143 Cal App 3d 642
192 Cal Rptr 57 (2d Dist, 1983)

The corrections required to comply with the allegations of plaintiff/cross defendant if they exist were and are minor. In the second demurrer. The defendant/cross plaintiff may have failed to list the four essential elements alleging fraud in a concise manner. The

defendant/cross plaintiff believe this is a minor correction of form that was, in fact, corrected in defendants/cross plaintiffs opposition to plaintiff/cross defendants demurrer.

Code of civil Procedure 430-60 states:

“A demurrer shall distinctly specify the grounds upon which any objections to the complaint, cross complaint or answer are taken. Unless it does so, it may be disregarded.”

The grounds for the opposition to the demurrer (1st) were stated in the demurrer and corrected in the defendants Bator's Amended Cross Complaint. The grounds for the 2nd motion to dismiss the demurrer were stated in the demurrer and the corrected in the defendant/cross plaintiff's Opposition to plaintiffs cross defendants 2nd demurrer.

It is attorney Griffith who fails to specify what are the grounds for the demurrer.

There was no basis for Judge Dixon to sustain the demurrer, other than a minor correction in form if my deficiencies actually exist.

ERROR # 11

The California Supreme Court has consistently held that a plaintiff is required only to set forth the essential facts of his or her case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature source and extent of his cause of action.

Ludgate Ins. Co. v Lockheed Martin Corp. 82 Cal App 4th 592, 608
98 Cal Rptr 2d 277 (6th Dist. 2000)

Youngman v Nevada Irr. Dist. 70 Cal 2d 240, 245

74 Cal Rptr 398, 449 P. 2d 462

Fenn v Sherriff 109 Cal App 4th 1466,1492
7 Cal Rptr 3d 185 (3rd Dist. 2003)

Elder v Pacific Bell Telephone co. 205 Cal App 4th 841,858
141 Cal Rptr 3d 48 (1st Dist. 2012)

Bator, defendant/cross plaintiff complied with the requirement. Judge Dixon erred in sustaining the demurrer.

ERROR # 12

A plaintiff is required only to set forth in his complaint the essential facts of his case with reasonable precision and with particularity sufficiently specific to acquaint the defendant of the nature source and extent of the cause of action, Nothing more is required.

Alch v superior Court 122 cal App 4th 339,390
19 Cal Rptr 3d 29,94

Fair Empl Proc. (Ca BNA) 793 (2nd Dist. 2004)

Judge Dixon erred in seeking more detail than is necessary to overrule the demurrer.

ERROR # 13

There is no need to require specificity in the pleadings because modern discovery procedures necessarily affect the amount of detail that should be required in a pleading.

Doheny Park Terrace Homeowners ass'n Inc v. Truck Insurance Exchange
132 Cal App 4th 1076.1079
34 Cal Rptr 157 (2d Dist, 2005)

Judge Dixon erred in requiring too much detail. Judge Dixon erred in denying

defendant Bator et al discovery.

ERROR # 14

In a complaint, less particularity is required where the defendant, herein Nilsson, may be assumed to have knowledge of the facts equal to that possessed by the plaintiff.

Ludgate Ins. Co. v Lockheed Martin Corp. 82 Cal App 4th 592, 608
98 Cal Rptr 2d 277 (6th Dist. 2000)

Two people negotiated these contracts in detail. David Nilsson is being evasive in answering the few Interrogatories and Admissions that he did because he knows of his fraudulent conduct. The truth will result in his fraudulent conduct being exposed and he will fail in his attempt to steal this property.

Judge Dixon in her refusal to overrule the demurrer is perpetuating and permitting Nilsson's fraud.

ERROR # 15

If a defendant demurs to the entire pleading, the demurrer will be overruled if any of the causes of action are good even though a demurrer might have been sustained as to one or more of the other causes of action.

Lord Garland 27 Cal 2d 840, 168 P. 2d 5 (1946)

Nilsson et al demurrer address how issues of fraud or breach of contract were to be addressed. The complaint was amended in Bator's Opposition to 2nd demurrer. No issues regarding extortion or usury were addressed. These issues should not have been

demurred as no basis for the demurrer was stated.

Judge Dixon seems to be aware of all of the counts alleged against Nilsson et al and fails in her judicial responsibility in sustaining the demurrer.

ERROR # 16

If a party fails to respond to a complaint by demurrer or otherwise a default judgement may be entered against him. David Nilsson was served Code of Civil Procedure 585 & 586.

Judge Dixon failed to enter entry of Default Judgement against David Nilsson. If it is Judge Dixon's position Mr. Nilsson was not served in California, because he has no registry address Mr. Nilsson's entire suit must be dismissed.

ERROR # 17

A court must allow oral argument for a demurrer before issuing a ruling.

Medix Ambulance Service Inc. v Superior Court 97 Cal App 4th 109,118
Cal Rptr 2d 249

Judge Dixon did not permit Anthony Bator, one of the two essential parties to this set of Agreements, to participate in any oral argument regarding either demurrer.

ERROR # 18

The court must assume the truth of all properly pleaded material allegations of the complaint and give the complaint a reasonable interpretation by reading it as a whole and its parts in their context.

Careau & Company v Security Pacific Business Credit Inc.
222 Cal App 3d 1371, 1381
272 Cal Rptr 387 (2nd Dist. 1990)

Judge Dixon has not given the cross complainant a reasonable interpretation and ignores defendants affirmative defense.

ERROR # 19

The court will liberally construe the allegations in the pleading with a view toward substantial justice between the parties. *Code of Civil Procedure 452.*

Quelimane v Stewart Title Guaranty Co. 19 Cal 4th 26, 43 n.7
77 Cal Rptr 2d 709, 960 P. 2d 513.

Judge Dixon is failing in her duty to rule in the interest of justice.

ERROR # 20

All facts properly pleaded in the complaint or cross complaint, no matter how unlikely or improbable, are deemed admitted by the demurrer.

Kerivan v. Title Insurance and Trust Company 147 Cal App 3d 225,229
195 Cal Rptr 53 (2d Dist. 1983)

Friends of Glendora v City of Glendora 182 Cal App 4th 573.576
106 Cal Rptr 3d 334 (2nd Dist. 2010)

Judge Dixon fails in her accepting Bator arguments as should be admitted by Nilsson et al demurring to the complaint.

ERROR # 21

To defeat a general demurrer a plaintiff is required to do no more than show that he or

she is entitled to some relief. That is so even where the facts may not be clearly stated or when the plaintiff demand relief to which he or she is not entitled under the facts alleged.

Schnall v Hertz Corp. 78 Cal App 4th 1144, 1152
93 Cal Rptr 2d 439 (1st Dist. 2000)

Judge Dixon fails on all counts to acknowledge Bator is entitled to relief.

ERROR # 22

A special demurrer should be overruled where the allegations of the complaint or cross complaint are sufficiently clear to apprise the defendant of the issues which he or she is to meet even though the allegations may not be as clear or as detailed as might be desired. Bator contends all of his arguments are clear.

Williams v Beechnut Nutrition Corp. 105 Cal App 301, 135 139 n2
229 Cal Rptr 605

Product Lub Rep (CCH) P 11162, 2UCC Rep Serv 2d 1252 (2d Dist. 1986)

The allegations were/are sufficient to apprise Nilsson et al. the demurrer should have been sustained.

ERROR # 23

A demurrer should be overruled if it is to an entire complaint or cross complaint if it contains allegations essential to the statement of any one cause of action even though an abortive attempt is made to state facts calling for other or different relief.

Certified Growers of California Ltd v. San Gabriel Valley Bank 150 Cal App 3d

281, 288

1972 Cal Rptr 710 (2d Dist. 1983)

Judge Dixon refused to grant 1 of Bator's complaints demonstrates her unwillingness to rule pursuant the law.

ERROR # 24

When a judge sustained demurrer, he must specify a statement of reasons upon which the ruling is based. A statement of reasons deemed sufficient if the judge simply includes in the Order a decision to the appropriate pages and paragraphs of the demurrer.

Civil Code of Procedure 472(d)

Fremont Indemnity Co. v Fremont general Corp.

148 Cal App 4th 97 111-112

Cal Rptr 3d 6211 (2d Dist. 2001)

Judge Dixon did not provide a statement of reasons upon which the ruling was based.
No justification for sustaining the demurrer exists.

ERROR # 25

A general demurrer should not be sustained without leave to amend if the complaint raises the possibility that its defects can be cured by amendment.

Litwin v Estale of Formula 186 Cal App 4th 607,613

111 Cal Rptr 3d 868 (3d Dist 2010)

Judge Dixon fails to permit Bator et al to amend their cross complaint.

ERROR # 26

Denial of leave to amend constitutes an abuse of discretion regardless of leave to amend is required.

Johnson v County of Los Angeles 143 Cal App 3d 298
Cal Rptr 704 (2d Dist. 1983)

Judge Dixon has abused her discretion in denying Bator et al to amend the complaint.

ERROR # 27

It is an abuse of discretion to sustain a special demurrer without leave to amend since it is directed to a defect of form rather than substance.

Jones v Daly 122 Cal App 3d 500, 506 n. 1
76 Cal Rptr 130 (2d Dist. 1981)

Judge Dixon sustained the demurrer when what was alleged was a defect of form.

ERROR # 28

Courts are extremely reluctant to grant demurrers without leave to amend unless there is NO feasible way that the plaintiff or cross complainant can possibly amend to state a viable cause of action. Indeed trial judges are very aware that appellate courts will go to great lengths to protect California's liberal policy of pleading and amendment.

Sanders v Cariss 224 Cal App 3d 985
274 Cal Rptr 186 (4th Dist. 1990)

Judge Dixon fails to acknowledge Bator et al can state a viable cause of action.

ERROR # 29

Unless the parties waive Notice or the court orders otherwise, the party prevailing at the demurrer hearing (denied to Bator) should within 5 days of the ruling mail or deliver a Proposed Order to the other party for approval as to form. Within 5 days after mailing

or delivery, the other party must notify the prevailing party as to whether or not the Proposed Order is approved as to form or any reason for disapproval.

Cal Rules of the Court rule 3.1312(a) Thereafter, the prevailing party must promptly Transmit the Proposed Order to the court together with a summary and responses of the other parties.

Cal Rules of the Court 3.1312(b)

Judge Dixon failed to comply with Rule 3.1312(a) or 3.1312(b) or compel esquire Griffith to Comply with the Rules of the Court.

ERROR # 30

Upon Motion for Reconsideration under the Code of Civil Procedure section 1008, if the Proposed Complaint states any cause of action then the trial court must vacate the Order which sustains the demurrer without the leave to amend and make a different Order granting plaintiff leave to file an amended complaint.

Careau and Company v Security Pacific Business Credit Inc.
222 Cal App 3d 1371
272 Cal Rptr 387 (2d Dist 1990)

Judge Dixon has refused to permit Bator et al to amend the complaint filed against Nilsson et al. Herein the Motion to reconsider filed with this Motion to Reconsider and Judicial Notice of errors committed by Judge Dixon cites *Code of Civil Procedure 1008* and Bator et al attempts to comply with the rules mandated by this code.

ERROR # 31

Code of Civil Procedure section 430.60 states:

“a demurrer shall distinctly specify the grounds upon which any objection to the complaint, cross complaint or answer is taken.”

In both demurrers plaintiff/cross defendant specified two specific deficiencies of the pleadings of Bator et al. Bator subsequently without Order from the court corrected these deficiencies. The court had no reason to sustain Nilsson et al's. demurrers.

ERROR # 32

Cal rules of the Court Rule 3.1320:

“A special demurrer for uncertainty must specify how and why the pleading is uncertain and must include reference to the page and line number where the uncertainty appears. Bator contends there is no uncertainty.

Fenton v Groveland Community Services Dist.
135 Cal 3d 797
185 Cal Rptr 758 (5th Dist. 1982)

Judge Dixon has not compelled Nilsson et al, represented by a licensed attorney to perform to the rules the attorney seems determined to compel Bator et al (non-attorney) to abide by.

ERROR # 33

Code of civil Procedure section 389. See Error # 6. The suit should not be permitted to move forward without David Nilsson individually. Bator and Nilsson individually and

personally negotiated all of the contracts.

Judge Dixon is Permitting David Nilsson to perpetuate his fraud by sustaining Nilsson et al's demurrers. Because Nilsson et al are not registered entities in the State of California, his entire suit should be dismissed.

ERROR # 34

Code of civil Procedure section 472(a) subd (c):

"Subject to the limitations imposed by *subdivision (e) of section 430.41*, if a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended plea shall be filed."

Judge Dixon failed to provide Bator the opportunity to amend his complaint pursuant to Nilsson et al's 2nd demurrer regarding form after Bator corrected the deficiencies of form in Nilsson et al's first demurrer. Mr. Bator does believe there are no deficiencies per arguments presented the demurrer.

ERROR # 35

Code of civil Procedure section 472(a) subdivision (d):

"Whenever a demurrer in any action or proceeding is sustained the court shall include in its decision or Order a statement of the specific ground or grounds upon which the decision is based which may be referenced to appropriate pages and paragraphs of the demurrer. The party against whom a demurrer has been sustained may waive the requirement."

BATOR DOES NOT WAIVE THE REQUIREMENT! Bator et al does not accept the sustaining of the demurrers and demands this court overrule the demurrers and sustain

the suit or dismiss the plaintiffs suit in its entirety or specify how Bator et al failed and part leave to amend the cross complaint.

Judge Dixon has not followed these fundamental principles of law as stated herein.

ERROR # 36

Regarding sustained Demurrers:

When a court makes an order sustaining a demurrer without leave to amend the question as to whether or not such court abused its discretion in making such an order is open to an appeal even though no request to amend such pleading was made.

Judge Dixon abused her discretion in sustaining the demurrer.

ERROR # 37

Bator has spoke with jail house commander Lieutenant Jeff Houston. Lieutenant Houston has indicated if the court ordered him to take Bator to the hearings for this case, He would. Without a court Order Lieutenant Houston has stated he will NOT.

Judge Dixon is failing in her judicial duty to protect the constitutional rights and due process rights of Anthony Bator. It is within her power. Judge Dixon has failed to assert her power.

QUESTION PRESENTED

This suit involves rewarding a very valuable property to foreign companies (out of state) whose acts are not in conformity with these companies contractual obligations, and

the reward of said properties are not in conformity with the law and case law.

These companies are doing business in the State of California. They are not registered with the Secretary of California. They are not registered to do business in the state of California. They are not registered to do business in the State of California. There is no agent available for legal service, there is no information available about who the principals are. The Superior Court has no jurisdiction to decide any collection issues; even less to award California properties to these unregistered companies operating in violation of the law.

the plaintiffs are unhappy with their decisions and they are attempting to modify and alter the contracts they agreed to, to permit these companies to take the property they desire.

David Nilsson is easy to understand. He has no honor and he is greedy. Nilsson has maneuvered events to attempt to take the entire project. In doing so, he has committed fraud, violated the terms and intent of the contracts, and violated multiple laws.

If North American Conservation Trust and Anthony Bator were granted a fair trial the award judgement to the plaintiffs would and should have been different. This suit should have been dismissed for two very obvious reasons.

1) The Superior Court has no jurisdiction.

2) The plaintiffs are not in conformity with their contractual obligations. *Civil Code*

02

1439 and related court rulings, supra.

Judge Dixon is letting her emotions overcome her sense of justice. The crime that Bator is accused of is heinous but the crime never happened.

The Siskiyou County legal community is attempting to destroy the Bator family. The Bator's are suing multiple members of that community for their illegal removal of the Bator child in 2011... *California Court of Appeals for the Third Circuit Case No. CO84483.*

When the Siskiyou County legal community realized the Bator's would hold them responsible for violating the law and stealing the Bator child, they fabricated false charges against Mr. Bator, committed perjury and convicted Mr. Bator in a very unfair trial. Mr. Bator will be filing a Habeas Corpus with over 130 substantial issues before the end of the year.

Judge Dixon is part of the Siskiyou County legal community. Her peers are being sued. Judge Dixon has been unable to separate her emotions from the facts and the law involved in this suit. Judge Dixon has permitted her contempt for Bator to affect her judgement.

Will the court permit the absolute disregard for contractual obligations and violations of the law to proceed uncorrected?

This suit should be dismissed with prejudice.

ARGUMENT

1) The court, Judge Dixon is prejudiced against the Bator family. Mr. Bator has been charged with multiple felonies that never occurred. The felonies never occurred. Bator was charged because the Bator family is seeking to hold the legal community in Siskiyou County responsible for the illegal removal of the Bator child by that community. Five or more of the members of that community are being civilly sued for the illegal taking of the child and the Bator family has expressed that they want to criminally punish them for their acts.

Judge Dixon objectiveness, to follow the obligations of the contracts, in controversy here, has been impaired by her prejudice.

Because of that prejudice;

2) Judge Dixon has permitted plaintiff to argue form rather than the obligations imposed by the contracts in controversy.

It is important to note, NACT and Mr. Bator believe that the form of their answers and cross complaint are in the appropriate form. That the cross complaint and the answers and admissions were provided and in conformity of the law.

Judge Dixon accepts as fact false statements made by Esquire Griffith over the truth spoken by Bator. See affidavits by Virginia Pelsor and Tim Brummet regarding

repeatedly providing answers to Griffiths Interrogatories and admissions.

Judge Dixon accepts Griffiths false allegations that Nilsson has attached mining equipment to hold a lien on. He does not. Nilsson is committing fraud.

Judge Dixon accepts what are purchases of Ore as mortgages on the property. They are not.

Judge Dixon accepts that Nilsson et al can contractually agree to pay off a mortgage owned by sandy Payne and Judith ward per The Ore Purchase and Processing agreements and then use these mortgages, that are paid off per contract, to take the property from North American Conservation Trust, Bator et al.

CONCLUSION

The Bator family is engaged in a legal battle with the legal community employed in Siskiyou County. Anthony Bator is in prison for a crime that was never committed. He has been prosecuted because he chose to sue assistant district attorney Christine Winte for her illegally removing the Bator child from the Bator home.

The prosecution was absolutely in retaliation for the Bator's holding Ms. Winte and her coconspirators liable, civilly and hopefully criminally, for their illegal acts; that community chose to prosecute Bator.

Mr. Bator cannot receive a fair trial in Siskiyou County. Judge Dixon works with all of the defendants who are involved in California Court of Appeals for the Third District

Case No. CO84483. Judge Dixon prejudice against the Bator family has interfered with her ability to fairly execute the law and the rights of the Bator family.

Violations of the law are documented herein;

- 1) The companies suing North American Conservation Trust and Bator are foreign companies. (not from California). They are not registered to do business in California and no person is available to accept legal service resides or has an office in California.
- 2) Judge Dixon awarded Nilsson et al a judgement of \$13,000,000.00. The \$13,000,000.00 was to be paid to Nilsson from the ore he purchased and his ore was run through the processing mill he failed to fund. Nilsson et al breached the contract – not Bator.
- 3) Rather than an award of judgement, the contracts between the parties provide the sole remedy in the contracts for any default is to give control of the mill with any default a short fall is brought current. If Nilsson gained control, Nilsson et al would receive their \$13,000,000.00, 80% of the gold to Nilsson et al, 20% to North American Conservation Trust et al.
- 4) No demand for payment by Nilsson et al was ever presented.
- 5) No payment was ever due to Nilsson et al as none was due.
- 6) Judge Dixon is violating *Article I section 10 of The United States Constitution*

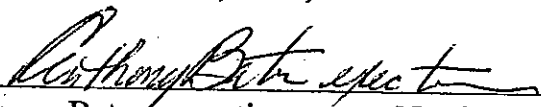
by ruling, as she has impairing, the contractual obligations of Nilsson et al for the funding of a complete mill.

- 7) Judge Dixon sustained a demurrer when the cross plaintiff clearly demonstrated a cause of relief.
- 8) Judge Dixon denied Bator the ability to be heard at all of the important Hearings that decided this case. See error # 2 Part C.
- 9) Upon request Judge Dixon denied the Bator family a court reporter.
- 10) There are open Motions Judge Dixon has refused to rule on.

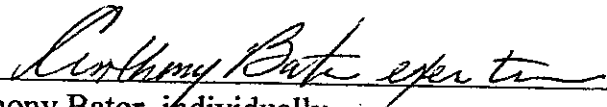
Wherefore the appellant requests this court dismiss the suit against North American Conservation Trust and Anthony Bator with prejudice.

Or, as the Court deems appropriate.

Dated December 12, 2018, California



Anthony Bator executive trustee North American Conservation Trust



Anthony Bator, individually



Irene Bator trustee North American Conservation Trust

CERTIFICATE OF COMPLIANCE

Petitioner of record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed Opening Brief is produced using 13 point Roman type including footnotes and contains approximately 13,422 words which is less than the total words permitted by the rules of the court. Petitioner relies on the word count of the computer program used to prepare this Opening Brief.

Dated: 12/12/2018

Signed: _____

Print Name: _____

Pro Per

PROOF OF SERVICE (Court of Appeal) <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.	
Case Name: Nilsson et al v Bator et al Court of Appeal Case Number: CO87168 Superior Court Case Number: SCSC-CVMS 2015-122-1	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My ☒ residence ☐ business address is (specify): 503 Henely Hornbrook Road
Hornbrook, Ca. 96044
3. I mailed or personally delivered a copy of the following document as indicated below (fill in the name of the document you mailed or delivered and complete either a or b):

OPENING BRIEF

- a. ☒ Mail. I mailed a copy of the document identified above as follows:

- (1) I enclosed a copy of the document identified above in an envelope or envelopes and
- (a) ☒ deposited the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
- (b) ☐ placed the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

(2) Date mailed: 12/12/2010

- (3) The envelope was or envelopes were addressed as follows:

- (a) Person served:

(i) Name: Clerk of the Court

(ii) Address: Court of Appeal, Third Appellate District
914 Capitol Mall
Sacramento, Ca. 95814 - 4814

- (b) Person served:

(i) Name: Clerk of the Court

(ii) Address: Superior Court, Siskiyou County
311 Fourth Street, room 206
Yreka, Ca. 96097

- (c) Person served:

(i) Name: Esquire David Griffith

(ii) Address: Griffith & Horn
1530 Humboldt Road, suite 3
Chico, Ca. 95928

☒ Additional persons served are listed on the attached page (write "APP-009, Item 3a" at the top of the page).

- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): Hornbrook, California

'APP-009, Item 3a'

Clerk of the Court
Supreme Court of California
350 McAllister St.
Room 1295
San Francisco, Ca. 94102

Case Name:

Nilsson et al v Bator et al

Court of Appeal Case Number
C087168

Superior Court Case Number
SCSC-CVMS 2015-122-1

3. b. ☐ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page (write "APP-009, Item 3b" at the top of the page).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/12/2018

Virginia Pelsor
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

Virginia Pelsor
(SIGNATURE OF PERSON COMPLETING THIS FORM)

Appendix C
California Superior Court case
#58SCCVMS-2015-01221-1
Judgment

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU

JUN -4 2018

BY: *R. Dickman*
DEPUTY CLERK

1 DAVID R. GRIFFITH, ESQ. (SBN 170172)
2 GRIFFITH & HORN, LLP
3 1530 Humboldt Road, Suite 3
4 Chico, California 95928
5 Telephone: (530) 812-1000
6 Facsimile: (530) 893-1093
7 Email: david@davidgriffithlaw.com

8 Attorney for Plaintiffs DAVID NILSSON, Trustee of the
9 NILSSON FAMILY REVOCABLE TRUST,
10 OLYMPIC INVESTMENTS LLC,
11 HOME TICKET VENTURES, INC.
12 OROFINO VENTURES, LLC

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SISKIYOU

11 DAVID NILSSON, Trustee of the NILSSON)
12 FAMILY REVOCABLE TRUST,)
13 OLYMPIC INVESTMENTS LLC,)
14 HOME TICKET VENTURES, INC.;)
15 OROFINO VENTURES, LLC,)

16 Plaintiffs,)

17 vs.)

18 ANTHONY J. BATOR; BATOR MINING;)
19 NORTH AMERICAN CONSERVATION)
20 TRUST; ANTHONY J. BATOR, Trustee of)
21 NORTH AMERICAN CONSERVATION)
22 TRUST; IRENE BATOR, Trustee of NORTH)
23 AMERICAN CONSERVATION TRUST;)
24 ERNEST ALDRIDGE, Trustee of NORTH)
25 AMERICAN CONSERVATION TRUST;)
26 HEATHER ALDRIDGE, Trustee of NORTH)
27 AMERICAN CONSERVATION TRUST;)
28 and DOES 1 through 20, inclusive,)

Defendants)

CASE NO.: SCSC-CVMS-2015-01221-1

JUDGEMENT

Date: March 16, 2018

Time: 8:30 a.m.

Dept.: 9

Hon. Karen Dixon, Judge

IT IS ORDERED, ADJUDGED, AND DECREED that Judgement is entered in favor
of Plaintiffs DAVID NILSSON, Trustee of The Nilsson Family Revocable Trust, OLYMPIC
JUDGMENT

INVESTMENTS, LLC, HOME TICKET VENTURES, INC., and OROFINO VENTURES, LLC, and against Defendants ANTHONY J. BATOR, individually, as Trustee of the North American Conservation Trust, and doing business as BATOR MINING, as follows:

1. There is now due and owing to Plaintiffs DAVID NILSSON, Trustee of The Nilsson Family Revocable Trust, and OLYMPIC INVESTMENTS, from Defendants ANTHONY J. BATOR, individually, as Trustee of the North American Conservation Trust, on the debt owed under the \$110,000.00 Installment Note secured by that certain Deed of Trust With Assignment of Rents dated February 23, 2004 recorded as Instrument No. 04-0003632 on March 12, 2004 in the Official Records of the Siskiyou County Recorder's Office, State of California, the sum of \$107,245.78 (representing principal owed in the amount of \$76,729.63 as of February 26, 2018, accrued interest at the rate of 6% in the amount of \$28,996.15, and late fees of \$1,520.00), plus daily interest at the rate of 6% per annum accruing on the principal sum in the amount of \$12.61 per day (i.e., $\$76,729.63 \times 6\% = \$4,603.77$ divided by 365 days = \$12.61) after February 26, 2018, until paid.

2. There is now due and owing to Plaintiffs OLYMPIC INVESTMENTS, LLC, HOME TICKET VENTURES, INC., and OROFINO VENTURES, LLC, from Defendants ANTHONY J. BATOR, individually and as Trustee of North American Conservation Trust, and doing business as BATOR MINING, and NORTH AMERICAN CONSERVATION TRUST on the debt owed under the Ore Purchase Agreements secured by that certain Deed of Trust recorded in the Official Records of the Siskiyou County Recorder's Office, State of California as Document Number 09-0010115 on October 1, 2009, the sum of \$12,751,200.00, plus daily interest at the rate of 10% per year after entry of judgment, or \$3,493.47 (i.e., $\$12,751,200.00 \times 10\% = \$1,275,120.00$ divided by 365 days = \$3,493.47 per day):

JUDGMENT

1 a. The real property described below, or as much of it as may be necessary, shall
2 be sold in the manner prescribed by law by the levying officer of Siskiyou County, California, on
3 proper application for issuance of a writ of sale to the levying officer.
4

5 b. Any party to this action may be a purchaser at the sale.

6 c. From the proceeds of the sale, the levying officer shall deduct the expenses for
7 the levy and sale and shall then pay to Plaintiffs the sums adjudged due, together with interest at
8 the rates stated above.

9 d. If any surplus remains after making those payments, it shall be paid by the
10 levying officer to Defendant ANTHONY J. BATOR, individually, as Trustee of the North
11 American Conservation Trust.
12

13 e. No defendant is personally liable for any deficiency between the sale price and
14 the total amount due plaintiffs together with expenses of sale.

15 f. A deficiency judgment being waived, the property shall be sold as provided in
16 Code of Civil Procedure Section 716.020.
17

18 g. From and after delivery of a deed by the levying officer to the purchaser at the
19 sale, Defendants ANTHONY J. BATOR, individually, as Trustee of the North American
20 Conservation Trust, and doing business as BATOR MINING, and all persons claiming under
21 them or having liens subsequent to the trust deed on the real property described below, and their
22 personal representatives, and all persons claiming to have acquired any estate or interest in the
23 property subsequent to the filing of notice of the pendency of this action with the county
24 recorder, are forever barred and foreclosed from all equity of redemption in, and claim to, the
25 property and every part of it.
26
27

28 JUDGMENT

75

1 h. The property that is the subject of this judgment and order is located in
2 County, California, and is described as follows:

3 **ALL THAT REAL PROPERTY IN THE STATE OF CALIFORNIA,**
4 **COUNTY OF SISKIYOU, UNINCORPORATED AREA, DESCRIBED**
5 **AS FOLLOWS:**

6 Those lode mining claims known as Trust Buster No. 1, Trust Buster
7 No. 2 and Trust Buster Mill Site described and recorded as follows:
8 Mineral Survey Nos. 6427-A and 6427-B, respectively, embracing
9 a portion of Section 10, Township 47 North, Range 8 West, Mount
10 Diablo Meridian.

11 **APN: (79-00) 6-060-020, 030.**

12 **AND**

13 Those lode mining claims numbered CAMC 274932, 274933 and 274934
14 recorded in Siskiyou County Recorder's office as Instrument Numbers
15 199810291356, 1998102913528 and 19981022913529 and known on
16 the BLM's records as TRUSTBUSTER #4, TRUSTBUSTER #5 and
17 TRUSTBUSTER #6, respectively. Together with the rents, issues and profits
18 thereof, subject however, to the right, power and authority hereinafter given
19 to and conferred upon Beneficiary to collect and apply such rents, issues
20 and profits.

21 **IT IS ORDERED, ADJUDGED, AND DECREED that:**

22 3. There is now due and owing to Plaintiff OLYMPIC INVESTMENTS, LLC from
23 Defendant ANTHONY J. BATOR under the loan agreement secured by the security agreement
24 and UCC-1 Financing Statement filed on October 25, 2009 as Document #22733650002, Filing
25 #097212205634, the sum of \$160,342.13 (representing principal owed in the amount of
26 \$114,873.42 as of March 1, 2018, and accrued interest at the rate of 10% in the amount of
27 \$45,468.71), plus daily interest accruing on the principal sum due at the rate of 10% in the
28 amount of \$31.47 per day (i.e., \$114,873.42 x 10% = \$11,487.34 divided by 365 days = \$31.47)
after March 1, 2018 until paid.

JUDGMENT

1 a. Plaintiff OLYMPIC INVESTMENTS, LLC may take possession of the
2 "Collateral" described below.

3 b. The personal property Collateral described below, or as much of it as may be
4 necessary, shall be sold in the manner prescribed by law by the levying officer of Siskiyou
5 County, California, on proper application for issuance of a writ of sale to the levying officer.
6

7 c. Any party to this action may be a purchaser at the sale.

8 d. From the proceeds of the sale, the levying officer shall deduct the expenses
9 for the levy and sale and shall then pay to Plaintiff the sums adjudged due, together with interest
10 at the rate stated above.
11

12 e. If any surplus remains after making those payments, it shall be paid by the
13 levying officer to Defendant ANTHONY J. BATOR.

14 f. No defendant is personally liable for any deficiency between the sale price and
15 the total amount due Plaintiff together with expenses of sale.

16 g. A deficiency judgment being waived, the property shall be sold as provided in
17 Code of Civil Procedure Section 716.020.
18

19 h. From and after delivery of a bill of sale by the levying officer to the purchaser
20 at the sale, Defendant ANTHONY J. BATOR and all persons claiming under him or having
21 liens subsequent to the lien on the personal property Collateral described below, and their
22 personal representatives, and all persons claiming to have acquired any interest in the property
23 subsequent to the filing of notice of the pendency of this action with the county recorder, are
24 forever barred and foreclosed from all equity of redemption in, and claim to, the property and
25 every part of it.
26

27
28 JUDGMENT


1 i. The personal property Collateral that is the subject of this judgment and order is
2 located in County, California, subject to the UCC-1 Financing Statement filed on October 25,
3 2009 (Document #22733650002 and Filing #097212205634) and more particularly set forth on
4 Exhibit "A" attached hereto.
5

6 IT IS ORDERED, ADJUDGED, AND DECREED that:

7 4. Cost of suit is awarded to Plaintiffs.

8 5. Attorney's fees are awarded to Plaintiffs in an amount to be determined by the
9 Court by way of motion and further order of the Court

10 Dated: 6-4-18


11 JUDGE OF THE SUPERIOR COURT
12 KAREN L. DIXON

13 This instrument is a correct copy of the
14 original on file in this office.

15 ATTEST: JUN 26 2018
16 RENÉE MCCANNA CRANE

17 Clerk of the Superior Court of the State of
18 California and for the County of Siskiyou.

19 By [Signature] Deputy
20
21
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JUDGMENT

Appendix D

List of Equipment David Nelson
et al fraudulently alleges he
has authority to take

Equipment Description	VIN, Serial Number or Other Identifier
1 - Kolman Trap Conveyor with steel stands/electronic controls	None - All Items are Located at Trust Buster Mill Site
Austin Machine Works 10"x36" Jaw Crusher - Refurbished new jaw plates and springs	Serial # 4014 - Located at Trust Buster Mill Site
3 - Conveyors	None - All Items are Located at Trust Buster Mill Site
Barmac B600 Impact Crusher with 250 HP Motor	None - All Items are Located at Trust Buster Mill Site
1999 Ford Ranger Pickup Truck - Red	VIN 1FTZR15V0XPB10300 - Located at Trust Buster Mill Site
Armadillo 4'x10' double deck vibrating screens	Serial # 41-562 - Located at Trust Buster Mill Site
Gallagher 3"x3" slurry pump with Toshiba 40 HP Motor	Serial # 100602092 - All Items are Located at Trust Buster Mill Site
3 - Sweco Screens 48" diameter multi-deck screens	Sweco Screen #2171, # TBD, and # TBD - at Trust Buster Mill Site
Spare Sweco Screens and retention rings, etc.	None - All Items are Located at Trust Buster Mill Site
Oversize to two conveyors to hopper	None - All Items are Located at Trust Buster Mill Site
Hopper - oversize with conveyors/electronic controls	None - All Items are Located at Trust Buster Mill Site
2 - New Large Stutenroth Impact Mills with New 50 HP Motors	None - Located at Trust Buster Mill Site
Stutenroth Steel Impeller Parts	Located at Trust Buster Mill Site
Mix-up Tank with Gallagher Pump, Motor and Trough	None - All Items are Located at Trust Buster Mill Site
Undersize to Mix-up Tanks with Edactors, Pumps/Troughs	None - All Items are Located at Trust Buster Mill Site
Manifold with Valves, Regulators, Hoses, etc.	None - All Items are Located at Trust Buster Mill Site
Humphrey Spirals with Cement Base	None - All Items are Located at Trust Buster Mill Site
5 - i-CON Concentrators with Metal Stands, Valves, etc	Serial #s F1002101489, F1002101524, F1002101604, F1002101609 and F1002101709 - Located at Trust Buster Mill Site
Knudsen Bowl Concentrator	None - Located at Trust Buster Mill Site
Clean Gold Plate	None - All Items are Located at Trust Buster Mill Site
UHF Finishing Table	None - Located at Trust Buster Mill Site
Thickener Tank	None - All Items are Located at Trust Buster Mill Site
Electrical Rooms and Electrical Equipment, Soft Starter, Trans. Murphy	None - All Items are Located at Trust Buster Mill Site
Scanna 150KW Diesel Generator	DS14A01 - 908121 - Located at Trust Buster Mill Site
Marathon MagnaMax 400KW Diesel Generator	Serial # TK3414987 - Located at Trust Buster Mill Site
21 - Wemco Model 56 Flotation Cells, Auto Samplers and Steel Catwalks	Serial #s 6237627, 6337627, 6939280-1, 6939280-2 and 6939280-3 - Six Located at Trust Buster Mill Site; 15 at Stidham Trucking in Yreka
John Deere 450G Dozer with 6-way blade	Serial # U87845T - Type T5E3M - Located at Trust Buster Mill Site
Ford 555C Backhoe	Serial # AB09275 - Located at Trust Buster Mill Site
1991 Komatsu PC300LC-3 Excavator with 42-inch Bucket with Hydraulic Thumb	Serial # 12449 - Located at Trust Buster Mine Site - Upper Road
1976 Poclain RC 200 Excavator with approximately 2400 hours	Serial # 002698 - Located at Trust Buster Mill Site
1980 AM General M920 Dump Truck Rebuilt with new Dump Body 3167 miles	Serial # OT5816-60-10559 - 2007 Fully Rebuilt by Unicor/FCI Gilmer
1978 Ford Dump Truck with CAT 3208 Engine	Located at Trust Buster Mine Site - Upper Road
1978 GMC 7000 Diesel Fuel Truck (54K miles)	VIN # T17DB9V600797 Truck Is Located at Trust Buster Mill Site
1976 Chevrolet Flatbed Truck	California License Plate 95746D - Located at Trust Buster Mill Site
21,000 GVW Gooseneck Trailer, Chains and Binders	#0928 - Trailer Is Located at Trust Buster Mill Site
Newport Motor Home	Located at Trust Buster Mill Site
Normad Trailer	California License Plate EU8414 - Located at Trust Buster Mill Site
Semi Trailer with Assay Lab, Kiln and Atomic Absorption	VIN 1H2V02812GH031767 - Located at Trust Buster Mill Site
Tool Trailer, Tools, Welder, Cutting Torches, etc.	None - All Items are Located at Trust Buster Mill Site
Wash Plant mounted on skids	Wash Plant Is located at Trust Buster Mill Site
Blower and Underground Duct System	None - All Items are Located at Trust Buster Mill Site
Retention Pond Equipment and Pond Liner	None - All Items are Located at Trust Buster Mill Site

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Appendix E
Order of Court of Appeal
in favor of David Nilsson et al

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Siskiyou)

DAVID NILSSON et al.,

Plaintiffs and Respondents,

v.

ANTHONY BATOR, Individually and as Trustee,
etc., et al.,

Defendants and Appellants.

C087168

(Super. Ct. No.
SCSCCVMS2015012211)

Appellants Anthony Bator, Bator Mining, and North American Conservation Trust (Bator) and respondents David Nilsson, Olympic Investments, LLC, Home Ticket Ventures, Inc., and Orofino Ventures, LLC (Nilsson) entered into a loan agreement and an ore purchase agreement secured by real and personal property of the mining operation. Relations between Bator and Nilsson deteriorated, culminating in a whirlwind of protracted litigation. Ultimately, the court granted Nilsson's motion for summary judgment. Proceeding in pro. per., Bator appeals. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Nilsson purchased an interest in a note and deed of trust executed by Bator in the amount of \$110,000. Nilsson alleged Bator failed to make the required payments under the note and deed of trust. Bator and Nilsson entered into a separate ore purchase and processing agreement. Nilsson alleged Bator breached the agreement by failing to abide by its terms.

Complaint

In September 2015 Nilsson filed a complaint alleging Bator's breach of the two agreements. Nilsson sought damages and also requested a judicial foreclosure of Nilsson's security interest in and collateral related to Bator's mining operation. The first cause of action sought judicial foreclosure on the deed of trust. The second cause of action sought judicial foreclosure on the ore purchasing and processing agreements. Bator answered the complaint.

Cross-complaint

Bator filed a cross-complaint. Nilsson filed a demurrer to the cross-complaint and a motion to strike portions of Bator's answer. Bator opposed both. In March 2016 the trial court sustained Nilsson's demurrer to Bator's cross-complaint and ordered Bator to file an amended cross-complaint and an amended answer by May 13, 2016. Subsequently, Nilsson filed a series of discovery motions.

On May 12, 2016, Bator filed a second amended cross-complaint asserting 52 claims for relief and an opposition to Nilsson's discovery motions. Bator also filed an amended answer to Nilsson's complaint.

In June 2016 Nilsson filed a demurrer to Bator's second amended cross-complaint. The parties filed various discovery motions.

The trial court granted Nilsson's demurrer without leave to amend. Bator filed a late opposition to the demurrer. Bator also filed a motion for reconsideration of the trial court's order sustaining the demurrer.

Discovery Imbroglio

The court denied Bator's discovery motion and granted Nilsson's discovery motion in part. Bator filed a flurry of motions challenging the court's order.

In October 2016 the court denied Bator's motion for reconsideration and ordered Bator to provide responses to Nilsson's discovery requests. Nilsson filed a discovery motion seeking evidentiary or terminative sanctions for Bator's continued failure to respond to interrogatories, produce documents, and respond to requests for admissions.

Bator filed a combined motion to strike and dismiss the pleadings filed by Nilsson, which Nilsson opposed. Bator also filed an opposition to Nilsson's discovery motion seeking evidentiary or terminative sanctions.

The trial court granted Nilsson's discovery motion in part and ordered Bator to provide a response, but denied the request for sanctions. The court denied Bator's motion to strike/dismiss the pleadings.

Nilsson filed another discovery motion seeking sanctions. Bator filed an opposition, to which Nilsson filed a reply. The trial court heard Nilsson's motion and requested Nilsson provide additional information as to whether documents provided by Bator were responsive to the discovery request. Nilsson filed a supplemental declaration in response.

Subsequently, the trial court granted Nilsson's discovery motion in part, noting Bator failed to provide sufficient responses to discovery. The court also directed Nilsson to prepare a declaration on the time spent on the discovery motion for an award of monetary sanctions. Nilsson submitted the declaration on hours spent.

The trial court entered an order granting Nilsson's discovery motion and ordering Bator to provide responses to interrogatories and demands for production of documents and to pay monetary sanctions in the amount of \$2,587. Bator filed "Answers to Courts (*sic*) Request or Additional Answers."

Nilsson filed another motion for sanctions for Bator's continued failure to provide compliant responses to discovery. The trial court granted the motion and made a series of findings. The court found Bator: "failed and continues to fail to comply with his discovery obligations, repeatedly misused the discovery process over the course of about 17 months, and disobeyed multiple prior Court discovery orders compelling compliance, such that the imposition of terminating sanctions is warranted . . . [citations] . . . [¶]

2. The Court finds that under the circumstances, lesser sanctions in the form of monetary sanctions are not likely to curb future misuses of the discovery process by said Defendant. [¶] 3. The Court orders an evidentiary sanction pursuant to Code of Civil Procedure section 2023.030(c) prohibiting Defendant . . . Bator . . . from presenting evidence at trial related to any facts, witnesses or documents related to or supporting the denials of material allegations or special or affirmative defenses raised by Defendant herein (Form Interrogatory 15.1). [¶] 4. The Court orders an evidentiary sanction . . . [citation] prohibiting Defendant . . . Bator . . . from presenting evidence at trial related to any facts, witnesses or documents related to any contract giving rise to this action (Form Interrogatory no. 50.1, et. seq.) [¶] 5. The Court reserves ruling on the issue of monetary sanctions related to the motion being imposed upon Defendant . . . Bator . . . individually and/or as Trustee"

Summary Judgment

In October 2017 Nilsson filed a motion for summary judgment. In response, Bator filed several random documents.

The court granted the motion for summary judgment including a judgment of judicial foreclosure of Nilsson's security interest in the real and personal property of Bator's mining operation. The court found: "Plaintiffs have made a prima facie showing that they are entitled to summary adjudication as a matter of law because Defendants Anthony J. Bator, individually, as Trustee of the North American Conservation Trust, and doing business as Bator Mining, breached and defaulted on the contractual agreements identified in the Verified Complaint resulting in damages to Plaintiffs and thereby entitling Plaintiffs to foreclose upon real and personal property securing Plaintiffs' interests in the contractual agreements. The Court finds that, in light of Defendants' failure to submit any opposition to Plaintiffs' motion and in light of the Court's September 27, 2017, Order Granting Plaintiffs' Motion for Sanctions, pursuant to which Defendants are prohibited from presenting any evidence at trial related to any facts, witnesses or documents related to or supporting the denials of material allegation or special or affirmative defenses raised by Defendants, and from presenting any evidence at trial related to any facts, witnesses or documents related to any contract giving rise to this action, Defendants have failed to meet their burden of establishing that a dispute exists as to any material fact on any cause of action."

Nilsson filed a memorandum of costs for \$35,907.75, including requested attorney fees. The court also granted Nilsson's motion for an award of attorney fees.

The court entered judgment in favor of Nilsson. Bator filed a notice of appeal.

DISCUSSION

I

We begin by noting Bator, proceeding in pro. per., has filed a 65-page opening brief devoid of either citations to the record or coherent legal argument. Instead, Bator regurgitates his version of events and lambasts the court as biased and complicit in a conspiracy against him.

According to Bator: "Mr. Nilsson represented himself as a venture capitalist, a specialist in raising capital; and seeking higher returns for taking risks. Returns are high because the concept of being a venture capitalist accompanies the commitment to accomplish and finish goals. In the contracts between the parties here the contracts call for completion of the processing mill. The contracts identify that Mr. Nilsson purchased gold bearing ore. Mr. Nilsson's failure to fund the mill kept his ore from being processed. He made the decisions that caused the delays in completing the mill. Mr. Nilsson's failure to pay Bator's salary caused Bator's financial problems. Mr. Nilsson engineered the incompletion of the mill. Because of his actions, he now attempts to enrich himself by attempting to take over this project clearly violating the intent of the parties. Judge Dixons [sic] prejudices [sic] against Mr. Bator has permitted this fraudulent attempt to take North American Conservations [sic] Trust's property and Bator's company." Bator cites nothing in the record to support these claims.

As for the discovery issues, Bator asserts: "Mr. Bator's answers were 100% accurate. Unfortunately for Griffith [Nilsson's counsel], Bator's answers are 100% true and do not support Griffiths [sic] allegations and demonstrate it was Nilsson who breached the contracts. [¶] This suit, these contracts are a big deal. When this mine is operating, the value of the project will easily exceed 100,000,000.00 not in gold value, in what can happen with good management and operations begin. [¶] Mr. Nilsson's greed has overcome his honor. [¶] Mr. Nilsson et al could not prevail in this case without a judge who appears unwilling to enforce the contracts or the law. [¶] Mr. Nilsson et al could not prevail in this case without a judge who is prejudice [sic] against the defendants."

II

On appeal, a party challenging an order has the burden to show error by providing an adequate record and making coherent legal arguments, supported by authority, or the

claims will be deemed forfeited. (See *People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *In re S.C.* (2006) 138 Cal.App.4th 396, 408.) The rules of appellate procedure apply to plaintiffs even though they are representing themselves on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.) A party may choose to act as his or her own attorney. We treat such a party like any other party, and he or she “ ‘is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’ ” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.) Accordingly, we consider Bator’s challenge to the trial court’s rulings on the demurrer, discovery motion, and summary judgment with these standards in mind.

III

The function of a demurrer is to test the sufficiency of the complaint by raising questions of law. We give the complaint a reasonable interpretation and read it as a whole with all parts considered in their context. A general demurrer admits the truth of all material factual allegations. We are not bound by the construction placed by the trial court on the pleadings; instead, we make our own independent judgment. (*Herman v. Los Angeles County Metropolitan Transportation Authority* (1999) 71 Cal.App.4th 819, 824.)

Where the trial court sustains the demurrer without leave to amend, we must decide whether there is a reasonable probability the plaintiff can cure the defect with an amendment. If we find that an amendment could cure the defect, we must find the court abused its discretion and reverse. If not, the court has not abused its discretion. The plaintiff bears the burden of proving an amendment would cure the defect. (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.)

Bator filed a cross-complaint, an amended cross-complaint, and a second amended cross-complaint. The trial court ultimately granted Nilsson's demurrer to the second amended cross-complaint.

On appeal, Bator presents a rambling list of "Errors" he accuses the trial court of committing in ruling on Nilsson's demurrer.¹ However, Bator fails to explain what causes of action he adequately pled in his cross-complaint. Nor does he set forth how the cross-complaint could be amended to cure the defects found by the trial court.

As noted, it is Bator's burden to affirmatively show the court erred. To demonstrate such error, Bator must provide meaningful legal analysis supported by citations to both the facts in the record and citations to authority to support his claims. Mere suggestions of error, without supporting argument or authority other than general abstract principles fail to present us grounds for review on appeal. (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457.) Accordingly, given the absence of either citations to the record or legal authority to support Bator's claims regarding the demurrer, the claim is forfeited.

IV

During the course of litigation, discovery requests and responses flew fast and furious between the parties. After several attempts to compel Bator to respond to

¹ Bator states: "Judge Dixon has declined to admit all the facts pleaded by the defendant/cross plaintiff. Defendant/cross plaintiffs believe Judge Dixon has not even considered them in any light." "Judge Dixon is putting form above substance in the granting demurrer of defendant/cross plaintiff cross complaint." "There was no basis for Judge Dixon to sustain the demurrer, other than a minor correction in form if my deficiencies actually exist." "Judge Dixon erred in seeking more detail than is necessary to overrule the demurrer." "Judge Dixon in her refusal to overrule the demurrer is perpetuating and permitting Nilsson's fraud." "Judge Dixon seems to be aware of all of the counts alleged against Nilsson et al and fails in her judicial responsibility in sustain the demurrer."

discovery, the trial court issued a detailed order sanctioning Bator for a variety of discovery abuses.

We review a trial court's order imposing a discovery sanction for an abuse of discretion, resolving any evidentiary conflicts most favorably to the trial court's ruling. We reverse only if the trial court's action was arbitrary, capricious, or whimsical. Bator bears the burden to demonstrate the trial court erred and where the evidence is conflicting we shall not disturb the trial court's finding. (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878.)

The record before us reveals an on-going failure of Bator to respond to Nilsson's discovery requests. At several junctures, the trial court ordered compliance to no avail. On appeal, Bator provides no coherent argument challenging the trial court's order. We find no abuse of discretion.

V

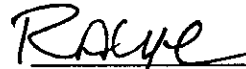
The trial court granted Nilsson's motion for summary judgment, including a judgment of judicial foreclosure of Nilsson's security interest in the real and personal property of Bator's mining operation. A motion for summary judgment must be granted if the submitted papers show there is no triable issue of fact and that the moving party is entitled to judgment as a matter of law. The moving party initially bears the burden of making a showing of the nonexistence of any genuine issue of fact. Once the moving party has met its burden, the burden shifts to the opposing party to show the existence of a triable issue of material fact. (Code Civ. Proc., § 437c, subds. (c), (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.)

On appeal, Bator states: "Multiple actions by Judge Dixon are unlawful and without merit. The court accepts the single statement by Nilsson et al, that they/he has fulfilled his obligations under the contract. This is a lie. A factual dispute warrants a jury trial. Mr. Nilsson breaches warrant a counter suit for breach of contract. Nilsson

breaches pre-date M. Bator's arrest and Mr. Bator can substantiate Nilsson et. al breaches; Unfortunately, Judge Dixon refused to allow appellant the ability to present evidence warranting Bator counter suit against Nilsson et al." Again, given Bator's failure to either cite to the record or legal authority to challenge the trial court's grant of summary judgment, the claim is forfeited.

DISPOSITION

The judgment is affirmed. Nilsson shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)




RAYE, P. J.

We concur:



BUTZ, J.



MURRAY, J.

**Additional material
from this filing is
available in the
Clerk's Office.**