

FILED  
APR - 4 2019  
James Hollaway  
General Sessions Civil Clerk  
0. GS 2019-CV-25

**Case No. GS-2019-CV-25**

## 1

NACA founding member, Naomi Crain. Bryan College's President, Stephen D. Livesay ("Livesay"), along with certain third parties, inserted themselves into NACA's affairs, including the separation of the Crains from NACA. On December 18, 2009, in part based upon the meddling and influence of Livesay and others affiliated with Bryan College, NACA's existing Board of Trustees voted to alter the makeup of NACA's governing body and to allow Livesay to hand-pick a new board consisting of a majority of individuals affiliated with Bryan College (including Livesay).

As of December 18, 2009, individuals who were members of Bryan College's Board of Trustees or who otherwise affiliated with Bryan College controlled the majority of the seats on NACA's Board of Trustees and, therefore, controlled the operations and affairs of NACA. To the extent that any decision affecting the operations of NACA resulted in a potential benefit for Bryan College, these individuals (who owed fiduciary duties to *both* Bryan College and to NACA) had a clear and inherent conflict of interest.

In early 2016, Livesay engaged in negotiations with a third party, pursuant to which Livesay offered to have *Bryan College* sell the Fort Bluff Camp (NACA's primary asset) to the third party for \$8.9 million. Thereafter, in April 2016, Bryan College's Board of Trustees voted to simply take the Fort Bluff Camp from NACA. Livesay, whose compensation at Bryan College was based, in part, on the fiscal performance of the college, stood to earn substantial sums if Bryan College received the Fort Bluff Camp and recorded the value of the property as an asset on its books. In June 2016, the Fort Bluff Camp and a small adjacent parcel of property with a home located on it (the "Bluff House Property") appraised for \$7,485,000. The value assigned to the Bluff House Property was only \$430,000. In June 2016, the NACA Board of Trustees (*which was*

*still controlled by individuals affiliated with Bryan College*) voted to transfer the Fort Bluff Camp to Bryan College.

Livesay sought to have a Lease for the Fort Bluff Camp approved by NACA and Bryan College. A proposed lease ("Lease 1") was furnished to NACA's Board of Trustees in June 2016. Lease 1 contained various terms that were favorable to NACA, such as a provision that NACA would only have to pay rent in a year when Bryan College operated at a deficit and that NACA would receive a credit for any improvements it constructed. Subsequently, at a specially called meeting, NACA's Board of Trustees approved Lease 1.

After NACA's Board of Trustees voted to approve Lease 1, a different lease ("Lease 2") was provided to Bryan College's board for approval. Multiple terms in Lease 1 favorable to NACA, including the provision that NACA would not be required to pay rent during any year that Bryan College finished in the black, were not included in Lease 2. Lease 2 was approved by Bryan College's board.

At the end of June, a Quitclaim Deed was signed by Vance Berger ("Berger"), NACA's sitting president, *who was also an officer of Bryan College at the time*, which purported to transfer the Fort Bluff Camp from NACA to Bryan College for \$1. Bryan College recorded the value of the Fort Bluff Camp on its books at \$6,045,580. Despite the fact that NACA's Board of Trustees had approved Lease 1 and not Lease 2, Berger nevertheless executed Lease 2 on behalf of NACA. In this action, Bryan College holds itself out to be the legal owner of the Fort Bluff Camp and is seeking to enforce the terms of Lease 2.

Bryan College did not report on its federal tax returns that it had received the Camp from NACA (in that Bryan College did not disclose that it had received any non-cash contributions in excess of \$25,000) or that it was "related" to any tax-exempt organizations. Despite the fact that

Tennessee law requires non-profit corporations to seek the approval of such transfers from the Attorney General of the State of Tennessee, neither NACA nor Bryan College informed the Attorney General of the transfer of NACA's primary asset to Bryan College. After Bryan College received the Fort Bluff Camp, Livesay received a sizeable bonus and increase in base salary from Bryan College.

Once Bryan College had taken NACA's primary asset (the Fort Bluff Camp) and Bryan College's officer had executed a harsh and inequitable lease on behalf of NACA, the individuals associated with Bryan College resigned from NACA's Board of Trustees and left their positions of power at NACA. Now that NACA finally had independence from Bryan College, NACA sought to unwind the damage that had been done. Such efforts, which included requesting the return of the Fort Bluff Camp from Bryan College, were promptly refused. NACA stopped paying rent, in part, due to the fact that the Fort Bluff Camp was wrongfully transferred and the fact that Lease 2 was never approved by NACA's Board of Trustees. Bryan College responded by filing this lawsuit seeking to remove NACA from the Fort Bluff Camp.

On April 2, 2019, NACA filed a separate lawsuit (the "NACA Lawsuit") in the Chancery Court of Rhea County, Tennessee, against Bryan College. (A copy of the Complaint in the NACA Lawsuit is attached as Exhibit A to NACA's Motion to Reconsider). In the NACA Lawsuit, NACA seeks a declaratory judgment setting aside the transfer of the Fort Bluff Camp from NACA to Bryan College as well as a declaration that Lease 2 is void and unenforceable. NACA also seeks certain monetary damages from Bryan College, including the repaying of all rent paid to Bryan College under Lease 2.

## II. LAW AND ARGUMENT

### 1. The Court has Jurisdiction to Consider Title Issues Concerning the Fort Bluff Camp.

During the hearing on March 18, 2019, on NACA's Motion to Remove, the Court voiced concern over its ability to consider various defenses that NACA intends to raise during the detainer hearing to Bryan College's claims, which are based upon challenges to the legitimacy of Bryan College's title to the Fort Bluff Camp. (For the convenience of the Court, a copy of the transcript from the March 18, 2019 hearing is attached hereto as Exhibit A). The Court cited Tenn. Code Ann. § 29-18-119, which concerns detainer action, and directed counsel's attention to subsection (c) of that statute, which contemplates that "[t]he estate, or merits of the title, shall not be inquired into." (Ex. A, p. 6, ln. 8-23). As discussed below, in an analogous case, the Tennessee Court of Appeals has considered Tenn. Code Ann. § 29-18-119(c) and determined that Courts of General Sessions nevertheless retain jurisdiction to consider and adjudicate title issues in a detainer action.

In Boyce v. LPP Mortg. Ltd., 435 S.W.3d 758, 763 (Tenn. Ct. App. 2013), the holder of a note and deed of trust (the "Mortgage Company") foreclosed on a parcel of property. Id. at 761. Thereafter, the Mortgage Company initiated a detainer action against the holdover tenants (the "Tenants") in the Shelby County General Sessions Court. Id. at 762. The Tenants appeared and sought to defend against the Mortgage Company's claims based, in part, upon the argument that the Mortgage Company did not have good title to the property at issue. In response, the Mortgage Company asserted that the General Sessions Court was barred from inquiring into the merits of the Mortgage Company's interest in title based upon Tenn. Code Ann. § 29-18-119(c). The General Sessions Court agreed with the Mortgage Company and no title defenses were raised during the detainer hearing. Without adjudicating the Tenants' title defenses, the trial court awarded possession of the property to the Mortgage Company and no appeal was taken.

The Tenants subsequently filed a declaratory judgment action in the Shelby County Chancery Court. Therein, the Tenants raised the title arguments that the Tenants had previously sought to assert as defenses in the detainer action. The Mortgage Company subsequently filed a motion for summary judgment, in which it averred that the prior judgment rendered by the General Sessions Court was res judicata to the Tenants' claims. The Chancery Court granted summary judgment to the Mortgage Company, finding that the Tenants had the right to raise its title defenses in the General Sessions detainer action, and therefore, the Tenants' claims were barred by the doctrine of res judicata. Id. at 762-763. The Tenants appealed the decision of the Chancery Court. Id. at 763.

In its opinion disposing of the Tenants' appeal, the Tennessee Court of Appeals analyzed the elements of a defense predicated upon res judicata. The Court noted that res judicata applies to detainer actions, and that, "[a] judgment in an action for forcible entry and detainer is conclusive and bars further litigation between the parties as to matters which could and should have been adjudicated...." Id. (quoting 50 C.J.S. Judgments § 1193). On the issue of whether the Tenants could have raised defenses in the detainer action based upon title, the Court of Appeals explained as follows:

Section 29-18-119 provides that in an FED action:

(b) The general sessions judge will try every case upon its merits and ascertain whether the plaintiff or defendant is entitled to the possession of the premises agreeably to the laws governing such cases, and give judgment accordingly.

**(c) The estate, or merits of the title, shall not be inquired into.**

(Emphasis added). Based on this statute, Appellants argue that the General Sessions judge was not authorized to determine whether the Appellee had proper title to the property at issue in order to initiate foreclosure proceedings.

This issue was recently examined by this Court in Davis v. Williams, E2010-01139-COA-R3-CV, 2011 WL 335069 (Tenn. Ct. App. Jan. 31, 2011).

In Davis, this Court concluded that **the General Sessions Court does have jurisdiction to consider the merits of the title, when the issue is raised as a defense to an FED action.** The Court further concluded that the failure to raise such a defense in the FED action resulted in the homeowner being barred from raising the merits of title as an issue in a subsequent proceeding. In the case, the sellers of the property conceded that the General Sessions Court did not have "jurisdiction to entertain the question of title," presumably based on the above cited statute. According to the Court, however, the sellers maintained that "since wrongful or fraudulent foreclosure could have been raised as a defense in the unlawful detainer action, but was not, it cannot now be the basis of a new action." The Court agreed with the Sellers, explaining:

\* \* \*

**"Where title bears directly upon the right of possession ... a party may legitimately interpose the issue."** Beasley, 2007 WL 77289 at \*6. It is the purchaser's "constructive entry" onto the premises through the title obtained in foreclosure that "provides the basis for maintaining the unlawful detainer action." *Id.* at \*7.

When the holding in Gerber is examined with reference to the holding in Beasley, it is inescapable that even though fraud in the foreclosure was not raised as a defense in the unlawful detainer action, it was conclusively determined not to exist. "In failing to raise these matters [concerning fraud in the foreclosure] which could have been litigated and decided as an incident to or essentially connected with the subject matter of the prior litigation, [the Buyers] forfeited [their] opportunity to assert [fraud] under the doctrine of *res judicata*." Gerber, 219 S.W.3d at 918.

Davis, 2011 WL 335069, at \*2-\*4.

From our reading, then, **while the merits of title cannot be considered as a basis for affirmative relief in the General Sessions Court, an argument as to the merits of title is an appropriate defense to an FED action in General Sessions Court, despite the language of Tennessee Code Annotated Section 29-18-119(c).** Indeed, as explained in a case relied upon in the Davis Opinion:

FED actions concern only the right to possession. Newport Hous. Auth., 839 S.W.2d at 89. In these summary proceedings, "the estate, or merits of the title, shall not be inquired into." Tenn. Code Ann. § 29-18-119(c) (2000). At first glance, it would seem that wrongful foreclosure, being tantamount to an assertion of title, could not constitute a defense in this action. Where title bears directly upon the right of possession, however, a party may legitimately interpose the issue. Allison v. Casey, 63 Tenn. 587 (Tenn.1874) (allowing evidence of title as proof of right to control and rent out property); Phillips [Philips] v. Sampson, 39 Tenn. 429 (1859); Settle v. Settle, 29 Tenn. 504 (Tenn.1850). For example, a court may inquire into title when a claimant has fraudulently represented his title to another and induced him to lease the property. Phillips [Philips], 39 Tenn. at 429.

Additionally, FED actions cannot be resolved in favor of a claimant when title, if bearing directly on his immediate right to possession, is questionable. See Elliott v. Lawless, 53 Tenn. 123 (Tenn.1871); 35A Am.Jur.2d *Forcible Entry & Detainer* § 50 (2006) (“[I]f the issue of title is germane to the issue of who has the present right of possession, questions of title may be raised.... However, such an issue may result in the case being removed from the summary proceedings contemplated by a forcible entry and detainer action, or the claimant may be required to establish his or her superior title prior to bringing the summary proceeding.” (footnotes omitted)).

Beasley, 2007 WL 77289, at \*6. Thus, the Beasley Court concluded that questions of title could be raised as defenses to FED actions in General Sessions Court.

The Davis and Beasley holdings were recently reexamined and upheld in Foster v. Federal Nat. Mortg. Ass'n, No. E2012-02346-COA-R3CV2013, 2013 WL 3961193 (Tenn. Ct. App. July 31, 2013). The Court in *Foster* likewise held that the General Sessions Court has jurisdiction to entertain the question of title as a defense to a FED action. *Id.* at \*3-4.

Boyce, 435 S.W.3d 765-67.

As the Court of Appeals’ decision in Boyce – and the authorities cited therein – demonstrate, NACA’s various defenses to Bryan College’s claims, which are based on challenges to the legitimacy of Bryan College’s title to the Fort Bluff Camp, can be raised and, in fact, must be raised by NACA in this proceeding.

## **2. This Matter Should be Removed to Facilitate Consolidation with the NACA Lawsuit.**

As noted previously, NACA has filed a separate lawsuit in the Chancery Court of Rhea County, Tennessee, in which it has asserted various claims against Bryan College. In the NACA Lawsuit, among other relief, NACA seeks to set aside the transfer of the Fort Bluff Camp to Bryan College, a declaration that the lease that Bryan College is seeking to enforce in this action be set aside and a monetary award against Bryan College in an amount not less than \$220,000. As is evident from NACA’s Complaint and the Affidavit filed with the Court by John Ballinger,



NACA's claims and defenses relating to and arising out of the transfer of the Fort Bluff Camp and the execution of Lease 2 are substantial, meritorious and complex.

The course of events pertinent to NACA's claims and defenses span at least nine (9) years, and there are a multitude of witnesses who were involved in various aspects of the transactions at issue and hundreds if not thousands of relevant documents. NACA should be afforded the opportunity to conduct adequate discovery to prepare for a trial and should be granted the necessary amount of time to fully present the merits of its claims and defenses. NACA submits that justice requires removal of this action to prevent and avoid prejudice to NACA that will result from forcing NACA to proceed on an expedited basis.

Tennessee Courts have recognized that in cases such as this, where defenses that are substantial, complex, and expensive in nature have been asserted, the removal statute serves the purpose of conserving judicial resources and avoiding unnecessary litigation costs by preventing the necessity of two separate trials. See Pullen v. Textron, Inc., No. 01-A-01-9404-CV00193, 1994 WL 581473, at \*3 (Tenn. Ct. App. Oct. 21, 1994) ("... the obvious purpose of the statute [Tenn. Code Ann. § 16-15-732] was to shorten the litigation by eliminating one trial where the defense was of a complex and expensive nature"). Here, NACA will have no choice but to appeal any adverse decision that may be rendered against it during the scheduled detainer hearing. Presumably, Bryan College would also appeal a decision by this Court which divests it of title to the Fort Bluff Camp and/or invalidates the lease it seeks to enforce. Accordingly, absent removal pursuant to Tenn. Code Ann. § 16-15-732, NACA will be required to relitigate its substantial meritorious defenses to Bryan College's claims.

Removing the pending matter to Circuit Court would enable the parties to consolidate this proceeding with the NACA Lawsuit. Therefore, all disputes among the parties could move forward as a single proceeding and be adjudicated in a single trial on the merits.

### III. CONCLUSION

For the reasons set forth herein, NACA respectfully requests that the Court reconsider its initial ruling on NACA's Motion to Remand and enter an order directing that, pursuant to Tenn. Code Ann. § 16-15-732, this matter shall be removed to the Circuit Court of Rhea County, Tennessee.

Respectfully submitted,

GRANT, KONVALINKA & HARRISON, P.C.

By: 

John P. Konvalinka (TN BPR #1780)  
Republic Centre, Suite 900  
633 Chestnut Street  
Chattanooga, Tennessee 37450-0900  
E-mail: jkonvalinka@gkhpc.com  
E-mail: tgautreaux@gkhpc.com  
E-mail: hfloberg@gkhpc.com  
Telephone: (423) 756-8400  
Facsimile: (423) 756-6518

Russell Anne Swafford (TN Bar #018243)  
LAW OFFICES OF STEPHEN T. GREER,  
P.C.  
P.O. Box 758  
Dunlap, TN 37327  
(423) 949-3621

*Attorneys for the Defendant*

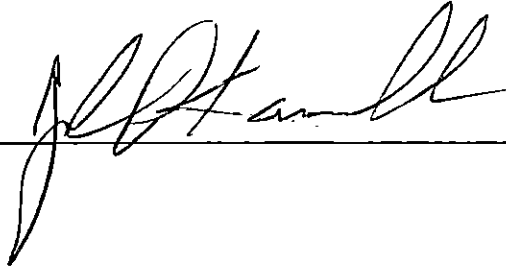
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading has been served by email, hand delivery, facsimile and/or by placing same in the United States mail, postage prepaid, and addressed as following individual:

Logan C. Threadgill, Esq.  
Chambliss, Bahner & Stophel, P.C.  
605 Chestnut Street, Suite 1700  
Chattanooga, Tennessee 37450

This 30 day of April, 2009.

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "L. Threadgill", is written over a horizontal line that serves as a signature line.

TRANSCRIPT  
IN THE GENERAL SESSIONS COURT FOR RHEA COUNTY, TENNESSEE

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BRYAN COLLEGE,

Plaintiff,

-vs-

NATIONAL ASSOCIATION OF  
CHRISTIAN ATHLETES,

Defendant.

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No. GS 2019-CV-25

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MOTION TO REMOVE

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BE IT REMEMBERED, that the above-styled  
cause came on to be heard on the 18th day of March, 2019,  
before the Honorable J. Shannon Garrison, when all  
parties announced ready to proceed, and the following  
proceedings were had, to wit:

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Sue Anne Vaughn, LCR  
Angel & Associates Court Reporting  
P.O. Box 1145  
Hixson, Tennessee 37343  
Telephone 423-876-4435 and 800-298-DEPO (3376)

## 1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 ANTHONY A. JACKSON, ESQUIRE

bjackson@chamblisslaw.com

4 LOGAN C. THREADGILL, ESQUIRE

lthreadgill@chamblisslaw.com

5 Chambliss, Bahner &amp; Stophel, P.C.

Liberty Tower

6 605 Chestnut Street, Suite 1700

(423) 757-0267

7  
8 FOR THE DEFENDANT:

9 JOHN P. KONVALINKA, ESQUIRE

jkonvalinka@gkhpc.com

10 Grant, Konvalinka &amp; Harrison, P.C.

633 Chestnut Street, Suite 900

11 Chattanooga, Tennessee 37450

(423) 756-8400

12 AND

ELIZABETH GREER ADAMS, ESQUIRE

13 Greer, Swafford &amp; Adams

elizabethadams@greerlawoffice.com

14 P.O. Box 188

379 2nd Avenue, Suite 1

15 Dayton, Tennessee 37321

(423) 775-3621

## P R O C E E D I N G S

THE COURT: All right. I see a motion to remove has been filed. Let's see. Is Mr. Konvalinka here?

MR. KONVALINKA: Yes, Your Honor.

THE COURT: All right. And Mr. Threadgill?

MR. THREADGILL: Yes, Your Honor. This is Dave. We have co-counsel, Bud Jackson, here.

MR. JACKSON: Good morning, Your Honor.

THE COURT: Good morning.

All right. Mr. Konvalinka, I'll hear your motion to remove.

MR. KONVALINKA: Your Honor, pursuant to Tennessee Code Annotated 16-15-732, we're asking for this to be removed because of the complex nature of this litigation. I suspect there will be no less than ten, but more likely 20, witnesses that will be called in connection with the defense of this matter.

We have given you an affidavit outlining some of those defenses. Specifically, if you look at the affidavit, the very campground upon which this is being leased by Bryan College to National Association of Christian Athletes was actually owned by the National Association of Christian Athletes. And while members of the board of trustees on the National Association of

1 Christian Athletes were related to Bryan College, they  
2 approved a transfer, according to our understanding of  
3 the property, to Bryan College without consideration,  
4 without notification to the Tennessee Attorney General.  
5 And we are obviously contesting the legality, validity  
6 and the enforceability of that transfer.

7 In addition, the property consisted of  
8 substantially all of the assets of National Association  
9 of Christian Athletes; and the not-for-profit status,  
10 bluntly, of National Association of Christian Athletes is  
11 jeopardized by this transaction if it's not set aside.

12 In addition to that, the actual form of the  
13 lease that was presented to the National Association of  
14 Christian Athletes' board of directors, we contend, is  
15 not the same lease that was approved by Bryan College  
16 with regard to this. So I have a representative for  
17 National Association of Christian Athletes that has  
18 signed the affidavit. I don't know if you -- I don't  
19 suspect you need any proof on this but --

20 THE COURT: No. I've read his affidavit.

21 MR. KONVALINKA: So, again, because of that,  
22 the nature of that, and the length that this trial is  
23 going to be, I don't think that you can accomplish this  
24 in a day necessarily. And I don't know that this is  
25 suitable for a sessions case because we're going to have

1 to conduct a considerable amount of discovery. I have  
2 three volumes of documents already, and those are summary  
3 documents.

4 THE COURT: All right. It looks like, from  
5 the affidavit, that this deed was executed in 2016; is  
6 that correct?

7 MR. KONVALINKA: That's correct, Your Honor.

8 THE COURT: All right. Has a suit already  
9 been filed in chancery or circuit court to cancel this  
10 deed?

11 MR. KONVALINKA: No, Your Honor, but we do  
12 have an answer and a counterclaim prepared once we get to  
13 circuit. We have one ready.

14 THE COURT: From reading the affidavit, it  
15 looks like that -- I understand there's an allegation  
16 about NACA's board being controlled by Bryan College.

17 MR. KONVALINKA: There is.

18 THE COURT: The affidavit explains that  
19 apparently NACA regained control of the board last May;  
20 correct?

21 MR. KONVALINKA: That's correct.  
22 Mr. Ballinger is the new representative with regard to  
23 that.

24 THE COURT: May I ask why nothing has been  
25 filed to set aside that deed, if they got control of the



1 board back last May?

2 MR. KONVALINKA: Well, Your Honor, I have been  
3 doing some investigation with regard to this. I intended  
4 to do it all at one time but, again, I can -- I can do  
5 that next week, if that's really important to the Court.  
6 I mean, I was going to do it as an answer and  
7 counterclaim in circuit, so...

8 THE COURT: All right. Mr. Konvalinka, I'm  
9 going to refer you to T.C.A. 29-18-119. That's our  
10 statute dealing with detainer actions. I don't know if  
11 you're familiar with that statute or not. But in dealing  
12 with these detainer actions, statute number (a) says, The  
13 cause shall be tried at the time and place designated, by  
14 a single general sessions judge, without the intervention  
15 of a jury, and in all respects like other civil suits  
16 before the court of general sessions; subsection (b), The  
17 general sessions judge will try every case upon its  
18 merits and ascertain whether the plaintiff or defendant  
19 is entitled to possession of the premises agreeably to  
20 the laws governing such cases, and give judgment  
21 accordingly; and subsection (c), which I believe is  
22 applicable here, The estate, or merits of the title,  
23 shall not be inquired into.

24 MR. KONVALINKA: And I understand that, Your  
25 Honor. But with regard to that particular -- again, the

1 answer and counterclaim with regard to this matter is why  
2 it's appropriate to be in circuit court.

3 THE COURT: I understand. But I believe the  
4 legislature, I believe they probably enacted that statute  
5 for cases just like this. Of course, I don't try title  
6 in general sessions court, and there's a statute dead on  
7 it.

8 All right. I'll hear your response.

9 MR. JACKSON: Your Honor, for the record, Bud  
10 Jackson, here on behalf of Bryan College. We can get in  
11 to more details if need be, but Your Honor is absolutely  
12 correct. 29-18-119 says exactly what you said, you know,  
13 subsection (c), The estate, or the merits of the title,  
14 shall not be inquired into. I don't know of a more  
15 direct legislative pronouncement as that. And as Your  
16 Honor pointed out, (a) section of that statute says that  
17 a case shall proceed in general sessions court. That's  
18 where we are. That's where we should be and, Your Honor,  
19 we think we should go forward.

20 Now, if NACA wants to file some other action  
21 somewhere else, I don't know who they're going to sue,  
22 but, you know, they can file whatever they want to file  
23 in another court. They can do that. But the whole  
24 purpose of a detainer action, as Your Honor knows better  
25 than I do, is possessory. And, you know, it's a

1 streamline process, and that's why we filed it in general  
2 sessions court, Your Honor.

3 THE COURT: Any response, Mr. Konvalinka?

4 MR. KONVALINKA: Yes, Your Honor. In the  
5 sense that with regard to this particular action itself,  
6 there's not only a contest with regard to the title,  
7 there's actually a contest with regard to the validity of  
8 the lease. That's not a title issue.

9 You're dealing with two related parties in  
10 connection with this transaction, and so that wouldn't be  
11 a contest as to what the title of the property is. It  
12 would be a contest as to the validity of the lease and  
13 the transaction involved, the actual negotiation of the  
14 lease and whether or not there was, bluntly, an  
15 inducement with regard to actually executing that lease,  
16 by reason of a misrepresentation, based upon the  
17 affidavit that I've already described with regard to it  
18 does not actually contain the same provisions of the  
19 lease that were presented to the National Association of  
20 Christian Athletes. And due to the fact that the two  
21 parties were related is one of the reasons why, in fact,  
22 the lease was signed. And so that is our contention with  
23 regard to that.

24 And I hear the Court with regard to this, but  
25 regardless of where we proceed, it is going to be a

1 complex litigation, which this statute was designed  
2 specifically for. And even though you may have  
3 jurisdiction with regard to it, there are exceptions,  
4 according to that statute, that allow us to remove it to  
5 a different court.

6 THE COURT: All right. I presume that the  
7 plaintiff is opposed to the removal?

8 MR. JACKSON: We are, Your Honor. NACA did  
9 pay on the lease for nearly two years before they ceased  
10 paying, so they recognized the validity of the lease.  
11 Now they want to go back and say, well, you know, we at  
12 NACA, you know, we should have never signed this lease.  
13 We were under some rogue board but, you know, that's  
14 years removed from the transaction at issue after they  
15 paid the lease for a couple of years, or at least  
16 payments for a couple of years, Your Honor. So, yeah, we  
17 definitely oppose it, Your Honor.

18 THE COURT: All right. Do you want to --  
19 anything else, Mr. Konvalinka?

20 MR. KONVALINKA: Yes, Your Honor. Again, all  
21 I'll say, if we're going to argue the merits, I will  
22 respond to counsel's statements that there were payments  
23 made. Again, they were still under the control of Bryan  
24 College representatives, while on NACA board, when those  
25 payments were made. And, again, you'll hear proof with

1 regard to that if you hear the case or it will be heard  
2 in circuit court.

3 THE COURT: All right. This is the way I see  
4 it: Apparently y'all have agreed for April 17th to have  
5 this hearing. And I'm going to tell you at that hearing,  
6 and I'm ruling in limine here, what I am focused on on  
7 April 17th is who has right title to this property.

8 I am focused on the four corners of that lease  
9 agreement. Even if -- I'm not getting into who has title  
10 of this property. I'm not getting into whether the  
11 deed -- whether the lease is valid or not because -- or  
12 even if somebody had the authority to sign. Even if --  
13 and I'll let you respond here, Mr. Konvalinka. But even  
14 if that lease is invalid, apparently I've got somebody  
15 that's got the deed to the property and somebody else is  
16 occupying, even if the lease is in effect and a detainer  
17 action would still apply, wouldn't it?

18 MR. KONVALINKA: Well, again, Your Honor, with  
19 regard to whether or not a detainer action applies with  
20 regard to whether there's a validity of a lease, I don't  
21 believe that is not an issue for this Court to try. I  
22 mean, I'm not asking about title. I'm asking about the  
23 actual transaction that occurred with regard to it.

24 THE COURT: Right.

25 MR. KONVALINKA: And so that's -- and I'm

1 talking about the lease provisions itself.

2 THE COURT: I'll hear any defenses. If you've  
3 got receipts where you paid rent, I'll take that. But my  
4 ruling is I'm not hearing any title suit in general  
5 sessions; and I'm not hearing any proof on whether this  
6 lease, whether the person who executed it had the power  
7 to do it. I'm not hearing that. Like I said, I'm  
8 looking at right title. I'm looking at who's got a deed.

9 You know, it might have been different if you  
10 had already filed something in chancery court to set it  
11 aside, and I consider that up to the point I hear this.  
12 But, you know, whenever there's somebody here in front of  
13 me and they say, you know, I've -- this is my property.  
14 Somebody else wrongfully owns it or has possession of it  
15 or wrongfully got a deed, you know, no action has been  
16 taken so far to do anything about that. So I consider  
17 that heavily in my decision.

18 MR. KONVALINKA: All right. Your Honor, I  
19 hear you.

20 THE COURT: All right. That's the Court's  
21 ruling.

22 MR. JACKSON: Thank you, Your Honor.

23 (End of proceedings.)  
24  
25

## REPORTER'S CERTIFICATE

STATE OF TENNESSEE:

COUNTY OF HAMILTON:

I, Sue Anne Vaughn, do hereby certify that the foregoing motion was stenographically recorded by me as stated in the caption, all parties were duly sworn; that pages 1 to page 12, inclusive, were reduced to typewriting under my direction and supervision, and the transcript is a true and correct record, to the best of my ability, of the testimony/evidence given by said parties, their counsel, and the Court.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the action. All rates charged are usual and customary.

This 20th day of March, 2019.

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Sue Anne Vaughn, LCR #346

and Notary Public.

My commission expires 5/9/2021