

1997

Jon Triesault, Elizabeth Triesault, Roger Clive Baker
and Lynnette Jennifer Baker v. QMF, Inc., William
E. Casper, Jr., Shirley A. Casper, George G. Wright,
Jane C. Wright, et al., : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE COURT OF APPEALS
OF THE STATE OF UTAH

DOCKET NO. 970274-CA

JON TRIESAULT, ELIZABETH
TRIESAULT, ROGER CLIVE BAKER
and LYNNETTE JENNIFER BAKER,

Plaintiffs-Appellants,

vs.

QMF, INC., WILLIAM E. CASPER,
JR., SHIRLEY A. CASPER,
GEORGE G. WRIGHT, JANE C.
WRIGHT, et al.,

Defendants-Appellees.

Case No. 970274-CA

Priority No. 15

BRIEF OF APPELLANTS

APPEAL FROM THE ORDER OF DISMISSAL
OF THE FOURTH DISTRICT COURT OF UTAH COUNTY, UTAH
THE HONORABLE DONALD C. EYRE

LESLIE W. SLAUGH, for
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FILED
Utah Court of Appeals
JUL 07 1997
Julia D'Alesandro
Clerk of the Court

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

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ATTORNEYS FOR APPELLEES

LIST OF PARTIES

The case caption discloses all parties who participated in the litigation.

The following persons were also named as defendants but were not served and did not participate in the litigation:

Stanley Wayne Curtis
William G. Schwartz
Michael G. Rieker
Carol P. Rieker
Mariliyn S. Peterson, trustee of the Peterson Family
Trust dated 1/26/89
Gary B. Peterson, trustee of the Peterson Family Trust
dated 1/26/89
Patricia H. Clark, Trustee of the J.D. and Patricia H.
Clark Family Living Trust
Quiet Meadow Farms Owners Association
Richard G. Thorpe
Jan Thorpe

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IN THE COURT OF APPEALS
OF THE STATE OF UTAH

JON TRIESAULT, ELIZABETH
TRIESAULT, ROGER CLIVE BAKER
and LYNNETTE JENNIFER BAKER,

Case No. 970274-CA

Plaintiffs-Appellants,

vs.

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JR., SHIRLEY A. CASPER,
GEORGE G. WRIGHT, JANE C.
WRIGHT, et al.,

Defendants-Appellees.

BRIEF OF APPELLANTS

JURISDICTION

Jurisdiction was conferred on the Utah Supreme Court by Utah Code Ann. § 78-2-2(3)(j) (1996). The appeal was timely. The Order of Dismissal appealed from was initially entered May 28, 1996 (R. 809-806), and amended December 10, 1996. (R. 912-910). No motions were filed under Rules 50(a) or (b), 52(b), or 59 of the Utah Rules of Civil Procedure. Two motions seeking reconsideration (authorized by Rule 54(b)) were filed. The first was filed April 12, 1996 (R. 765-763), and denied by the Order of Dismissal dated May 28, 1996. The second Rule 54(b) motion was filed August 16, 1996 (R. 826-825), and denied by the Order of Dismissal dated December

10, 1996. Because of a pending counterclaim which was first dismissed as part of the December 10, 1996, order, the May 28, 1996, dismissal did not become final until December 10, 1996.

By order entered January 9, 1997, the trial court granted plaintiffs' ex parte motion for extension of time to appeal, and granted a 30 day extension of time. (R. 920-918.) Plaintiffs filed their notice of appeal on Monday, February 10, 1997. (R. 923-921.)

This Court has jurisdiction under Utah Code Ann. § 78-2a-3(2)(j) (Supp. 1997).

ISSUES PRESENTED

1. Did Triesaults have standing to bring their claims that they were fraudulently induced to purchase a lot in the PUD? This issue was addressed below in plaintiffs' Rule 54(b) Motion for Order Vacating Dismissal of Personal Claims. (R. 826-825.)

2. Did plaintiffs, who were each members of a planned unit development and who were each personally affected by the loss of prime common area, have standing to challenge the sale of part of the PUD common area? This issue was addressed in Plaintiffs' Motion to Determine Standing or, in the Alternative, for Leave to Join Additional Parties. (R. 618-617.)

3. Did plaintiffs waive their personal claims (that Triesaults were fraudulently induced to sign a quit claim deed and Bakers were fraudulently induced to sign the amended PUD plat) by stating that their goal in the lawsuit was not to profit personally, but to seek the return of the common ground or its value to

the homeowners association? This issue was addressed below in plaintiffs' Rule 54(b) Motion for Order Vacating Dismissal of personal Claims. (R. 826-825.)

4. Where the applicable statute and contract required a vote of three-fourths of the property owners of a planned unit development before selling off a parcel of the common ground, but where no owners' meeting was held nor a vote ever taken, did the trial court err in holding that such approval was effectively given because at least three-fourths of the members stated by affidavit that they did not wish to join in plaintiffs' challenge of the sale of the common area? This issue was suggested in Wrights' memorandum opposing plaintiffs' motion to reconsider (R. 788) and was addressed at oral arguments.

The trial court decided this case by summary judgment, and its ruling is reviewed for correctness, with no deference to the trial court. Blue Cross & Blue Shield v. State, 779 P.2d 634, 636 (Utah 1989); Ron Case Roofing and Asphalt Paving v. Blomquist, 773 P.2d 1382, 1385 (Utah 1989).

DETERMINATIVE STATUTES OR RULES.

Appellants are not aware of any statutes, rules or cases which are solely determinative of the issues stated.

STATEMENT OF THE CASE

A. Nature Of The Case. This is an appeal from a final judgment in a civil case. The lawsuit sought rescission or damages arising from a real estate transaction.

B. Course of Proceedings and Disposition Below. Plaintiffs filed their complaint on March 10, 1995. (R. 24-1.¹) The complaint named as defendants the Wrights and QMF, Inc. (sometimes jointly referred to in this brief as "Wright"), and the Caspers. Among other things, the complaint sought an order restoring certain real property to a planned unit development, and an award of damages related to the loss of the property. Plaintiffs also filed a lis pendens. (R. 26-25.) On June 21, 1995, the parties filed a stipulation dismissing the claim for restoration of the real property. (R. 70-68.) Plaintiffs also released their lis pendens against the property. (R. 72-71.) An Order of Partial Dismissal was entered June 29, 1995. (R. 75-73.)

Plaintiffs filed a motion for summary judgment (R. 79-78) and supporting memorandum (R. 171-080) on July 14, 1995. Wrights responded to the motion (R. 191-185) and filed their own motion for summary judgment. (R. 355-354.) Caspers also responded to the motion. (R. 507-475.) Following oral argument, the trial court (Judge Lynn Davis) ordered the parties to provide further briefs on whether plaintiffs had standing. (R. 536.) Caspers then filed a motion for summary judgment which included arguments on standing. (R. 559-558.) Wrights filed a memorandum on the issue. (R. 555-557.) Plaintiffs filed a motion to have the court determine that

¹ The documents in the trial court record are organized in reverse chronological order, with the result that the index page numbers on each document run in reverse order.

plaintiffs had standing or alternatively to grant leave to join additional parties. (R. 618-617.)

On January 24, 1996, the trial court (Judge Lynn Davis) ruled that plaintiffs lacked standing, and that the case would be dismissed without prejudice unless the plaintiffs within 30 days joined the homeowners association or the other homeowners. (R. 647-645.) Plaintiffs filed an amended complaint on February 23, 1996, naming the other homeowners and the homeowners association as additional defendants. (R. 730-696.) Wrights (R. 736-731) and Caspers (741-737) answered the amended complaint.

As part of the regular rotation of cases in the Fourth District, the case was assigned to Judge Donald Eyre. On April 4, 1996, Judge Eyre ruled on Caspers' motion for summary judgment. Apparently unaware that plaintiffs had filed an amended complaint, Judge Eyre stated the action was dismissed without prejudice because plaintiffs had failed to join additional parties. Judge Eyre also noted that Judge Davis had allowed for joinder of either the homeowners association or the homeowners, but expressed his opinion that joinder of the homeowners association would be more appropriate. (R. 762-760.)

Plaintiffs sought reconsideration of the dismissal on the ground that Judge Eyre was obviously unaware plaintiffs had filed an amended complaint. (R. 756-763.) Wrights opposed the reconsideration and submitted affidavits from several homeowners stating they did not want to be part of any lawsuit. (R. 791-773.) On May

7, 1996, Judge Eyre granted the motion to reconsider, but nonetheless ordered the case dismissed. The court held that only the homeowners association had standing to pursue the claims, and that the affidavits of a majority of the homeowners precluded the homeowners association from being named as a party to pursue the claims. (R. 796-792.) An order of dismissal prepared by Wrights counsel and dismissing plaintiffs' case with prejudice² was entered May 28, 1996. (R. 809-806.)

On September 1, 1995, without seeking prior leave of court, Wrights had filed a counterclaim against plaintiffs claiming slander of title and other damages. (R. 346-343.) The court subsequently granted leave to file the counterclaim. (R. 655.) On August 19, 1996, plaintiffs, through new counsel, filed a motion for summary judgment against the counterclaim. (R. 839-838.) Plaintiffs also sought an order vacating the dismissal of their personal claims. (R. 826-825.) Following argument, the trial court reaffirmed the dismissal of all plaintiffs' claims, but ordered that the dismissal be without prejudice. The court also granted plaintiffs' motion for summary judgment dismissing Wrights' counterclaim. (R. 904-899.) The formal order of dismissal was entered December 10, 1996. (R. 912-910.)

²Judge Eyre's Memorandum Decision dismissing the case (R. 762-760), as well as Judge Davis's prior decision on standing (R. 647-645), had both stated the case would be dismissed without prejudice.

Plaintiffs obtained a 30-day extension of time to appeal (R. 920-918), and filed their notice of appeal on February 10, 1997. (R. 923-921.) The Supreme Court poured the case over to this Court on April 30, 1997. (R. 931.)

C. Statement of Facts.

In 1974, QMF, then a corporation³ owned by Wrights and Caspers, purchased a parcel of property in Mapleton, Utah, containing a little over a hundred acres. (R. 495.) A 25-acre portion of that property was preliminarily approved as a planned unit development ("PUD") in 1974. Although lots were sold previously, the formal approval for the PUD occurred in 1980. (R. 494.) As part of the PUD, approximately two acres were set aside as common ground. (R. 506.)

For financial and other reasons, Wrights and Caspers determined to amend the PUD documents to reacquire part of the common ground, which could then be sold as a new lot. (R. 506.) In order to maintain the required 25 acres in the PUD, Wrights would convey other property to the PUD. (Id.) George Wright prepared an amended plat, Quiet Meadow Farms Planned Unit Development Plat "C," to accomplish this change. The amended plat "C" had essentially the same lots (with some adjustments in lot lines) as the prior plats. (R. 168.)

³QMF, Inc. was involuntarily dissolved on December 1, 1987. (R. 729 ¶ 4, 735 ¶ 4.)

Mapleton City required Wrights and Caspers to obtain the signatures of all the lot owners to change the plat. (R. 505.) George Wright obtained the signatures of all the owners except Steve Hechtle, the prior owner of the Triesault lot. Hechtle orally authorized Wright to sign the amended plat, but did not give a written power of attorney. (R. 444.) Wright represented to the homeowners who personally signed the plat, including Bakers, that "the funds that came from the sale of [the new lot] would be used for the benefit of the PUD." (R. 128.)

The amended Plat "C" was not recorded until March 16, 1993. (R. 530.) Prior to recordation, on March 1, 1993, Hechtle had sold his lot to Triesaults. (Id.) Wrights never sought the signature of the Triesaults on the amended plat; therefore, neither Hechtle nor Triesaults ever signed the amended plat.

George Wright had facilitated the sale to Triesaults by representing to them, among other things, that the common area could never be built on, and that the land directly behind the subject lot was Forest Service land. (R. 414 (Triesault deposition p. 13).) Contrary to these representations, the land directly behind the lot purchased by Triesaults was owned by QMF, not Forest Service. (R. 313.) Also contrary to these representations, Wright was in the process of removing some of the common area to be sold as a building lot.

As part of the plat amendment process, the title company requested that all the lot owners sign a quit claim deed conveying

all the property back to QMF, so the amended plat would reconvey the property to the lot owners. Triesaults were now lot owners, although they had not signed the amended plat, so a quit claim deed from them was necessary to facilitate the title company's mechanism for amending the plat. To obtain Triesaults' signatures, George Wright told them the quit claim deed was required to make "technical adjustments" to add some unusable hillside land to their lot. (R. 410 (Triesault deposition p. 45); R. 106-105.) Wright did not disclose that the effect of the deed would be to remove 1.8 acres from the heart of the prior common area. (R. 409 (Triesault deposition p. 50).)

Wright used the 1.8 acres along with additional land he owned to create a lot which was sold for \$85,000. George Wright received approximately \$24,000 of that amount. Approximately \$10,000 went directly to Mr. Casper. Additional amounts were used to pay bills owed by Wrights' and Caspers' partnership, Quiet Meadow Farms. The monies were not used for the debts of the PUD. (R. 167-166.)

Plaintiffs brought this action to recover the value of the common area which was taken from the PUD and to recover for the reduced value of their own properties. (R. 720.) Plaintiffs testified that they did not seek to profit from the lawsuit, but only to recover what was taken. (R. 477.)

SUMMARY OF ARGUMENT

Plaintiffs allege they were induced by defendants' wrongful acts to personally take actions--Triesaults to buy property and to

quit claim that property back to developer, and Bakers to approve an amendment to the PUD. These misrepresentations were made personally to plaintiffs and induced individual acts by each plaintiff. Plaintiffs have standing to assert claims based on those acts.

Plaintiffs also had standing to privately assert claims which may have been common with other owners in the PUD. As with a condominium, an owner in a PUD has private rights and has standing to assert those rights. Standing is not defeated by the fact that other PUD residents may have the same rights.

Plaintiffs did not waive their claims by revealing an advance intent to donate any fruits of the litigation to the homeowners association.

The fact that a majority of homeowners expressed, outside of any meeting, a willingness to approve the amended PUD plat does not obviate compliance with the formal requirements. Votes cannot be taken outside of a meeting; the objecting homeowners have a right to a formal meeting where their positions can be advocated.

ARGUMENT

POINT I

PLAINTIFFS HAD STANDING TO PURSUE THEIR PERSONAL CLAIMS.

Standing is a jurisdictional issue which considers whether a person has a sufficient interest in a controversy to bring a lawsuit. The Utah Supreme Court has noted that standing issues

often turn on the facts of a case and that generalizations about standing to sue are largely worthless as such." Kennecott Corp v. Salt Lake County, 702 P.2d 451, 453 (Utah 1985) (citation omitted, quotation marks omitted). The Court has nonetheless developed the following test for standing:

1. We first apply traditional standing criteria, which require that (a) the interests of the parties be adverse, and (b) the parties seeking relief have a legally protectible interest in the controversy. Plaintiff must be able to show that he has suffered some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute.

2. If the plaintiff has no standing under the first step, then he may have standing if no one has a greater interest than he and if the issue is unlikely to be raised at all if the plaintiff is denied standing.

3. In unique cases, standing may be established by a showing that the issues raised by the plaintiff are of great public importance and ought to be judicially resolved.

Kennecott, 702 P.2d at 454 (citing Jenkins v. Swan, 675 P.2d 1145 (Utah 1983) (citations and quotation marks omitted)).

In this case plaintiffs asserted two separate interests: personal claims, and claims on behalf of all homeowners. Plaintiffs had standing to assert both claims.

Plaintiffs' complaint alleges wrongs personal to the plaintiffs. Paragraph 14 of the amended complaint alleges that George Wright falsely told Jon Triesault that the purpose of executing a quit claim deed was to make "technical adjustments" in the plat, rather than truthfully stating that its purpose was to

eliminate the most valuable part of common area. Paragraph 19 alleges that Wright falsely told Bakers that the proceeds from the sale of the common area would be used for the purpose of improving and maintaining the common area.

Although all homeowners were harmed by the removal of the property from the common area, plaintiffs suffered wrongs individually, independent from their ownership in the homeowners association. These damages are alleged in paragraph 39 of the complaint:

The plaintiffs, and each of them, were injured and damaged by the removal of the Common Area taken by the Defendants Wrights, Casper and QMF. That injury and damages includes, but is not necessarily limited to: a) the reduction of the Common Area; b) the value of the Common Area taken by the Defendants Wright, Casper and QMF; c) the likelihood that they would be unable to pick cherries from the cherry trees; d) the reduced possibility of access; e) the reduction in value of their properties as a result of the access problems described above; f) the reduction in value of their property as a result of the property to the east of Quiet Meadow Farms Planned Unit Development being owned by private property owners (including the Defendants Wright, Casper and QMF) rather than the National Forest Service; g) other damages as may be proven at trial.

(R. 720.)

The harm to all of the plaintiffs is real, substantial, and personal. These are not rights which plaintiffs are attempting to assert for the benefit of the homeowners association, but rather rights which are individual and personal to the plaintiffs.

Plaintiffs, and only plaintiffs, have standing to pursue these claims.

Plaintiffs also had rights common with all members of the homeowners association. Because of the unique nature of a PUD (similar to a condominium), both an individual owner and the homeowners association could have standing to assert similar rights. The document creating the PUD did so by reference to the Utah Condominium Act, and the property rights created are functionally the same as for condominiums. The Utah Supreme Court described those rights as follows:

A condominium owner is the holder of a hybrid real property interest consisting of "two distinct tenures, one in severalty and the other in common; both types, although well established separately, are inseparably joined in a condominium."

Brickyard Homeowners' Ass'n Management Comm. v. Gibbons Realty Co., 668 P.2d 535, 537 (Utah 1983). Based on the same analysis, the court in Rogers & Ford Const. Corp. v. Carlandia Corp., 626 So. 2d 1350 (Fla. 1993), held that an individual unit owner has standing to sue for defects in the common areas of a condominium, so long as the interests of the other unit owners are protected.

Plaintiffs had an individual interest in the common areas. Plaintiffs joined the other homeowners, which would have protected their interests. The district court erred in holding that plaintiffs lacked standing.

POINT II

PLAINTIFFS DID NOT WAIVE THEIR CLAIMS.

The trial court was concerned that the plaintiffs "do not request monetary gain as an outcome of the lawsuit." (R. 901.) This "finding" is not supported by the deposition testimony. Mr. Triesault testified:

Q. Mr. Triesault, do you claim that you and your wife are entitled to the full value of the common areas that were taken out?

A. No.

Q. What would be your claim?

A. A portion. There is no claim on my behalf for a monetary gain of any kind. This is a claim to return the common ground, and any damages that may have been incurred or legal expenses, or *whatever else is pled in the complaint*. There is no attempt on my part or I believe on Mr. Baker's part to profit in any way by this lawsuit, financially.

. . . .

Q. You're not seeking to benefit monetarily at all from the lawsuit?

A. Not personally. If there are benefits monetarily, they would be given to the homeowners' association.

R. 477 (*italics added*).

Plaintiffs clearly prayed for compensatory damages, for punitive damages, for attorney fees, for declaratory relief, and for other relief as appropriate. The complaint stated a cognizable claim for that relief. It is irrelevant what plaintiffs may have chosen to do with any money awarded. The fact that plaintiffs may

have chosen to donate any money back to the association does not constitute a waiver of the right to receive that money.

POINT III

PLAINTIFFS SUFFERED A LEGAL INJURY EVEN THOUGH A MAJORITY OF THE HOMEOWNERS DISAGREED WITH PLAINTIFFS' POSITION.

The trial court stated: "The Court has difficulty in finding an injury where the common ground has been disposed of in compliance with the applicable statute, and where additional property has been deeded back to compensate for that disposal." (R. 901.) The claim that the property had been disposed of in compliance with statute was based on the court's interpretation of Utah Code Ann. § 57-8-32 (1996), which permits sale of condominium property upon the affirmative vote of at least three-fourths of the unit owners. The trial court reasoned that, "[a]lthough no official vote was taken," because eight of the ten owners in this case consented to the sale of the common area, those "votes" would "effectively bind all property owners, including the Plaintiffs." (R. 901.)

The error in this reasoning is its assumption that a vote can be taken without a meeting. The Utah Supreme Court long ago rejected that concept in the context of a corporation:

A corporation being but an artificial entity, has but one will, and this will is collected by the sense of a majority of the directors. Its will, so collected, directs and controls the corporate acts. It is therefore important that every director should have an opportunity to be heard on all matters affecting the

corporation, so that, through the sense of all, its best interests may be subserved. Every director is entitled to the reasoning, judgment, and advice of every other director [W]here matters to be acted upon call for deliberation and judgment, all interests and parties to be affected should have the benefit of the wisdom and counsel of all those intrusted with the decision. Although all may not concur, still the arguments and information of each may modify and affect the conclusions which otherwise might be reached.

Singer v. Salt Lake City Copper Mfg. Co., 17 Utah 143, 53 P. 1024, 1028 (1898).

The fact that eight of ten owners approved the sale is therefore of no relevance. This Court must presume that some of eight may have been persuaded by the arguments of the two had a formal meeting occurred. There was no lawful, proper vote in this case. The lack of that vote was not harmless.

An additional error in the trial court's reasoning is found in the comment that "additional property has been deeded back to compensate" for the loss of part of the common area. Land is unique. Redevelopment Agency v. Mitsui Investment, Inc., 522 P.2d 1370, 1373 (Utah 1974). Plaintiffs characterized the lost property as the heart of the common area. Although equal acreage was deeded back to replace the lost property, it certainly was not of equal value. The original common area was a generally flat lot planted with cherry trees, a place where children could play. The replacement property was steep hillside. If the properties were in fact equivalent, Wrights and Caspers would have had no motivation to carve out the common area in the first place.

CONCLUSION

Plaintiffs had standing, both for private wrongs and for wrongs to all homeowners in the PUD. Plaintiffs did not waive their claims. The dismissal of plaintiffs' complaint should be reversed.

DATED this 7th day of July, 1997.



LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Appellants

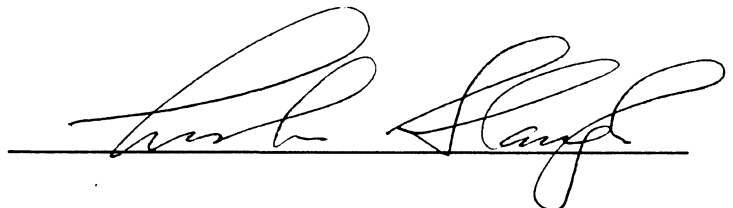
MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 7th day of July, 1997.

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APPENDIX "A"

Amended Complaint (R. 730-696)

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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

JON TRIESAULT, ELIZABETH)
TRIESAULT, ROGER CLIVE BAKER,)
and LYNNETTE JENNIFER BAKER,)

AMENDED COMPLAINT

Plaintiffs,)

vs.)

QMF, INC., WILLIAM E. CASPER,)
JR., SHIRLEY A. CASPER,)
GEORGE G. WRIGHT, JANE C.)
WRIGHT, STANLEY WAYNE CURTIS,)
WILLIAM G. SCHWARTZ, MICHAEL)
G. RIEKER, CAROL P. RIEKER,)
MARILYN S. PETERSON, Trustee,)
and GARY B. PETERSON, Trustee,)
of the PETERSON FAMILY TRUST)
dated 1/26/89, PATRICIA H.)
CLARK, Trustee of the J.D.)
AND PATRICIA H. CLARK FAMILY)
LIVING TRUST, and QUIET)
MEADOW FARMS OWNERS)
ASSOCIATION (defined in Quiet)
Meadow Farms Planned Unit)
Development Agreement), and)
RICHARD G. THORPE, and JAN)
THORPE, and JOHN DOES 1-10,)

Civil No. 950400154

Judge Lynn W. Davis

Defendants.)

COME NOW the Plaintiffs, by and through their

counsel of record, Thomas W. Seiler of Robinson, Seiler & Glazier, LC, and allege as follows:

FACTS

1. The Plaintiffs Jon Triesault and Elizabeth Triesault are residents of Utah County, State of Utah, and purchased all of Lot 4, Quiet Meadow Farms Planned Unit Development, amended Plat "A", Mapleton, Utah, according to the official Plat thereof on file in the Office of the Recorder, Utah County, State of Utah, from Stephen E. Hechtle, pursuant to that certain Warranty Deed recorded March 1, 1993, as Entry No. 11594, in Book 3095, at Page 10, of the Utah County Records Office, a copy of which is attached hereto and made a part hereof by reference as Exhibit "A".

2. The Defendants William E. Casper and Shirley A. Casper, sometimes hereinafter collectively referred to as Casper, are residents of the State of California.

3. The Defendants George G. Wright and Jane C. Wright, sometimes hereinafter collectively referred to as Wright, are residents of Utah County, State of Utah.

4. QMF, Inc., sometimes hereinafter referred to as QMF, is an association and not a corporation recognized by the State of Utah, having been involuntarily dissolved on December 1, 1987.

5. QMF, Inc., is owned and controlled by Casper and Wright.

6. No filing has been made with the Department of Business Regulations of the State of Utah to reinstate QMF, Inc., since its involuntarily dissolution on December 1, 1987.

7. The Remaining Individual Defendants (referred to herein as such) are property owners owning property in Quiet Meadow Farms Planned Unit Development, and are members of the Defendant Owners Association.

8. The Defendant Owners Association is an association created by the Defendants Wright, Casper, and QMF to govern Quiet Meadow Farms Planned Unit Development.

9. The Plaintiffs Roger Clive Baker and Lynnette Jennifer Baker, sometimes hereinafter collectively referred to as Baker, are residents of Utah County, State of Utah, and are owners of a home and a lot located in Quiet Meadow Farms Planned Unit Development.

10. The Defendants Wright, Casper and QMF are the developers of Quiet Meadow Farms Planned Unit Development, Plats "A", "B" and "C", are the developers of the G. Wright "A" Subdivision which has been created from the Common Area of Quiet Meadow Farms Planned Unit Development.

11. Quiet Meadow Farms Planned Unit Development,

Plat "C", contains generally the same lots (with some adjustments in the lot lines) as do Quiet Meadow Farms Planned Unit Development, Plats "A" and Amended Plat "B".

12. The Defendants Wright, Casper, and QMF, have caused approximately 1.8 acres of the Common Area described in Quiet Meadow Farms Planned Unit Development, Plat "A", and Amended Plat "B" to be removed from the Common Area to help create the G. Wright "A" Subdivision.

13. Attached hereto and made a part hereof by reference as Exhibit "B" is a Quit Claim Deed recorded with the Office of the Utah County Recorder, Utah County, State of Utah, as Entry No. 15043, in Book 3103, beginning at Page 574 (hereinafter referred to as the Fraudulent Quit Claim Deed).

14. Between the acquisition of Lot 4 as described on Exhibit "A" and the execution of the Fraudulent Quit Claim Deed, the Defendants Wright, Casper, and QMF, acting through the Defendant George Wright, represented to the Plaintiff Triesault that the purpose for executing the Fraudulent Quit Claim Deed (Exhibit "B") was to make "technical adjustments" to the Quiet Meadow Farms Planned Unit Development Plat.

15. The representations referred to in Paragraph 14 above were made on or about the date of execution of the Fraudulent Quit Claim Deed (Exhibit "B").

16. The Defendants Wright, Casper, and QMF had known for not less than four months prior to the representation described in Paragraph 14 being made, that the Defendants Wright, Casper, and QMF intended to cause the Quiet Meadow Farms Planned Unit Development Plats "A" and "B" (Amended) to be vacated.

17. On or about November 12, 1992, the Defendants Wright, Casper, and QMF represented to Mapleton City, State of Utah, that all the owners of property located in Quiet Meadow Farms Planned Unit Development Amended Plat "A" and Amended Plat "B" had executed Quiet Meadow Farms Planned Unit Development Plat "C".

18. On November 12, 1992, the Defendants Wright, Casper and QMF well knew that all of the owners of property in Quiet Meadow Farms Planned Unit Development Amended Plat "A" and Amended Plat "B" had not executed Quiet Meadow Farms Planned Unit Development Plat "C" and that such representation, as made by the Defendants Wright, Casper and QMF, and each of them, was fraudulent.

19. The Defendants Wright, Casper and QMF, acting through the Defendant George Wright, represented to the Plaintiffs Baker that: a) a portion of the Common Area of Quiet Meadow Farms Planned Unit Development Amended Plat "A"

and Amended Plat "B" would be removed; b) that additional property would be added to Quiet Meadow Farms Planned Unit Development in the new Plat "C" to increase the acreage to not less than 25 acres; and c) that the proceeds from the sale of the Common Area now included in the G. Wright "A" Subdivision (hereinafter referred to as the Common Area taken by the Defendants Wright, Casper, and QMF) would be used for the purpose of improving and maintaining the Common Area of Quiet Meadow Farms Planned Unit Development.

20. Prior to the purchase of their respective lots, the Defendants Wright, Casper and QMF represented to the Plaintiffs that there was access in and to Quiet Meadow Farms Planned Unit Development (regardless of the Plat) from Mapleton Road, Mapleton City, State of Utah.

21. In fact, the access which appears on the ground goes across property owned by the adjoining property owner to the south, and, upon information and belief, these Plaintiffs allege that, prior to the initiation of this lawsuit, there was no written document providing for continued access to Quiet Meadow Farms Planned Unit Development across the southern property owner's ground.

22. The Common Area taken by the Defendants Wright, Casper and QMF would have allowed Quiet Meadow Farms Planned

Unit Development additional access to Mapleton Road.

23. The Common Area taken by the Defendants Wright, Casper and QMF is planted, at least in part, with cherry trees.

24. Immediately prior to the purchase of their lot, the Defendants Wright, Casper and QMF (through the Defendant George Wright) represented to the Plaintiffs Triesault that the Plaintiffs Triesault would be entitled to pick cherries in perpetuity from the cherry trees, which exist on the Common Area taken by the Defendants.

25. After the commencement of this lawsuit, the Defendants Wright, Casper and QMF sold the Common Area taken by the Defendants Wright, Casper and QMF to third parties (Mr. and Mrs. Croshaw).

26. Upon information and belief, the Common Area taken by the Defendants Wright, Casper and QMF is alleged to be valued at between \$61,200 and \$85,000. The actual value is susceptible to proof before the Court.

27. At the time the Plaintiffs Triesault purchased their lot pursuant to Exhibit "A", the Defendants Wright, Casper and QMF represented to the Plaintiffs Triesault that the property immediately to the east of Quiet Meadow Farms Planned Unit Development was owned by the National Forest

Service. In fact, the property adjoining to the east is not owned by the National Forest Service, but is owned by private property owners, including the Defendants Wright, Casper and QMF.

28. The Defendants Wright, Casper and QMF have maintained two metal buildings in the southwesterly portion of the Common Areas, which they have used for their exclusive use to the detriment of these Plaintiffs in an amount to be proven at trial.

29. The Defendants Wright, Casper and QMF have admitted that the Defendants Wright, Casper and QMF should have disclosed to the Plaintiffs Triesault their intention to remove the Common Area taken by the Defendants Wright, Casper and QMF from Quiet Meadow Farms Planned Unit Development prior to convincing the Plaintiffs Triesault to execute the Fraudulent Quit Claim Deed.

30. The Defendants Wright, Casper and QMF have made fraudulent misrepresentations to the Plaintiffs as set forth above, including, but not necessarily limited to:

a. The request that the Fraudulent Quit Claim Deed be signed so that the Defendants Wright, Casper and QMF could make technical adjustments to the Quiet Meadow Farms Planned Unit Development property lines;

b. That the Plaintiffs Triesault could pick cherries on the Common Area taken by the Defendants Wright, Casper and QMF in perpetuity;

c. That the property to the east of Quiet Meadow Farms Planned Unit Development was owned by the National Forest Service;

d. That the access to Quiet Meadow Farms Planned Unit Development to Mapleton Road was secure;

e. That the proceeds from the sale of the Common Area taken by the Defendants Wright, Casper and QMF would go to improve and maintain Quiet Meadow Farms Planned Unit Development Common Area; and other representations set forth above; all of which are referred to hereinafter as the Fraudulent Misrepresentations, and were known by the Defendants Wright, Casper and QMF to be false at the time they were made.

31. Each of the Fraudulent Misrepresentations made by the Defendants Wright, Casper and QMF were representations concerning presently existing material facts.

32. The Fraudulent Misrepresentations were known by the Defendants Wright, Casper and QMF to be false, or were made by the Defendants Wright, Casper and QMF knowing that the Defendants Wright, Casper and QMF had insufficient knowledge

upon which to base such representations.

33. The Fraudulent Misrepresentations were made by the Defendants Wright, Casper and QMF for the purpose of inducing the Plaintiffs to act upon them.

34. The Plaintiffs Triesault acted upon the Fraudulent Misrepresentations by executing the Fraudulent Quit Claim Deed, Exhibit "B".

35. The Plaintiffs Baker acted upon the Fraudulent Misrepresentations of the Defendants Wright, Casper and QMF by executing Plat "C" of Quiet Meadow Farms Planned Unit Development and executing the Fraudulent Quit Claim Deed (Exhibit "B").

36. The Plaintiffs, and each of them, acted reasonably and in ignorance of the falsity of the Fraudulent Misrepresentations.

37. The Plaintiffs, and each of them, did in fact rely upon the Fraudulent Misrepresentations in executing the Fraudulent Quit Claim Deed (Exhibit "B") and, as to the Plaintiffs Baker, in executing Quiet Meadow Farms Planned Unit Development Plat "C".

38. The Plaintiffs, and each of them, were induced to execute the documents referred to in the preceding paragraphs as a result of the Fraudulent Misrepresentations of

Defendants Wright, Casper, and QMF.

39. The Plaintiffs, and each of them, were injured and damaged by the removal of the Common Area taken by the Defendants Wright, Casper and QMF. That injury and damage includes, but is not necessarily limited to: a) the reduction of the Common Area; b) the value of the Common Area taken by the Defendants Wright, Casper and QMF; c) the likelihood that they would be unable to pick cherries from the cherry trees; d) the reduced possibility of access; e) the reduction in value of their properties as a result of the access problems described above; f) the reduction in value of their property as a result of the property to the east of Quiet Meadow Farms Planned Unit Development being owned by private property owners (including the Defendants Wright, Casper and QMF) rather than the National Forest Service; g) other damages as may be proven at trial.

40. As part of the scheme and artifice to mislead the Plaintiffs, the Defendants Wright, Casper and QMF (through the Defendant George Wright) represented to Mapleton City on or about November 12, 1992, that all of the owners of the property described as Quiet Meadow Farms Planned Unit Development Plat "C" had executed said Plat, when in fact at least Stephen E. Hechtle, who was an owner of property

contained thereon, had not signed the said Plat.

41. Such misrepresentation was necessary in order to present said Plat to the Planning Commission of Mapleton City for Planning Commission approval, which Planning Commission approval appears to have been obtained on or about November 12, 1992.

42. It was necessary for the Defendants Wright, Casper, and QMF to make fraudulent misrepresentations to the Plaintiffs to induce the Plaintiffs to execute the Fraudulent Quit Claim Deed in order to obtain approval from the City Council of Mapleton City for the vacation of Plat "A" Amended and Plat "B", Quiet Meadow Farms Planned Unit Development, which Plat Vacation Notice was executed by Ernest "Skip" Predmore on or about March 11, 1993, the date of execution of the Fraudulent Quit Claim Deed.

43. In addition to the Plaintiffs, the Defendants Stanley Wayne Curtis, William G. Schwartz, Michael G. Rieker, Carol P. Rieker, Marilyn S. Peterson, Gary B. Peterson, and Patricia H. Clark executed the Fraudulent Quit Claim Deed. Upon information and belief, the Plaintiffs allege that the one or more of the Fraudulent Misrepresentations made by the Defendants Wright, Casper and QMF (through the Defendant George Wright) were made to the remaining individual

Defendants. This allegation is based, in part, upon the testimony of George Wright to the effect that the Defendant George Wright told everyone he talked to that the funds that came from the sale of Lot 1, the G. Wright Subdivision, Plat "A", would be used for the benefit of the Quiet Meadow Farms Planned Unit Development.

44. Upon information and belief, the Plaintiffs allege that some of the parties executing the Fraudulent Quit Claim Deed did not personally appear before the notary public to execute the Fraudulent Quit Claim Deed. The Defendants Wright, Casper and QMF knew that one or more of the signators on the Fraudulent Quit Claim Deed had not personally appeared before the notary to sign the Fraudulent Quit Claim Deed, nor to acknowledge that they had executed the same. This allegation is based, in part, on the testimony of the Defendant George Wright to the effect that the Defendants Rieker, the Plaintiffs Baker, the Defendants Clark, the Defendants Peterson, the Defendants Curtis, the Defendants Schwartz, and the Defendants Wright each signed the Quiet Meadow Farms Planned Unit Development Plat "C", which signatures were not affixed in front of a notary, contrary to the representation contained on Quiet Meadow Farms Planned Unit Development Plat "C".

45. The Plaintiffs are entitled to punitive damages against the Defendants Wright, Casper and QMF in the amount of the value of the Common Area taken by the Defendants Wright, Casper and QMF, which value is \$250,000 or more as is proven at trial.

46. The Plaintiffs are entitled to recover all costs incurred herein and, including, but not limited to, reasonable attorney's fees, which reasonable attorney's fees are in the amount of \$40,000 or more as is proven at trial.

47. The Defendants Stanley Wayne Curtis, William G. Schwartz, Michael G. Rieker, Carol P. Rieker, Marilyn S. Peterson, Gary B. Peterson, Patricia H. Clark, Richard G. Thorpe and Jan Thorpe, hereinafter Remaining Individual Defendants, claim an interest in and to portions of the real property described in this Complaint, and are members of the Defendant Owners Association.

48. The Defendant Owners Association is an association established by the Defendants Wright, Casper and QMF, of which the Plaintiffs and all individual Defendants are members, which was established for the purposes set forth in the Quiet Meadow Farms Planned Unit Development Agreement, attached as Exhibit "C" and incorporated herein by reference.

49. Pursuant to Exhibit "C", the Quiet Meadow Farms Planned Unit Development was created pursuant to the Mapleton City Zoning Ordinance and the Utah Condominium Ownership Act, each of which are incorporated herein by reference.

50. Upon information and belief, the Plaintiffs allege that the provisions of the second sentence of paragraph 1 of Exhibit "C" have not been enforced as property has changed hands in Quiet Meadow Farms Planned Unit Development.

51. The business of the Defendant Owners Association, including the operation, maintenance and improvement of the Common Areas of the Quiet Meadow Farms Planned Unit Development shall be conducted by an Executive Committee consisting of three members to be elected by the owners.

52. In fact, the Executive Committee has been made up of the various homeowners who are named as parties in this action.

53. The Executive Committee has chosen not to pursue the Defendants Wright, Casper and QMF for the damages alleged in this Complaint, and, accordingly, the Remaining Individual Defendants and the Defendant Owners Association have been named to place all parties before the Court.

54. The Plaintiffs are entitled to an Order of the Court determining that the Owners Association and the Remaining Individual Defendants have failed and refused to pursue the claim for damages set forth herein, and, pursuant to the Court's Ruling of January 24, 1996, they are indispensable parties who must be brought into the action.

55. The Plaintiffs are entitled to an Order of the Court determining the interests of all parties who are members of the Owners Association as to the judgment which will be awarded upon the successful completion of this action.

56. The Plaintiffs are furthermore entitled to an Order of the Court determining the rights of all parties in and to the funds, the access, the metal building, and the punitive damages described throughout this complaint.

WHEREFORE, the Plaintiffs pray for judgment as follows:

1. For an amount to be proven at trial representing the reasonable value of the Common Area taken by the Defendants Wright, Casper and QMF.

2. For punitive damages in the amount of \$250,000.

3. For an Order of the Court determining the reduction in value of the Plaintiffs' property as a result of

the Fraudulent Misrepresentations made by the Defendants Wright, Casper and QMF, including, but not limited to: a) the reduction of the Common Area; b) the value of the Common Area taken by the Defendants Wright, Casper and QMF; c) the likelihood that they would be unable to pick cherries from the cherry trees; d) the reduced possibility of access; e) the reduction in value of their properties as a result of the access problems described above; f) the reduction in value of their property as a result of the property to the east of Quiet Meadow Farms Planned Unit Development being owned by private property owners (including the Defendants Wright, Casper and QMF) rather than the National Forest Service; g) other damages as may be proven at trial.

4. For all costs incurred herein and including, but not limited to, reasonable attorney's fees, which reasonable attorney's fees shall be in the amount of \$40,000 or more as is proven at trial.

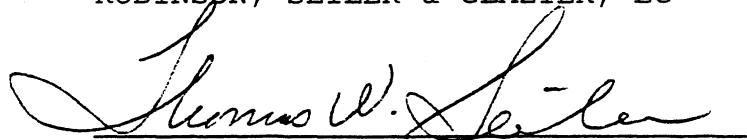
5. For determination by the Court as to the interests of the Remaining Individual Defendants and the Defendant Owners Association in and to the damages awarded hereby.

6. For such other and further relief as to the

Court may seem just and proper under the circumstances.

DATED this 23rd day of February, 1996.

ROBINSON, SEILER & GLAZIER, LC


Thomas W. Seiler

Plaintiffs' Addresses:

Jon and Elizabeth Triesault
18 Quiet Meadow Lane
Mapleton, UT 84664

Roger & Lynnette Baker
23 Quiet Meadow Lane
Mapleton, UT 84664

GASEILERVTRIESAUL.COM

MAILING CERTIFICATE

I hereby certify that correct copies of the foregoing were mailed, postage prepaid, this 23 day of February, 1996, addressed as follows:

Richard D. Bradford
BRADFORD, BRADY & RASMUSSEN, PC
389 North University Avenue
P.O. Box 432
Provo, UT 84603

M. Dayle Jeffs
Jeffs & Jeffs
90 North 100 East
Provo, UT 84603

John E. Roll

Recorded at Request of _____

ENT 11594 BK 3095 PG 10
NINA B. REID-UTAH CO RECORDER BY ME
1993 MAR 1 9:45 AM FEE 8.00
RECORDED FOR SECURITY TITLE AND ABSTRACT

nt _____ M. Fee Paid \$ _____

by _____ Dep. Book _____ Page _____ Ref.: _____

Mail tax notice to _____ Address _____

WARRANTY DEED

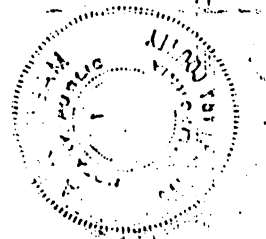
STEPHEN E. HECHTLE aka STEVEN E. HECHTLE grantors
of San Jose, County of Santa Clara, State of CA., hereby
CONVEY and WARRANT to JON TRIESAULT and ELIZABETH TRIESAULT, husband and
wife, as Joint Tenants, with full right of survivorship

of 2136 Spring Oaks Dr., Springville, Utah 84663 grantee
\$10.00 and other good and valuable consideration - - - - - DOLLARS,

the following described tract of land in Utah County,
State of Utah:

Lot 4, Quiet Meadow Farms Planned Unit Development, Amended Plat "A",
Mapleton, Utah, according to the official plat thereof on file in the
office of the RECorder, Utah County, Utah.

Subject to Easements and Covenants of record.



WITNESS, the hands of said grantors, this 25th day of
February, A. D. 1993

Signed in the Presence of

Stephen E. Hechtle AKA Steven E. Hechtle
Stephen E. Hechtle
AKA Steven E. Hechtle

STATE OF CALIFORNIA

County of _____

ss.

On the _____ day of February, A. D. 1993
personally appeared before me STEPHEN E. HECHTLE aka STEVEN E. HECHTLE

the signers of the within instrument, who duly acknowledged to me that they executed the
same.

*see
Attached*

Notary Public.

My commission expires _____ Residing in _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5193

State of California
County of Santa Clara

On February 25, 1993 before me, A.K. Nigam, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"
personally appeared Stephen E. Hechtle aka Steven E. Hechtle
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

A.K. Nigam
SIGNATURE OF NOTARY

OPTIONAL SECTION
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- ☒ INDIVIDUAL
☐ CORPORATE OFFICER(S)
TITLE(S)
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

OPTIONAL SECTION

TITLE OR TYPE OF DOCUMENT Warranty Deed
NUMBER OF PAGES 1 DATE OF DOCUMENT Feb 25, 1993
SIGNER(S) OTHER THAN NAMED ABOVE None

QUIT-CLAIM DEED

STANLEY WAYNE CURTIS, WILLIAM G. SCHWARTZ, JON TRIESAULT and ELIZABETH TRIESAULT, his wife, GEORGE G. WRIGHT and JANE C. WRIGHT, his wife, MICHAEL G. RIEKER and CAROL P. RIEKER, his wife, ROGER CLIVE BAKER and LYNNETTE JENNIFER BAKER, his wife, MARILYN S. PETERSON, Trustee and GARY B. PETERSON, Trustee of the PETERSON FAMILY TRUST, dated 1/26/89, and PATRICIA H. CLARK, Trustee of the J. D. and Patricia H. Clark Family Living Trust

grantees



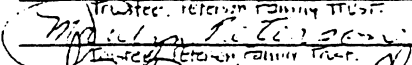
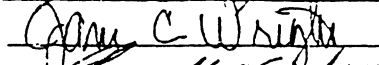

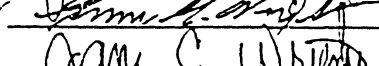
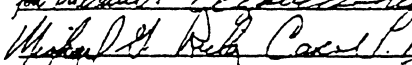
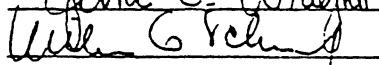
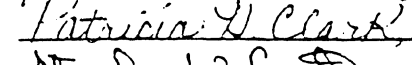
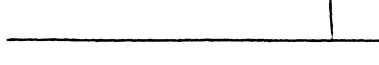
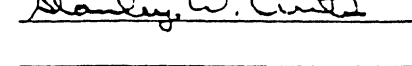
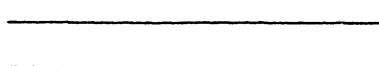
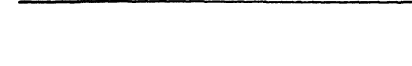
of Mapleton, County of Utah, State of Utah, hereby
QUIT-CLAIM to QMF, INC.

of 21 Quiet Meadow Lane, Mapleton, Utah 84664 grantee
for the sum of One Dollar and no/100s-----

the following described tract of land in Utah County,
State of Utah:

Amended Plat "A", Quiet Meadow Farms Planned Unit Development
and Plat "B", Amended Quiet Meadow Farms Planned Unit Development,
according to the official plats thereof on file in the office of
the Recorder, Utah County, Utah.

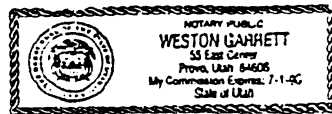
Witness the hands of the grantors, this 11th day of March
1993, A.D. on thousand nine hundred and ninety three.

 Stanley W. Curtis	 George G. Wright
 William G. Schwartz	 Jane C. Wright
 Jon Triesaault	 Michael G. Rieker
 Elizabeth Triesaault	 Carol P. Rieker
 Roger Clive Baker	 Lynette Jennifer Baker
 Gary B. Peterson	 Patricia H. Clark
 Marilyn S. Peterson	

Trustee

STATE OF UTAH)
) ss
COUNTY OF UTAH)

On the 11th day of March, 19 93, personally appeared before me MARILYN S. PETERSON and GARY S. PETERSON Trustees under the PETERSON FAMILY Trust dated the 26th day of January, 1989, the signer of the within instrument, who duly acknowledged to me that they executed the same pursuant to and in accordance with the powers vested in them by the terms of said Trust Agreement.



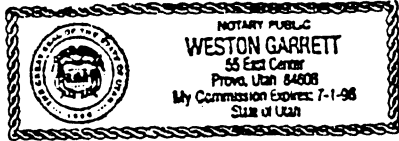
Weston Garrett
Notary Public

My Commission Expires: 7/1/96

Residing at: Provo, Utah

STATE OF 1)
) ss
COUNTY OF UTAH)

On the 11th day of March, 1993, personally appeared before me MICHAEL G. RIEKER and CAROL P. RIEKER, his wife, a signers of the foregoing instrument, who duly acknowledged to me that they executed the same.



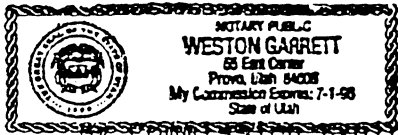
My Commission Expires:

7/1/96

Weston Garrett
Notary Public
Residing in Provo

STATE OF UTAH)
) ss
COUNTY OF UTAH)

On the 11th day of March, 1993, personally appeared before me ROGER CLIVE BAKER and LYNNETTE JENNIFER BAKER, his wife, a signers of the foregoing instrument, who duly acknowledged to me that they executed the same.



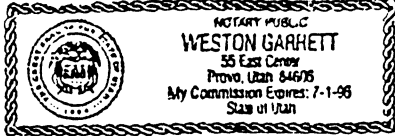
My Commission Expires:

7/1/96

Weston Garrett
Notary Public
Residing in Provo

STATE OF UTAH)
) ss
COUNTY OF UTAH)

On the 11th day of March, 1993, personally
appeared before me STANLEY WAYNE CURTIS, a
signer of the foregoing instrument, who duly acknowledged to me
that he executed the same.



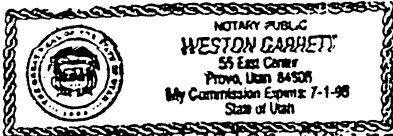
My Commission Expires:

7/1/96

Weston Garrett
Notary Public
Residing in Provo

STATE OF UTAH)
) ss
COUNTY OF UTAH)

On the 11th day of March, 1993, personally
appeared before me WILLIAM G. SCHWARTZ, a
signer of the foregoing instrument, who duly acknowledged to me
that he executed the same.



My Commission Expires:

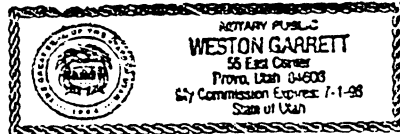
7/1/96

Weston Garrett
Notary Public
Residing in Provo

Trustee

STATE OF UTAH)
) ss
COUNTY OF UTAH)

On the 11th day of March, 1993, personally appeared before me PATRICIA H. CLARK, Trustee under the J.D. and PATRICIA H. CLARK FAMILY LIVING Trust dated the day of , 19 , the signer of the within instrument, who duly acknowledged to me that they executed the same pursuant to and in accordance with the powers vested in them by the terms of said Trust Agreement.



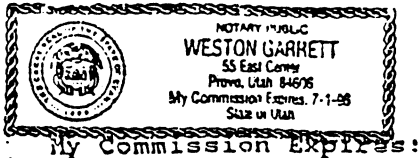
Weston Garrett
Notary Public

My Commission Expires: 7/1/96

Residing at: Provo, Utah

COUNTY OF UTAH) ss
)

On the 11th day of March, 1993, personally appeared before me JON TRIESAULT and ELIZABETH TRIESAULT, his wife, a signer of the foregoing instrument, who duly acknowledged to me that they executed the same.



7/1/96

Weston Garrett
Notary Public
Residing in Provo

STATE OF UTAH)
COUNTY OF UTAH) ss
)

On the 11th day of March, 1993, personally appeared before me GEORGE G. WRIGHT and JANE C. WRIGHT, his wife, a signers of the foregoing instrument, who duly acknowledged to me that they executed the same.



7/1/96

Weston Garrett
Notary Public
Residing in Provo

16282

QUIET MEADOW FARMS
PLANNED UNIT DEVELOPMENT
AGREEMENT

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The undersigned, who are all the owners of the real property described in Exhibit A to this Agreement have agreed to create a planned unit development within the meaning of Mapleton City Zoning Ordinance and the Utah Condominium Ownership Act. A set of plans for the planned unit development, to be known as Quiet Meadow Farms (hereinafter called the "Development"), is attached as Exhibit B to this Agreement. The owners have agreed to maintain and manage the common areas of the Development according to the terms of this Agreement as set forth below:

1. *Organization and Membership.*

The owners hereby organize themselves as the Quiet Meadow Farms Owners Association (hereinafter called the "Association"), an unincorporated association. All owners of property in the Development shall be members of the Association, and no member may sell or transfer his property unless the new owner agrees in writing to become a member of the Association.

2. *Executive Committee.*

The business of the Association, including the operation, maintenance and improvement of the common areas of the Development shall be conducted by an executive committee consisting of three members to be elected by the owners.

3. *Annual Meetings of the Association.*

Meetings of the members of the Association shall be held at least once per year on the first Monday in May, or such other convenient time as three-fourths of the owners may agree upon. At the annual meeting the members shall receive a report of the business of the Association and elect the executive committee of the Association. Each owner shall have three votes and may cast one or more of such votes for any candidate.

4. *Covenants to Run with the Land.*

This Agreement shall be recorded as a deed covenant and all covenants, restrictions, limitations, and conditions provided in this Agreement shall run with the land owned in common by the owners and shall be binding on the owners whose signatures appear on this document, all additional owners who acquire an interest in the common areas of the Development, and their successors in interest.

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PAGE 78

5. *Change of Ownership.*

The executive committee shall require any new owner to furnish evidence of ownership and sign a written agreement agreeing to be bound by this Agreement before recognizing a new owner's claim to use of the common areas. No interest in the common areas may be transferred without the transfer of ownership of a homesite in the Development.

6. *Insurance.*

The executive committee shall maintain insurance in an amount equal to estimated replacement cost of common facilities.

7. *Assessments.*

Each owner shall pay his proportionate share of common expenses. Payment shall be made at such times and in such amounts as the executive committee shall determine in accordance with this Agreement and the by-laws of the Association.

The Association shall have a lien upon the individual homesites and any improvements thereon for the payment of common expenses as provided in Paragraph 8 of this Agreement. Failure to use the common facilities shall not exempt any owner from liability for his share of common expenses.

Each owner shall pay his allocated portion of common expenses for maintenance and operation of common areas according to an annual schedule to be prepared by the executive committee. Assessments for construction of new facilities costing in excess of \$1,500 shall require the approval of 75% of the homesite owners. This shall not apply in the case of reconstructing facilities destroyed through a casualty loss fully covered by insurance.

Any assessment unpaid within thirty days after the due date shall bear interest at the rate of 10 percent.

The executive committee shall have full discretion to prescribe the manner of operating and maintaining the common areas and the cash requirements for doing so. Every reasonable determination by the executive committee shall be final and conclusive as to the owners and every reasonable expenditure shall be deemed necessary and properly made.

8. *Liens.*

Each monthly assessment and each special assessment shall be personal debts and obligations of the owner against whom they are assessed at the time assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the

owner of any homesite, including reasonable attorney's fees, shall become a lien upon such homesite and improvements and the owner's interest in common areas upon recording a notice of the assessment as provided by the Utah Condominium Ownership Act.

The lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(a) Tax and special assessment liens, and

(b) Encumbrances on the homesite and owners' interest in common areas recorded prior to the date such notice is recorded, which by law would be a lien prior to subsequently recorded encumbrances.

The lien for nonpayment of assessment may be enforced by sale or foreclosure of the owner's interest by the executive committee or by a bank, trust company or title insurance company authorized by the executive committee, such sale or foreclosure to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law.

9. *Agreement Enforceable by City.*

This Agreement, when executed by the owners, and approved by the City Attorney of the City of Mapleton, Utah, shall be filed with the Utah County Recorder and shall be enforceable by the City of Mapleton, as provided in the Zoning Ordinance of the City of Mapleton. These sections permit the City to treat a breach of this Agreement as a violation of the Mapleton City ordinances. The City also has the right to treat a failure to maintain the common areas as a public nuisance and the City may use any remedy provided by law to abate such nuisance. The owners hereby specifically agree that the covenants set forth in this agreement may be enforced by the City should the owners fail to do so.

10. *Services Rendered by City.*

The owners agree that if the City of Mapleton should be hindered in rendering fire, police or other city services by the locked gate at the entrance to the Development or other special features of the Development, the owners shall not hold the City liable provided reasonable efforts have been made to furnish the service in question.

11. *Use Restrictions.*

Use of property in the Development shall be subject to the following provisions:

(a) Each homesite shall be used only for a private single family residence and shall be occupied only by an individual family and its servants, guests, lessees or tenants. No homesite may be subdivided nor may an owner sell or transfer less than all his interest in his homesite and common areas.

(b) The common areas shall be used only by the owners, their families, guests and lessees. No commercial use of the common areas may be permitted.

(c) All homesites and the common areas shall be kept in a clean and sanitary condition. No rubbish or refuse shall be allowed to accumulate. No unlawful use of any part of the Development shall be permitted.

(d) No signs, notices or advertisements shall be displayed in the Development without the consent of the executive committee.

12. *Administrative Rules and Regulations.*

The executive committee shall have the power to adopt and establish by resolution such building, management and operational rules as it may deem necessary for the maintenance, operation, management and control of the project. The committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any rule has been furnished to the owners, the rule shall be binding upon the owners.

13. *Amendment.*

This Agreement, the by-laws of the Association and the rules adopted by the executive committee may be amended by a vote of not less than three-fourths of the owners. Any amendment to this Agreement shall be filed for recording with the Utah County Recorder.

14. *Right of First Refusal.*

When an owner desires to sell his interest in the Development, he shall give notice to the executive committee of the owner's intention to sell. The notice shall include the name and address of the prospective purchaser and the price and terms of the proposed sale. At any time within ten days of the receipt of the notice the executive committee may notify the owner that the Association or a member of the Association elects to purchase the owner's interest at the price and on the terms specified. If the owner is not notified within ten days that the Association elects to purchase the owner's interest, the owner is free to sell to the prospective purchaser at the price and on the terms specified. If the owner fails to complete the sale to the designated purchaser, the owner shall again tender his interest to the executive committee before making any sale.

15. *Agent for Service of Process.*

Service of process upon the Association may be made by serving George G. Wright, whose address is: 2137 East 400 North, Mapleton, Utah, 84663

16. *Miscellaneous Provisions.*

(a) Invalid Provisions. In the event that one or more of the phrases, sentences, clauses, paragraphs or subparagraphs contained in this Agreement are determined to be invalid or operate to render this Agreement invalid, this instrument shall be construed as if such invalid phrase, sentence, clause, paragraph or subparagraph had not been inserted so far as legally possible.

(b) Interpretation. The singular, wherever used herein, shall be construed to include the plural when applicable, and a given gender shall be deemed to include partnerships, corporations, individuals, and men or women where necessary and applicable.

(c) Topical Headings. The topical headings of the paragraphs contained in this Agreement are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Agreement.

17. *Waiver.*

No provisions contained in this Agreement shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

18. *Effective Date.*

This Agreement shall take effect on the date it is recorded in the office of the Utah County Recorder.

Executed this 8 day of 1980.

Quiet Meadow Farms, Inc. by

William E. Casper Jr.
William E. Casper, Jr. Pres.

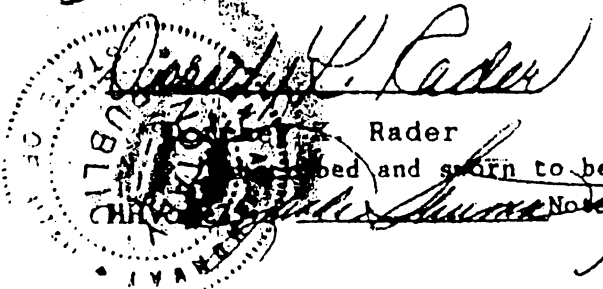
George Wright
George Wright Sect. & Treas.

William E. Casper Jr.
William E. Casper Jr.

Shirley A. Casper
Shirley A. Casper

George G. Wright
George G. Wright

Jane C. Wright
Jane C. Wright



Rader

Subscribed and sworn to before me this 8th day of May 1980
Residing in Orem, Utah

My commission expires 5/26/81

- 5 -

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APPENDIX "B"

Memorandum Decision, 7 May 1996 (R. 796-792)

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

JON TRIESAULT, ELIZABETH
TRIESAULT, ROGER CLIVE BAKER, and
LYNNETTE JENNIFER BAKER,
Plaintiffs/Counterclaim Defendants,

vs.

QMF, INC., WILLIAM E. CASPER, JR.,
SHIRLEY A. CASPER, GEORGE G,
WRIGHT, JANE C. WRIGHT, and JOHN
DOES 1-10,
Defendants/Counterclaim Plaintiffs.

MEMORANDUM DECISION

CASE NO. 950400154

DATE: May 7, 1996

JUDGE DONALD J. EYRE

This matter came before the Court on Plaintiff's Motion to Reconsider, filed on April 12, 1996. The Court, having received and reviewed the motion, memorandum in support, memorandum in opposition, and having reviewed the applicable law, now makes the following remarks:

1. Upon review of its April 4, 1996 Memorandum Decision, the Court finds that Plaintiffs' Motion to Reconsider is the functional equivalent of a motion pursuant to U. R. C. P., Rule 60 (b), requesting relief from a mistaken judgment or order, and grants said motion. See Watkiss & Campbell v. Foa & Son, 808 P.2d 1061, 1063-65 (Utah 1991).
2. The Court regrets any confusion its previous memorandum decisions may have caused the parties in the above matter regarding issues related to standing and joinder of indispensable parties.
3. The Court, in its "Ruling on Issue of Whether Plaintiffs Have Standing," dated January 24, 1996, was ". . . concerned with the issue of standing in this case *and* whether all the necessary parties have been included in the action" (emphasis added). The Court then

entered into a discussion of joinder of persons pursuant to Rule 19 of the Utah Rules of Civil Procedure but neglected to address the standing issue.

4. The Court recognizes that Plaintiffs, pursuant to the recommendations of this Court, attempted to cure the issue regarding whether all the necessary parties have been included in the action by joining various parties as Defendants on February 23, 1996, when Plaintiffs filed an amended complaint with this Court. The Court's finding, in the Memorandum Decision dated April 4, 1996, that the "Plaintiffs have not joined any indispensable parties" was therefore a mistake.

5. Nevertheless, Plaintiffs' joinder of indispensable parties does not cure its standing deficiencies. The issue of standing has always been, and still remains to be, Plaintiff's largest obstacle in bringing this action. It was the issue of standing that this Court attempted to address in its January 24, 1996 ruling.

6. The Court noted, in its April 4, 1996 Memorandum Decision, that the homeowner's association would most likely have standing in regards to the above controversy and that it may also be possible that the homeowners could jointly have standing. It was implied that the Plaintiffs, by themselves, did not have standing.

7. Standing is a Plaintiff's issue ". . . intended to assure the procedural integrity of judicial adjudication by requiring that the parties to a lawsuit have a sufficient interest in the subject matter of the dispute and sufficient adverseness that the legal and factual issues which must be resolved will be thoroughly explored. Terracore v. Utah Bd. of State Lands, 716 P.2d 796 (Utah 1986).

8. Utah has formulated an alternative test for determining standing:

1. We first apply traditional standing criteria, which require that (a) the interests of the parties be adverse, and (b) the parties seeking relief have a legally protectible interest in the controversy. Plaintiff must be able to show that he has suffered some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute.

2. If the plaintiff has no standing under the first step, then he may have standing if no one has a greater interest than he and if the issue is unlikely to be raised at all if the plaintiff is denied standing.

3. In unique cases, standing may be established by a showing that the issues raised by the plaintiff are of great public importance and ought to be judicially resolved.

See Terracore v. Utah Bd. of State Lands, 716 P.2d 796, 798-9 (Utah 1988); Kennecott Corp. v. Salt Lake, 702 P.2d 451, 454 (Utah 1985); Jenkins v. Swan, 675 P.2d 1145, 1148-50 (Utah 1983).

9. For purposes of addressing the standing issue, the Court finds that Defendant QMF, Inc. made several land transactions in Mapleton, Utah. Some of the property was sold in accordance with a planned unit development (PUD) which QMF, Inc. established with the Mapleton City Council and Planning Commission. As part of the PUD, approximately 2.0 acres were set aside as common ground as part of the approval of the plat for the PUD. QMF, Inc. wanted to amend the PUD boundary to reacquire part of the common ground to be combined with other land of QMF, Inc. to create a new lot to be sold. In exchange, QMF, Inc. would extend the actual acreage of certain lots of the PUD by an equivalent amount of land used from the common ground. The Defendants obtained all the landowner's signatures of authorization from them for approval on the amended PUD in accordance with the requirement of the Mapleton City Council, except for the signature of Stephen E. Hechtle; the predecessor in interest to Plaintiffs Triesault and Baker. The PUD was amendable by a vote of not less than three-fourths of the owners. Subsequently, each property owner quit claimed their lot to QMF, Inc. The newly created lot was sold and the proceeds from the sale were used for services of QMF, Inc., and towards obligations of QMF, Inc. to the homeowner's association.

10. Plaintiffs initiated this action claiming an interest in the value of the common areas of the PUD, and claiming Defendant Wright made fraudulent representations in obtaining Plaintiffs' signatures on the quit claim deeds to QMF, Inc. Plaintiffs did not obtain, nor do

they have any authority to act for or in behalf of the homeowner's association. All alleged representations concerning QMF, Inc. made by Defendant Wright were to the homeowner's association, and not each landowner individually.

11. Additionally, filed with the Court are the affidavits of Michael G. Rieker, George G. Wright, Jane C. Wright, Carol P. Rieker, William G. Schwartz, Jan Thorpe, Richard V. Thorpe, Marilyn S. Peterson, Gary B. Peterson, Paul J. Hurst, Dorthy J. Hurst, Stanley Wayne Curtis, and Patricia H. Clark who all indicate that they are members of the Homeowner's Association of the Quiet Meadow Farms PUD; that they do not desire to have this claim asserted on their behalf or on behalf of the Homeowners Association; and that they desire that the Plaintiffs claim be dismissed.

12. For various reasons Plaintiffs do not have standing to bring this matter. They have not suffered some distinct and palpable injury giving them a personal stake in the outcome of this dispute. According to the "Quiet Meadow Farms Planned Unit Development Agreement", it is the "Quiet Meadow Farms Owners Association," through its "Executive Committee," that conducts the business relating to the maintenance and management of the common areas at issue. Additionally, the Plaintiffs Triesault and Baker have not suffered any distinct and palpable injury as .22 of an acre was deeded back to Lot 4 as laid out in the amended PUD. Plaintiffs are merely trying to assert a claim that is best brought by the homeowner's association.

13. Under the second step in the above standing analysis, the homeowner's association clearly has a greater interest than any of the Plaintiffs in the above matter.

14. Finally, the Court finds that the issues presented in this matter are not such as to establish standing because they are of great public importance and ought to be judicially resolved.

15. Based on the above, Plaintiffs have not established their standing to bring this action and this case should be dismissed.

Counsel for Defendant, Richard D. Bradford, is to prepare, within 15 days of the date hereof, an order consistent with the terms of this decision and submit it to opposing counsel for approval as to form prior to submission to the Court for signature.

Dated at Provo, Utah this 7th day of May, 1996.

BY THE COURT:


JUDGE DONALD J. EYRE

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 7th day of May, 1996:

RICHARD D. BRADFORD
389 North University Avenue
Provo, Utah 84601

M. DAYLE JEFFS
90 North 100 East
P.O. Box 888
Provo, Utah 84603

THOMAS W. SEILER
P.O. Box 1266
Provo, Utah 84603-1266

CARMA B. SMITH
CLERK OF THE COURT

By 
Deputy Clerk

APPENDIX "C"

Memorandum Decision, 28 Oct. 1996 (R. 904-899)

4TH JUDICIAL DISTRICT COURT
STATE OF UTAH
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**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

JON TRIESAULT, ELIZABETH
TRIESAULT, ROGER CLIVE BARKER
and LYNNETTE JENNIFER BAKER,
Plaintiffs/Counterclaim
Defendants,

vs.

QMF, INC., WILLIAM E CASPER, JR,
SHIRLEY A CASPER, GEORGE G
WRIGHT, JANE C WRIGHT and JOHN
DOES 1-10,
Defendants/Counterclaim
Plaintiffs.

MEMORANDUM DECISION

CASE NO. 950400154

DATE: October 23, 1996

JUDGE DONALD J. EYRE

This matter came before the Court on October 17, 1996. The Court, having received and reviewed the Plaintiffs' Motion for Summary Judgment on Counterclaim, Motion for Order Vacating Dismissal of Personal Claims, and Motion to Assess Costs, as well as Defendants' Motion to Tax Costs, memoranda in support, memoranda in opposition, reply memoranda, having heard oral arguments, and having reviewed the applicable law, now makes the following findings and conclusions:

1. This Court finds that the Plaintiffs/Counterclaim Defendants filed their Complaint on March 19, 1995. In their Complaint, the Plaintiffs alleged they suffered an injury when a portion of common ground within their Planned Unit Development ("PUD") was sold by Defendants.

2. This Court finds that the Plaintiffs/Counterclaim Defendants filed a lis pendens on March 14, 1996 on the common ground that was at issue in their Complaint.

3. On September 1, 1995, the Defendants/Counterclaim Plaintiffs filed a Counterclaim against the Plaintiffs/Counterclaim Defendants alleging damages suffered as a consequence of the lis pendens; in particular, the Defendants/Counterclaim Plaintiffs alleged slander of title and bad faith.

4. In its Memorandum Decision dated May 7, 1996, this Court found that the Plaintiffs/Counterclaim Defendants did not have standing to bring forth the claim for injury stated in their Complaint.

5. Accordingly, on May 28, 1996, this Court entered an Order of Dismissal, which dismissed the Plaintiffs'/Counterclaim Defendants' remaining claims.

6. This Court finds that the purpose for recording a lis pendens is to "give constructive notice of the pendency of proceedings which might be derogatory to the owner's title or right of possession; its only foundation is the action filed, and it has no existence independent of that." Hansen v. Kohler, 550 P.2d 186, 190 (Utah 1976). In addition, this Court finds that recording a lis pendens "is in effect a republication of the pleadings in the underlying action; as such it is an absolutely privileged publication, and cannot become the basis of an action for slander of title." Id.

7. Moreover, this Court finds that, even if lis pendens permitted an action for slander of title, the Counterclaim Plaintiffs could not establish slander of title in the present case. "To prove slander of title, a claimant must prove (1) there was a publication of a slanderous statement disparaging claimant's title, (2) the statement was false, (3) the statement was made with malice, and (4) the statement caused actual or special damages." Gillmor v. Cummings, 904 P.2d 703, 707 (Utah Ct. App. 1995), *citing* First Security Bank v. Banberry Crossing, 780 P.2d 1253, 1256-57 (Utah 1989). The Counterclaim Plaintiffs have presented no evidence which clearly establishes that the Counterclaim Defendant acted maliciously. Filing a lis pendens action is appropriate "[i]n any action affecting the title to, or the right of possession of, real property. . ." UCA § 78-40-2 (1996). In its lis pendens, the Counterclaim Defendants stated that "[o]ne or more of the Defendants claims ownership

or control of said real property." This Court finds that a claimant's disputed interest in real property, whether or not mistaken, does not rise to the level of malice required by the statute.

8. This Court finds that, to award attorney's fees to a prevailing party in a civil matter, a Court must find that "the action or defense to the action was without merit and not brought or asserted in good faith," with certain exceptions. UCA § 78-27-56 (1996). Consequently, to award attorney's fees, the prevailing party must demonstrate that the claim was frivolous, or that it had no basis in law or fact, and that the action was not brought in good faith. Jeschke v. Willis, 811 P.2d 202 (Utah Ct. App. 1991).

9. Furthermore, this Court finds that an action is without merit if it has no legal or factual basis. However, this Court also finds that a case without merit may still be in good faith provided the claimant honestly believes the action is appropriate, and has not initiated the action in an effort to hinder, delay, defraud or take advantage of another. Cady v. Johnson, 671 P.2d 149 (Utah 1983).

10. This Court finds that the Counterclaim Defendants, in filing their Complaint, had an honest belief that doing so was appropriate, whether or not that belief was erroneous. Therefore, this Court finds that Counterclaim Defendants claim was neither frivolous nor in bad faith to the extent required by statute for awarding attorney's fees.

11. Based on the foregoing, Plaintiffs'/Counterclaim Defendants' Motion for Summary Judgment on Counterclaim is GRANTED.

12. This Court finds that, in cases where a court has not made a final decision or order on all the claims or rights and liabilities of all the parties involved in a claim, those decisions "shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." URCP 54(b) (1996).

13. This Court finds that:

[U]nit owners may, by an affirmative vote of at least three-fourths of such unit owners . . . elect to sell or otherwise dispose of the property. Such action shall be binding upon all unit owners and it shall thereupon become the duty of every unit owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale."

UCA § 57-8-32 (1996). Therefore, this Court finds that in the present case, the affirmative vote of at least three-fourths of the property owners in the Quiet Meadow Farms PUD was necessary to bind all unit owners of the property at issue. Although no official vote was taken, the Court received affidavits from eight of the ten property owners, who stated that they neither wished to join in Plaintiffs' claim, nor have the claim pursued on their behalf. This Court finds that, because at least three-fourths of the property owners agreed to the property disposal, the Court accepts the affidavits as affirmative votes which effectively bind all property owners, including the Plaintiffs.

14. In its Memorandum Decision signed on May 7, 1996, this Court held that the Plaintiffs did not have standing to bring their claim because they had not "suffered some distinct and palpable injury giving them a personal stake in the outcome of this dispute." In addition, this Court found that the Quiet Meadow Farms Owners Association, through its Executive Committee, conducted the business relating to the maintenance and management of the common area at issue. As such, the Owners Association was the appropriate party to bring forth a claim.

15. Furthermore, this Court finds that the Plaintiffs, by their own account, do not request monetary gain as an outcome of the lawsuit. On the contrary, the Plaintiffs have stated their interest in having the common ground at issue returned. Depo. of Jon Triesault, p. 36; Depo. of Roger Baker, p. 20. However, the Amended PUD deeded back .22 of an acre to Lot 4. This Court has difficulty in finding an injury where the common ground has been disposed of in compliance with the applicable statute, and where additional property has been deeded back to compensate for that disposal.

16. Based on the foregoing, Plaintiff's Motion for Order Vacating Dismissal of Personal Claims is DENIED.

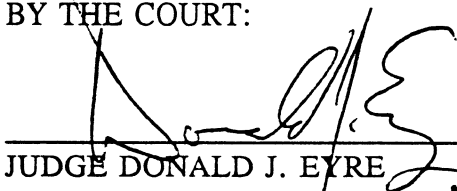
17. This Court finds that the Defendants filed a Motion to Assess Costs on July 23, 1996, and that Plaintiffs filed a Motion to Tax Costs on August 19, 1996. This Court orders each party requesting costs to submit affidavits outlining their costs, based upon and in accordance with this Memorandum Decision and the Utah Rules of Civil Procedure, to this Court for approval.

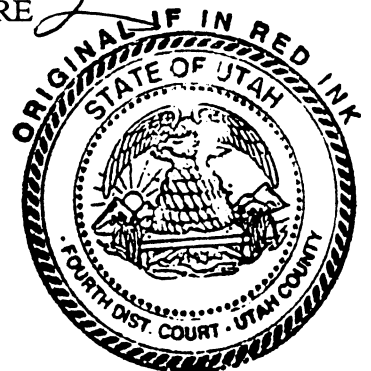
18. In conclusion, this Court notes that, according to the Utah Rules of Civil Procedure Rule 41, dismissals based on lack of jurisdiction are without prejudice unless otherwise specified. Therefore, in its Order of Dismissal dated May 28, 1996, the order should reflect that that dismissal was without prejudice.

Counsel for Plaintiffs is to prepare, within 15 days of the date hereof, an order consistent with the terms of this decision and submit it to opposing counsel for approval as to form prior to submission to the Court for signature.

Dated at Provo, Utah this 28th day of October, 1996.

BY THE COURT:


JUDGE DONALD J. EYRE



MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 28 day of October, 1996:

M Dayle Jeffs
90 N 100 E
PO Box 888
Provo, UT 84603

Richard D Bradford
389 N University Ave
PO Box 432
Provo, UT 84603

Leslie W Slaugh
120 E 300 N
PO Box 1248
Provo, UT 84603

Thomas W Seiler
80 N 100 E
PO Box 1266
Provo, UT 84603

CARMA B. SMITH
CLERK OF THE COURT

By


Deputy Clerk