

1997

Louise A. Drazich v. Alan Lasson, Mary D. White, and Darrell L. White : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 970333-CA

IN THE UTAH COURT OF APPEALS

LOUISE A. DRAZICH, aka LOUISE
ANN DRAZICH, as an individual
and LOUISE A. DRAZICH, as
Trustee of Trusts created by
the Will of MARKO N. DRAZICH,
deceased,

Plaintiffs/Appellants

v.

ALAN LASSON, MARY D. WHITE,
and DARRELL L. WHITE,
individuals,

Defendants/Appellees

CASE NO. 970333-CA

Dist. Ct. No. 940906967

BRIEF OF APPELLANTS

AN APPEAL FROM THE THIRD DISTRICT COURT FOR SALT LAKE COUNTY

THE HONORABLE WILLIAM B. BOHLING, JUDGE

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ARGUMENT PRIORITY CLASSIFICATION: 15

FILED

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COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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DARRELL L. WHITE, and)
DAVID A. WHITE, individuals,)
Defendants/Appellees)

PRELIMINARY STATEMENT:

In this brief "T" refers to the transcript of the proceedings from the trial. There are two volumes and "T" alone refers to volume one and the second is referred to by "T" and the date of the hearing. "R" refers to the record of the court, and "Ex" refers to exhibit, followed by the exhibit number.

By stipulation the claims against the defendants named White were resolved and the claim against them was dismissed.

STATEMENT OF JURISDICTION:

This court has jurisdiction to hear this case pursuant to the provisions of 78-2a-3, Utah Code Annotated, Rule 3 of the Utah Rules of Appellate Procedure, and Sections 3 and 5, Article VIII of

the Utah Constitution.

STATEMENT OF ISSUES PRESENTED FOR REVIEW AND STANDARDS FOR REVIEW:

ISSUE ONE

IN THE INDENTURE TO THE D. & R. G. RAILROAD, DID THE TERMS THEREIN CONSTITUTE TERMS OF CONVEYANCE WHEREBY FEE TITLE TO THE LAND IN QUESTION WAS CONVEYED, OR, DID THE TERMS MERELY CONVEY A RIGHT-OF-WAY THAT WAS SUBJECT TO ABANDONMENT, WAS ABANDONED, AND THUS NOTHING WAS EVER CONVEYED FROM THE RAILROAD TO ITS GRANTEE AND SUBSEQUENTLY TO APPELLANT DRAZICH?

Standards for Review:

(1) A trial court's conclusions of law in civil cases are reviewed for correctness and therefore no deference is given to the trial court's ruling on questions of law. State v. Pena, 869 P2d 932 (Utah 1994); United Park City Mines Co. v. Greater Park City Co., 870 P2d 880 (Utah 1993).

(2) In reviewing issues of law the standard is an assessment for correctness. State v. Rio Vista Oil, Ltd., 786 P2d 1342 (Utah 1990).

ISSUE TWO

WERE THERE VALID AND EFFECTIVE CONVEYANCES THAT ESTABLISHED A CHAIN OF TITLE TO DRAZICH THAT WOULD PRECLUDE PROTECTION FOR LASSON UNDER THE MARKETABLE TITLE ACT?

Standards for Review:

See standards for issue number one above.

ISSUE THREE

DOES THE MARKETABLE TITLE ACT PROVIDE PROTECTION TO A PARTY FROM CLAIMS EXISTING IN A PARALLEL CHAIN OF TITLE?

Standards for Review:

(1) See standards for issue number one above.

(2) In reviewing the trial court's findings, the clearly

erroneous standard is applied. Bell v. Elder, 782 P2d 545 (Ut. App. 1989)

(3) A finding of fact is clearly erroneous if it is without adequate evidentiary foundation or if it is induced by an erroneous view of the law. Cove View Excavating & Const. v. Flynn, 758 P2d 474 (Utah 1988).

(4) On appeal the appellate court must review facts in the light most favorable to the prevailing party. Lamkin v. Lynch, 600 P2d 530 (Utah 1979).

PLEASE NOTE: In the argument all issues pertaining to the Marketable Title Act are argued under Point IV jointly for the sake of brevity and clarity.

ISSUE FOUR

DID THE APPELLEE LASSON ACQUIRE TITLE TO THE DISPUTED TRACT BY ADVERSE POSSESSION?

Standards for Review:

See standards set forth above.

ISSUE FIVE

DID THE APPELLEE LASSON ACQUIRE TITLE TO THE DISPUTED TRACT BY VIRTUE OF THE DOCTRINE OF BOUNDARY BY ACQUIESCENCE?

Standards for Review:

See standards set forth above.

DETERMINATIVE STATUTES:

MARKETABLE TITLE ACT STATUTES

57-9-1 Utah Code Annotated SEE ADDENDUM

"What constitutes marketable record title."

57-9-2 Utah Code Annotated SEE ADDENDUM

"Rights and interests to which marketable

record title is subject."

57-9-3 Utah Code Annotated SEE ADDENDUM

"Marketable record title held free and clear of interests, claims and charges."

ADVERSE POSSESSION STATUTES

78-12-7 Utah Code Annotated SEE ADDENDUM

"Adverse possession - Possession presumed in owner."

78-12-8 Utah Code Annotated SEE ADDENDUM

"Under written instrument or judgment."

78-12-9 Utah Code Annotated SEE ADDENDUM

"What constitutes adverse possession under written instrument."

78-12-10 Utah Code Annotated SEE ADDENDUM

"Under claim not founded on written instrument or judgment."

78-12-11 Utah Code Annotated SEE ADDENDUM

"What constitutes adverse possession not under written instrument."

78-12-12 Utah Code Annotated SEE ADDENDUM

"Possession must be continuous, and taxes paid."

STATEMENT OF THE CASE

A. NATURE OF THE CASE:

This action involves a dispute over ownership of a parcel of land approximately 78 feet in length and of varying width of approximately 11 feet to 22 feet. The area in dispute forms a portion of the north boundary of the Drazich lands and the south boundary of the Lasson land. The legal descriptions in their current deeds of conveyance overlap.

The record title to the area in dispute was originally acquired by the Denver & Rio Grande Western Railroad Company as part of its rail system in Salt Lake County, over which a spur

track was maintained for many years.

On September 3, 1958, the railroad conveyed fee title to the disputed area to Building Supply Center, and by mesne deeds of record, title thereto has devolved to Drazich. Lasson does not claim or assert any conveyance from the railroad as a basis for his title but relies upon mesne deeds which by survey and description appear to overlap the lands conveyed to Drazich.

Issues exist over the nature of a fence line and its effect upon the title, the uses made of the land by the parties, acquiescence to boundary, the nature of the interest conveyed initially to the railroad, methods of description in the various deeds, and other related issues.

B. COURSE OF THE PROCEEDINGS:

The case was tried without a jury before the honorable William Bohling in the Third District Court for Salt Lake County, in September of 1996.

C. DISPOSITION AT TRIAL COURT:

The respective parties submitted proposed findings and conclusions and the court took the matter under advisement. The court ruled that Lasson had acquired title to the subject property and the findings and conclusions of the defendant Lasson were adopted by the court. A Judgment and Order, dated January 3, 1997, was signed and entered by the court. No post-judgment motions were made. The judgment by the court is a final judgment for purposes of this case and this appeal.

The defendants by the name of White were dismissed earlier in

the proceedings by stipulation between the parties. They are not parties to this appeal.

STATEMENT OF FACTS

1. The parties Drazich and Lasson own pieces of property that are contiguous to each other in Salt Lake County in the vicinity of 4500 South and 300 West. (T. 15; Ex. 4-P)

2. In order to more clearly demonstrate the chains of title for both Drazich and Lasson, the documents comprising the Drazich chain of title are collectively compiled in chronological order in Exhibit 15-P, and those comprising the Lasson chain are collectively compiled in Exhibit 16-P, both of which exhibits were received by the court. Those chains of title are outlined as follows:

DRAZICH CHAIN:

3. Under a homestead certificate of 1875 the United States conveyed real property that includes the disputed tract to James Bell. It conveyed a portion of a quarter section.

4. By indenture Bell conveyed to Helm in 1877.

5. By indenture Helm conveyed to the Denver and Rio Grande Railroad in 1882.

6. By special warranty deed the Denver & Rio Grande conveyed the property to Building Supply Center.

7. Building Supply then conveyed by deed to Ewell & Son; they by deed to Ute-Liner; they by deed to D.C. Johnson; he by deed to Michie Associations; they by deed to Homco; they by deed to First Security Bank; they by deed to Daw.

8. Daw then conveyed by Warranty Deed to Drazich in 1993.

END OF DRAZICH CHAIN

LASSON CHAIN:

9. Jenkins conveyed by warranty deed to Dahlquist in 1931.

10. Dahlquist by warranty deed in 1940 to Anderson.

11. Anderson by warranty deed to Eastman in 1948.

12. S. Eastman to G. Eastman by warranty deed in 1950.

13. G. Eastman to S. Eastman in 1951 by warranty deed.

14. S. Eastman to S. Eastman, et al. by quit claim deed in 1993.

15. S. Eastman, et al to Alan Lasson in 1993 by warranty deed.

END OF LASSON CHAIN

16. In the Lasson chain, until 1950 in the conveyance from Stanley Eastman to Glen Eastman, all of the descriptions of the south boundary of what is now the Lasson tract designated the south boundary as being one rod from the center of the track.

(Ex. 16-P)

17. There was testimony by Arlen Taylor, a witness for Lasson, that the descriptions in the deeds prior to 1950 were using metes and bounds and not calling to the center line of the railroad. (T. 157-158) However, all deeds in the Lasson chain (Ex. 16-P) do tie to the railroad center line until you get to the Stanley Eastman-Glen Eastman deed of 1950 when it is dropped. (Ex. 8-P)

18. The witness Taylor also testified that the current description of the Lasson property is "fairly similar" to that described in the earlier deeds. (T. 156)

19. In 1950, Stanley Eastman, et ux, conveyed by warranty deed to Glen Eastman, but all reference to the railroad disappears and for reasons that are unknown metes and bounds using measurements in chains is substituted. (Ex. 8-P; T. 47) At this point the tie-in to the center line of the railroad is eliminated.

20. These conflicting legal descriptions create an overlap parcel approximately 78 feet long and varying in width from 11 to 22 feet.

21. This overlap occurred of record with the 1958 Special Warranty Deed from the railroad to Building Supply Center. (Ex. 2-P)

22. In 1910 the railroad prepared a map of their spur line, which included the subject property. (Ex. 5-P; T. 36)

23. The area colored in yellow on the exhibit depicts the land in the legal description included in the 1958 Special Warranty Deed from the railroad to Building Supply Center. (T. 37)

24. Abraham Helm, by his indenture dated August 29, 1882, (Ex. 15-P) conveyed to the Denver and Rio Grand Railway Company fee title to a strip of land which extended from the main line of the railroad company's railroad tracks, in a northeasterly direction, over and across the lands owned by Helm. The description contained in the indenture describes the land to which the interest related as being a corridor two rods in width, lying 16 1/2 feet on either side of the center line of an existing railroad track, which area includes the area in dispute in the instant case. (R. 233)

25. The railroad tracks lying within the corridor were removed

in approximately 1904, but no precise legal description of the location of the tracks was recorded. (R. 233) The court's finding number 7 that there was confusion at some time in the past as to the location of the tracks seems true only to a degree. There was only one witness for Lasson who thought the track location had shifted. (T. Sept. 27 Trans. p. 18) No other witness for either side came to this conclusion. This witness for Lasson did not say where or how the track position changed.

26. Arlen Taylor also testified that the deed from the railroad to Building Supply covers the area in dispute, that it is described in that deed by a metes and bounds description, and that there is a conflict between the Lasson deed and the Drazich deed. (T. 170)

27. By stipulation the parties agreed that title to the disputed parcel was vested in Drazich, although Lasson did not agree that such a vesting was fee title. (T. 81-83)

28. Arlen Taylor acknowledged that he had heard the stipulation whereby it was agreed that record title was in the plaintiff and that he did not dispute that fact based upon the evidence he had examined. (T. 170)

29. In 1905 the subject property was apparently dropped from the tax rolls (T. 153), and was not taxed by the county again until 1959. (T. 153; R. 3)

30. The railroad began deeding out portions of the whole rail corridor as early as 1926. (T. 157; R. 3)

31. At the time the deed was given from Helm to the railroad

the spur line had already been built, (T. 30), but the railroad then said it needed a right-of-way 16.5 feet on each side of the track from the center line of the track. (T.30-31) This was conveyed. (T. 31)

32. In 1958 the railroad employed Coon and King Engineers to determine the legal description of the property the railroad intended to convey to Building Supply. (T. 33) They performed the survey, physically staked the property, and formulated a legal description that was used in the deed from the railroad to Building Supply. (T. 33)

33. In 1993 the witness Jack DeMass performed a survey of the same land and his description, findings and configuration of the property were exactly the same as those produced from the Coon and King survey of 1958. (T. 33-34)

34. In researching the location of the D.& R. G. corridor and the track, Mr. DeMass researched the railroad and County Recorder records. In that investigation he located a map prepared in 1910 with an affidavit attached to it.(T. 35-37) This is Exhibit 5-P. The affidavit was prepared by a Mr. A. Blake, who was the Division Engineer for the Denver and Rio Grande Railroad Company. (T. 40) However, the affidavit had been prepared in 1904. (T. 41)

35. In part, the affidavit states that Mr. Blake is ". . . familiar with the position and location of the tracks of the Rio Grande and Western Railway. . . ", and that he had " . . . been familiar with the location of said tracks for several years prior to said date", said date being 1904. (Ex. 5-P)

36. Among the railroad records pertaining to the sale of the property to Building Supply was found a set of five sheets of paper, the first being a copy of the 1958 deed to Building Supply, but the last and fifth sheet being a copy of a map, dated June 11, 1958. (Ex. 6-P; T. 43)

37. That map is different in certain respects from the 1910 map, but the lines conform with the Coon & King survey, and the map is likewise consistent with the findings of Mr. DeMass' prior findings. (T. 44)

38. Based upon the Coon & King survey, the railroad issued a Special Warranty Deed to Building Supply (Ex. 2-P), dated September 3, 1958. (R. 234) The legal description contained in the Special Warranty Deed incorporates the parcel of land which is in dispute in this case. (R. 234)

39. Ex. 6-P has a map which was apparently derived from the Coon & King survey. That map has a tie from the center line of 45th South to the northwest corner of the right-of-way. This is significant because it is an actual location of where the railroad right-of-way was located. (T. 71) The findings of fact (R. 234) state that there was no accurate information from Coon & King survey as to the location of the rail corridor, but it was undisputed that Ex. 6-P's map was derived from Coon & King's survey, and Mr. DeMass testified that established ". . . where the actual location, at least according to the railroad, of where their right-of-way was. That's not something to scale, that's a definitive." (T. 71)

40. Mr. DeMass further testified: "There is a specific tie over. Whoever prepared this railroad map tied the center line of 45th South Street and the corner of this purported railroad property with a bearing and a distance. And that's exact. That can't be off."

41. Ex. 13-P is a survey done by a Mr. Page for Mr. Lasson, the defendant. That survey does not show a fence line along the southern boundary, but it dos show the overlap or disputed tract. (T. 74)

42. However, the Page survey is faulty because his distances and calls are different from those in the Lasson deed (T. 75); and in keeping with what Mr. DeMass concluded in his research, both DeMass and Page found that the Lasson deed did not close, so he [Page] apparently ". . . chose to force a closure" (T. 75-76)

43. Exhibit 4-P is the DeMass survey. That survey noted the existence of fence lines on the properties adjoining properties (T. 65), but DeMass found no evidence of a fence line running along the back of the Green property, which is now the Lasson property. (T. 17-18)

44. The Coon & King survey (Ex. 12-D) uses fence line symbols to show a fence line running south of what became the White, Green (now Lasson) and United Homes properties. (T. 65) The only evidence that Lasson found of a fence line in the area of the disputed tract was a strip of barbed wire and some burnt wood remnants among other debris that he thought looked as if they could

have been used at one point in time as fence posts. (T. Sept. 27 Trans. pp. 52, 63)

45. If a fence had existed at some location on the disputed property, there was absolutely no evidence as to who erected it, when, how long it existed, or why it was erected. Lasson's grantor was the only witness to testify that there had been some type of old, decrepit fence in the bushes, but again, he was the only witness, and his knowledge and description of the "fence" were very sketchy at best. (T. 138)

46. Based upon the Coon & King survey the railroad issued a Special Warranty Deed to Building Supply Center in 1958 (Ex. 2-P). The legal description used in the deed was the one derived from the Coon & King survey. (R. 234)

47. This Special Warranty Deed contained an exception which reads "Subject, however, to all outstanding rights for any and all pipe lines, fences, roads, ditches, pole and wire lines and all other utility lines now existing upon, under, along, over or across said described premises." (Ex. 2-P)

48. The court found that there was no "clear evidence" that the Coon & King survey accurately reflected the historic location of the railroad tracts or the corridor through which they travelled. (R. 234) However there was considerable evidence by several witnesses that indicated that a high reliability existed of the survey being accurate as to the location of the railroad tracks and the corridor. (T. 71-72; T. 96, 98)

49. The Findings of Fact found that Lasson and his

predecessors in interest have used and occupied the disputed parcel since at least 1950. (R. 235) However, the evidence in fact indicated that the area was used as a dump yard by unknown persons, and that the area was covered with trash, weeds and other types of debris. (T. 18) Even Mr. Lasson testified that the property was covered with weeds, old out-buildings, "random debris", metal auto parts, old trees, garden-oriented type equipment, etc. (T Sept 27 Trans. pp. 51,58,63), and that the only use Lasson made of the property was to clear some of the weeds and junk from the property in 1994. (T Sept 27 Trans. 63) This very limited use by Lasson is also evidenced by some of his photographs. (Ex. 28-D, 29-D, 30-D)

50. There is some evidence from Mr. Lasson that the reason he began to construct a fence and clear the property was that shortly after he purchased the land he became aware that Mr. Drazich laid claim to the disputed tract of property. (T. Sept. 27 Trans. p. 72)

51. Mr. Lasson testified that he has paid taxes on the property deeded to him since the date of his conveyance. (T. Sept. 27 Trans. p. 68)

SUMMARY OF ARGUMENTS

POINT I:

THE WORDS OF CONVEYANCE FROM HELM TO THE RAILROAD IN 1882 DID NOT CONVEY A MERE RIGHT-OF-WAY BUT RATHER, CONVEYED FEE SIMPLE TITLE.

The district court concluded that the words used in the conveyance from Helm to the railroad conveyed merely a right-of-way that was subject to abandonment and was in fact thereafter abandoned by the railroad. (R. 235-236)

However, the words used in the indenture clearly convey fee title to the railroad, and not a right-of-way.

POINT II:

THE DEFENDANT LASSON DID NOT ACQUIRE TITLE TO THE DISPUTED PARCEL BY ADVERSE POSSESSION.

While the conclusions of law do not specifically address this issue, the comments of the court during the trial and the findings of fact indicate that the court relied upon adverse possession in determining that Lasson had acquired title to the property by that means. However, the fundamental requirements of acquiring title by adverse possession have not been met by Lasson or his predecessors in interest.

POINT III:

THE DEFENDANT LASSON DID NOT ACQUIRE TITLE TO THE DISPUTED TRACT OF LAND BASED UPON THE DOCTRINE OF BOUNDARY BY ACQUIESCENCE.

As with the adverse possession claim, no specific conclusion of law refers to this theory, but title is awarded based upon this legal concept considering again the findings made by the court and the comments of the court at trial. The appellate courts have established four fundamental requirements to establish boundary by acquiescence and the defendant Lasson has failed to meet any those requirements.

THE DEFENDANT LASSON UNDER TERMS AND REQUIREMENTS
OF THE MARKETABLE TITLE ACT, NOR DOES THE MARKETABLE TITLE
APPLY TO THIS FACTUAL SCENARIO.

Mr. Lasson asserts that the Marketable Title Act deprives Mr. Drazich of title to the disputed tract, and quiets title to the property in him. However, this is a misapplication and misinterpretation of the Marketable Title Act. It does not work to aid in quieting title in Lasson, nor does it apply to the factual scenario of this case.

Furthermore, the Marketable Title Act does not protect a party from claims in a parallel chain of title. Thus, the Marketable Title Act cannot provide Lasson clear title to the property against the claims of Drazich.

ARGUMENT

POINT I:

THE WORDS OF CONVEYANCE USED IN THE INDENTURE FROM HELM
TO THE RAILROAD DID NOT CONVEY A MERE RIGHT-OF-WAY SUBJECT
TO ABANDONMENT, BUT RATHER, CONVEYED FEE SIMPLE TITLE.

Lasson has relied heavily on the words of conveyance in the indenture from Helm to the railroad to substantiate his point that these words were merely a grant of a right-of-way which was subject to abandonment, and not a grant in fee. This argument was adopted by the district court in its second and third conclusions of law (R. 235-236), and is the underpinning for most of the Lasson claims

to the property. The result of this conclusion by the court is that the railroad was unable to convey fee title to its successors in interest.

The operative language in the indenture (Ex. 15-P) reads in relevant part ". . . hereby grants, bargains, sells and conveys to the party of the second part, its successors and assigns forever in fee, all that land and Real [sic] estate" It is well known that the phrase "Grant, bargain, sell and convey" has long been recognized to convey fee title. In fact, this phraseology has historically been the language of choice in countless conveyances.

The use of the word "Grant" was long ago ruled as being equivalent to a deed in fee in the case of United States v. Northern Pacific Railroad Co., 12 P. 769, 770, 6 Mont. 351. The conveyance language in our case uses as well the word "fee". Black's Law Dictionary, 4th Ed., states that "Grant" has become a generic term applicable to all transfers of real property, and cites many supporting cases and authorities thereunder in support of its position.

In Love v. Missouri Union Presbytery, 534 SW2d 511 at 514 (Mo. App), the Missouri court states that the ". . . words grant, bargain and sell within a deed import the vesting of fee simple title."

In Bender v. Fromberger, 4 U.S. 436 at 440, the United States Supreme Court held that the phrase "Grant, Bargain and Sell" conveys fee title. See also Rianda v. Watsonville Water & Light Co., 93 P 79, 81 (Cal. 1907) The court will note the age of many

of these cases. This is indicative of the fact that the phrase "Grant, Bargain, Sell and Convey" has long been established as a valid, operative phrase to convey fee title in land, and was in all likelihood the choice at the time the conveyance was made by Helm to the railroad.

The district court refers to there "being imprecise legal description and other relevant language" (R. 235) as a basis for concluding there was a right-of-way. To clarify this rather ambiguous conclusion, which is not supported by proper findings, there arose during argument and witness examination much was made of the issue that warranties were absent from the indenture and therefore, absent warranties no valid conveyance was made. Also, the district court in its conclusions at R. 236, concluded that "Based upon the abandonment and the conditional language contained in the 1958 Special Warranty Deed from the Railroad Company to Building Supply Center regarding warranty and fence lines, no conveyance of the disputed strip of land actually occurred. We have dealt with the abandonment issue, but we wish to briefly address this point concerning warranty and fence language in the 1958 deed.

First, we submit that warranties are separate and apart from the conveyance itself and have nothing to do with the actual conveyance of the property. How the limited warranties in a Special Warranty Deed vitiates a title transfer is in no way explained by the district court and certainly is not supported by law or the facts. We refer the court to 26 CJS Deeds, Sec. 22 (e) at 628,

where it states that "[W]hile a deed may contain a clause of warranty and covenants or conventions, it is valid without them, for they are not parts of the conveyance proper but are separate contracts."

The words of conveyance are not only present in the indenture from Helm to the railroad, but are as adequately present and efficacious in the 1958 deed from the railroad to Building Supply Company.

The second point concerning the presence of fence line language in the 1958 deed is enigmatic. That language states: "Subject, however to all outstanding rights for any and all pipe lines, fences, roads, ditches, pole and wire lines and all other utility lines now existing upon, under, along, over or across said described premises." When one goes through the testimony of the trial it is clear that the defendant Lasson is attempting to show that due to the presence of the word "fences" in the deed, and the deed being subject to fences, there must be an admission to the existence of a fence line and that the fence line is the correct boundary. This simply makes no sense. First, if this were the case the railroad grantor would be making the property description subject to alterations due to the presence of not only fences, but also roads, ditches, pole and wire lines, pipe lines, utilities and other such objects.

Second, making the deed subject to rights for fences is not an acknowledgement that a fence line exists. Title experts testifying for both sides stated that a general exception such as the

foregoing in a deed is common, is done for the protection of the grantor, and does not constitute an admission that any of the named exceptions actually exists. (T. 91; T. 160)

POINT II:

THE DEFENDANT LASSON DID NOT ACQUIRE TITLE TO THE DISPUTED PARCEL OF LAND BY ADVERSE POSSESSION.

Adverse possession is a means of establishing title and possession to land that is owned by another. It is just what it says it is, a possession and claim that is adverse to the rights of the true owner. If the person taking possession does so under some type of deed or other conveyance, this is termed taking under "color of title", although our courts have often not given substantial effect to possession under color of title. Since the defendant Lasson claims title to the disputed strip of land under a deed, it is necessary to discuss the ramifications of color of title on the defendant's claim.

78-12-9 U.C.A. provides as follows:

"For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

- (1) Where it has been usually cultivated or improved.
- (2) Where it has been protected by a substantial inclosure.
- (3) Where, although not inclosed, it has been used for the supply of fuel, or fencing timber, for the purpose of husbandry, or for pasturage or for the ordinary use of the occupant.
- (4) Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed according to the usual course and custom of the adjoining county is deemed to have ben occupied for the same length of time as the part improved and cultivated."

While this statute does not provide for open and notorious use, our Supreme Court has made it clear over the years that this requirement pertains equally to this code section as it does to that code section where title is not claimed under color of title. The case of Day v. Steele, 184 P2d 218 (Utah 1947), at 220, made this clear when the court was confronted with a situation where the adverse claimant purchased the land at a tax sale and held it under a defective deed. During the next ten years he paid the taxes, surveyed the land and established markers, cleared brush, installed a water meter, replaced corner posts, and filled excavations. A unanimous court said " . . . we are of the opinion that respondents have failed to prove their possession was continuous, hostile, open, notorious and exclusive"

In the instant action the use made of the property by the defendants doesn't even rise to this level. Lasson has cleared some trash and weeds, and taken some steps to begin a partial fencing of the property. Furthermore, the court's finding that the defendant Lasson's predecessor's in interest had carried on activities that constituted open, continuous and notorious use of the property adverse to the claim of the true owner is totally without factual support in the record. While the district court found a fence existed, we submit that the "fence" in no way constituted a "substantial inclosure" as required by law. We also submit that the record is lacking in credible evidence to show that a fence in fact did exist. The extent of the fence found is that Lasson alone said he found a strip of barbed wire and among the

trash some unspecified number of burned pieces of wood that he interpreted to be fence posts. Their location was not specified. [One of Lasson's witnesses testified that there had been some old sheds burned in fire in the same area and these so called fence posts could just as well have been remnants from the burned sheds. (T. 137)] This is critical since Lasson's testimony of fence evidence is not tied in to the physical location of the fence markings on the Coon & King survey. Other evidence of the existence of a fence available to the court was the fence line marking on the Coon & King survey. But that marking indication fails to state the type of fence, how long it had existed, who erected it, or why it was created. In point of fact, there is very little credible evidence that a fence of any type ever existed across the disputed tract, and certainly no evidence as to its history if it did exist.

For argument's sake, even if we assume a fence existed, this alone would not satisfy the "substantial inclosure" requirement of the law. We refer the court to the case of Peterson v. Johnson, 34 P2d 697, at 698 (Utah, 1934) where the court stated that:

"The mere fact that the defendant's predecessors in title inclosed within his fence a strip of land not covered by his deed and that such fence has ben maintained for a long period of time does not vest title in such land in the defendant."

In the case of Scott v. Hansen, 442 P2d 525 (Utah, 1966). our Supreme Court held that:

"When land is held under color of title the possessory requirement for adverse possession may extend to the land described in the document providing the color of title, but only if the tract of land is an integrated

or unified tract under circumstances such that others would know that the claimant is claiming possession of the whole."

This does not apply to the facts in this case, and frankly has been found to occur in only the rarest of circumstances. This leaves us with the question of uses made of the property.

One of the most fundamental conditions to establish adverse possession is occupancy of another's land in such a manner that the true owner who is being adversely affected will have notice of the adverse claimant's assertion of a right to occupy, use and hold the land in question. Notice cannot be provided unless the land is occupied in such a manner that the true owner acquires knowledge of the adverse party's actions.

In the case before this court the defendants, as well as others in the neighborhood, used the area, and land outside of the disputed tract, to dump trash and a few junked vehicles. A similar situation is to be found in the case of D.H. Peery Estate v. Ford, 151 P 59 (Utah 1915). In that case the uses made of the property are essentially identical to those of the instant action, as well as a similarity with some of the other key factual issues. In Peery the claiming party asserted that it was entitled to the land based upon certain surveys which he alleged supported his deed. The claiming party also claimed title by virtue of adverse possession and boundary by acquiescence. The Supreme Court found against the defendant on the boundary issue and turned its attention to the adverse possession claim, which was founded in part upon a claim under color of title resulting from legal descriptions which defendant asserted showed a surplus of land to

which defendant was entitled. There was also evidence that there may have been some burnt posts and possibly some wire fastened to the posts along the south end of the property. The court found that the fence was never intended to be a boundary nor was it recognized as such. However, the most telling facts concern the uses made of the strip of land by the adverse claimant.

On the disputed strip in that case the claiming party had deposited old vehicles and trash, and as the court observed, " . .

the defendant used not only the disputed strip, but also, and of necessity, so used additional, open, uninclosed and unoccupied ground to the south of the strip, which additional ground confessedly belonged to the plaintiff, and admittedly was not acquired adversely or otherwise by the defendant." (Ibid., at p. 66) (We submit that these facts are substantially identical to those of the case before this court.) In finding that such a use was inadequate the Supreme Court stated and ruled as follows:

"It is not uncommon for one neighbor to let vehicles stand on uninclosed and unoccupied ground of another, to lead or drive horses over it, and to throw manure and rubbish on it. All that may be a trespass or a nuisance; but it hardly is such a possession or occupancy as is calculated to give the owner notice of an adverse holding, and knowledge to him that, if he does not take steps to interrupt the occupancy, it will ripen into a title by limitation. * * * Hence the general rule that the possession of an adverse claimant must be continuous, exclusive, open, hostile, notorious, and of such character as to enable the owner to know of the invasion of his rights. I do not think the defendant's possession or occupancy or use of the strip was of that character." (Ibid., at 66) [Emphasis added]

The absolute necessity of the adverse party conducting his occupancy in such a way that it gives notice to the true owner cannot be understated. The court in Scott, supra., at 529, stated

that:

"If the rule were otherwise, landowners would be placed under the unduly burdensome necessity of periodically checking the property descriptions of their neighbors to see that some document had not been placed of record which encroached upon their land."

The second requirement to establish title by adverse possession concerns the payment of taxes for the requisite period of time of adverse occupancy. During the course of the trial some evidence was presented that the defendant Lasson had paid taxes on the property (T. Sept. 27 Trans. p. 68), but that evidence was not clear as to what or for when the payment of those taxes was intended, and by no means showed payment of taxes in each of seven successive years which coincided with the alleged open and notorious use and occupancy of the property as is required by 78-12-12 U.C.A., which provides as follows:

"In no case shall adverse possession be considered established under the provisions of any section of of this code, unless it shall be shown that the land has been occupied and claimed for the period of seven years continuously, and that the party, his predecessors and grantors have paid all taxes which have been levied and assessed upon such land according to law."

Our Supreme Court has long held that it is absolutely essential that it be shown by the adverse claimant, who bears the burden of proof, that the taxes have been paid in each of the seven years involved. For example, in the case of Bowen v. Olson, 268 P2d 983, at 985 (Utah, 1954), the court ruled as follows on the necessity of timely payment of taxes:

" . . . [P]erhaps the most important consideration is

that one of the purposes of the statute requiring payment of taxes in order to establish adverse possession is that by paying taxes on the land a public record is made which gives notice to the owner that his land is being claimed adversely. This purpose cannot be fulfilled if the possessor can wait any number of years, even up to the necessary seven, and then pay the taxes in a lump sum by redeeming."

The facts show that Lasson did not acquire the property until 1993, short of the seven years, and no evidence was produced as to what taxes may have been levied by the county and paid by his predecessors in interest prior to his 1993 deed. Clearly, then, he fails as to both the possession and tax requirements imposed by law as necessary elements to establish title by adverse possession.

POINT III:

THE DEFENDANT LASSON FAILED TO ESTABLISH TITLE BY THE DOCTRINE OF BOUNDARY BY ACQUIESCENCE.

While it is not entirely clear what role adverse possession or boundary by acquiescence played in the court's final ruling, it appears from the nature of some of the conclusions, as well as the factual emphasis on various subjects such as nature of occupation, continuity of use, the payment of taxes, fence lines, types of use, visible markers, periods of occupation, and other such topics that these legal principles did form a substantial basis for the court's final ruling.

The elements that our appellate courts have established as the basis for resolving title through boundary by acquiescence are set forth in a variety of Utah cases, and we cite to the court as an example the case of Staker v. Ainsworth, 785 P2d 417 (Utah 1990), wherein the components listed are: "(1) Occupation up to a visible

line marked by monuments, fences, or buildings, (2) mutual acquiescence in the line as a boundary, (3) for a long period of time, (4) by adjoining landowners." (Emphasis added) In the Staker case the occupation line was a readily visible and permanent fence line with the occupation itself consisting of houses, buildings, cultivated and irrigated land, and the keeping of livestock.

In Goodman v. Wilkinson, 629 P2d 447, at 449 (Utah 1981), our court ruled that "failure to establish any one of the four elements is fatal to the defense of boundary by acquiescence." (Emphasis added)

The Utah Supreme Court has addressed the meaning of the second element, the requirement of mutual acquiescence in the new boundary line, on numerous occasions.

In the case of Madson v. Clegg, 639 P2d 726 (Utah 1981), the Supreme Court held that:

"This Court has determined that in the absence of an express agreement as to the location of the boundary between adjoining owners, the law will imply an agreement fixing the boundary as located, if it can do so consistently with the facts appearing. However, when the evidence fails to support any implication that a fence has been erected by adjoining owners pursuant to an agreement between them as to the location of the boundary, the doctrine of boundary by acquiescence has no application."

In the case of Glen v. Whitney, 209 P2d 257 (Utah, 1949), the Utah Supreme Court held:

". . . there must be some uncertainty or a dispute between adjoining owners as to the location of the true boundary line before a fence which they subsequently erect to resolve their differences and in which they acquiesce for a long period of time, may be taken as the agreed boundary line."

In all cases examined and cited herein, or otherwise available on this point, the appellate courts of this state require a substantial and highly visible marker to establish the line of demarcation between the parties. At best, the defendants have shown that a couple of burned posts in a rubbish pile, and a strand or two of wire were present. Under the fact situations of no case examined for this action have we found a boundary "marker" of this dignity in which a court would declare the parties have acquiesced.

Furthermore, the dispute in the case over the location of the track line does not appear to support Lasson. He had but one witness who testified that he thought the track position had changed, but was not at all clear as to when, where or how. On the other hand, the 1910 affidavit from the railroad Engineer is much closer in time, and is based upon personal knowledge and observation. He, Mr. Blake, was quite certain as to the location of the track and the Drazich chain is based largely upon his knowledge. Other witnesses were likewise quite certain as to the location of the track.

It is important that there first of all be an adequate boundary marker. Unless this is present it is virtually impossible for the court to determine that the parties have acquiesced in a boundary to that marker. In Florence v. Hilene Equipment Co., 581 P2d 998 (Utah 1978), the court ruled that the parties must, by evidence, acquiesce that the fence is the boundary. In our case we have very minimal evidence of what might have been a fence, no evidence that any parties were aware of the fence, very little

evidence of character or structure of the fence, and certainly therefore no evidence that anyone ever acquiesced in a boundary to a definite and readily ascertainable point. There is thus evidence lacking as to the purpose of the fence, who erected it, its purpose, how it got there, how long it existed, or whether there was really ever a fence there in the first place. It is true that Lasson's grantor testified that he thought there had been a "decrepit" old fence of some type in the bushes, but his description of its quite vague (T. 138), and lacks detail as to the history or uses of the "fence."

The court in Hales v. Frakes, 600 P2d 556 (Utah 1979), at 559, ruled that there must be ". . . occupation up to a visible line marked definitely by monuments, fences or buildings. . . ." It should be noted that this case emphasized the necessity of having not only a definite marker, but occupation to the boundary point.

In Fuoco v. Williams, 421 P2d 944 (Utah 1966), at 946, our Supreme Court ruled that:

"A claimed boundary line by acquiescence must be open to observation. * * * A boundary line to be established by acquiescence must be definite, certain and not speculative." (Emphasis added)

We submit that in that case at bar we have only a speculative boundary line, i.e., speculative even to its existence or physical character, and certainly speculative as to whether anyone in the chain of title ever knew of the fence or mutually recognized it as a boundary between the two parcels of land for the requisite 20 year period of time.

The fact situation in Fuoco is instructive on this point. In

that case there was a ditch used only for one tract for irrigation, it was in a disintegrating nature and frequently obscured by weeds. The court found the ditch did not rise to the dignity of a boundary marker under the law. The court noted that any number of ditches could cross a person's land for purposes other than a boundary marker. The same can be said for fences. Even with a finding of the existence of a fence, there is no evidence to support a finding that the fence constituted a mutually agreed upon boundary between the two tracts of land.

One of the most recent cases is that of Van Dyke v. Chappell, 818 P2d 1023 (Utah 1991), wherein the court ruled that there must be substantial use and mutual agreement to a definite and obvious point. The court made three important rulings. The substantial use, the mutual agreement and the existence of a definite and obvious point of boundary. The evidence in our case would seem to provide little support for any of the three elements required by the court in that case.

We could cite many cases defining occupancy or use. The Van Dyke case cited above requires substantial use. In the instant action we have virtually no use. The testimony is that the area was used by the neighborhood, including some of the defendants, as a garbage dump, and one key witness for the defense testified that the trash was dumped beyond the alleged fence line. (T. 142)

The need to make substantial use to a given point is critical so as to give notice to all parties concerned of the physical point to which a party claims title. Furthermore, we question whether

the dumping of refuse constitutes the type of use required by the courts. We submit that it does not, even if the trash being dumped was by the defendants alone and not by others in the neighborhood.

In defining occupancy, the court in Drangstreet v. Auto-Owners Ins. Co., 536 NW 189, at 191 (Wisc.), held that:

"Occupancy means to take up residence in . . . , to reside in as owner or tenant; to take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession. Actual use, possession and cultivation."

An earlier Utah case is very helpful on these points as well. In the case of Peterson v. Johnson, 34 P2d 697, at 698 (Utah 1934), the court was dealing with a situation where there was a fairly substantial boundary demarcation established by a fence, but essentially no use of the land. The court held as follows:

"The mere fact that the defendant's predecessors in title inclosed within his fence a strip of land not covered by his deed and that such fence had been maintained for a long period of time does not vest title in such land in the defendant."

After considerable wrangling by the parties, this court has found that there was a fence, of some type, at some time, but there is clearly no finding of mutual acquiescence, or that the fence was of a substantial nature, or how long it existed. And the nature of the "occupancy" is clearly insufficient as defined and required by law. We propose, therefore, that not one of the four elements has been established, and the failure of any one is fatal to the claim of the defendant Lasson.

POINT IV:

THE MARKETABLE TITLE ACT DOES NOT ACT TO DIVEST THE PLAINTIFF DRAZICH OF HIS PROPERTY, NOR DOES IT ACT TO QUIET

TITLE TO THE DISPUTED TRACT IN THE NAME OF THE DEFENDANT
LASSON.

The "Marketable Title Act" is set forth in 57-9-1, et. seq., U.C.A., a complete copy of which is included in the addendum to this brief. The defendant Lasson and the district court placed considerable emphasis on this statute to support the award and judgment to Lasson. In Lasson's trial brief (R. 112) the arguments made by him condense down essentially to a claim that they have a 40 year chain of title which is supposedly unbroken and therefore Lasson is entitled to have title quieted in his name.

The defendant Lasson seems to confuse the issues of adverse possession with the Marketable Title Act. The Marketable Title Act has nothing to do with adverse possession, but is instead a means used to perfect title against claims that arose prior to the root of title, as that root is established by the statute. To prevail the title holder must have an unbroken record chain of title for at least 40 ears plus such period of time as may be necessary to find the next fee simple conveyance. You may then ignore any claims behind that root but you are charged with notice of any conveyance since the root.

For Lasson to benefit from the Marketable Title Act he must show an unbroken record chain, as well as nothing that purports to divest any interest in his chain. In this case we have two independent chains of title that on their face would appear to be marketable.

The facts are clear that the railroad owned fee title to the subject tract, and not a mere right-of-way. Thus, fee title was

held by the railroad before its 1958 conveyance to Building Supply Company. The Marketable Title Act lists five (5) exceptions to the act, number four (4) being of greatest import to our case. It states that marketable record title is subject to:

"Any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started; provided, however, that such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of Section 57-9-3."

The railroad made its conveyance in 1958, obviously subsequent to the defendant's root of title. (See Exhibits 15-P and 16-P) From that date we have a number of conveyances, with the plaintiffs being last in line. Virtually all of these conveyances occurred during the 40 year period. It is clear then that all of these conveyances interrupt the title chain of defendants, put the defendants on notice of these conveyances as a matter of law, and creates a parallel, independent chain of title that the Marketable Title Act was never designed to deal with or resolve.

In his article in Utah Law Review, Vol. 8, 1963, at p. 208, Robert W. Swenson of the faculty of the University of Utah College of Law, wrote regarding exception number four that ". . . a marketable record title is subject to any deed or title transaction recorded within forty years after the recording of the root of title even though such instrument is outside the record chain of

title." (Emphasis added)

The "Title Standards of the Utah State Bar" concerning the Marketable Title Act are instructive and helpful on these issues. Standard No. 45 states that "The Marketable Title Act is remedial in character and should be relied upon as a cure or remedy for such imperfections of title as fall within its scope." The effect of the act is limited and clearly the facts of this case do not fall within its scope.

Even more in point is standard No. 54, which states that:

"The recording of an instrument of conveyance subsequent to the effective date of the root of title has the same effect in preserving any interest conveyed as the filing of the notice provided for in Sec. 4 of the ct. See Utah Code Ann. 57-9-2(4) (1953)." (Emphasis added)

The comment provides additional clarification. In part, it states at the outset that "This standard is operative both where there are claims under a single chain of title and where there are two or more independent chains of title." (Emphasis added)

We therefore submit that with the many conveyances of record since Lasson's root of title, coupled with the fee ownership of the railroad, the Marketable Title Act simply avails neither party anything. If Lasson can claim that it cures the defects in his chain, then Drazich can make the same claim as to his chain, both of which are independent of the other.

One final question remains, for which we have been unable to find any answer or any supporting authority in either direction. If the overlap has been caused because of the change in descriptions made in the 1950 deed from Stanley Eastman to Glen

Eastman, does that give Lasson an unbroken chain, and, does it give him a root of title for the requisite period under the Marketable Title Act? These questions presently have no answer.

CONCLUSION

We have attempted to marshall the evidence that the court had available to make its decision. Appellant takes the position that the facts simply do not support the court's decisions where facts are required, that the appellee Lasson has failed to carry his burden of proof in those instances where it is required, and that the district court has misapplied the law in those instances where the law is controlling.

On the issue of the words of conveyance, grant, bargain, sell and convey to a party's successors and assigns " forever in fee" can by no stretch of the imagination be interpreted to convey only a limited estate, to-wit: a right-of-way. A limited estate that is subject to abandonment. Nothing else in the record furnishes any factual grounds for the court to have concluded that only a limited estate was granted. We can only conclude then that fee title was held by the railroad and could not be abandoned.

The appellee Lasson stipulated in court that record title was held by the appellant Drazich. The burden of proof for showing that title by adverse possession was acquired by Lasson rests upon him. The facts do not support his contention. There is no showing of payment of taxes for seven years, and whether we look at the case from the perspective of simple adverse possession or adverse possession under color of title, we cannot find facts to sustain a

holding that Lasson acquired title by adverse possession.

As to boundary by acquiescence, again the burden of proof lies upon Lasson. Even at best, he had only one witness who testified of seeing an old fence of some sort in the brush. No one else saw this fence. Only Lasson found a strand or two of wire, and some burned posts amongst rubbish that he said "could" have been fence posts. But does this constitute a substantial inclosure for the purposes of adverse possession, or, a clear line to which parties mutually acquiesce for purposes of boundary by acquiescence? We cannot say that it does for either purpose. Indeed, in viewing the court decisions extant on these legal principles, we can only conclude that the whole fence line issue has been greatly blown out of proportion and that the so called "fence" does not in any way meet the criteria to satisfy the legal requirements under either legal doctrine.

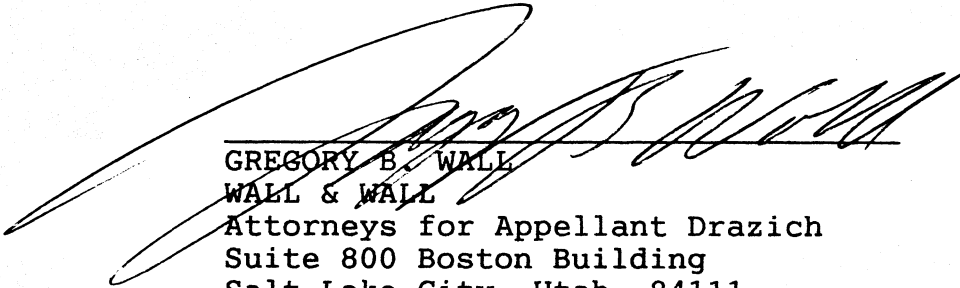
The uses made of the property furnish even less support for the Lasson position than the fence. The property was a waste dump for years, if not decades. Clearly, Lasson's claims of substantial uses of the property do not square with any facts presented to the court.

Finally, the Marketable Title Act. Here we have Lasson attempting to bootstrap himself into title due to his predecessors' changing of the method they described the property they had granted to them. When Stanley Eastman granted to Grant Eastman the evidence was uncontroverted that it was due to the change of description in that conveyance that the overlap of the two

properties occurred. Say what anyone might, the railroad's position and property description had long been established, and in the Lasson chain of title the call had always been to the center line of the tracks. Suddenly we have a completely different change of description with the admitted result the legal descriptions of the properties then overlapped. Lasson's witness Arlen Taylor said that the descriptions before and after were "fairly similar." This cannot suffice. One can only convey what one owns and "fairly similar" descriptions of land cannot be used as a legitimate basis to claim title to land.

The Marketable Title Act does not afford protection in such a situation, nor does it provide relief to people in a parallel chain of title, if the Lasson chain can really even be called parallel due the different descriptions used. Thus, this act affording no protection Lasson must prevail on one of the others points, and there being no supportable law or facts there his claims to the property in dispute, we submit, must be denied and the decision of the district court should be reversed.

RESPECTFULLY SUBMITTED this 10th day of September, 1997.



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CERTIFICATE OF MAILING

This is to certify that two true and correct copies of the foregoing Appellant's Brief were mailed, postage prepaid, to David P. Hirschi, attorney for appellee Lasson, 2224 North 640 West, West Bountiful, Utah, 84087, on the 12th day of September, 1997.



GREGORY B. WALL
Attorney at Law

ADDENDUM

STATUTES: (All references to Utah Code Annotated)

57-9-1

57-9-2

57-9-3

78-2a-3

78-12-7

78-12-8

78-12-9

78-12-10

78-12-11

78-12-12

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JUDGEMENT AND ORDER

declaration and bylaws adopted pursuant to the provisions of this act.

(2) All agreements, decisions and determinations lawfully made by the manager, management committee or by the association of unit owners in accordance with this act, the declaration or bylaws, shall be deemed to be binding on all unit owners.

1963

57-8-35. Effect of other laws — Compliance with ordinances and codes — Approval of projects by municipality or county.

(1) The provisions of this chapter shall be in addition and supplemental to all other provisions of law, statutory or judicially declared, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail: provided further, for purposes of Sections 10-9-805, 10-9-811, and 17-27-804 and provisions of similar import and any law or ordinance adopted pursuant thereto, a condominium project shall be considered to be a subdivision, and a record of survey map or supplement thereto prepared pursuant to this chapter shall be considered to be a subdivision map or plat, only with respect to:

(a) such real property or improvements, if any, as are intended to be dedicated to the use of the public in connection with the creation of the condominium project or portion thereof concerned; and

(b) those units, if any, included in the condominium project or portion thereof concerned which are not contained in existing or proposed buildings.

(2) Nothing in this chapter shall be interpreted to state or imply that a condominium project, unit, association or unit owners, or management committee is exempt by this chapter from compliance with the zoning ordinance, building and sanitary codes, and similar development regulations which have been adopted by a municipality or county. No condominium project or any use within said project or any unit or parcel or parcel of land indicated as a separate unit or any structure within said project shall be permitted which is not in compliance with said ordinances and codes.

(3) From and after the time a municipality or county shall have established a planning commission, no condominium project or any record of survey map, declaration, or other material as required for recordation under this chapter shall be recorded in the office of the county recorder unless and until the following mentioned attributes of said condominium project shall have been approved by the municipality or county in which it is located. In order to more fully avail itself of this power, the legislative body of a municipality or county may provide by ordinance for the approval of condominium projects proposed within its limits. This ordinance may include and shall be limited to a procedure for approval of condominium projects, the standards and the criteria for the geographical layout of a condominium project, facilities for utility lines and roads which shall be constructed, the percentage of the project which must be devoted to common or recreational use, and the content of the declaration with respect to the standards which must be adhered to concerning maintenance, upkeep, and operation of any roads, utility facilities, recreational areas, and open spaces included in the project.

(4) Any ordinance adopted by the legislative body of a municipality or county which outlines the procedures for approval of a condominium project shall provide for:

(a) a preliminary approval, which, among other things, will then authorize the developer of the condominium project to proceed with the project; and

(b) a final approval which will certify that all of the requirements set forth in the preliminary approval either have been accomplished or have been assured of accom-

plishment by bond or other appropriate means. No declaration or record of survey map shall be recorded in the office of the county recorder until a final approval has been granted.

57-8-36. Existing projects — Effect of statutory amendments.

Any condominium project established by instruments for record prior to the effective date of the foregoing amendments to the Condominium Ownership Act (hereinafter referred to as an "existing project") and the rights and obligations of all parties interested in any such existing project shall, to the extent that the declaration, bylaws, and record of survey map concerning the existing project are inconsistent with the provisions of these amendments, be governed and controlled by the provisions of the Condominium Ownership Act as they existed prior to these amendments and by the terms of the existing project's declaration, bylaws, and record of survey map to the extent that these terms are consistent with applicable law other than these amendments. Any existing project containing or purporting to contain time period units, convertible land, or convertible space, any existing project which is or purports to be a contractible, expandable or leasehold condominium, the validity of any such project and the validity and enforceability of any provisions concerning time period units, convertible land, convertible space, withdrawable land, additional land, or leased land which are set forth in an existing project's declaration, bylaws, or record of survey map, shall be governed by applicable law in effect prior to these amendments, including principles relating to reasonableness, certainty, and constructive and actual notice. This shall not necessarily be ineffective or defeated in whole or in part because the project or provision in question does not comply or substantially comply with those requirements of the foregoing amendments which would have been applicable to the instruments creating the project been recorded after the effective date of these amendments, but shall, in any event, be valid, effective, and enforceable if the project or provision in question either substantially complies with those requirements of the foregoing amendments which relate to the subject at issue or employs an arrangement which substantially achieves the same policy as underlies those requirements of the foregoing amendments which relate to the subject at issue.

CHAPTER 9

MARKETABLE RECORD TITLE

Section	
57-9-1.	What constitutes marketable record title.
57-9-2.	Rights and interests to which marketable record title is subject.
57-9-3.	Marketable record title held free and clear of interests, claims, and charges.
57-9-4.	Filing of notice of claim of interest authorizing effect of possession of land by record owner as to possessory interest.
57-9-5.	Notice of claim of interest — Contents — for record.
57-9-6.	Applicability of provisions.
57-9-7.	Existing statutes of limitations and record of survey statutes not affected.
57-9-8.	Definitions.
57-9-9.	Legislative purpose and construction.
57-9-10.	Extension of limitation period.

57-9-1. What constitutes marketable record title

Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to

interest in land for forty years or more, shall be deemed to have a marketable record title to such interest as defined in Section 57-9-8, subject only to the matters stated in Section 57-9-2. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than forty years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in

- (1) the person claiming such interest or
- (2) some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest: with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

1963

57-9-2. Rights and interests to which marketable record title is subject.

The marketable record title is subject to:

(1) all interests and defects which are inherent in the muniments of which such chain of record title is formed, except that a general reference in the muniments or any of them, to easements, use restrictions, or other interests created prior to the root of title is not sufficient to preserve them, unless specific identification is made therein of a recorded title transaction which creates the easement, use restriction, or other interest;

(2) all interests preserved by the filing of proper notice or by possession by the same owner continuously for a period of 40 years or more, in accordance with Section 57-9-4;

(3) the rights of any person arising from prescriptive use or a period of adverse possession or user, which was in whole or in part subsequent to the effective date of the root of title;

(4) any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started, except that the recording does not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of Section 57-9-3; and

(5) the exceptions stated in Section 57-9-6 as to rights of reversioners in leases, as to apparent easements and interests in the nature of easements, as to the right, title, or interests of the state in school or institutional trust lands, and as to interests of the United States.

1995

57-9-3. Marketable record title held free and clear of interests, claims, and charges.

Subject to Sections 57-9-2 and 57-9-6:

(1) the marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims, or charges, whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title; and

(2) all such interests, claims, or charges, however denominated, whether legal or equitable, present or future, whether the interests, claims, or charges are asserted by a person sui juris or under a disability, whether the person is within or without the state, whether the person is natural or corporate, or is private or governmental, are declared to be void.

1995

57-9-4. Filing of notice of claim of interest authorized — Effect of possession of land by record owner of possessory interest.

(1) Any person claiming an interest in land may preserve and keep effective such interest by filing for record during the

forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim. No disability or lack of knowledge of any kind on the part of anyone shall suspend the running of the forty-year period. The notice may be filed for record by the claimant or by any other person acting in behalf of any claimant who is

- (a) under a disability,
- (b) unable to assert a claim on his own behalf, or
- (c) one of a class, but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

(2) If the same record owner of any possessory interest in land has been in possession of such land continuously for a period of forty years or more, during which period no title transaction with respect to such interest appears of record in his chain of title, and no notice has been filed by him or on his behalf as provided in Subsection (1), and such possession continues to the time when marketability is being determined, such period of possession shall be deemed equivalent to the filing of the notice immediately preceding the termination of the forty-year period described in Subsection (1).

1963

57-9-5. Notice of claim of interest — Contents — Filing for record.

To be effective and to be entitled to record, the notice referred to above shall contain an accurate and full description of all land affected by such notice which description shall be set forth in particular terms and not by general inclusions; but if the claim is founded upon a recorded instrument, then the description in the notice may be the same as that contained in the recorded instrument. The notice shall be filed for record in the registry of deeds of the county or counties where the land described therein is situated. The recorder of each county shall accept all such notices presented to him which describe land located in the county in which he serves and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded and each recorder shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing the notices in his office each recorder shall enter the notices under the grantee indexes of deeds under the names of the claimants appearing in the notices. Such notices shall also be indexed under the description of the real estate involved in a book set apart for that purpose to be known as the "Notice Index."

1963

57-9-6. Applicability of provisions.

This act may not be applied to bar:

(1) any lessor or his successor as a reversioner of his right to possession on the expiration of any lease; or

(2) extinguish any easement or interest in the nature of an easement created or held for any pipeline, highway, railroad or public utility purpose, or any easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use; or

(3) extinguish any water rights, whether evidenced by decrees, by certificates of appropriation, by diligence claims to the use of surface or underground water or by water users' claims filed in general determination proceedings; or

(4) extinguish any right, title, estate, or interest in and to minerals, and any development, mining, production or other rights or easements related to the minerals or exercisable in connection with the minerals; or

(5) any right, title, or interest of the state in school or institutional trust lands; or

(6) any right, title, or interest of the United States, by reason of failure to file the notice herein required.

1995

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
 - (b) act as liaison with the Supreme Court;
 - (c) call and preside over the meetings of the Court of Appeals; and
 - (d) carry out duties prescribed by the Supreme Court and the Judicial Council.
- 5) Filing fees for the Court of Appeals are the same as for Supreme Court. 1988

3a-3. Court of Appeals jurisdiction.

1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals; over:

- (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

- (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
- (ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

3) The Court of Appeals upon its own motion only and by vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings. 1996

3a-4. Review of actions by Supreme Court.

1) The judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court. 1986

78-2a-5. Location of Court of Appeals.

The Court of Appeals has its principal location in Salt Lake City. The Court of Appeals may perform any of its functions in any location within the state. 1986

CHAPTER 3

DISTRICT COURTS

Section

78-3-1 to 78-3-2. Repealed.

78-3-3. Term of judges — Vacancy.

78-3-4. Jurisdiction — Appeals.

78-3-5. Repealed.

78-3-6. Terms — Minimum of once quarterly.

78-3-7 to 78-3-11. Repealed.

78-3-11.5. State District Court Administrative System.

78-3-12. Repealed.

78-3-12.5. Costs of system.

78-3-13. Repealed.

78-3-13.4. Transfer of court operating responsibilities — Facilities — Staff — Budget.

78-3-13.5, 78-3-14. Repealed.

78-3-14.2. District court case management.

78-3-14.5. Allocation of district court fees and forfeitures.

78-3-15 to 78-3-17. Repealed.

78-3-17.5. Application of savings accruing to counties.

78-3-18. Judicial Administration Act — Short title.

78-3-19. Purpose of act.

78-3-20. Definitions.

78-3-21. Judicial Council — Creation — Members — Terms and election — Responsibilities — Reports.

78-3-21.5. Data bases for judicial boards.

78-3-22. Presiding officer — Compensation — Duties.

78-3-23. Administrator of the courts — Appointment — Qualifications — Salary.

78-3-24. Court administrator — Powers, duties, and responsibilities.

78-3-25. Assistants for administrator of the courts — Appointment of trial court executives.

78-3-26. Courts to provide information and statistical data to administrator of the courts.

78-3-27. Annual judicial conference.

78-3-28. Repealed.

78-3-29. Presiding judge — Associate presiding judge — Election — Term — Compensation — Powers — Duties.

78-3-30. Duties of the clerk of the district court.

78-3-31. Court commissioners — Qualifications — Appointment — Functions governed by rule.

78-3-1 to 78-3-2. Repealed.

1971, 1981, 1988

78-3-3. Term of judges — Vacancy.

Judges of the district courts shall be appointed initially until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office for judges of the district courts is six years, and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. 1988

78-3-4. Jurisdiction — Appeals.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

of the same, shall be effectual, unless it appears that the person prosecuting the action, or interposing the defense or counterclaim, or under whose title the action is prosecuted or defense or counterclaim is made, or the ancestor, predecessor or grantor of such person was seized or possessed of the property in question within seven years before the committing of the act in respect to which such action is prosecuted or defense or counterclaim made. 1953

78-12-7. Adverse possession — Possession presumed in owner.

In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property shall be presumed to have been possessed thereof within the time required by law; and the occupation of the property by any other person shall be deemed to have been under and in subordination to the legal title, unless it appears that the property has been held and possessed adversely to such legal title for seven years before the commencement of the action. 1953

78-12-7.1. Adverse possession — Presumption — Proviso — Tax title.

In every action for the recovery or possession of real property or to quiet title to or determine the owner thereof the person establishing a legal title to such property shall be presumed to have been possessed thereof within the time required by law; and the occupation of such property by any other person shall be deemed to have been under and in subordination to the legal title, unless it appears that such property has been held and possessed adversely to such legal title for seven years before the commencement of such action. Provided, however, that if in any action any party shall establish prima facie evidence that he is the owner of any real property under a tax title held by him and his predecessors for four years prior to the commencement of such action and one year after the effective date of this amendment he shall be presumed to be the owner of such property by adverse possession unless it appears that the owner of the legal title or his predecessor has actually occupied or been in possession of such property under such title or that such tax title owner and his predecessors have failed to pay all the taxes levied or assessed upon such property within such four-year period. 1953

78-12-8. Under written instrument or judgment.

Whenever it appears that the occupant, or those under whom he claims, entered into possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for seven years, the property so included is deemed to have been held adversely, except that when the property so included consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract. 1953

78-12-9. What constitutes adverse possession under written instrument.

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

- (1) Where it has been usually cultivated or improved.
- (2) Where it has been protected by a substantial inclosure.
- (3) Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber, for the purpose of

husbandry, or for pasturage or for the ordinary use of the occupant.

- (4) Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed according to the usual course and custom of the adjoining county is deemed to have been occupied for the same length of time as the part improved and cultivated. 1953

78-12-10. Under claim not founded on written instrument or judgment.

Where it appears that there has been an actual continued occupation of land under claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land so actually occupied, and no other, is deemed to have been held adversely. 1953

78-12-11. What constitutes adverse possession not under written instrument.

For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment or decree, land is deemed to have been possessed and occupied in the following cases only:

- (1) Where it has been protected by a substantial inclosure.
- (2) Where it has been usually cultivated or improved.
- (3) Where labor or money has been expended upon dams, canals, embankments, aqueducts or otherwise for the purpose of irrigating such lands amounting to the sum of \$5 per acre. 1953

78-12-12. Possession must be continuous, and taxes paid.

In no case shall adverse possession be considered established under the provisions of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of seven years continuously, and that the party, his predecessors and grantors have paid all taxes which have been levied and assessed upon such land according to law. 1953

78-12-12.1. Possession and payment of taxes — Proviso — Tax title.

In no case shall adverse possession be established under the provisions of this code, unless it shall be shown that the land has been occupied and claimed for the period of seven years continuously, and that the party, his predecessors and grantors have paid all the taxes which have been levied and assessed upon such land according to law. Provided, however, that payment by the holder of a tax title to real property or his predecessors, of all the taxes levied and assessed upon such real property after the delinquent tax sale or transfer under which he claims for a period of not less than four years and for not less than one year after the effective date of this amendment, shall be sufficient to satisfy the requirements of this section in regard to the payment of taxes necessary to establish adverse possession. 1953

78-12-13. Adverse possession of public streets or ways.

No person shall be allowed to acquire any right or title in or to any lands held by any town, city or county, or the corporate authorities thereof, designated for public use as streets, lanes, avenues, alleys, parks or public squares, or for any other public purpose, by adverse possession thereof for any length of time whatsoever, unless it shall affirmatively appear that such town or city or county or the corporate authorities thereof have sold, or otherwise disposed of, and conveyed such real estate to a purchaser for a valuable consideration, and that for more than seven years subsequent to such conveyance the purchaser, his grantees or successors in interest, have been in the exclusive, continuous and adverse possession of such real estate; in which case an adverse title may be acquired. 1953

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Attorney for Defendant Alan Lasson

FILED DISTRICT COURT
Third Judicial District

NOV 26 1996

SALT LAKE COUNTY

By 
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LOUISE A. DRAZICH, a/k/a LOUISE)
ANN DRAZICH, as an individual, and)
LOUISE A DRAZICH as Trustee of)
Trusts created by the Will of)
MARKO N. DRAZICH, deceased,)

Plaintiff,)

vs.)

ALAN LASSON, an individual,)
MARY D. WHITE, an individual,)
DARRELL L. WHITE, an individual,)
and DAVID A. WHITE, an individual)

Defendants.)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Civil No. 940906967. PR

Judge: William B. Bohling

This case came on for trial to this Court, pursuant to notice, on September 26, September 27, and November 13, 1996. Plaintiff and Defendant were represented by counsel and were given a full opportunity to present their respective arguments on the issues raised in the case. Evidence, testimony and arguments of the parties were presented and received for an in behalf of the respective parties. Based thereon, the Court being thus fully advised in the premises, does hereby make and enter the following:

000231

FINDINGS OF FACT

1. Defendant Alan Lasson acquired title by Warranty Deed on October 25, 1993, to a parcel of land (the "Lasson Property") located in Salt Lake County, State of Utah, described as follows:

Commencing 4.7 chains South and 19.62 chains West from the East quarter corner, Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence South 3.08 chains; thence South 45 deg. West 1.42 chains; thence North 4.15 chains; thence East 1.13 chains to the point of beginning.

2. Plaintiff acquired title by Warranty Deed dated December, 1993, to a parcel of land which comprises approximately one (1) acre (Exhibit 1-P).

3. The description contained in the deed to Plaintiff overlaps and extends into the Lasson Property to the extent of approximately 11 feet at the easterly end and 20 feet at the westerly end, for an average width of approximately 15 feet. The precise description of said conflict is not identified by metes and bounds description.

4. Title to the area in dispute has a common origin of title by virtue of a Patent issued by the United States Government in favor of James Bell, which appears of record in the official records of Salt Lake County, Utah (Exhibit 15-P).

5. The Patentee, James Bell, conveyed fee title to Abraham Helm by a certain "Indenture" recorded in Book L, page 283-284, of the official records of Salt Lake County, Utah (Exhibit 15-P).

6. Abraham Helm, by a certain "Indenture" dated August 29, 1882, conveyed to The Denver and Rio Grande Railway Company (the

"Railroad Company") an interest in a strip of land which extended from the main line of the Railroad Company's railroad tracks, in a northeasterly direction, over and across the lands owned by Helm. The description contained in said Indenture describes the land to which the interest related as being a corridor two (2) rods (33 feet) in width, lying 16 1/2 feet on either side of the center line of an existing railroad track, which area includes the area in dispute in the instant case.

7. The railroad tracks lying within the corridor were removed in approximately 1904, and no precise legal description of the location of the tracks or of the corridor in which the tracks were located was ever recorded. Credible evidence at trial demonstrated considerable discrepancy and confusion as to the exact location of the Railroad Company tracks and that there may have been a shift in the location of the tracks prior to the tracks being removed in 1904.

8. The Railroad Company ceased paying taxes on the corridor lands in 1904, ceased using the land for railroad purposes at that time, and commenced quit claiming its interest in the corridor lands as early as 1926.

9. In 1958, the Railroad Company employed Coon and King Engineers to attempt to survey the corridor of land upon which the tracks had existed and to establish a legal description for the corridor which had been imprecisely described in the 1882 Indenture.

10. The survey prepared by Coon and King Engineers revealed the existence and location of a fence lying several feet south of what Coon and King believed to be the northerly boundary of the historic railroad right-of-way. No clear evidence was presented at trial demonstrating that the Coon and King survey accurately reflected the historic location of the Railroad Company tracks or the corridor through which they travelled. The location of the fence and evidence of its long term existence evidences that the fence may have been built along the northerly boundary of the Railroad Company right-of-way.

11. Based upon the Coon and King survey, on September 3, 1958, the Railroad Company issued a Special Warranty Deed to Building Supply Center, which was recorded in the official records of Salt Lake County, Utah, on November 26, 1958 (Exhibit 2-P).. The legal description contained in the Special Warranty Deed incorporates the parcel of land which is in dispute in the case at bar.

12. The Special Warranty Deed contained exceptions and conditions, one of which being the "...outstanding rights for any and all...fences...now existing upon, under, along, over or across the described premises."

13. The legal description contained in Plaintiff's deed dated December, 1993, contained that portion of the land described in the 1958 Special Warranty Deed which is in dispute in the case at bar.

14. The legal description contained in Defendant's Warranty Deed dated October 25, 1993, also covers the entire area in

dispute, and said legal description has been consistently and continuously used in conveyances of the Lasson Property since at least 1950.

15. Defendant and his predecessors in interest have used and occupied the real property described in Defendant's Warranty Deed since at least 1950.

16. Neither Plaintiff nor any of Plaintiff's predecessors in interest have used or occupied any portion of the property in dispute since at least 1950.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. Defendant Alan Lasson is the owner of record in fee simple of the lands and premises which are the subject of this dispute in accordance with the legal description contained in the Warranty Deed dated October 25, 1993, recorded October 26, 1993, as Entry No. 5638344, in the official records of the Salt Lake County, Utah, Recorder.

2. Due to the imprecise legal description and other relevant language contained in the 1882 Indenture between Abraham Helm and the Railroad Company, the interest granted to the Railroad Company in 1882 was a grant of a right-of-way only, subject to abandonment.

3. Based upon its actions and inactions relative to its

right-of-way, the Railroad Company abandoned its right-of-way at some time prior to 1958.

4. Based upon the abandonment and the conditional language contained in the 1958 Special Warranty Deed from the Railroad Company to Building Supply Center regarding warranty and fence lines, no conveyance of the disputed strip of land actually occurred.

5. No "title transaction," as that term is used in Section 57-9-2(4) of the Utah Marketable Record Title Act (Utah Code Annotated, Section 57-9-1 et seq.) occurred so as to break Defendant's chain of title which has existed in excess of the forty (40) years required by Section 57-9-1 of the Utah Marketable Record Title Act.

6. Defendant Alan Lasson is entitled to a Decree awarding said Defendant possession and right to possession of the premises hereinafter described and is entitled to a Decree and Judgment quieting title in said premises as against said Plaintiff and all persons claiming by, through and under said Plaintiff, and said Plaintiff should be enjoined, debarred and restrained from claiming or asserting any right, title, interest or estate in and to the premises belonging to Defendant, situate in Salt Lake County, State of Utah, and described as follows:


Commencing 4.7 chains South and 19.62 chains West from the East quarter corner, Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence South 3.08 chains; thence South 45 deg. West 1.42 chains; thence North 4.15 chains; thence East 1.13 chains to the point of beginning.

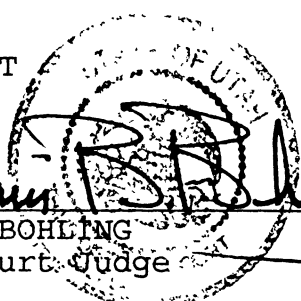
7. The counterclaim of Defendant for trespass is dismissed, with prejudice.

8. Defendant is entitled to costs incurred. Each party shall bear their own attorney's fees.

DATED this 26 day of November, 1996

BY THE COURT


WILLIAM B. BOHLING
District Court Judge



CERTIFICATE OF SERVICE

This is to certify that on this 25th day of November, 1996, I personally delivered a true and correct copy of the foregoing Findings of Fact and Conclusions of Law to:

Brant H. Wall, Esq.
Wall and Wall
Attorneys for Plaintiff
Suite 800, Boston Building
Salt Lake City, Utah 84111



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JUDGEMENT

THIRD JUDICIAL DISTRICT COURT
Judicial District

JAN 03 1997

By W. B. Bohling County Clerk

Attorney for Defendant Alan Lasson

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LOUISE A. DRAZICH, a/k/a LOUISE
ANN DRAZICH, as an individual, and
LOUISE A DRAZICH as Trustee of
Trusts created by the Will of
MARKO N. DRAZICH, deceased,

Plaintiff,

vs.

ALAN LASSON, an individual,
MARY D. WHITE, an individual,
DARRELL L. WHITE, an individual,
and DAVID A. WHITE, an individual

Defendants.

2212476
1-6-97
8:04 am

JUDGEMENT AND ORDER

Civil No. 940906967. PR

Judge: William B. Bohling

The above entitled matter having come on for trial, pursuant to notice, on September 26, September 27 and November 13, 1996, before the Honorable Judge William B. Bohling, oral arguments having been heard, evidence having been presented and Findings of Fact and Conclusions of Law having been filed on November 26, 1996, this Court now ORDERS AND DECREES AS FOLLOWS:

1. Judgement in the above entitled matter is hereby granted to Defendant Alan Lasson.

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2. Defendant Alan Lasson is granted full possession of and quiet title to all of the following described real property (the "Subject Property") located in Salt Lake County, State of Utah, to wit:

Commencing 4.7 chains South and 19.62 chains West from the East quarter corner, Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence South 3.08 chains; thence South 45 deg. West 1.42 chains; thence North 4.15 chains; thence East 1.13 chains to the point of beginning, all as shown on the Survey of Record recorded as Recordation No. 96-110466 in the official records of the Salt Lake County Surveyor.

3. Plaintiff is hereby enjoined, debarred and restrained from claiming or asserting any right, title, interest or estate in and to the Subject Property.

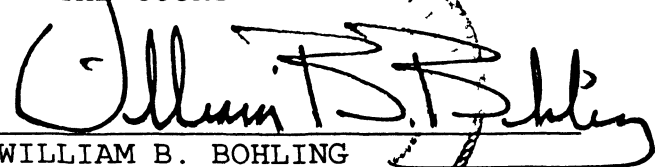
4. Plaintiff shall reimburse Defendant Alan Lasson for all costs incurred in defending this action (excluding attorney's fees) upon submission of written evidence of said costs to Plaintiff and/or Plaintiff's counsel of record.

5. Defendant Alan Lasson's counterclaim for trespass is dismissed, with prejudice.

6. Each party shall bear their own attorney's fees.

DATED THIS 3 day of January, 1997.

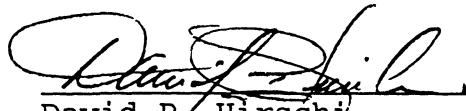
BY THE COURT


WILLIAM B. BOHLING
District Court Judge

NOTICE TO COUNSEL

YOU WILL PLEASE TAKE NOTICE that the undersigned, David P. Hirschi, attorney for Defendant Alan Lasson, will submit the foregoing JUDGMENT AND ORDER to the Honorable Judge Bohling for his signature, pursuant to Rule 206 of the Rules of Practice of the District Courts of the State of Utah, upon the expiration of eight days of the date of mailing this notice to you, unless you file objection thereto in writing. Kindly govern yourself accordingly.

DATED this 16th day of December, 1996.




David P. Hirschi
Attorney for Defendant Lasson

CERTIFICATE OF MAILING

This is to certify that on this 16th day of December, 1996, I mailed a true and correct copy of the foregoing by U.S. Mail, postage prepaid, to:

Brant H. Wall, Esq.
Wall and Wall
Attorneys for Plaintiff
Suite 800, Boston Building
Salt Lake City, Utah 84111



David P. Hirschi

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