

1989

Velma Marchant, Elma Winterton Leora Robinson,
Wanda Penrod, Mon Lichty, Merle Anderson v.
Park City. and The State of Utah : Petition for Writ
of Certiorari

Utah Court of Appeals

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James Carter; R. Paul Van Dam; State Attorney General; Alan Bacham; Assistant Attorney General; Attorneys for Respondents.

Robert Felton; Attorney for Appellants.

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UTAH SUPREME COURT.

BRIEF

890139

Utah Supreme Court

VELMA MARCHANT, ELMA WINTERTON,
LEORA ROBINSON, WANDA PENROD,
MONA LICHTY, MERLE ANDERSON,

Plaintiffs and Appellants,

vs.

PARK CITY, a municipal corporation,
and THE STATE OF UTAH,

Defendants and Respondents.

CASE NO.

890139

PETITION FOR A WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

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APR 13 1989

Mr. Justice

Utah Supreme Court

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QUESTIONS PRESENTED FOR REVIEW

1. Can title based upon a tax deed, coupled with actual possession, be collaterally attacked after 70 years as having failed to convey the underlying real property in abrogation of the statute of limitations?

2. Did the Utah Court of Appeals fail to follow the pronouncement of this Court in *Park West Village, Inc. v. Avise*, 714 P.2d 1137 (Utah, 1986) by refusing to rule that the Plaintiffs had title to the real property by adverse possession since they were in possession and no one other than themselves or their predecessors paid taxes on the property between 1910 and 1931?

3. Can title to a home and real estate based upon actual possession and a Quit-Claim Deed be attacked after 70 years, contrary to the Utah Marketable Title Act § 57-9-1 et seq?

4. In the event Appellants did not have title by adverse possession, does the continuous use of the home located on the property since at least 1910 support a prescriptive easement for the continued use and maintenance of that home in the defined yard?

5. The Utah Court of Appeals failed to address Appellants' claim for damages caused by the Defendants' destruction of their home to build a highway.

REFERENCE TO THE REPORT OF THE OPINION ISSUED BY THE COURT OF APPEALS

The Opinion of the Court of Appeals (Case No. 880131-CA) is reproduced as Exhibit No. 1 in the Appendix to this Petition for Writ of Certiorari.

**STATEMENT OF GROUNDS ON WHICH THE
JURISDICTION OF THE SUPREME COURT OF
THE STATE OF UTAH IS INVOKED**

Jurisdiction for this Petition for a Writ of Certiorari to the Utah Court of Appeals is found in Title 78, Chapter 2, Section 2 of the Utah Code; and Title 78, Chapter 2a, Section 4 of the Utah Code (amended 1986) and in Title 6 of the Rules of the Utah Supreme Court.

STATEMENT OF THE CASE

This is a quiet title case filed by the Plaintiffs against Park City, a municipal corporation and the State of Utah for possession and title to the Plaintiff's family home in Park City which they and their family occupied since 1910. Plaintiffs also claim damages in the amount of \$20,000.00 against Park City for their destruction of the home on the property.

Park City requested the Plaintiffs to repair their home which they were in the process of doing when Park City issued a demolition permit to a third party for the destruction of the home. A claim for damages was timely submitted to Park City. After the house was removed, Park City conveyed the property to the State of Utah for construction of a new highway to Deer Valley in 1982.

Park City claims they have no liability for the destruction of the Plaintiffs' home because it was done by a third party and the State of Utah claims that while their record of title to the property is flawed, it is superior to that of the Plaintiffs.

A trial was held before the Court on May 6, 1987 and Findings of Fact, Conclusions of Law and a Judgment were entered dismissing

Plaintiffs' Complaint and quieting title to the real property in the State of Utah.

Plaintiffs appealed to the Utah Supreme Court and the case was transferred to the Court of Appeals. The Utah Court of Appeals, in an Opinion filed March 13, 1989 held that: the State of Utah's title, while flawed, was superior to that of the Appellant; the tax deeds issued by Summit County in 1914, 1917, 1957 and 1963 did not convey any real property, but only improvements; Defendants were not barred from challenging Plaintiffs' title by the statute of limitation; and, Plaintiffs did not have a prescriptive easement to maintain their house and yard if their title failed.

The Court of Appeals did not address Plaintiffs' claim for damages against Park City as a result of Park City's destruction of the home located on the property in question, or the application of the Utah Marketable Title Act, §§ 57-9-1 et seq. U.C.A.

ARGUMENT

I.

The Statute of Limitations in Section 78-12-5.1 Utah Code Annotated Bars A Collateral Attack On A "Tax Title" After Four Years

Plaintiffs' heirs commenced living in this home in about 1910. In addition to continuously occupying the home since that time, the Plaintiffs and their heirs occupied the fenced yard adjacent to the property in conjunction with their home. The Plaintiffs' grandfather, William Rolfe, lived on the property until his death in 1939. Their grandmother, his wife, continued to occupy the property until 1946.

William Rolfe's son, Charles, rented out the house from 1949 until 1964. He died in 1966 and his wife followed in 1981. Charles' daughters have regularly visited the property at least yearly since that time (Court of Appeals Opinion, p.2). "There was no evidence that anyone other than William Rolfe paid taxes on the property until 1931" (Court of Appeals Opinion, p.3).

The documents supporting Plaintiffs' title by tax deed start with a quit-claim deed from McPollin to McCarrell dated March 19, 1906 (Appendix, Exhibit 2). Neither of these parties were ever related to the Plaintiffs.

On June 10, 1914, a tax deed was issued to William Rolfe for "improvements east U.C. track, Park City, Utah" (Appendix, Exhibit 3). That deed also states, "this deed is made from title secured from a certain tax sale in the year 1909 and by an auditor's deed to Summit County, dated May 14, 1914 and in accordance with Section 2655, Compiled Laws of Utah, 1907." Section 2655, Compiled Laws of Utah, 1907, provides for a tax deed for the sale of real estate sold for tax delinquencies. It does not allow a deed or sale of personal property. In fact, this Section prohibits a sale "in a cases where the description of such real estate is so defective as to convey no title" Apparently, in 1914, the description was sufficient in the minds of the County government to describe what real estate was being sold since they were statutorily prohibited from the sale if it could not be identified.

In the event the 1914 deed was not valid, then this property would have remained in the name of McCarrell, being the grantee of the 1906 Deed from McPollin; or in the name of one of the

Defendants' predecessors - Park City Smelting Company (Court of Appeals Opinion, p.3, ¶2). One of these parties would have been legally responsible for paying the taxes. Section 2425, Compiled Laws of Utah, 1907. A second tax deed was executed to William Rolfe from Summit County on June 21, 1917 (Appendix, Exhibit 4). Another tax deed was also referenced in a letter from the Summit County Treasurer to Charles Rolfe for this property (Appendix, Exhibit 5). In 1963 a subsequent tax deed was issued to Plaintiffs' father, Charles Rolfe, who was a completely different person than William Rolfe and also an heir of the Plaintiffs' (Appendix, Exhibit 6). Letters from Summit County also confirmed that Plaintiffs had paid taxes from 1940 - 1957 and 1972 (Appendix, Exhibits 5 and 7).

The Court of Appeals misinterpreted this Court's decision in *Dillman v. Foster*, 656 P.2d 974 (Utah, 1982) by holding that "one who has a tax deed but does not hold title to the property cannot assert" (Statute of Limitations, § 78-12-5.1). This holding is, in fact, contrary to the holding by this Court in *Dillman, supra*. The scope of that ruling determines that a person with legal title who is otherwise responsible for the taxes, cannot buttress his titles by allowing taxes to lapse and thereafter performing his legal duties by paying them.

Both the trial court and appeals court found, the "vested title" lay in the respondent's predecessors (Court of Appeals Opinion, p.3). Section 80-5-12 U.C.A. (1943) is almost identical to the earlier statute found in Section 2524, Compiled Laws of Utah (1907) and provides the person chargeable with paying taxes:

"If the name of the owner or claimant of any property is known to the assessor, or if it

appears of record in the office of the County Recorder where the property is situated, the property must be assessed to such name . . ."

If the Plaintiffs' predecessors did not hold title as a result of the 1907 deed, then, in 1917, the property was in the name of either McCarrell or Park City Smelting Company who were legally obligated to pay the taxes on their property. They unequivocally made no such payments and Plaintiffs' tax deeds are insulated from a collateral attack after all these years as provided for in Section 78-12-5.1 U.C.A. (1953, as amended) which provides in part,

"With respect to action or defenses brought or interposed for the recovery or possession of, or to quiet title or determine the ownership of real property against the holder of a tax title to such property, no such action or defense shall be commenced or interposed more than four years after the date of the tax deed, conveyance, or transfer creating such tax title unless the person commencing or interposing such action or defense, or his predecessor, has actually occupied or been in possession of such property within four years . . ."

In *Dillman v. Foster*, 656 P.2d 974 (Utah, 1982), this Court, relying on *Frederiksen v. La Fleur*, 632 P.2d 827 (Utah, 1981) stated

"That policy of protection is based on the assumption that the tax debtor is the possessor of property which is probably his home or farm land."

This property was the Rolfe family home for 70 years and Respondents' claims are barred by the four year statute of limitation arising out of any one of the four tax deeds (Addendum, Exhibits 2-4

and 7) coupled with the Plaintiffs' continuous possession. Section 78-12-5.3 provides that the "tax title" is any title received by way of a sale for delinquency taxes and it is irrelevant if the title "is valid or not." "Real Estate" includes "the possession of, claim to, ownership of, or right to the possession of, land . . ." § 80-3-1(2) U.C.A. (1943).

II.

Title Vested In Plaintiff In 1917 By Adverse Possession And Cannot Be Challenged 70 Years Later

Plaintiffs submit that this Court's decision in *Park West Village v. Avise*, 714 P.2d 1137 (Utah, 1986) is "on all fours" with this action and requires review of the Court of Appeals' decision which is in direct conflict with that ruling.

Ignoring, for a moment, all evidence or occurrences after 1931, it is uncontested that there was "no evidence that anyone other than William Rolfe paid taxes on the property until 1931" (Utah Court of Appeals Opinion, p.3). He started living in the house in 1910 and resided there continuously until after 1931 (Court of Appeals Opinion, p.2). The record title holder, according to the Respondents and the Court of Appeals was Lewis Withey and Clay Holister (Court of Appeals Opinion, p.3, ¶¶3,4,5).

If any taxes were assessed on the realty then they were paid by William Rolfe. If, as the Court of Appeals states, the taxes were assessed on the improvements only, then Plaintiffs are relieved of their obligation to pay non-existent assessments, *Park West Village v. Avise*, 714 P.2d 1137 (Utah, 1986), *Royal Street Land Co. v. Reed*, 739 P.2d. 1104 (Utah, 1987).

It should be noted that this property is right next door to the *Avis* property and the adjoining fence constitutes part of the definition of the yard in that case. The uncertain deeds and procedures followed by Summit County in early portions of this century are the same in that case as they are here. Once title vests after seven years it cannot be attacked half a century later, § 78-12-7 U.C.A. (1953).

III.

Plaintiffs' "Root Of Title" Is More Than 40 Years Old And Insulated From Challenge By The Utah Marketable Title Act, §§ 57-9-1, et. seq.

William Rolfe obtained a deed to this real estate from Summit County in June, 1917 (Appendix, Exhibit 4). William Rolfe and his family or their tenants continually occupied the home and property until 1964 and regularly visited to the day the house was destroyed (Court of Appeals Opinion, p.2). This deed vested color of title in William Rolfe, *Baker v. Goodwin*, 57 Utah 379, 194 P.2d 117 (1920).

Respondents had actual notice of the Plaintiffs' claim of ownership by the recorded deed and the Rolfe families' continuous possession, *Falcenaro Enterprises v. Valley Investment Company*, 16 Utah 2d 77, 395 P.2d 915 (1974).

Section 57-9-1 U.C.A. (1953, as amended 1963) states that Plaintiffs have marketable title and acts to cut off Defendants' claims because the "root of title" from which the Respondents' claim ownership is more than 40 years old. This fact considered in conjunction with the fact that none of the Defendants nor their predecessors were ever in possession of this property, while the

Plaintiffs have been in continuous possession, falls squarely within the protection of the Marketable Title Act, § 57-9-1 et seq. and insulates Plaintiffs' title from the Respondents' challenge.

IV.

If Plaintiffs Did Not Have Title,. They Had A Prescriptive Right To Maintain Their House And Yard

Plaintiffs continuously used and lived at this property for over 70 years, to the exclusion of the world. Some comment is made that Mr. Rolfe was given permission to build the house by Silver King Coalition Mine. This was impossible since this Company did not even claim an interest until 1926 (Court of Appeals Opinion, p.3), and Mr. Rolfe and his wife had already been there for at least 16 years. Plaintiffs further stated that no one in their family had ever worked for this Company or any company related to it.

If seventy years of open, notorious, and unchallenged possession, is not sufficient to vest title in Plaintiffs, it ripened into prescriptive use for the maintenance of the yard and house on this property, *Zollinger v. Frank*, 110 Utah 514, 175 P.2d 714 (1946).

V.

Park City Is Liable For Damages For Destroying Plaintiffs' Home

In August, 1981, Park City had Deer Valley Resort bulldoze Plaintiffs' home so that the new road to Deer Valley could be built across this lot (Appendix, Exhibit 8). Neither the State of Utah nor Park City claimed Deer Valley Resort ever owned any interest in this property. Plaintiffs submitted a timely claim to Park City for the

damage which was denied. Thereafter an action in the District Court was filed within the time limit prescribed by State law.

The trial court confused the exhibits and held that notice was not timely filed and that Park City was not responsible because the building was destroyed by a third party pursuant to the City's demolition permit. The trial court found a claim was filed on September 20, 1982, but that was the date the claim was denied. The claim (Exhibit 18 in the trial court) was submitted August 30, 1982, within the time provided by law. § 63-30-13 U.C.A. (1953). The trial court confused the dates and the Court of Appeals did not address this issue. There is unrefuted testimony to the Court that the building was worth at least \$20,000.00 (Appendix, Exhibit 9, Testimony of Merle Anderson) *Ault v. Dubois*, 739 P.2d 1117 (Ut. App. 1987).

The Court of Appeals failed to consider this issue and if Plaintiffs' claim and cause of action were timely under the Utah Governmental Immunity Act, then Plaintiffs are entitled to damages against Park City for having a third party destroy the home to build a public road without condemnation proceedings being filed. The demolition permit also included the *Avise* house which was not destroyed because Mr. Avise was there.

CONCLUSION



The Utah Court of Appeals has misconstrued Utah law governing statutes of limitations intended to protect title to persons' homes and real estate after those persons have lived in and paid taxes on the property for years. Conflicting standards as to when

and on what basis people may rely on their ownership now exist and must be resolved. The Court of Appeals' decision requires review in accordance with Rule 43(1), (2), (3) and (4).

In addition, there is another action pending before this Court which may impact this decision. In *Sweeney Land Company v. Kimball*, Supreme Court No. 880485, this Court granted a Petition for Writ of Certiorari dated March 23, 1989. One of the issues in that action involves the evidence necessary to establish rights by prescription as well as what constitutes "consent" to the historical use of property. The decision in the *Sweeney Land Company, supra* matter may necessitate review of the Court of Appeals decision in this action.

The Court should issue its Writ of Certiorari to the Utah Court of Appeals that it direct the trial court to quiet title to the subject property in the name of the Plaintiffs and award judgment for damages for the destruction of Plaintiffs' home in the amount of \$20,000.00.

RESPECTFULLY SUBMITTED this 12 day of April, 1989.

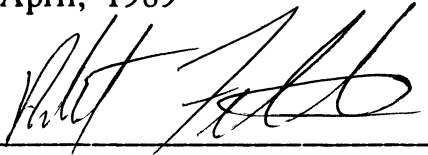
 

Robert Felton
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I mailed four (4) true and correct copy of the Defendants-Respondents' PETITION FOR WRIT OF CERTIORARI by

United States first-class mail, postage prepaid, to James W. Carter,
Attorney at Law, P.O. Box 1480, Park City, Utah 84060 and Alan
Bachman, Assistant Attorney General, 236 State Capitol, Salt Lake
City, Utah 84144 on the 12 day of April, 1989



APPENDIX

- | | |
|------------|---|
| EXHIBIT 1 | OPINION OF THE COURT OF APPEALS FILED
MARCH 13, 1989 |
| EXHIBIT 2 | DEED: McPOLLIN to McCARRELL DATED
MARCH 19, 1906 |
| EXHIBIT 3 | DEED: SUMMIT COUNTY TO WILLIAM ROLFE
DATED JUNE 10, 1914 |
| EXHIBIT 4 | DEED: SUMMIT COUNTY TO WILLIAM ROLFE
DATED JUNE 21, 1917 |
| EXHIBIT 5 | LETTER: SUMMIT COUNTY TO CHARLES ROLFE
DATED MAY, 1957 |
| EXHIBIT 6 | TAX DEED: SUMMIT COUNTY TO CHARLES ROLFE
DATED 1963 |
| EXHIBIT 7 | LETTER: SUMMIT COUNTY TO MRS. ROLFE |
| EXHIBIT 8 | DEMOLITION PERMIT BY PARK CITY |
| EXHIBIT 9 | TESTIMONY OF MERLE ANDERSON, OWNER
RE VALUE OF HOME |
| EXHIBIT 10 | JUDGMENT, FINDINGS OF FACT AND CONCLUSIONS
OF LAW |

STATUTES

1. § 78-12-5.2 U.C.A. (1953) - LIMITATION OF ACTIONS RE TAX
TITLES
2. § 78-12-5.3 U.C.A. (1953) - DEFINITION OF "TAX TITLE"
3. § 2655 COMPILED LAWS OF UTAH (1907) AND AMENDMENTS
4. § 80-3-1 U.C.A. (1943)
5. UTAH MARKETABLE TITLE ACTION §§ 57-9-2 and 57-9-3
U.C.A. (1953)

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IN THE UTAH COURT OF APPEALS

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FILED

MAR 13 1989
Gary Noonan
Gary T. Noonan
Clerk of the Court
Utah Court of Appeals

Velma Marchant, Elma
Winterton, Leora Robinson,
Wanda Penrod, Mona Lichty,
Merle Anderson,

Plaintiffs and Appellants,

v.

Park City, a municipal
corporation, and the State
of Utah,

Defendants and Respondents.)

OPINION
(For Publication)

Case No. 880131-CA

Third District, Summit County
The Honorable Leonard H. Russon

Attorneys: Robert Felton, Salt Lake City, for Appellants
J. Craig Smith, James W. Carter, Park City,
for Park City
Alan Bachman, Salt Lake City, for the State
of Utah

Before Judges Davidson, Greenwood and Orme.

GREENWOOD, Judge:

Appellants challenge the trial court's ruling that they did not have vested title to certain real property in Park City and thus were not entitled to recover damages for destruction of the home on the property. Appellants claim that they have title to the property through adverse possession, deeds or alternatively, that their use was prescriptive. Accordingly, they claim entitlement to \$20,000 in damages for the destruction of the residence on the property. We affirm.

EXHIBIT 3

In August of 1981, Park City issued a demolition permit to Deer Valley Resort to remove a building. The building was demolished by Lloyd Brothers Construction Company between August 4 and September 7 of 1981 allegedly to build an access road Deer Valley Resort. Appellants brought this action seeking to quiet title to the real property and to recover damages for the destruction of the home located on the property.

According to appellants, their grandfather, William Rolfe, possessed the home and yard on the property from 1910 until his death in 1939. After his death, his wife continued to occupy the property until 1946. She died in about 1949. William Rolfe's son, Charles Rolfe, rented out the house from 1949 until about 1964. Charles Rolfe died in 1966 and his wife, Ethel Rolfe, died in 1981. Charles Rolfe's daughters, appellants, claim to have visited the property at least once a year since 1964. In support of their claim that they have vested title to the property, appellants rely on the following documents:

1. A quit claim deed from Dan and Belle McPolin to Jesse McCarrell dated March 19, 1906 for "that certain one-story framed, three-room dwelling house situated on the easterly side of Silver Creek and about 100 feet easterly from the lumberyard of the Summit Lumber Company."

2. A quit claim deed from Summit County to William Rolph [sic] dated June 10, 1914 for \$28.68 for "[i]mprovements East U.C. Tracks, Park City, Utah." The quit claim deed states that the deed is "made from title secured from a ~~tax~~ sale in the year 1909 and by an Auditors deed to Summit County, dated May 1st, 1914."

3. A quit claim deed from Summit County to William Rolfe dated June 21, 1917 for \$1.00 for "that certain frame dwelling house by Lumber Yard in Park City, Summit County, Utah, assessed to William Rolfe in the year 1912."

4. A letter from the Summit County Treasurer to Charles Rolfe dated May 16, 1957 stating that in 1938 the county issued a quit claim deed to Charles Rolfe's father. The letter also stated that from 1940 to 1954, taxes were taken care of by widows abatement and that Charles Rolfe paid taxes of \$8.06 in 1955 and \$7.33 in 1956.

5. A tax deed from Summit County to Charles Rolfe dated June 13, 1963 for "House in lumber yard," stating "[t]his conveyance is made in consideration of payment by the Grantee of the sum of \$12.53 delinquent taxes, penalties, interest and

costs, constituting a charge against said real estate for the year 1958 in the sum of \$7.81."

The State of Utah claims chain of title through a series of documents, all of which were recorded, and all, except numbers 3, 4 and 5 below, contained a metes and bounds description of the property. The documents are as follows:

1. A patent from the United States government, undisputedly containing the property in question, to George Snyder on April 5, 1882.

2. A deed from George Snyder to the Park City Smelting Company, dated November 14, 1883.

3. A deed from the Park City Smelting Company to Lewis H. Withey and Clay H. Hollister on September 21, 1912. The deed did not contain a metes and bounds description, but described the conveyed property as "all of the real property or rights or interest in real property belonging to the Park City Smelting Company and situated in the County of Summit, Utah."

4. A deed from the executors of Lewis H. Withey's estate to Silver King Coalition Mines Company on November 5, 1926. The deed did not have a metes and bounds description, but conveyed "all the estate, right, title, interest, property, claim and demand whatsoever of the said Lewis H. Withey . . . [of] the property above described."

5. A trustee's deed from Clay Hollister, Withey's tenant in common, to Silver King Coalition Mines on February 18, 1927. The deed did not contain a metes and bounds description but described the property as "all other real property or rights or interests in real property . . . belonging to Park City Smelting Company, and situated in the County of Summit, State of Utah."

6. A deed from Silver King Coalition Mines Company to United Park City Mines Company, dated May 8, 1953.

7. A deed from United Park City Mines Company to Park City, dated April 2, 1969.

8. A deed from Park City to the State of Utah, dated June 7, 1982.

There was no evidence that anyone other than William Rolfe paid taxes on the property until 1931. From 1931 to 1953, the real property in question was assessed as part of Silver King Coalition Mines Company. From 1954 to 1969, real

property taxes were assessed to and paid by United Park City Mines.

The trial court found that appellants' chain of title was discontinuous and, at best, conveyed title to improvements on the property only. The court concluded that the State's claim to title of the property was superior to that of appellants and, therefore, quieted title in the State of Utah and dismissed appellants' complaint.

On appeal, appellants assert that: 1) the trial court erred in finding that they did not have vested title to the property by deed or adverse possession; 2) even if appellants do not have title to the property, they established prescriptive use; 3) respondents are barred from challenging appellants' tax title by the statute of limitations set forth in Utah Code Ann. § 78-12-5.1 (1987); and 4) respondents' claims are barred by laches and estoppel.

Vested Title

Appellants first claim on appeal that the trial court erred in concluding they did not have vested title to the property by deed. Appellants assert they obtained tax title to the property by virtue of the 1914 quit claim deed and the 1963 tax deed from Summit County, and any action challenging that title is barred by the four year statute of limitations set forth in Utah Code Ann. § 78-12-5.1 (1987). In addition, they claim title under the Marketable Record Title Act, Utah Code Ann. § 57-9-1 through -10 (1986), commencing with the 1917 quit claim deed as the "root" of title. The trial court concluded that the tax deeds under which appellants claimed title did not convey title to the underlying real property.

In reviewing the trial court's conclusions of law, we apply a correction of error standard with no deference to the trial court. Creer v. Valley Bank and Trust Co., 97 Utah Adv. Rep. 12, 12 (Dec. 9, 1988). A person who has a duty to pay taxes cannot fail to pay taxes and subsequently purchase the land at a tax sale and thereby attempt to strengthen his title to the property. Dillman v. Foster, 656 P.2d 974, 979 (Utah 1982); Crofts v. Johnson, 6 Utah 2d 350, 313 P.2d 808, 810 (1957). In addition, one who has a tax deed but does not hold title to the property cannot assert the special statute of limitations contained in Utah Code Ann. § 78-12-5.1 (1987). Dillman, 656 P.2d at 978-79.

In this case, there is no indication that William Rolfe was the record titleholder. Even assuming he received quit claim deeds from Summit County in 1914, 1917 and 1957 after

paying delinquent taxes, we agree with the trial court that, at most, he received title to the improvements described in the deeds. The 1963 tax deed, similarly, conveyed only the improvements, not the underlying real property. Taxes at that time were apparently separately assessed on improvements and real property in Summit County, and the State's predecessor in title, United Park City Mines, paid real property taxes from 1954 to 1969. The deeds did not strengthen Rolfe's title to the property, but merely indicated that he paid delinquent taxes on the property. The State's title, on the other hand, while flawed, is clearly superior to that of appellants. Therefore, we hold that the trial court did not err in concluding that appellants failed to establish title to the property by deed and that the tax deed statute of limitations was inapplicable.

Adverse Possession

Appellants' second assertion of error is that the trial court erred in finding that appellants did not have title to the property by adverse possession. The proponent of an adverse possession claim has the burden of proving full statutory compliance, including the payment of all taxes levied and assessed. Neeley v. Kelsch, 600 P.2d 979, 982 (Utah 1979). However, if a party in possession of property and his predecessors have paid taxes based on the value of improvements on the property and no taxes have been levied based on the valuation of the land, the party has established title to the property by adverse possession if all other elements of adverse possession are met. Park West Village, Inc. v. Avise, 714 P.2d 1137, 1140-41 (Utah 1986); see also Royal Street Land Co. v. Reed, 739 P.2d 1104, 1106 (Utah 1987).

In Avise, the trial court found that Mrs. Lake failed to acquire title to property because she failed to pay taxes on the property. The Utah Supreme Court reversed, stating that the trial court's finding that Mrs. Lake failed to pay taxes on the property was contrary to the evidence. The court noted that an employee of the Summit County assessor's office testified at trial that he had searched the records in that office and could find no evidence that any taxes had been assessed on the land prior to 1975. The undisputed evidence established that Mrs. Lake received a tax notice every year and paid the tax that was levied. Although those taxes were based only on the value of the improvements on the property, the Utah Supreme Court held that because no other taxes were levied, Mrs. Lake had "paid all taxes levied and assessed" in accordance with Utah Code Ann. § 78-12-12 (1977). The court also noted that there was no evidence that there were any delinquent taxes owing on the land for the years prior to 1975

or that the land had been sold by the County for failure to pay taxes for those years.

Appellants claim that this case is indistinguishable from Avisé. We disagree. In Avisé, unlike this case, Mrs. Lake established that she had paid taxes on the improvements to the property for twenty-three years. In this case, however, the only evidence that appellants' predecessors had paid taxes on the property for seven continuous years were quit claim and tax deeds and a letter from Reed Pace to Charles Rolfe. There was no evidence that taxes were paid prior to delinquency. At best, the deeds and letter indicate that William Rolfe paid delinquent taxes on the personal property at various tax sales. Further, appellants established that Charles Rolfe paid taxes on improvements on the property in 1955, 1956 and 1958, but it was also proven that real property taxes were paid by Silver King Coalition Mines Company those same years. Thus, unlike Avisé, appellants failed to prove that they paid taxes on the home or on the underlying land for a continuous seven year period. See Utah Code Ann. § 78-12-7.1 (1987). Payment of delinquent taxes at a tax sale cannot be used to establish the payment of taxes necessary to a successful claim of adverse possession. Otherwise, anyone purchasing property at a tax sale would be able to claim the number of years taxes had gone unpaid as a credit on the seven year period required for adverse possession. In addition, in contrast to Avisé, the quit claim deeds themselves establish that taxes were assessed and not paid during the years appellants claim to have established title by adverse possession. Therefore, we hold that appellants failed to sustain their burden of proving payment of taxes for the requisite seven year period, and the trial court correctly concluded that appellants did not acquire the property by adverse possession.

Prescriptive Easement

Appellants also assert that even if they do not have fee title to the property by adverse possession or chain of title, they have a prescriptive easement. Appellants are unclear as to what they claim flows from the alleged prescriptive easement. If they claim that a prescriptive easement, if established, would give them ownership rights in the underlying property, they err. See Osborn & Caywood Ditch Co. v. Green, 673 P.2d 380, 382 (Colo. Ct. App. 1983). A prescriptive easement does not result in ownership, but allows only use of property belonging to another for a limited purpose. North Union Canal Co. v. Newell, 550 P.2d 178, 179 (Utah 1976). A prescriptive easement "arises under our common law from a use

of the servient estate that is 'open, notorious, adverse, and continuous for a period of 20 years.'" Crane v. Crane, 683 P.2d 1062, 1064 (Utah 1984) (quoting Jensen v. Brown, 639 P.2d 150, 152 (Utah 1981)). The trial court concluded that appellants had not established a prescriptive easement.¹ A claimant of prescriptive easement must establish the necessary elements by clear and convincing evidence. Garmond v. Kinney, 91 N.M. 646, 579 P.2d 178, 178 (1978). Appellants not only had the burden of proof at trial, but on appeal are similarly required to marshal all evidence supporting the trial court's findings and then to demonstrate that the evidence, when viewed most favorably to the trial court, is insufficient. Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985). Appellants have not marshalled the evidence supporting the trial court's findings in connection with the issue of prescriptive easement. It further follows that on appeal, appellants are required to marshal evidence which would support each element required to prove their claim of prescriptive easement. For example, the trial court found that appellants' predecessors in interest worked for Silver King Coalition Mines Company, and were given permission by the company to build a house on the property in question. Appellants claim that this finding is not supported by the evidence but they do not provide other argument or reference to the trial record to establish that the use was "adverse," one of the required elements for prescriptive easement. Similarly, appellants have not compiled evidence which establishes the other necessary elements and have further failed to analyze what rights or claims to damages might flow from the alleged prescriptive easement. We will not consider conclusory arguments without citation to either the record or cases involving pivotal issues. Randall v. Salvation Army, 100 Nev. 466, 686 P.2d 241, 244 (1984). Therefore, we find that appellants did not establish a prescriptive easement to the property.

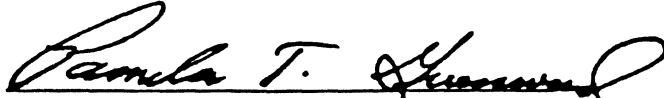
Laches and Estoppel

Finally, appellants assert that Park City is barred from claiming ownership of the property by laches and estoppel. Those issues were not raised in the trial court and, therefore,

1. The court also concluded that the prescriptive easement claim was barred by Utah Code Ann. § 78-12-5 (1987). However, in Morris v. Blunt, 49 Utah 243, 161 P. 1127 (1916), the Utah Supreme Court held that the predecessor section to the present code does not apply to actions for prescriptive easements.

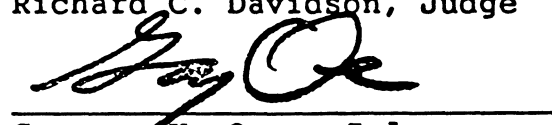
we decline to reach them. See James v. Preston, 746 P.2d 799,
801 (Utah Ct. App. 1987).

Affirmed.


Pamela T. Greenwood, Judge

WE CONCUR:


Richard C. Davidson, Judge


Gregory K. Orme, Judge

COVER SHEET

CASE TITLE:

Velma Marchant, et al.,
Plaintiffs and Appellants,
v.
Park City, a municipal corporation,
Jack Coppedge, and the State of Utah,
Defendants and Respondents.

Court of Appeals No. 880131-CA

PARTIES:

Robert Felton (Argued)
Speciale & Felton
Attorney for Plaintiffs and Appellants
310 South Main Street, Suite 1309
Salt Lake City, UT 84101

J. Craig Smith (Argued)
James Carter
Attorneys at Law for Defendants and Respondents, Park City Municipal
Corporation
P.O. Box 1480
Park City, UT 84060

R. Paul Van Dam
State Attorney General
Donald S. Coleman, Chief,
Physical Resources Division
Assistant Attorney General
Alan Bachman (Argued)
Assistant Attorney General
Attorneys at Law for Defendants and Respondent, State of Utah
B U I L D I N G M A I L

TRIAL JUDGE:

Honorable Leonard H. Russon

March 13, 1989. OPINION (For Publication)

This cause having been heretofore argued and submitted, and the
Court being sufficiently advised in the premises, it is now
ordered, adjudged and decreed that the judgment of the trial
court herein be, and the same is, affirmed.
Opinion of the Court by PAMELA T. GREENWOOD, Judge; RICHARD C.
DAVIDSON, and GREGORY K. ORME, Judges, concur.

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of March, 1989, a true
and correct copy of the foregoing OPINION was mailed or personally
delivered to each of the above parties.


Case Manager

TRIAL COURT:

Third District Court, Summit County, #7174

QUIT-CLAIM DEED.

~~XXXXXXXXXXXXXXXXXXXX~~

DAN McPOLIN and Belle McPolin, his wife, Grantors, of Park City, Summit County, Utah, hereby

QUIT-CLAIM to JESSE D. McCAPREL, Grantee, of the same place, for the sum of ONE HUNDRED TWENTY-FIVE & ~~no/100~~ the following described house and premises located in Park City, Summit County, Utah.

All the right, title and interest of the said Grantors of, in and to that certain one-story, frame, three roomed dwelling house situated on the easterly side on Silver Creek and about one hundred feet easterly from the lumber yard of the Summit Lumber Company.

Together with all the rights and priveleges of the said Grantors in the land on which said house stands and ~~the~~ immediately surrounding said house.

March, A. D. 1906.

In the presence of

L. D. Wright

Dan McPolin
Belle McPolin

EXHIBIT 2

State of Utah,)
(ss.
County of Summit.)

On this 19th day of March, 1906, personally appeared before me, Dan McPolin and Belle McPolin, his wife, the signers of the foregoing instrument, who duly acknowledged to me that they

L. D. Wright
Notary Public.

ENTRY NO. 27644.

QUIT CLAIM DEED

SUMMIT COUNTY a municipal corporation, grantor, of the State of Utah, hereby quit-claims to William Rolph, grantee of Park City, Summit County, State of Utah, for a sum of Twenty-eight & 68/100 Dollars, (\$28.68), the following described property in Park City, Summit County, Utah, to-wit:

Improvements East U. C. Tracks, Park City, Utah.

This deed is made from title secured from a certain tax sale in the year 1914 and by an auditors deed to Summit County, dated May 1st, 1914 and in accordance with Section 2605, compiled laws of Utah, 1907.

WITNESS the hand of said grantors, by its duly authorized clerk, this 10th day of June, A.D. 1914.

SUMMIT COUNTY

(SEAL)

By Moses C. Taylor Clerk.

STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

EXHIBIT 3

On this 10th day of June, A. D. 1914, personally appeared before me, Moses C. Taylor, who being by me duly sworn, did say that he is the County Clerk of Summit County, a municipal corporation of the State of Utah, that he executed the foregoing instrument in behalf of said Summit County and in accordance with a resolution of the Board of County Commissioners passed on the 3rd day of June, A. D. 1914, and said Moses C. Taylor, duly acknowledged to me that he executed the same.

(SEAL)

E. W. Farnsworth
County Recorder.

ENTRY NO. 27710.

QUIT CLAIM DEED

SUMMIT COUNTY, a municipal corporation, grantor of the State of Utah, do hereby quit-claims to William Rolfe, Grantee of Park City, Summit County, State of Utah, the sum of One and no/100 (1.00) Dollars, the following described property situated in Park City, Summit County, State of Utah, to-wit:

That certain frame dwelling house by Lumber Yard in Park City, Summit County, Utah, assessed to William Rolfe in the year 1912.

This deed is made under authority of Section 2655 compiled laws of Utah, as amended by Chapters 114 & 115, Laws of Utah 1911 and in pursuance of an order of the Board of County Commissioners of said County made on the 5th day of June, A. D. 1917.

WITNESS the hand of said grantor, by its duly authorized Clerk, this 21st day of June, A. D. 1917.

SUMMIT COUNTY

By A. C. Hortin, County Clerk.

STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

On this 21st day of June, A. D. 1917, A. C. Hortin, personally appeared before me and being duly sworn, did say that he is the County Clerk of Summit County, a municipal corporation of the State of Utah, and that he executed the foregoing instrument in behalf of said County by authority of a resolution of the Board of County Commissioners of said County, passed on the 5th day of June, A. D. 1917, and said A. C. Hortin acknowledged to me that he executed the same.

(SEAL)

Kate W. Kimball
County Recorder.

-----000-----

EXHIBIT 4

May 16, 1957

Mr Charles Rolfe
Oakley, Utah

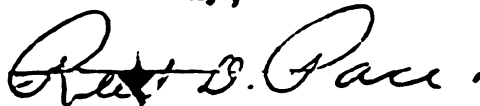
Dear Mr Rolfe,

I checked over the records on the tax situation of your fathers place in Park City, and Found that in 1938 a quit claim deed was issued by the county to your father for \$33.00 the receipt and everything was made out to William Rolfe Sr. So I have no way of knowing who paid that money.

From 1940 until 1954 the taxes were taken care of by widows abatement, by the county commissioners. In the year 1955 you paid the taxes of \$8.06 and in 1956 you paid the taxes in the amount of 7.33.

I hope this is the information that you want, but if I can help you any more please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Rex B. Pace". The signature is written in dark ink and is positioned above the printed name of the signatory.

Summit County Treasurer.

EXHIBIT 5

Entry No. 97001

TAX DEED

SUMMIT COUNTY, a body corporate and politic of the state of Utah, Grantor, hereby conveys to Charles Rolfe Grantee, of Oakley, Utah the following described real estate in SUMMIT COUNTY, UTAH:

House in lumber yard

This conveyance is made in consideration of payment by the Grantee of the sum of \$12.50 delinquent taxes, penalties, interest and costs, constituting a charge against said real state, which was sold to said County at preliminary sale for non-payment of general taxes assessed against it for the year 1958 in the sum of \$7.81.

DATED this 13th day of June 1963.

SEAL) (Seal)

SUMMIT COUNTY
By
Reed D. Pace, County Auditor.

* * * * *

Recorded at the request of County Clerk June 19 A.D. 1963 at 1:21 P.M.

Wanda Y. Spriggs, County Recorder

Entry No. 97003

Revenue Stamps \$3.85 (Cancelled)

QUIT-CLAIM DEED

Dr. Dan Oniki and K. Helen Oniki, his wife Grantors, of Salt Lake City, County of Salt Lake, State of Utah, hereby QUIT-CLAIMS to Pete Robert Toly and Mary Lou W. Toly, his wife as joint tenants with the right of survivorship and not as tenants in common, Grantees of Park City, Utah for the sum of Ten Dollars and other good and valuable consideration, the following described tract of land in Summit County, State of Utah:

and a in Block 28 of Snyders

EXHIBIT 2

COMMISSIONERS

CARLOS L. PORTER
ROY G. PAGE
G. MELVIN FLINDERS

Summit County

State of Utah

COALVILLE, UTAH

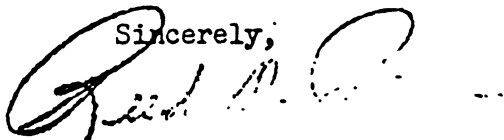
84017

REED D. PACE COUNTY CLERK
BLANCHE R. YOUNG TREASURER
WANDA Y. SPRIGGS RECORDER
ALAN D. FRANDSEN ATTORNEY
RONALD R. ROBINSON SHERIFF
LEO O. PRAZIER ASSESSOR

Aug. 31, 1972

This is to advise you that your application for abatement
of taxes for 1972 has been approved by the County Commissioners.
The abatement allowed will be shown on your Tax Notice.

Sincerely,



Reed D. Pace
Summit County Clerk.

Use of Structure

BUILDING FEE SCHEDULE

Demo
 1st Street Pacific Ave.
 Certificate No. Assessors Parcel No.

10007 | 8-4-81 | 561-8

Square Ft. of Building
☐ Rough Basement
☐ Finish Basement

Valuation 10000⁰²

Building Fees	20
Plan Check Fees	
Electrical Fees	
Plumbing Fees	
Mechanical Fees	
Water	
Sewer	
Storm Sewer	
Moving or Demo.	
Temporary Conn.	
Reinspection	
Total	20

Carport sq. ft. Demo
 Garage sq. ft. Demo
 Type of Bldg. *Detached*
 No. of Bldgs. *1*
 No. of Stories *1*
 No. of Bedrooms
 No. of Dwellings
 Type of Construction
☐ Frame ☐ Brick/Var.
☐ Brick ☐ Block ☐ Concrete ☐ Steel
 Max. Occ. Load
 Fire Sprinkler ☐ Yes ☐ No

Block * Subd. Name & Number
 Location *ND DEPOT*
 City Area - In Acres or Sq. Ft. Total Bldg. Site Area Used

Property *er Valley Resort* Phone *-8585*
 Address *BOX 889 PO 84060* City
 Site Address *al Street Land #4505* Business Lic. No.
 Engineer Phone

Tractor *oyd Brothers Const.* Phone
 State Lic. No. City/Co. Lic. No.

Tractor Phone
 State Lic. No. City/Co. Lic. No.

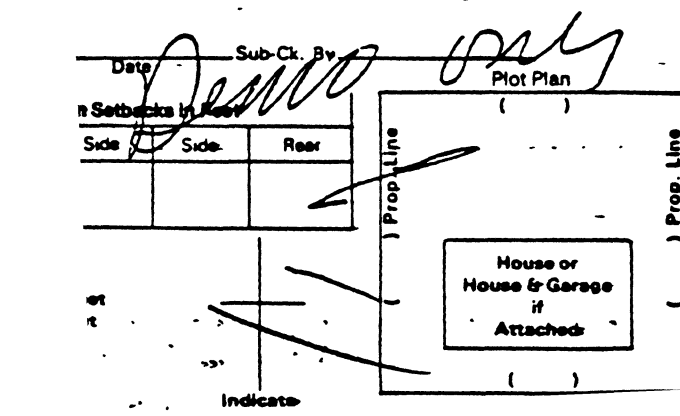
Tractor Phone
 State Lic. No. City/Co. Lic. No.

Tractor Phone
 State Lic. No. City/Co. Lic. No.

Year of Land or Structure (Past 3 yrs.)
 Now on Lot * Accessory Bldgs. Now on Lot

Permit/Kind of Const.
☐ Build ☐ Remodel ☐ Addition
☐ Move ☐ Convert Use ☒ Demolish

Parking spaces: Covered Uncovered
 HECK Zone *H-R-1* Zone Approved By *[Signature]*



Special Approvals

Required	Received	Not Req.
Board of Adjustment		
Health Dept.		
Fire Dept.		
Soil Report		
Water or Well Permit		
Traffic Engineer		
Flood Control		
Sewer or Septic Tank		
City Engineer (off site)		
Gas		

Comments: *Remove Building as per photo -*

Land Use Cert.
 Electrical Dept.
 HiBack C.G. & S.
 Other

Bond Required ☐ Yes ☐ No Amount

This application does not become a permit until signed below.

Plan Chk. OK by *[Signature]*

Signature of Approval *[Signature]* Date *8-4-81*

This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced. I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not the granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction and that I make this statement under penalty of perjury.

Signature of Contractor or Authorized Agent *[Signature]* **EXHIBIT B**

Signature of Owner (if owner) (Date)

Census Tract. Traffic Zone Coordinate Ident. No.

Merle Anderson

A Yes.

Q Or what is left of it, I guess?

A Uh-huh (yes).

Q Merl, do you have in your experience in your life, I take it you have been involved with building with your husband. You have any idea how much things cost, general idea?

A Quite a bit. We have done a lot of building.

Q Tell me what kind of building you have done?

A We built our house.

Q When you say "we" what do you mean?

A My husband and I.

Q After that?

A We have remodeled a number of homes. We have some rentals and we remodel them and work on them and replace things on them.

Q Do you have an opinion as to what it would cost to replace this structure?

A I am sure we couldn't replace it for 20,000.

Q It would be more than 20,000?

A It would be more than 20,000.

Q Is there any way -- obviously the building was destroyed and you didn't know about it when it was destroyed, did you?

A No.

EXHIBIT 9

J. CRAIG SMITH, #4143
JAMES W. CARTER, #0586
Park City Municipal Corporation
445 Marsac Avenue
P.O. Box 1480
Park City, Utah 84060
Telephone: (801)649-9321

IN THE THIRD DISTRICT COURT OF
SUMMIT COUNTY, STATE OF UTAH

VELMA MARCHANT, et al.)	
Plaintiffs,)	
)	
)	
v.)	JUDGMENT
)	
)	
)	
PARK CITY, a municipal)	Civil No. 7174
corporation, JACK)	
COPPEDGE, and the STATE)	Honorable Leonard H. Russon
OF UTAH,)	
Defendants.)	
)	

This matter came regularly for Trial on May 6, 1987 before the Court, the Honorable Leonard H. Russon presiding, the Trial concluded on May 7, 1987, after all parties had fully presented all evidence and argued their respective positions. The parties appeared through, and were represented by, their respective counsel, J. Craig Smith, Esq., Assistant City Attorney, and James W. Carter, Esq., City Attorney, for Defendant Park City Municipal Corporation, Alan Bachman, Esq., Assistant Attorney General

Exhibit 10

for Defendant State of Utah, and Robert Felton, Esq., for Plaintiffs, Velma Marchant, Leora Robinson, Wanda Penrod, Mona Liechty and Merle R. Anderson.

Evidence was received in the form of testimony, exhibit and stipulation, oral argument on the facts and law were made by respective counsel and legal memoranda were submitted.

Having given full consideration to the evidence admitted, the legal memoranda submitted, and the oral argument made, the Court having entered a Memorandum Decision and entered its Findings of Fact and Conclusions of Law does hereby Order, Adjudge and Decree as follows:

1. Plaintiff's Complaint, and each cause thereof, is dismissed with prejudice.

2. Fee ownership of the real property in question, which is particularly described as:

Beginning at a point which is North 407.38 feet West 41.39 feet of the Southwest corner of the Southeast one-quarter of the Northeast one-quarter Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian thence North $36^{\circ}40'9''$ West 71.46 feet; thence North $57^{\circ}29'15''$ East 77.50 feet; thence South $18^{\circ}58'45''$ East 70.93 feet; thence South $55^{\circ}6'25''$ West 55.77 feet to the point of beginning.

is quieted in the State of Utah free of any interest, lien, easement, or encumbrance of Plaintiffs.

3. Each party is to bear its own attorney's fees and costs of court.

4. This is a final and appealable judgment.

DATED this 4 day of ^{July}~~June~~, 1987.

BY THE COURT

s/ Homer F. Wilkinson
Leonard H. Russon
District Court Judge

Approved as to Form:

J. Craig Smith
J. Craig Smith, Esq.
Attorney for Defendant
Park City Municipal Corporation

Alan Bachman
Alan Bachman, Esq.
Attorney for Defendant
State of Utah

Robert Felton
Robert Felton, Esq.
Attorney for Plaintiffs

practice for Silver King Coalition Mines Company to allow miners to construct houses on real property the Company owned.

4. Plaintiffs' predecessors in interest worked for Silver King Coalition Mines Company and were permitted to construct a house on the real property in question.

5. The underlying real property in question was assessed by Summit County separately from the house located thereon claimed by Plaintiffs.

6. Defendant's predecessors in interest paid all real property taxes assessed against the underlying real property in question.

7. Neither Plaintiffs nor their predecessors in interest paid any taxes on the underlying real property in question.

8. Plaintiffs did not have possession of the real property in question for a period in excess of seven years prior to filing their complaint; it was abandoned, empty and open and in a state of deterioration and was rarely visited by Plaintiffs.

9. The chain of title through which Plaintiffs claim title to the real property in question is discontinuous.

10. The tax deeds through which Plaintiffs claim title were given by Summit County pursuant to unpaid tax delinquencies on the improvements located on the underlying real property in question.

11. The house which had been owned by Plaintiffs' predecessors was removed or demolished by a third party, not a party to this action.

12. Because of the abandoned and deteriorated nature of the house on the property Park City granted a demolition permit for the demolition of the house, on proper application, to a third party claiming ownership of the house.

13. There was no evidence presented as to the value of the house and no finding as to the value can be made without gross speculation.

14. Plaintiffs were aware of the destruction of the house prior to September 7, 1981.

15. No notice of claim was ever filed by the Plaintiffs against Defendant State of Utah.

16. Notice of claim was filed against Defendant Park City on September 20, 1982, more than one year after the Plaintiffs learned of the destruction of the house.

CONCLUSIONS OF LAW

1. The chain of title through which the Defendant State of Utah claims title is superior to the chain of title through which Plaintiffs claim title.

2. Plaintiffs' claim to title by deed to the underlying real property in question, fails due to insufficient descriptions in the claimed deeds and a lack

of continuity of Plaintiffs' claimed chain of title. Plaintiffs' title, if any, was to the house or improvements located upon the real property in question.

3. The tax deeds under which Plaintiffs claim title to the real property conveyed improvements only and had no effect on title to the underlying real property in question.

4. The tax deeds under which Plaintiffs claim title to the underlying real property in question add nothing to the title of the Plaintiffs'.

5. Adverse possession cannot be had against Defendant Park City, a political subdivision of the State of Utah, or against Defendant State of Utah pursuant to Utah Code Annotated § 78-12-13, 1953 as amended.

6. Plaintiffs' claim of title to the real property in question by adverse possession and claim of easement by prescription are barred by the applicable statute of limitations pursuant to Utah Code Annotated § 78-12-5, 1953 as amended.

7. Plaintiffs' claim against the State of Utah is barred by Plaintiffs' failure to comply with the Utah Governmental Immunity Act, Utah Code Annotated § 63-30-1, et. seq.

8. Plaintiffs' claims against Defendant Park City Municipal Corporation are barred by Plaintiffs' failure to comply with the Utah Governmental Immunity Act, Utah Code Annotated § 63-30-1, et. seq.

9. Plaintiffs' claim of adverse possession of the real property in question fails, pursuant to Utah Code Annotated § 78-12-12, 1953 as amended, for failing to show payment of all taxes which have been levied and assessed upon the real property in question according to law.

10. Plaintiffs' claims of adverse possession of the real property in question and of prescriptive easement fail since possession by Plaintiffs' predecessors in interest was not adverse to the interests of Defendants' predecessors in interest.

11. Plaintiffs' claim of prescriptive easement to the entire area of the real property in question fails as inapplicable to the facts of the case and concerns only use rather than possession of or title to real property.

12. Defendant Park City is not liable to Plaintiffs for issuing a demolition permit, based on proper application, notwithstanding whether the permit was wrongfully obtained or the demolition work unlawfully performed.

13. Plaintiffs have stated no claim against the State of Utah for the destruction of the house.

14. Plaintiffs' complaint, and each cause thereof, should be dismissed with prejudice and title to the real property in question should be quieted in the State of Utah free and clear of any interest, lien, easement, or encumbrance by Plaintiffs.

15. Plaintiffs are not entitled to any damages against Defendants.

Wherefore, let judgment be entered in favor of the Defendants and against the Plaintiffs in accordance with these findings of fact and conclusions of law.

Dated this 6th day of June, 1987

By the Court

s/ Homer
Leonard H. Russon
District Court Judge

Approved as to form:

J. Craig Smith
J. Craig Smith, Esq.
Attorney for Defendant
Park City Municipal Corporation

Alan Bachman
Alan Bachman, Esq.
Attorney for Defendant
State of Utah

Robert Felton
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STATUTES

1. § 78-12-5.2 U.C.A. (1953) - LIMITATION OF ACTIONS RE TAX
TITLES
2. § 78-12-5.3 U.C.A. (1953) - DEFINITION OF "TAX TITLE"
3. § 2655 COMPILED LAWS OF UTAH (1907) AND AMENDMENTS
4. § 80-3-1 U.C.A. (1943)
5. UTAH MARKETABLE TITLE ACTION §§ 57-9-2 and 57-9-3
U.C.A. (1953)

not applicable in a quiet title action by the other cotenants against the purchasing cotenant who attempted to exclude the other cotenants after the purchase. *Massey v. Prothero*, 664 P.2d 1176 (Utah 1983).

—Former record titleholders.

Where former record titleholders were obligated to pay the 1964 taxes on the real property but failed to do so and conveyed away all their interest and title in the property prior to the final or auditor's tax sale, and at such tax sale the former titleholders appeared and paid the delinquent taxes and purchased an auditor's tax deed, the former titleholders, by meeting their tax obligation at the tax sale, could not acquire any title or interest in the property beyond that which they already had, which

was no interest or title since they had conveyed away their interest and title prior to the tax sale; therefore, the former titleholders could not and did not purchase a tax title at the tax sale and were not entitled to the protection of the tax title statutes, §§ 78-12-5.1 to 78-12-5.3. *Dillman v. Foster*, 656 P.2d 974 (Utah 1982).

Validity of section.

This statute is a valid statute of limitations designed to validate tax titles. Although Laws 1951, ch. 58 repealed parent statute of Laws 1951, ch. 19, it did not repeal ch. 19. Under such circumstances it is not reasonable to assume that the legislature intended to repeal Laws 1951, ch. 19. *Hansen v. Morris*, 3 Utah 2d 310, 283 P.2d 884 (1955) (see Compiler's Notes, above).

COLLATERAL REFERENCES

Brigham Young Law Review. — Utah's Short Statutes of Limitation for Tax Titles: The Continuing Specter of *Lyman v. National Mortgage Bond Corp.* — A Need for Remedial Legislation, 1976 B.Y.U. L. Rev. 457.

Am. Jur. 2d. — 51 Am. Jur. 2d Limitation of Actions § 84 et seq.

C.J.S. — 53 C.J.S. Limitations of Actions § 42.

Key Numbers. — Limitation of Actions ⇐ 19(7).

78-12-5.2. Holder of tax title — Limitations of action or defense — Proviso.

No action or defense for the recovery or possession of real property or to quiet title or determine the ownership thereof shall be commenced or interposed against the holder of a tax title after the expiration of four years from the date of the sale, conveyance or transfer of such tax title to any county, or directly to any other purchase thereof at any public or private tax sale and after the expiration of one year from the date of this act. Provided, however, that this section shall not bar any action or defense by the owner of the legal title to such property where he or his predecessor has actually occupied or been in actual possession of such property within four years from the commencement or interposition of such action or defense. And provided further, that this section shall not bar any defense by a city or town, to an action by the holder of a tax title, to the effect that such city or town holds a lien against such property which is equal or superior to the claim of the holder of such tax title.

History: C. 1943, 104-2-5.10, enacted by L. 1951, ch. 19, § 2.

"Date of this act". — The term "date of this act," referred to in the first section, means the effective date of Laws 1951, Chapter 19, i.e., May 8, 1951.

Cross-References. — Marketable record title, § 57-9-1 et seq.

Occupying claimants, § 57-6-1 et seq.

Tax sales, § 59-10-29 et seq.

Superiority of tax title.**—Quitclaim deed.**

Quitclaim deed given to utility company's grantor which failed to show that the maker had any title to the land the deed purported to convey other than recital that such maker was the heir at law of the original owner did not convey title to the utility company's grantor and the utility company did not have any standing to challenge the title held by later purchaser of tax deed *State Rd Comm'n v Thompson*, 17 Utah 2d 412, 413 P 2d 603 (1966)

Tolling of statute.**—Previous quiet title action.**

Section 78-12-40 permitted defendants attacking a tax title in a quiet title action to prove tolling of the statute of limitations where, within one year previous, an action in which a similar claim had been asserted by plaintiffs was dismissed not on the merits *Thomas v Braffet's Heirs*, 6 Utah 2d 57, 305 P 2d 507 (1956)

COLLATERAL REFERENCES

Brigham Young Law Review. — Utah's Short Statutes of Limitation for Tax Titles The Continuing Specter of *Lyman v National Mortgage Bond Corp* — A Need for Remedial Legislation, 1976 B Y U L Rev 457

Am. Jur. 2d. — 72 Am Jur 2d State and Local Taxation § 1031 et seq

C.J.S. — 53 C.J.S Limitations of Actions § 42, 85 C.J.S Taxation § 966 et seq

Key Numbers. — Limitation of Actions ⇐ 19(7), Taxation ⇐ 803

78-12-5.3. Definitions of "tax title" and "action."

(1) The term "tax title" as used in § 78-12-5.2 and § 59-2-1364, and the related amended §§ 78-12-5, 78-12-7, and 78-12-12, means any title to real property, whether valid or not, which has been derived through or is dependent upon any sale, conveyance, or transfer of property in the course of a statutory proceeding for the liquidation of any tax levied against the property whereby the property is relieved from a tax lien.

(2) The word "action" as used in these sections includes counterclaims and cross-complaints and all civil actions wherein affirmative relief is sought.

History: C. 1943, 104-2-5.11, enacted by L. 1951, ch. 10, § 3; 1987, ch. 4, § 305.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, added the subsection designations and made a statutory reference change

Retrospective Operation. — Laws 1987, ch 4, § 307 provides that this section has retrospective operation to January 1, 1987

Cross-References. — Tax sales, § 59-10-29 et seq

NOTES TO DECISIONS

ANALYSIS

Invalid tax title**"Tax title"****—Failure to attach affidavit.****Invalid tax title.**

Tax title holders may avail themselves of the special statute of limitations provided for tax titles regardless of either the invalidity of their tax title or their inability to establish an affirmative claim to title apart from their tax title *Frederiksen v. LaFleur*, 632 P 2d 827 (Utah 1981)

"Tax title".**—Failure to attach affidavit.**

Failure of county auditor to attach his affidavit to county assessment roll did not void auditor's tax deed to county since term "tax title," as defined by this section, would indicate that Legislature intended to include within statutes of limitation tax titles which were initiated by tax sales the records of which would not show

CHAPTER 49.

SALE OF REAL ESTATE FOR TAXES

An Act to amend Section 2655, Revised Statutes of Utah, 1898, as amended by Chapter 76, Laws of Utah, 1905, relating to the sale of real estate for taxes and the distribution of the proceeds.

Be it enacted by the Legislature of the State of Utah:

SECTION 1. Section Amended. That Section 2655. [Revised Statutes of Utah, 1898], as amended by Chapter 76, Laws of Utah, 1905, be and the same is hereby amended to read as follows:

2655. Real Estate Deed to County to be Sold at Auction. Whenever a county has received a tax deed for any real estate sold for delinquent taxes, the Board of County Commissioners, shall, during the month of May in each year, after giving the statutory notice, offer for sale at the front door of the County Court House, at the time specified in the notice, all such real property not heretofore sold or redeemed; *provided*, that in cases where the description of such real estate is so defective as to convey no title, such real estate shall not be so offered. The County Clerk is authorized to execute deeds therefor in the name of the county and attested by his seal, vesting in the purchaser all of the title of the State, of the County, and of each city, town, school, or other taxing districts interested, in the real estate so sold. The money arising from such sale must be paid into the County Treasury, and the Treasurer must settle for the same as in the case of money received for redemption, as provided in the next preceding section. The Board of County Commissioners may at any time after the period of redemption has expired and before the property has been deeded to the county or sold as herein provided, permit a redemption from any sale where the property has been sold to the county, but in no case for a less sum than the tax, interest and costs. All property for which there is no purchaser at the sale provided for in this section, shall thereafter be disposed of on the day of the first regular meeting of the Board of County Commissioners in any month, at either public or private sale as the said board may determine, and the money received therefor shall be apportioned as in the manner of tax sales redemptions.

Approved this 14th day of March, 1907..

empowered to do any and all things necessary to make a full and complete investigation of the matters and things hereinabove enumerated and to that end to employ the necessary clerical assistance, and to provide the necessary office room, stationery, printing, blank forms and other incidental matters required to carry into effect the provisions of this Act.

Sec. 6. Appropriation. There is hereby appropriated out of the General Fund not otherwise appropriated, the sum of Six Thousand Dollars, or so much thereof as may be necessary for the purposes of this Act.

Sec. 7. Repeal. That Sections 2427x, 2427x1 and 2427x3, Compiled Laws of Utah, 1907, are hereby repealed.

Sec. 8. This act shall take effect upon approval.

Approved March 20th, 1911.

CHAPTER 114.

COLLECTION OF TAXES.

An Act to amend Sections 2621, 2642, 2644, 2653, 2654 and 2655, Compiled Laws of Utah, 1907, relating to the sale of real estate for delinquent taxes, tax-sale records and duplicates thereof to be furnished to the State Auditor; providing that taxes erroneously assessed or collected may be refunded or allowed by the Board of County Commissioners; requiring the reassessment of property not sold because of irregularity of assessment; authorizing County Commissioners to accept a sum less than taxes, interest and cost in certain tax sales; providing for the distribution of the proceeds from tax sale redemptions; and providing for the sale of real estate held by the county under tax deed and for settlement therefor.

Be it enacted by the Legislature of the State of Utah:

SECTION 1. Sections Amended. That Section 2621, 2642, 2644, 2653, 2654 and 2655, Compiled Laws of Utah, 1907, be and the same are hereby amended to read as follows:

2621. Sale for Delinquency. Record. On the third Monday of December of each year, the treasurer shall expose for sale between the hours of ten a. m. and three p. m. sufficient of such delinquent real estate to pay the taxes and costs, at public auction, at the front door of the county court house, and sell the same to the highest responsible bidder for cash, and the treasurer shall continue to sell from day to day between such hours until the property of such delinquent is exhausted or the taxes

and costs are paid. The treasurer shall make a record of all sales of real property in a book to be kept by him for that purpose, therein describing the several parcels of real property on which the taxes and costs were paid by the purchasers, in the same order as the published list of delinquent sales contained in the list of advertisements on file in his office, stating in separate columns the amount as obtained from the tax list of each kind of tax and costs for each tract or lot, how much and what part of each tract or lot was sold, to whom sold and the date of sale. A separate column shall also be provided in said record, in which the treasurer shall enter the date of redemption. When all the sales shall have been made, the treasurer shall file the record in his office; provided, that in all counties there shall be adopted a uniform system of tax sale record, which shall be recommended by the state auditor, and that a duplicate of said record of each county shall be furnished by the county treasurer to the state auditor, in loose leaf or bound form as may be directed by the state auditor, and to which shall be added the subsequent taxes of each succeeding year, together with the redemptions as reported to the state auditor by the treasurers of the various counties, upon blanks to be prescribed by the state auditor.

2642. **Erroneous and Illegal Taxes Refunded.** Any taxes, interest and costs paid more than once or erroneously or illegally collected, may by order of the board of county commissioners be refunded by the county treasurer, and the portion of such taxes, interest and cost of the state, cities and school districts, must be refunded to the county, and the proper officer must draw his warrant therefor in favor of the county: provided that the board of county commissioners upon sufficient evidence being produced that property has been erroneously or illegally assessed, may order the county treasurer to allow the taxes on that part of property erroneously or illegally assessed, to be deducted before payment of the said taxes.

2644. **Sale Omitted for Irregularity.** If the treasurer discovers before the sale that on account of any irregular assessment or of any other error any land ought not to be sold, he must not offer that land for sale; and the board of county commissioners must cause the assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, on the basis of the valuation and rates of the year for which it was erroneously assessed, to be collected as other taxes are collected thereon.

2653. **Redemption.** In case property is sold to the county as purchaser pursuant to section 2623 and is subsequently assessed pursuant to section 2651, no person must be permitted to redeem from such sale except upon payment also of the amount of such subsequent assessment, interest and costs, unless in the judgment of the county commissioners the interests of the State and the county will be

subservd by accepting a less sum than the amount due for taxes, interests and costs.

2654. Distribution of Money Received for Redemption. Whenever property sold to the county pursuant to the provisions of this title is redeemed or the certificate of sale is assigned as herein provided, the moneys received on account of such redemption or assignment must be distributed as follows: The original and subsequent taxes, and forty per cent. of interest and costs of sale and cost of advertising received must be apportioned to the state, county, city, town, school district, and other taxing districts interested, in the proportion of their respective taxes, and the balance must be paid to the county; provided that in all cases where a sum less than the taxes, interest and costs is accepted in settlement, the proceeds of such settlement shall be applied, first to the payment of the original and subsequent taxes, and the remainder, if any there be, to the payment of interest and costs. The county treasurer must keep an accurate account of all moneys paid in redemptions of property sold to the county and for assignments of certificates of sale thereof, and must, on the first Monday of March in each year, or at such other time as the state auditor may direct, make a detailed report, verified by his affidavit of each account, year for year, to the state auditor, in such form as the state auditor may desire. Whenever the county receives from the county auditor any grant of property so sold for taxes, the same shall be recorded, at the request of the county auditor, free of charge by the county recorder, and shall be immediately reported by the county auditor to the board of county commissioners.

2655. Real Estate Deed to County to be Sold at Auction. Whenever a county has received a tax deed for any real estate sold for delinquent taxes, the board of county commissioners shall during the month of May in each year, after giving the statutory notice, offer for sale at the front door of the county court house, at the time specified in the notice, all such real property not heretofore sold or redeemed; provided, that in cases where the description of such real estate is so defective as to convey no title, such real estate shall not be so offered. The county clerk is authorized to execute deeds therefor in the name of the county and attested by his seal, vesting in the purchaser all of the title of the State, of the county, and of each city, town, school or other taxing district interested, in the real estate so sold. The money arising from such sale must be paid into the county treasury, and the treasurer must settle for the same as in the case of money received for redemption, as provided in the next preceding section. The board of county commissioners may, at any time after the period of redemption has expired and before the sale as herein provided, permit a redemption from any sale where the property has been sold to the county. All property for which there is no purchaser at the sale provided for in this section shall there-

CHAPTER 3

DEFINITIONS

80-3-1. "Property," "Real Estate," "Improvements," "Personal Property," "Value," Defined.

In this title, unless the context or subject matter otherwise requires:

(1) "Property" means property which is subject to assessment and taxation according to its value, and does not include moneys, credits, bonds, stocks, representative property, franchises, good will, copyrights, patents, or other things commonly known as intangibles.

(2) "Real estate" includes

(a) The possession of, claim to, ownership of or right to the possession of, land.

(b) All mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining thereto.

(c) Improvements.

(3) "Improvements" includes all buildings, structures, fixtures, fences and improvements erected upon or affixed to the land, whether the title has been acquired to the land or not.

(4) "Personal property" includes

(a) Every class of property as defined in subsection (1) hereof which is the subject of ownership and not included within the meaning of the terms "real estate" and "improvements."

(b) Gas and water mains and pipes laid in roads, streets or alleys.

(c) Bridges and ferries.

(5) "Value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

(L. 31, p. 123, §§ 5865, 5893, 5894.)

History.

This section was R. S. 1898, § 2505; Comp. Laws 1907, § 2505.

Cross-references.

Constitutional provision, Const. Art. XIII, § 2; railroad rolling stock, etc., as personalty, Const. Art. XII, § 14.

1. Double taxation.

This section as it formerly read, and Art. XIII, § 2 of the Constitution of this state prior to its amendment in 1930, forbade double taxation. *McCornick & Co. v. Bassett*, 49 U. 444, 164 P. 852, applying Comp. Laws 1907, §§ 2505-2509.

But "double taxation means taxing the same property twice." *Stillman v. Lynch*, 56 U. 540, 551, 192 P. 272, 12 A. L. R. 552.

When property of corporation has been taxed, its stock is nontaxable. *Stillman v. Lynch*, 56 U. 540, 192 P. 272, 12 A. L. R. 552.

The taxation of title retaining notes and conditional sales agreements does

not amount to double taxation. *Stillman v. Lynch*, 56 U. 540, 192 P. 272, 12 A. L. R. 552.

2. "Property."

The term "property," as defined by Comp. Laws 1907, § 2505, included not only money, but credits, etc. In *re Thourot's Estate*, 52 U. 106, 110, 172 P. 697.

3. "Real estate."

An engine and boiler built into a brick foundation, and firmly affixed by bolts leaded down and used in underground workings of a mine, are included in term "real estate." *Mammoth Min. Co. v. Juab County*, 10 U. 232, 37 P. 343.

4. "Value."

Under subdivision (5) of this section, the market value, and not the asset value, should have been taken as the basis for assessment of bank shares. *Continental Nat. Bank of Salt Lake City v. Naylor*, 54 U. 49, 63, 179 P. 67.

History: C. 1953, 57-8-36, enacted by L. 1975, ch. 173, § 19.
 Condominium Ownership Act. — See § 57-8-1 and notes thereto.
 Meaning of "amendments". — The term "amendments," referred to throughout this sec-

tion, means those amendments made by L. 1975, ch. 173, §§ 1 through 19, which now appear as §§ 57-8-3, 57-8-6, 57-8-7, 57-8-10, 57-8-13 through 57-8-14, 57-8-16.5, 57-8-18, 57-8-24, 57-8-27, 57-8-32.5, 57-8-35, 57-8-36

CHAPTER 9

MARKETABLE RECORD TITLE

Section	Section
57-9-1. What constitutes marketable record title.	57-9-5. Notice of claim of interest — Contents — Filing for record.
57-9-2. Rights and interests to which marketable record title is subject	57-9-6. Applicability of provisions.
57-9-3. Marketable record title held free and clear of interests, claims and charges.	57-9-7. Existing statutes of limitations and recording statutes not affected
57-9-4. Filing of notice of claim of interest authorized — Effect of possession of land by record owner of possessory interest.	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 any interest in land for forty years or more, shall be deemed to have a marketable record title to such interest as defined in § 57-9-8, subject only to the matters stated in § 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.

History: L. 1963, ch. 109, § 1.

NOTES TO DECISIONS

ANALYSIS

Adverse possession.

Boundary by acquiescence.

Adverse possession.

City's continuous possession and use of canal for over ninety years and use of the land on both sides thereof in the maintenance of the

canal, established title in such land by adverse possession; possession was hostile in that it was of such a character that ownership could be inferred therefrom; city acquired title de-

spite non-payment of taxes due to the acquisition of title prior to the enactment of the statute requiring payment of taxes as a condition of obtaining the title to land. State ex rel. Road Comm'n v. Cox Corp., 29 Utah 2d 127, 506 P.2d 54 (1973).

Boundary by acquiescence.

Marketable Record Title Act did not apply to defeat fundamental doctrine of boundary by acquiescence established in the defendants in a quiet title action. Olsen v. Park Daughters Lav. Co., 29 Utah 2d 421, 511 P.2d 145 (1973).

COLLATERAL REFERENCES

Brigham Young Law Review. — Public Land Law Reform — Reflections from Western Water Law, 1982, B.Y.U. L. Rev. 1, 20.

Installment Land Contracts — The National Scene Revisited, 1985 B.Y.U. L. Rev. 1.

Am. Jur. 2d. — 77 Am. Jur. 2d Vendor and Purchaser § 123 et seq.

C.J.S. — 92 C.J.S. Vendor and Purchaser §§ 189-200.

A.L.R. — Construction and effect of "marketable record title" statutes, 31 A.L.R.4th 11.

Key Numbers. — Vendor and Purchaser 130.

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

The marketable record title shall be subject to:

(1) All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided, however, that a general reference in such muniments or any of them, to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such 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 forty years or more, in accordance with § 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; 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 § 57-9-3.

(5) The exceptions stated in § 57-9-6 as to rights of reversioners in leases, as to apparent easements and interests in the nature of easements, and as to interests of the United States.

History: L. 1963, ch. 109, § 2.

NOTES TO DECISIONS

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City's continuous possession and use of canal for over ninety years and use of the land on both sides thereof in the maintenance of the canal established title in such land by adverse possession; possession was hostile in that it was of such character that ownership could be inferred therefrom; city acquired title despite nonpayment of taxes due to the acquisition of title prior to the enactment of the statute re-

quiring payment of taxes as a condition of obtaining the title to land. *State ex rel. Road Comm'n v. Cox Corp.*, 29 Utah 2d 127, 506 P.2d 54 (1973).

Boundary by acquiescence.

Marketable Record Title Act did not apply to defeat fundamental doctrine of boundary by acquiescence established in the defendants in a quiet title action. *Olsen v. Park Daughters Inv. Co.*, 29 Utah 2d 421, 511 P.2d 145 (1973).

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

Subject to the provisions of § 57-9-2, 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. All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether such interests, claims or charges are asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be void.

History: L. 1963, ch. 109, § 3.

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