

1988

Velma Marchant, Elma Winterton, Leora  
Robinson, Wanda Penrod, Mona Lichty, and Merle  
Anderson v. Park City and the State of Utah : Reply  
Brief

Utah Supreme Court

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#### Recommended Citation

Reply Brief, *Velma Marchant v. Park City*, No. 880131.00 (Utah Supreme Court, 1988).  
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BRIEF

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DOCKET NO. 88-0131-CA IN THE SUPREME COURT OF THE STATE OF UTAH

\* \* \* \* \*

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

Plaintiffs-Appellants, )

vs. )

PARK CITY, a municipal corpora- )  
tion, and THE STATE OF UTAH, )

Defendants-Respondents. )

88-0131-CA

Case No. 870320  
14-b

\* \* \* \* \*

REPLY BRIEF OF APPELLANTS

\* \* \* \* \*

APPEAL FROM THE JUDGMENT OF THE THIRD  
JUDICIAL DISTRICT COURT OF SUMMIT COUNTY

\* \* \* \* \*

THE HONORABLE LEONARD RUSSON, JUDGE

\* \* \* \* \*

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FILED

JAN 8 1988

Clerk, Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATEMENT OF FACTS

Since the filing of the Appellants' Brief in this action, the Utah Court of Appeals has handed down a decision which materially affects this action and which requires emphasis on some of the specific facts as to the Plaintiffs' possession of the Park City home. The issue of possession and abandonment materially relates to the statutes of limitations (including adverse possession statutes), tax title and estoppel issues raised in the primary Briefs.

Respondent's Brief states that the first date of possession claimed by the Plaintiffs was 1925 (Respondent's Brief p.8). This is a misstatement of fact. The unrefuted testimony of the Plaintiff, Merle Anderson, was, that to her personal knowledge, her parents had resided in this home and on this property since at least 1910 (T. p.40).

The first Tax Deed (Ex. 5) to William Rolfe is dated 1914. There is no dispute that the possession of the Plaintiffs, their families and their tenants continued uninterrupted until 1964 and that the home was not actually used as a residence for some years after that. However, because of the pronouncement by our Court of Appeals in **Adair v. Bracken**, 70 Ut. Adv. Rpts. 39 (1987) the activities of the Plaintiff subsequent to 1964 also reflect their intent that this property belongs to them.

After 1964, one or more of the Plaintiffs visited or went to the Park City property at least once a year (T. p.65). Thereafter, the Plaintiffs continued to treat the property as their own and continued to "possess" it, as evidenced by the testimony of Merle Anderson. That testimony is summarized in pages 53-61 of the Transcript which are attached to this Reply Brief. That testimony demonstrates:

1978 - Park City Building Inspector wrote the Plaintiff to rehabilitate the property (T. p.53, Ex. 17). Park City was told that the property was going to be cleaned up, not to tear the house down and that Plaintiffs wanted to take care of the property.

In the late 70s and early 80s, the Plaintiffs were involved in the property a lot.

After 1980 one of the Plaintiffs, Merle Anderson, commenced keeping notes about the activities. The action as reflected by those notes included: July, 1980 putting in a new floor (T. p.57); July 24 1980 putting on a roof (T. p.58); July 26, 1980 attempting to get the

electricity turned on (T. p.58); July 11, 1980 contacting an attorney, Robert Orton, regarding transfer of the title of the property (T. p.58); August 11, 1980 getting an engineer and arranging for a survey (T. p.58); August 19, 1980 talked to Park City about the survey (T. pp. 58-59); August 28 1980 contacted person about the survey and the title company as well as an attorney (T. p.59); September 1, 1980 went to Park City to install electric pipe (T. p.59); September 2, 1980 called Park City Power and Light to have power turned on (T. p.59); September 2, 1980 called Park City and the Building Inspector for inspection (T. p.59); August, 1982 called Mr. Felton, attorney (T. p.60); August, 1982 visited property (T. p.60); September, 1982 went to Salt Lake to see about letter to the City after discovering the property was demolished.

In addition to this involvement, it is important to note that, aside from this litigation, no one has ever asserted any property interest in this yard and home, nor has anyone ever said that the Plaintiff and their family did not own the property (T. p.61) for 70 years.

The Court also found that the Plaintiffs' predecessors worked for Silver King Coalition Mines and were permitted to occupy the premises. The testimony relied upon by the Defendants was from Mr. Ed Osika and is found on Page 174 of the Transcript (Respondents' Brief, p. 23). A copy of Page 174 is attached to this Brief. Mr. Osika's testimony was:



"I am aware that there were situations that did occur, but I have no real personal knowledge of early history in that regard."

Also, Silver King Coalition Mines did not even claim any interest until 1927, at least 17 years after Mr. Rolfe had acquired this property. Plaintiffs had no knowledge that their grandfather, grandmother, or father ever worked for any mining company.

Defendants agree with the Plaintiffs' position that there are no records or evidence that anyone other than Plaintiffs' grandfather, William Rolfe, paid the real property taxes before 1931 (Respondents' Brief, p. 9).

Plaintiffs requested the Trial Court to amend its Findings and Conclusions (R. pp.374-377, Addendum 3) and to make additional findings as to estoppel and possession. The Court summarily refused to consider any of the issues raised in that Motion (Addendum).

#### ARGUMENT

##### I.

PLAINTIFFS' POSSESSION HAS BEEN CONTINUOUS SINCE AT LEAST 1910 AND THERE WAS NO ABANDONMENT OF THE PREMISES

The issue of the possession of the premises by the Plaintiffs is fundamental to a majority of the defenses raised by the Respondents, especially since the Court adopted the position that it would compute the relevant time periods back from the time of trial rather than evaluate the vesting of title commencing from the date of first possession, which was at the turn of the century.

The Utah Court of Appeals in **Adair v. Bracken**, 70 Ut. Adv. Rpts. 39 (1986) evaluated abandonment of real property and, at page 40 stated:

"On the other hand, evidence that support a finding that Appellants did not intentionally abandon their contractual rights and interest is substantial. Jane Adair testified that they visited the land "many times" between March, 1981 and May, 1984. She provided several specific examples, including camping on the land during a family reunion in 1982, snowmobiling there two times one year, and once the other two years, and spending a weekend or week there each summer. The Adairs also gave their sister their proxy to vote as landowners at a June, 1983 organizational meeting to discuss a proposed water users association.

These actions can only be regarded as unequivocal expressions of the Adairs' intent to use the property and not abandon their contractual interest in it.

\* \* \* \* \*

We therefore conclude that the Court's finding of abandonment is against the clear weight of the evidence and, as such, is clearly erroneous and must be set aside."

There is a striking similarity in the actions of the Plaintiffs' family and the Adair family. The unequivocal expression of intent of the Plaintiffs was that they owned the property and continue to do so to this day. This is substantially buttressed by the fact that even the Defendant, Park City, recognized their ownership interest and sent them letters asking them to fix the property (Exs. 16 and 17, T. p.53).

## II.

TITLE UNEQUIVOCALLY VESTED IN PLAINTIFFS'  
PREDECESSORS PURSUANT TO ADVERSE POSSESSION  
STATUTES OR PLAINTIFFS' USE IS PRESCRIPTIVE

The issue of adverse possession under our statute is

addressed in Appellants' Brief and will not be reargued here except as to a new decision by this Court.

Respondents agree that there is no evidence that anyone other than the Plaintiffs' predecessors paid any property taxes on the underlying real estate, or otherwise, prior to 1931 (Respondents' Brief, p.9). In 1917 Plaintiffs' grandfather, William Rolfe, received a tax deed from Summit County which recites payment of some taxes (Ex. 5). Both parties agree that this is the only available evidence of payment of taxes before 1931.

Respondents argue that the case of **Park West Village v. Avise**, 714 P.2d 1137 (Utah, 1986) does not apply to this case. In **Royal Street Land Company v. Reed**, 739 P.2d 1104 (Utah, 1987) this Court reaffirmed the **Avise** case and stated:

"We recently held in **Park West Village, Inc. v. Avise**, 714 P.2d 1137 (Utah, 1986) that an adverse possessor meets the requirements of § 78-12-12 to pay all taxes which have been levied and assessed if he pays all taxes levied and assessed on the improvements when no taxes are levied and assessed on the surface of the land."

The unrefuted testimony is that all taxes which were levied and assessed were paid by William Rolfe and his possession was open and notorious. The requirements of the adverse possession statute were met and title vested prior to any other party paying taxes. Once the fee title to the property is vested (1917) all of the other actions are irrelevant and cannot defeat the perfected, statutory title of the Plaintiffs.

Even if the Court finds that taxes were not paid, the trial court conclusion that prescriptive use did not apply is clearly an error which requires reversal. Prescriptive rights in the

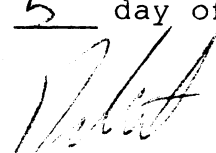
property may be acquired after adverse use of 20 years, **Lund v. Wilcox**, 34 Utah 205, 97 P.33 (1908) and the payment of taxes is not required to establish such use **Pace v. Jerman**, 684 P.2d 56 (Utah, 1984).

#### CONCLUSION

The underlying defect with the Trial Court's decision was its misapprehension of the historical facts in this case as applied to the law and the controlling decision of **Park West Village v. Avise**, 714 P.2d 1137 (Utah, 1986) which resolved the exact same issue as to the contiguous property.

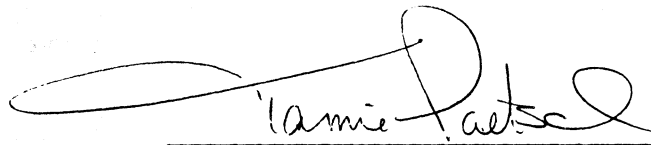
Plaintiffs' family have lived and treated this property as their own since the turn of the century, without interference. Park City treated the property as belonging to the Plaintiff, and inquiries with the County by members of the Plaintiffs' family verified payment of taxes and the fact that the County knew and treated Plaintiffs as the owners. Only when the property became important to the State of Utah, some 70 years later, because they need it for a right-of-way, do the Defendants assert some interest. Even then, they do not assert that interest by requesting a declaratory judgment action or filing a condemnation proceeding, they simply hire someone to destroy the home and proceed with their roadwork, thereby leaving the Plaintiffs (ages 60 to 80), to do the best they can.

RESPECTFULLY SUBMITTED this 5 day of January, 1988.

  
Robert Felton

**MAILING CERTIFICATE**

I certify that I mailed four (4) true and correct copies of the foregoing REPLY BRIEF OF APPELLANTS by United States first-class mail, postage prepaid, to J. Craig Smith, P.O. Box 1480, Park City, Utah 84060 and to Alan Bachman, 236 State Capitol, Salt Lake City, Utah 84114 on the 4 day of January, 1988.

  
\_\_\_\_\_

**TRANSCRIPT**

**Pages 53 through 61**

1 Q Who did the letter identify Mr. Scanter as?

2 A He was someone who wrote to us from the Park  
3 City Building Inspector.

4 Q Do you have a copy of his letter? Do you know?

5 A I can't remember. It seems like we did have a  
6 copy. Whether we lost it, I think we did.

7 Q Let me show you -- is this what you mean?

8 A Yes.

9 Q This is the other letter?

10 A Uh-huh (yes).

11 Q This is Exhibit 17, the date appearing on that  
12 is April of '79?

13 A Yes.

14 Q This is '78. You have any other letters?

15 A I think the one from this one we probably lost  
16 track of.

17 Q Can you recall what the letter was about?

18 A I think he just told us that the property needed  
19 to be fixed up or we had to do something. They were going  
20 to try to clean up Park City, so we were going to try to  
21 clean it up, too.

22 Q And that was the purpose of this letter?

23 A Yes.

24 Q And what was the reason you wrote this letter?

25 A Told him not to tear it down, we wanted to take

1 care of it.

2 Q Let me show you what has been marked Plaintiffs'  
3 Exhibit 17 and ask you if you can identify that letter?

4 A This is another letter from Scanter. It came to  
5 mother.

6 Q There is some writing on the back of this exhibit.  
7 Do you know who wrote that?

8 A I am sure I must have written this on here. This  
9 letter was sent to mother, Ethel Rolfe, in Oakley, Utah.

10 Q And where did you find this letter?

11 A In the documents.

12 Q Did you reply to this letter?

13 A I don't remember whether I did or not.

14 MR. FELTON: We would move admission of Plaintiffs'  
15 Exhibit 17, Your Honor.

16 MR. SMITH: We are going to object on foundation,  
17 Your Honor.

18 THE COURT: Why does it lack foundation? Who is  
19 it from?

20 MR. FELTON: Mr. Scanter.

21 THE COURT: Park City.

22 MR. SMITH: It purports to be a letter from the  
23 City. I suppose we can object on hearsay. It is being  
24 admitted to prove something and the person is not here  
25 to identify he wrote the letter, or wrote the letter or



1 signed the letter.

2 THE COURT: Objection is sustained.

3 Q (By Mr. Felton) Merl, in late, early-late 70's,  
4 or early 80's, were you involved in this property a lot?

5 A Yes. We were the one -- my family was the one  
6 that was really working on it to get it fixed up.

7 Q I should have it marked. It wasn't marked,  
8 I am sorry. And at that time were you also talking with  
9 people about the property? People in Park City or people  
10 other places?

11 A We tried to get -- we talked to Park City about  
12 it, about getting the lights turned on. We went up there.  
13 We re-wired the house.

14 MR. SMITH: Your Honor, could I voir dire the  
15 witness?

16 THE COURT: You may.

17 MR. SMITH: Could you tell me who you talked to  
18 at Park City about the electricity?

19 THE WITNESS: Yes.

20 MR. SMITH: Could you please tell me?

21 THE WITNESS: I went right to the Utah Power and  
22 Light office, I am sorry.

23 MR. SMITH: Thank you, Your Honor. That is the  
24 point I am trying to bring out. Park City has never had  
25 an electrical utility.

1 THE WITNESS: That is right.

2 MR. FELTON: I will object to that.

3 THE COURT: That probably should have been  
4 brought out on cross examination. If you had an objection  
5 as to foundation, that is what it should have been.

6 MR. SMITH: No objection, Your Honor.

7 THE COURT: Sometimes we get those things mixed  
8 up, but that testimony is in.

9 Q (By Mr. Felton) Merl, do you have a real fresh  
10 recollection about everything you did at this time?

11 A No, if I hadn't written down a few things, I  
12 wouldn't remember. It is hard to remember dates and all of  
13 this.

14 Q Let me show you Plaintiffs' Exhibit 41 and ask  
15 you if you can identify this?

16 A This is a little log I wrote down, kind of keeping  
17 track of times we went up to Park City. And sometimes I  
18 wrote it down and sometimes I didn't.

19 Q As to the dates and the actions reflected on  
20 that exhibit, were those made on or about the time identified?  
21 When I say --

22 A Pretty much so. I tried to write it down then.

23 Q If you look at that, does that document refresh  
24 your memory as to why you wrote those down and the subject  
25 matter of each of those recollections?

1           A     Yes, it kind of refreshes my memory.

2           Q     Would you read it, please?

3           A     It says --

4           Q     You have got to start at the first, though.

5           THE COURT: Let's take a recess. We have been  
6 going quite a while and Dorothy needs a rest. Let's take  
7 a ten-minute recess at this time.

8           (At 10:55 a.m. Court recessed until approximately  
9 11:05 a.m.)

10          THE COURT: Let the record show that the Court  
11 just had a conference with counsel in chambers and the  
12 Court in regards to 14, Exhibit 14, has on further  
13 consideration felt that it should reserve its ruling as  
14 to whether or not 14 will be received, and the record  
15 should now reflect that Exhibit 14-P is not received.  
16 However, the Court has it under consideration. Okay, you  
17 may proceed.

18          MR. FELTON: Thank you, Your Honor.

19          Q     (By Mr. Felton) Merl, would you read the notes  
20 that you have previously identified?

21          A     "1980, July: Val and Narvel went to Park City  
22 to put in the floor in the front room."

23          Q     Who are these people?

24          A     Val is my oldest son and Narvel is my husband,  
25 Narvel Anderson.

1           Q     To expedite this, if they are going somewhere  
2     and doing something is that the property in question?

3           A     That is the property we are talking about here.

4           Q     Go on.

5           A     " -- front room and roof."

6                 "July 24: Val, Narvel and Vance." Val Anderson  
7     is my eldest son, Narvel my husband and Vance Anderson my  
8     second son put on the rest of the roof. These are our  
9     boys from California. These two eldest ones.

10                July 26: "We are up to Park City to see about  
11     why they haven't turned on the electricity."

12                July 11: "Talked to Attorney Orton on Park City  
13     property about getting the probate into mother's name. He  
14     said to get back to him. It would depend on how much the  
15     property was worth."

16                "August 11: "Went to Oakley and took mother to  
17     Park City to see engineer, to see property, to have it  
18     surveyed, talked to Jan's assistant."

19                August 15: "Called Steve Beker in Park City to  
20     find out cost. He will call me back."

21                August 15: "Steve Beker called Sean," that is  
22     our son at home, "while we were gone to the temple. And  
23     he said for us to call him back. I called but he had  
24     left on an errand."

25                August 19: "Went to Park City to see about survey."

1                   August 28: "Went to see Harold Styles about  
2 survey and also title company. Paid Styles \$200 to  
3 start the survey. Also got back to the deed from Lawyer  
4 Christiansen."

5                   Monday, Labor Day, September 1st: "Went to Park  
6 City to put up new rigid pipe for electricity."

7                   Tuesday September 2nd: "Called Park City, Utah  
8 Power and Light, to have lights turned on."

9                   Q     That was all 1980?

10                  A     That was all in 1980. And now this is still 1980.

11                  August 5: "Went to Coalville, took mother, talked to  
12 Attorney Christiansen about probate."

13                  August 7: "Called Christiansen's office. He  
14 was not in."

15                  Q     Is that Terry Christiansen you are referring  
16 to?

17                  A     Here (indicating).

18                  Q     The Assistant Summit County Attorney?

19                  A     Yes.

20                  Q     Go on.

21                  A     August 11: "Placed a person-to-person call to  
22 Attorney Orton."

23                  And September 2nd: "Called Park City Hall in  
24 Park City. Also called inspector in Park City to have  
25 the pipe inspected."

1 August, 1982, "Called Mr. Felton, the attorney."

2 August, 1982, "Went to Park City. Someone had  
3 put a fence around the property, Rolfe property."

4 And 1982, "Went to Salt Lake to see about a  
5 letter to the city about our house. They had torn it  
6 down."

7 MR. FELTON: Thank you. Your Honor, under the  
8 rules we are not capable of admitting this document, though  
9 the adverse party is. So, I will leave it there. We  
10 have read it.

11 THE COURT: Under the rules you have two  
12 possibilities. You have a document that is used to refresh  
13 a witness's testimony, in which case it should not be  
14 read into evidence, but may only be used to refresh the  
15 witness's testimony and you must give the adverse party a  
16 chance to review that document, or it is a recorded  
17 recollection. It is something that was recorded at or  
18 near the time things were done and, in which case, the  
19 document is admitted and then you can have it read into  
20 evidence, I suppose. But it had no objections either  
21 way. Right now the testimony is in and the document just  
22 sits there and you aren't offering it because you can't  
23 under t h e rules?

24 MR. FELTON: That is correct, Your Honor. I  
25 wanted to alert you as to the reason why we are not.

1           Your Honor, there are a couple of items out  
2 of order here that we have reviewed. Plaintiffs' Exhibit 18,  
3 which is a claim which I filed with Park City August 30th,  
4 dated August 30, 1982, and a response from Tim Clyde,  
5 Plaintiffs' Exhibit 19 we would move admission of those  
6 two documents, Your Honor.

7           MR. SMITH: No objection, Your Honor. I think  
8 we stipulated to those.

9           THE COURT: Mr. Bachman?

10          MR. BACHMAN: No objection, Your Honor.

11          THE COURT: 18 and 19 are received.

12          Q     (By Mr. Felton) Merl, in your conversations with  
13 Mr. Scanter or the other people that you have testified to  
14 in regards to your notes, did anyone ever assert or tell  
15 you that you didn't own the property or your family  
16 didn't?

17          A     No.

18          Q     Did anyone ever tell you that someone, other than  
19 you or your family owned the property?

20          A     No.

21          Q     Merl, ~~has~~ the use of the property historically  
22 gone on for as long as you have knowledge of it? As you  
23 described it, has that use been continuous?

24          A     It has been continuous, yes.

25          Q     To the average person, is it obvious to the

**TRANSCRIPT**

Page 174



1       lease, only our permission, verbal permission, simply  
2       because the individual was under contract to provide  
3       cleaning services for the offices.

4           Q     Are you aware of any other circumstances currently  
5       of that nature?

6           A     Currently, I am not.

7           Q     Are you familiar with the history of that  
8       practice by United Park or its predecessor?

9           A     I am aware that there were situations that  
10      did occur, but I have no real personal knowledge of  
11      early history in that regard.

12          Q     Would it be fair to say that you are aware  
13      of a practice of United Park or its predecessor to allow  
14      occupancy of United Park land?

15          A     In some instances, yes.

16          Q     Thank you. Let me ask you this, Mr. Osika.  
17      If I were to show you again our Defendants' Exhibit 35,  
18      if <sup>you</sup> / were to look at the legal description contained  
19      on the first page there, the page with the date of 1953,  
20      would you be able to trace the outline of that description  
21      on Defendants' Exhibit 25?

22               MR. FELTON: If you want, this is also part of  
23      my understanding of the stipulation.

24               MR. CARTER: If that is the case, we would  
25      proffer the description that is contained on these deeds

**MOTION TO AMEND FINDINGS OF FACT**

2. Finding of Fact No. 4: There is no evidence that Plaintiff's predecessors ever worked for Silver King Coalition Mines or were permitted to construct a home on the real property in question. The evidence specifically supports the conclusion that the

Plaintiff's predecessors never worked for Silver King Coalition Mines or any other entity within the chain of title. With the death of William Rolfe in 1939, his widow resided in the house until approximately 1946 and thereafter rented it to other women until the 1960's. None of these people were ever employed by any entity in the Defendant's chain of title, and there is no evidence to support this finding.

3. Finding of Fact No. 5: This is not supported by the evidence in that there was no evidence that any real property taxes were assessed by Summit County other than those assessed to William Rolfe until at least 1931.

4. Finding of Fact No. 6: This should be amended to reflect payment since 1931 and should include the fact that Plaintiffs were the only persons paying taxes prior to that time.

5. Finding of Fact No. 7: This should be amended to include after 1931.

6. Finding of Fact No. 8: Should include a finding as to the possession and use of plaintiffs and their predecessors and the year in which said possession ceased, if that is the finding of the Court.

7. Finding of Fact No. 9: Should include the fact that not only is plaintiffs' claim of title to the real property in question, discontinuous, but so is that of the defendant's.

8. Finding of Fact No. 12: Should be amended to reflect that Park City claimed ownership of the property at the time the demolition permit was granted or, in the alternative, that Park City had recognized the interests of the plaintiff and had informed them to repair the house at the time the demolition permit was granted.

9. Finding of Fact No. 13: Should be amended to state that the evidence presented was insufficient to support an award of damages. There was, in fact, evidence admitted as to the value of the structure.

10. Finding of Fact No. 16: This is incorrect and should be deleted. The evidence clearly supports that notice of claim was given to Park City on August 30, 1982. The September 20, 1982 date referred to by the Court in its Memorandum Opinion refers to

the date of the response denying the claim, signed by Mr. Tom Clyde, Park City Attorney.

#### CONCLUSIONS OF LAW

Plaintiffs request an amendment to Conclusions of Law as follows:

1. Conclusion of Law No. 2: Must address the insufficient description in the deed constituting defendants' claim of title, including absence of certain grantors necessary to complete that title.

2. Conclusion of Law No. 5: Should be stricken as contrary to law when, in fact, adverse possession can be maintained against a political subdivision and against the Defendant State of Utah.

3. Conclusion of Law No. 6: Should be amended to address the fact that title had ripened in the plaintiffs and their predecessors in 1917 as to adverse possession, and in 1920 as to a prescriptive easement for the use of the property. Since title was vested or the easement perfected, divestment can only occur according to law, and the Conclusion of Law fails to address this issue.

4. Conclusion of Law No. 8: Should be stricken as plaintiffs did comply with the Governmental Immunity Act as to Park City having duly filed their claim August 30, 1982.

5. Conclusion of Law No. 10: Must be amended as contrary to the evidence.

6. Conclusion of Law No. 11: Should be altered, since the issue of prescriptive easement is very germane to the issue and has been ignored by the Court. A conclusion of law as to the use of the property, the time of its use, and persons during the historical existence of predecessors' claim should be addressed in the conclusion.

7. The Court should make a conclusion as to the sufficiency of the chain of title of the defendants, both as to the description in the deed and the gaps in the title.

8. A conclusion of law as to the applicability of the Marketable Title Act and the fact that the plaintiffs have been in possession of the property pursuant to a recorded instrument for an excess of 40 years.

Plaintiffs further move this Court that the Judgment be amended in accordance with the Requested Amendments to the Findings and Conclusions, that the Judgment be reversed; that the property be awarded to Plaintiff. In the alternative, Plaintiffs move this Court for a new trial for and on the grounds the verdict is not supported by the evidence, and the Court has badly misconstrued the evidence and has failed to recognize the vesting of the property rights in the plaintiffs and their predecessors.

DATED this \_\_\_\_ day of June, 1987.

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Robert Felton

**MAILING CERTIFICATE**

I certify that I mailed a true and correct copy of the foregoing MOTION TO COMPEL DISCOVERY by United States first-class mail, postage prepaid, to:

J. Craig Smith  
Park City Municipal Corporation  
P. O. Box 1480  
Park City, Utah 84060

Alan Bachman, Esq.  
236 State Capital  
Salt Lake City, Utah 84114

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