

2010

Mike Meguerditchian v. Max Smith : Reply Brief

Utah Court of Appeals

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Reply Brief, *Meguerditchian v. Smith*, No. 20100850 (Utah Court of Appeals, 2010).

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IN THE COURT OF APPEALS, STATE OF UTAH

MIKE MEGUERDITCHIAN, an
individual,

Plaintiff/Appellee/Cross-Appellant,

vs.

MAX SMITH, individually and as Trustee
of The Smith Family Living Trust, u/a/d
March 19, 1991

Defendant/Appellant/Cross-Appellee.

Case No. 20100850-CA

REPLY BRIEF OF CROSS-APPELLANT

Appeal and Cross-Appeal from the Order of the Sixth District Court of Sanpete County,
State of Utah, The Honorable Marvin Bagley, Granting in Part and Denying in Part
Defendant's Motion to Set Aside Sheriff's Sale

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SUMMARY OF ARGUMENT

Plaintiff, Appellee and Cross-Appellant Meguerditchian (“Plaintiff”) presents this Reply Brief of Cross-Appellant, responding to the issues raised by the Defendant Appellant and Cross-Appellee Smith (“Defendant”) in the Defendant’s “Reply Brief of Appellant/Cross-Appellee” (“Defendant’s Reply Brief”). Pursuant to Rule 24(c) and 24(g)(4), Utah Rules of Appellate Procedure, this Reply Brief of Cross-Appellant will be limited to the issues raised in the Defendant’s Reply Brief in opposition to the Plaintiff’s Cross-Appeal, set out at pages 21, 22 and 23 of the Defendant’s Reply Brief.

As set forth in the Cross-Appeal, the District Court found that, in conducting a sheriff’s sale to satisfy a judgment in favor of the Plaintiff, the failure to specifically describe a portion of the individual water rights of the Defendant constituted an irregularity, and set aside the sale of all water rights described, on that basis. The District Court set aside the sale of Water Right # 51-224 that was specifically identified, when it set aside the sale of other unspecified water rights of the Defendant located in Sanpete County. It is only the sale of that particular water right, Water Right # 51-224, that is the subject of the Cross-Appeal. Defendant does not dispute that Water Right #51-224 was specifically identified. Defendant’s only response is that the Defendant owned several other water rights that were not specifically identified at the sheriff’s sale. In doing so, Defendant misses the subject of the Cross-Appeal, Plaintiff is not seeking to reverse the District Court’s ruling as to other, unspecified water rights, only as to that certain water

right, Water Right # 51-224, that was specifically identified at the sheriff's sale. The District Court's ruling setting aside the sheriff's sale in part, to the extent that it deals with Water Right # 51-224 and only to that extent, should be reversed as clear error.

ARGUMENT

I. Limited Scope of Cross-Appeal

In the relevant portion of the District Court's "Findings of Fact Conclusions of Law and Order, Denying in Part and Granting in Part Defendant's Motion to Set Aside Sheriff's Sale" ("District Court Order"), applying the standard articulated by this Court in *Pyper v. Bond*, 2009 UT App 331, 224 P.3d 713, *cert. granted*, 225 P.3d 880 (Utah 2010) and *aff'd* 2011 UT 45 ("Pyper I")¹, the District Court found that the water rights were "inadequately described in the Notice of Sheriff's Sale" and therefore, "there were irregularities attending the sale of water rights at the Sheriff's Sale" meeting the second element of the standard applied in *Pyper I*. District Court Order, R. at 1049, ¶ 5. A copy of the entire District Court Order, R. at 1045-1059 is attached in the Addendum hereto at Tab 1.

The sheriff's sale included other, unspecified rights of the Defendant in wells or other water rights of the Defendant in Sanpete County, generally. R. at 1058, Tab 1

¹ The 2-part standard articulated in *Pyper I* was upheld by the Utah Supreme Court, holding that "the court of appeals did not err in concluding that gross inadequacy in price together with slight circumstances of unfairness may justify setting aside a sheriff's sale." *Pyper v. Bond*, 2011 UT 45 at ¶ 27 ("Pyper II").

hereto. The Plaintiff's Cross-Appeal does not address the District Court Order as it applied to those other, unspecified water rights. The irregularity found in the District Court Order regarding the sale of water rights was that those other water rights were inadequately described. Plaintiff's Cross-Appeal does not seek to find reversible error in the District Court Order that found that unspecified rights of the Defendant in wells or other water rights in Sanpete County were inadequately described. The only error the Plaintiff seeks to reverse is that portion of the District Court Order that found that Water Right # 51-224, though specifically described, should be set aside since other water rights were not specifically described. There is no argument from the Defendant or finding of the District Court that describing Water # 51-224 by said designation was inadequate. The District Court Order goes only to other, unspecified water rights of the Defendant. Therefore, it was reversible error on the part of the District Court to reverse the sale of Water Right # 51-224 in the process of the reversing the sale of all other, unspecified water rights.

II. Defendant's Response Goes Only to Other Water Rights, Not to Water Right 51-224, the Subject of the Cross Appeal

Defendant points to evidence of the Defendant's ownership interest in "WR # 51-224 and those water rights that have been severed from WR # 51-224 and given new water right numbers" in response to the Plaintiff's claim that Water Right # 51-224 was adequately described. Defendant's Reply Brief at p. 21, ln 14-15 (emphasis added).

Defendant further points out to the Court that “most of [Defendant’s] rights in WR # 51-224 have been segregated into 243 different water right numbers.” *Id.* at ln 19-20.

Plaintiff’s Cross-Appeal goes only to Defendant’s remaining interest in Water Right # 51-224, not to any rights previously severed therefrom. The Cross-Appeal does not address any water rights that now have their own separate water right numbers. To point out that the Defendant has other water rights does nothing to refute the premise that Water Right 51-224 was adequately described at the sheriff’s sale. No irregularity can be assessed to the description of Water Right # 51-224 as such, no allegation has been made that this does not present a prospective purchaser with sufficient information to assess the value thereof.

The Cross-Appeal is an objection to the legal conclusion drawn by the District Court, not a claim that the evidence as marshalled does not support the District Court’s findings of fact. That legal determination of the District Court should be reviewed “for correctness, granting no deference to the trial court’s conclusions of law.” *Markham v. Bradley*, 2007 UT App 379 at ¶ 12. Simply put, there is no dispute of fact that the general description of other water or well rights owned by the Defendant in Sanpete County lacked specificity. That description does not apply to the water right that was specifically named. The legal conclusion drawn by the District Court was that, if some water rights were not specifically described, the sale of all water rights, even those that were

specifically described, should be set aside. That legal conclusion is not supported by the two-part standard described in Pyper I, and should be overturned.

CONCLUSION

The two-part test applied in Pyper I, i.e., grossly insufficient price and irregularities attending the sale, cannot be met as to the sheriff's sale of Water Right # 51-224. Having found that certain water rights were inadequately described, the District Court erred when it concluded that the sheriff's sale of the one water right that was specifically described should also be set aside. The District Court's assignment of irregularity, based on a failure to describe with particularity, does not apply to Water Right # 51-224. That clear error justifies overturning the District Court Order to that extent.

For the reasons set forth above, Plaintiff requests that the District Court's ruling setting aside the sheriff's sale of Water Right # 51-224 only, without regard to the sale of other unspecified water rights, be reversed. The District Court Order should otherwise be affirmed, on the grounds previously addressed.

RESPECTFULLY SUBMITTED this 31st day of October, 2011.

HOOLE & KING, L.C.

By: 

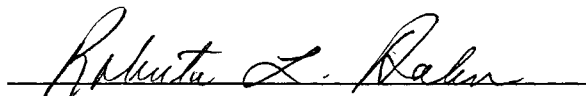
Paul M. King

Attorneys for Appellee/Cross-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this the 31st day of October, 2011, a true and correct copy of the foregoing **REPLY BRIEF OF CROSS-APPELLANT** was served upon the following by U.S. Mail, postage prepaid, as follows:

Darwin C. Fisher
40 North. 300 East, Suite 101
St. George, Utah 84770

A handwritten signature in cursive script, reading "Rebekah L. Baker", is written over a horizontal line.

Tab 1

ADDENDUM TO REPLY BRIEF OF CROSS-APPELLANT

IN THE COURT OF APPEALS, STATE OF UTAH

MIKE MEGUERDITCHIAN, an individual,
Plaintiff/Appellee/Cross-Appellant

vs.

MAX SMITH, individually and as Trustee of The Smith Family Living Trust,
Defendant/Appellant/Cross-Appellee.

Case No. 20100850-CA

TAB 1

**Findings of Fact Conclusions of Law and
Order, Denying in Part and Granting in Part
Defendant's Motion to Set Aside Sheriff's Sale**

SIXTH DISTRICT COURT

CLERK ml

2010 SEP 15 PM 5:01

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Attorneys for Mike Meguerditchian

IN THE SIXTH DISTRICT COURT FOR THE STATE OF UTAH

IN AND FOR SANPETE COUNTY, MANTI DEPARTMENT

MIKE MEGUERDITCHIAN, an individual,

Plaintiffs,

vs.

MAX SMITH, individually and as Trustee
of The Smith Family Living Trust, u/a/d
March 19, 1991

Defendant.

FINDINGS OF FACT CONCLUSIONS
OF LAW AND ORDER, DENYING IN
PART AND GRANTING IN PART
DEFENDANT'S MOTION TO SET
ASIDE SHERIFF'S SALE

Civil No. 050600136

Judge Marvin Bagley

At a hearing held before the above captioned court on the 9th day of July, 2010, beginning
at 10:00 a.m. as evidenced MBB
at 10:00 a.m., all parties appearing through counsel, the Court having received the memoranda
of counsel and being fully advised of the premises, the Court heard oral argument concerning the
Defendant's Motion to Set Aside the Sheriff Sale previously conducted in this matter in execution

of the judgment in favor of the Plaintiff previously rendered herein. Accordingly, as to the subject Motion to Set Aside Sheriff's Sale, the Court makes the findings of fact, conclusions of law and order set forth below.

A complete transcript of the Court's ruling made in Court at said date and time is attached hereto as Exhibit "A" and incorporated herein by this reference. A copy of the Certificate of Sale issued by the Sanpete County Sheriff's Office, documenting the Sheriff's Sale which is the subject of the Defendant's Motion to Set Aside Sheriff's Sale, is attached hereto as Exhibit "B" and incorporated herein by this reference.

FINDINGS OF FACT

1. The fair market value of the real property included in the Sheriff's Certificate of Sale, consisting of two parcels of real property, items 1 and 2 in the Sheriff's Certificate of Sale, tax parcels 20232X1 and 20221, respectively, is \$505,000.00.
2. All parties presented expert reports prepared by qualified appraisers, the Court found both appraisers to be qualified and competent. The Court found that the appraiser and expert report relied upon by the Defendant in this matter to be more compelling and more accurately reflected the fair market value of the property, which was found to be \$505,000.00 as set forth above.
3. The price bid at the Sheriff's Sale for the aforementioned two parcels of real property, a total of \$33,000.00, was found by the Court to be inadequate, and the difference

between \$33,000.00 bid and the \$505,000.00 fair market value of the property found by the Court shocks the conscience of the court.

4. With regards to the water rights included in the Sheriff's Certificate of Sale, being items number 3 and 4 in said Certificate, water right number 51-224 and other un-named water rights of the Defendants in Sanpete County, Utah, respectively, the Court found that the fair market value of said water rights are \$7,500.00 per acre foot.

5. Without testimony of the exact number of acre feet of water owned by the Defendant included in said Sheriff's Certificate of Sale, the Court found that the Defendant's held in excess of 20 acre feet of water subject to that certificate.

6. The bid amount for said water shares, being \$30,000.00 and \$3,000.00 respectively for a total of \$33,000.00, is less than the fair market value of said water shares found by the Court, to the extent that the Court found that price to be inadequate and that difference shocks the conscience of the Court.

7. The officer conducting the Sheriff's Sale, being unable to find sufficient personal property, acted appropriately in selling real property of the Defendants listed in said Certificate of Sale.

8. The Court finds that there was nothing misleading regarding the sale of real property included in the Sheriff's Certificate of Sale, and no unfairness in the conduct of the purchasing party with respect to the two parcels real property included in said Certificate of Sale. The Court found that there was nothing irregular in the sale of real property at said Sheriff's Sale.

9. The Court finds that the Notice of Sheriff's Sale described the first portion of water rights as simply the rights to the Defendants in water right #51-224, however, the fact that several of the rights included in said water right have been severed off and have individual water right numbers made said description insufficient.

10. The description of the second part of the water rights sold at said Sheriff's Sale (item #4) was simply other water rights of the Defendant in Sanpete County, Utah.

11. The Court finds that these descriptions of the water rights of the Defendants are insufficient, leading to confusion, which would have the effect of discouraging bidders at the sale and which would have a direct effect of lowering the price at the Sheriff's Sale.

CONCLUSIONS OF LAW

1. The proper standard for setting aside the Sheriff's Sale in this matter is that standard outlined in *Pyper v. Bond*, 224 P.3d 713 (Utah App., 2009). The standard set out in that case is that two elements must be satisfied; first there must be a gross inadequacy of the purchase price as compared to value of the property sold; and second, there must be irregularities attending the sale, especially if the irregularities have a distinct tendency to prevent the realization of a fair price for the property sold unless the complaining party is estopped by his or her own laches or failure to act.

2. The purchase price for the two parcels of real property sold at the Sheriff's Sale, was grossly inadequate, shocking the conscience of the Court meeting the first element required by the *Pyper v. Bond* standard.

3. There were no irregularities involving the sale of real property at the Sheriff's Sale, therefore, the second element of the *Pyper v. Bond* standard is not met as it applies to the sale of real property at the Sheriff's Sale.

4. The purchase price for the sale of water rights was grossly inadequate, shocking the conscience of the Court, and meeting the first element of the *Pyper v. Bond* case standard for setting aside the Sheriff's Sale as it relates to said water rights.

5. The Court rules as a matter of law that the water rights sold constituted real property and were inadequately described in the Notice of Sheriff's Sale. Therefore, the Court finds that there were irregularities attending the sale of water rights at the Sheriff's Sale, and both elements of the *Pyper v. Bond* case standard were met as they relate the to the sale of water rights at the Sheriff's Sale.

6. The Court rules that under Utah Code Ann. § 73-1-11, because the water rights sold were not shares of stock in an irrigation company, the water rights constituted real property not personal property, and therefore were inadequately described as set forth above, because rule 69B(d) of the Ut. R. Civ. P. requires that parcels of real property be sold separately and be described separately.

ORDER

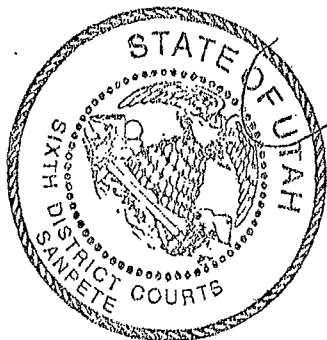
1. The Sheriff's Sale of the two parcels of real property, being items one and two listed in the Sheriff's Certificate of Sale, parcels 202323X1 and 20221, at Sanpete County, Utah, is affirmed. Defendants' Motion to Set Aside the Sheriff's Sale as to the parcels of real property is denied.

2. The Sheriff of Sanpete County, Utah, is authorized to issue its final Sheriff's Deed transferring both parcels of real property to the bidder at said Sheriff's Sale.

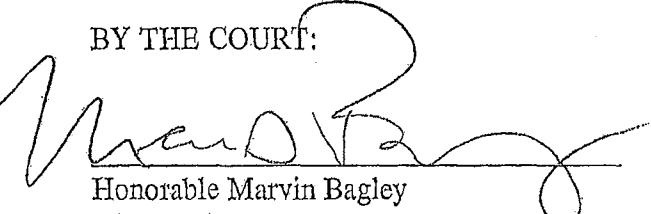
3. Defendant's Motion to Set Aside the Sheriff's Sale as it applies to the water rights sold, items number three and four in the Sheriff's Certificate of Sale, being water right number 51-224 and all other water rights of the Defendants in Sanpete County Utah, is granted. The Sheriff's Sale and the Sheriff's Certificate of Sale as it applies to said water rights only is hereby set aside.

4. The judgment in favor of the Plaintiff previously rendered herein remains unsatisfied as to the \$33,000.00 credit bid of the Plaintiff for the water rights purchased, which purchase is set aside pursuant to this Order.

DATED this 15th day of September, 2010.



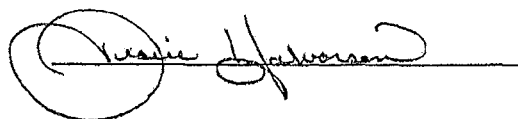
BY THE COURT:


Honorable Marvin Bagley
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER, DENYING IN PART AND GRANTING IN PART DEFENDANT'S MOTION TO SET ASIDE SHERIFF'S SALE** was mailed by first-class mail, postage prepaid, on this 26th day of August, 2010 to the following:

Darwin C. Fisher
40 N. 300 East, Suite 101
St. George, UT 84770

A handwritten signature in black ink, appearing to read "Darin Johnson", is written over a horizontal line. The signature is cursive and includes a large circular flourish at the beginning.

Meguerditchian v. Smith, et al.

Case No. 050600136

Evidentiary Hearing - Defendants' Motion to Set Aside Sheriff's Sale

July 9, 2010

Transcript of Judge's Ruling

From recording made at hearing by court personnel;
Transcript prepared by the staff of Hoole & King, L.C.

Judge: We are back on the record in Meguerditchian versus Smith case 050600136. I've gone back and reviewed my notes and looked up some provisions of the law and have this decision.

This case is here on a Motion to Set Aside a Sheriff's Sale following entry of a judgment in favor of the Plaintiff against the Defendant. The proper standard for setting aside a Sheriff's Sale is what's outlined in the Pyper case and as I interpret the Pyper decision requirement. First there must be a gross inadequacy of the purchase price as compared to the value of the property being sold, and there must be irregularities attending the sale. And especially if the irregularities have a distinct tendency to prevent the realization of a fair price for the property sold unless the complaining party is estopped by his or her own laches or failure to act.

In this case, I find that there were two parcels of ground, real property, that were sold. One 9.42 acres that sold for \$3,000.00, one 155 acre parcel that sold for \$30,000.00. There were also rights that were...water rights that were sold as defined as rights in water right 51-224 that sold for \$30,000.00, and \$3,000.00 for other rights in San...other water rights in Sanpete County.

I find that the fair market...well as to the fair market value of the land, there were two appraisals, Mr. Kjar, Kjar testified that the property was worth \$151,000.00 and he included enough water for essentially one, one residence. Ms. Denbow testified that her value was \$505,000.00 without water. Mr. Kjar appraised the pasture as ag-land, or excuse me, he appraised the property equivalent as a pasture with ag-land and Ms. Denbow appraised as property with the potential for development. I find that both appraisers are credible, that both appraisers are qualified and that I accept the appraisals based upon both appraisers. I find that they were both correct, however, they both appraised it differently.

Ms. Denbow appraised on a highest and best use of a potential for development. Mr. Kjar appraised it as, just raw land. And so I believe the issue before me is what is the highest and best use of the property so I that I know which appraisal to accept. I find that the highest and best use of the property is as it was appraised by Ms. Denbow.

The reason I find that is because it was partially developed, there was some testimony

that there had been up to \$200,000.00 of development costs already into it, that there are roads and other improvements. I also find that the parties are in the subdivision business, that they have been developing subdivisions in the area for some time, that they got preliminary approval for the larger parcel as to phase 4 of a subdivision, that it was their clear intent that that what they intended to do with the property, and that the property was not being used as ag-land, it was not on the green belt, that is was there in the process of being developed. So I find that the property does have a fair market value without water of \$505,000.00. The bid price for that ground was \$33,000.00. I find that the difference between \$33,000.00 and \$505,000.00 is inadequate, it's a sufficient difference to shock the conscience, particularly when you consider the potential value if this subdivision was completed. Ms. Denbow testified that she did not value, did not appraise the property as a completed subdivision but only as a something with the potential. And so if it is completed, and there was some testimony that it could be completed with as little as \$10,000.00 more dollars; however, there is still not approval and there are a lot of "if's". I just find that given all the facts before me, all the evidence that I have heard, that \$33,000.00 for \$505,000.00 worth of property is too inadequate and it shocks my conscience.

With regard to the water rights, they sold for a total of \$33,000.00. The evidence that I have is that they water rights are valued at \$7,500.00 per acre foot, I accept that because that is the evidence before me. However, I actually believe and firmly believe that that is undervalued based on judicial notice of other cases that I am familiar with. When, when those acre feet of water are divided into .25, which they are in this case, it is an indication that there is .25 acre foot per future building lot and so that I think that they usually sale for four times that amount. \$7,500.00 would be the price for .25 acre feet of water for an individual lot. However that is not the evidence before me but I still believe and firmly believe that's true. We don't have a firm number of shares but there are in excess of 20 shares based on the evidence that before me. Unless that I find the value of the water shares is also in excess of what the price brought and it is also is inadequate and shocks the conscience as well.

With regard to prong number 2, that there has to be...when one prong is not sufficient there has to be a satisfaction of both prongs. There has to be alleged irregularities or there has to be irregularities in the sale. The first allegation is that the personal property should have been sold first. Under Rule 69 A(a), the law requires a seizure of property before the sale. Under that rule, the Sheriff is, or whoever is doing the seizing, is required to seize the personal property first and then if sufficient personal property can not be found, then to seize the real property. The only testimony that I have as to what the sheriff did in seizing the property was he said he didn't have sufficient information to know that the property was. There weren't numbers provided and there was no evidence that he didn't do his job, there was no evidence that he didn't act in good faith. So I find that the officer acted appropriately, I find that he couldn't find sufficient personal property, so seizing on the real property was sufficient. Now I realize that there is a lot of hand-holding that

goes on when a sheriff is asked to seize property, but usually in my experience there is not enough hand-holding. It should be the responsibility of the lawyers to dot all the 'i's' and cross all the 't's'. Whenever, in my practice as lawyer, if I ever had a sheriff's sale and seizure, I would make all the arrangements. Don't leave anything up to the sheriff's office. You arrange for storage, you arrange for what is to be picked up and numbered and for whatever reason, that wasn't done, and I don't, I don't fault the Sheriff in this case and I do find that he was unable to find sufficient personal property and so the seizure of the real property was appropriate.

Also there was contradictory evidence as to ownership of the tractor and the brush hog and really no value as to any other specific item of, of personal property. With regard to the real property, there were two descriptions, one of the smaller parcel and one of the larger parcel. The larger parcel was described...well both of them were described in metes and bounds but in addition the larger parcel, parcel was described as Phase 4 of Oakerhills Plat 4. I find that there was nothing misleading about that. I could not find any unfairness in the conduct of the purchasing party with respect to the two parcels of real property. I didn't find anything that was irregular in that sale. With regard to the sale of the water rights, I do find that there were irregularities. Rule 69B(d) requires that severable lots of real property be sold separately. Also Rule 69B(b)(3) requires that the notice of sale contain a particular description of real property to be sold. I find that the notice in this case did not give a particular description. It was described as all rights of Defendants in water right 51-224; however, the evidence before me is that several of those rights have been severed off and have their individual water rights numbers. I also find that the other description of the other waters was other water of the Defendants in Sanpete County. That is just an insufficient description, I think it leads to confusion and would have a effect of discouraging bidders at the sale which would have a direct effect of lowering the price.

Exhibit 6 shows several different water numbers of water rights; however, part of the them are, or all of them were originally severed from 51-224, plus I that think the description was misleading and was insufficient and did not describe the water separately. I find that the water rights are real property. Section 73-1-11 Utah Code Annotated distinguishes between shares of stock in an irrigation company, which my understanding of Utah law is those are personal rights as to other water rights, which are not shares of stock in an irrigation company. I know that there has been, the Utah law...went, there were different cases several years ago, I believe that the most recent Utah Supreme Court case, and I believe that the legislature resolved that a few years ago. And water rights that are not in an irrigation company are real property, water rights in an irrigation company are personal property. The rights in this case are not shares of stock in an irrigation company so I find that they are real property. Also, water rights, such as these are transferred by Warranty Deed, they are also recorded in the Office of the State Engineer, but there is also a requirement that there be a backup of a conveyance document, which usually is in the form of a Warranty Deed. I believe that is the law in the State of Utah, and if its not, if I am

wrong on that, in this case I believe that it is appropriate because the water rights in this case are sufficiently closer to being real property than they are personal property, and as such I believe that Rule 69B(d) requires that they be sold separately and described separately.

In addition I think the sale of the water rights is, just smacks of unfairness. I think \$7,500 per acre foot is very low compared to if they are divided into .25 acre feet and sold for individual lots. Also, I think it was unfair by the way that the water rights were described, appears to smack of unfairness.

So in this case I set aside the Sheriff's Sale as it relates to the sale of the water rights. I do not set aside the sale as it relates to the ground. There still remains a portion of the judgment outstanding that is not paid, and the Defendant is still the record title owner of the water rights. I do not extend the redemption period because that was not what was requested in the motion, but the request was to set aside the sale. That's my decision. Neither party prevailed outright, and the rule requires that I request the prevailing party to prepare the order. I think that neither party is the prevailing party so I am going to ask counsel who wants to volunteer to prepare the order.

Fisher: I'll do it.

Judge: Alright, Mr. Fisher, I order you to prepare the order. I think that the case was well tried, I appreciate the courtesy of counsel and their preparation and that's my Order.

10

WHEN RECORDED RETURN TO:

Mike Meguerditchian
P.O. Box 861
Salt Lake City, Utah 84165

Paul M. King
4276 Highland Dr.
SLC UT 84124

Ent 166499 Pl 595 Pl 842
Date: 26-OCT-2009 9:33AM
Fee: \$15.00 Check
Filed By: TAJ
REED D HATCH, Recorder
SANPETE COUNTY CORPORATION
For: HOOLE & KING LC
31-12-45 30-12-45

IN THE SIXTH JUDICIAL DISTRICT COURT FOR THE STATE OF UTAH SANPETE
COUNTY, MANTI DEPARTMENT

---0000---

MIKE MEGUERDITCHIAN, an Individual,
Plaintiff(s)

vs.

CERTIFICATE OF SALE
Case No: 050600136

MAX SMITH, individually and as Trustee of The
Smith Family Living Trust, u/a/d/ March 19, 1991
Defendant(s),

I, Robert Henningson, Deputy Sheriff of Sanpete County, do hereby certify that I received the Writ of Execution, issued by the above-mentioned court, and by virtue of the same, I did notice for sale all rights, title and interest of the defendant(s) in the following described property:

Beginning at the Southwest corner of Section 31, Township 12 South, Range 4 East, Salt Lake Base and Meridian; thence North 88deg 59'57" East 1288.94 feet; thence North 79deg56'18" East 710.82 feet; thence North 59deg13'01" East 819.26 feet; thence North 58deg52'40" East 428.89 feet; thence North 25deg47'50" East 129.558 feet; thence South 424.763 feet; thence South 60deg18'17" West 788.156 feet; thence South 79deg29'31" West 504.635 feet; thence West 1935.19 feet to the point of beginning.

Containing: 9.42 acres, more or less (S#20232X1)

Oaker Hills Plat 4 (Phase IV) (Tax Serial #20221) more specifically described as:

Beginning at the Northeast corner of Section 30, Township 12 South, Range 4 East, Salt Lake Base and Meridian, said point of beginning being on Section Line and being on the boundary line between Oaker Hills and Elk Ridge Subdivision; thence South 89deg43'46" west 1642.58 feet to the centerline of the Oaker Hills access road and the following 14 courses; South 266.85 feet; thence

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Meguerditchian vs. Smith

South 12deg56'35" East 282.88 feet; thence south 38deg25'13" East 274.87 feet; thence South 44deg31'02" East 210.10 feet; thence South 70 deg 54'52" East 244.38 feet; thence South 63deg 38'47" East 237.37 feet; thence South 43 deg 36'34" East 204.14 feet; thence South 25 deg 21'18" East 209.58 feet; thence South 08 deg 56'10" West 208.94 feet; thence South 32 deg 06'46" West 173.63 feet; thence South 75 deg 26'28" West 292.16 feet; thence North 89 deg 02'18" West 234.57 feet; thence South 48 deg 04'38" West 112.48 feet; thence South 26 deg 52'33" West 394.85 feet; thence leaving said road centerline, South 61. deg 33'22" East 226.25 feet; thence South 00deg 45'39" West 299.14 feet to a fence corner and sixteen (1/16) corner; thence North 89deg 24'38" East 2615.95 feet; thence North 00 deg 00'36" East 2675.36 feet; thence South 89 deg 43'47" West 1323.29 feet to the point of beginning.

Water Rights:

- (1) All rights of the Defendants in water right number 51-224, and all other rights of the Defendants in water coming from and the well producing said water, said to be located approximately North 950 feet East 300 feet from the Southwest corner, Section 4 Township 12 South Range 4 East, Salt Lake Basin Meridian.
- (2) Other rights of the Defendants in water rights and/or interests in water wells located in Sanpete County, Utah.

By posting written notice of time, date and place of sale and particularly describing and posting said property twenty-one (21) days on the property to be sold at the place of sale, the Sanpete County Courthouse and three (3) public places in the precinct where the property is located. Notice of Sale was also advertised in the Sanpete Messenger for three (3) issues once a week for three (3) successive weeks prior to the sale.

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On the 10th day of July, 2009 at the Sanpete County Courthouse, 160 North Main Manti, Utah at the hour of 11:00 a.m. I did sell the interest of Max Smith, individually and as Trustee of The Smith Family Living Trust, u/a/d March 19, 1991 to Mike Meguerditchian. Paul M. King, counsel of record for and in behalf of Mike Meguerditchian placed the highest and only bid, a credit bid in the amount of \$66,000.00. There were four items offered for sale, those being listed in order as they appear on the "Notice of Sale".

Item #1 was sold on Credit Bid for \$ 3,000.00

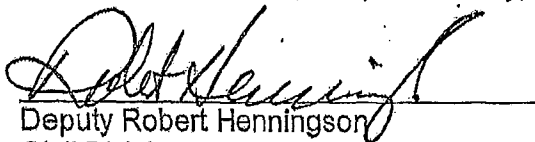
Item #2 was sold on Credit Bid for \$30,000.00

Item #3 was sold on Credit Bid for \$30,000.00


Item #4 was sold on Credit Bid for \$ 3,000.00

Sale of real property is subject to redemption as provided for by law.

Dated at Manti, Sanpete County, State of Utah this 15th day of July, 2009.


Deputy Robert Henningson
Civil Division

On the 15th day of July 2009 personally appeared before me, Deputy Robert Henningson, the signer of the within instrument, who duly acknowledged to me that he executed the same.


Notary Public

