

2010

# Mike Meguerditchian v. Max Smith : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Counsel for Appellee; Paul M. King; Hoole & King.

Counsel for Appellant; Darwin C. Fisher.

---

## Recommended Citation

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

[https://digitalcommons.law.byu.edu/byu\\_ca3/2567](https://digitalcommons.law.byu.edu/byu_ca3/2567)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

**IN THE COURT OF APPEALS FOR THE 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 APPELLANT / CROSS-APPELLEE**

---

Appeal from the Sixth District Court of Sanpete County, State of Utah  
The Honorable Marvin Bagley

**COUNSEL FOR PLAINTIFF/  
APPELLEE/CROSS-APPELLANT**

Paul M. King (#5500)  
HOOLE & KING, L.C.  
4276 South Highland Drive  
Salt Lake City, UT 84124-2634  
Telephone: (801)272-7556

**COUNSEL FOR DEFENDANT/  
APPELLANT/CROSS-APPELLEE**

Darwin C. Fisher (#1080)  
A Professional Corporation  
40 North 300 East, Suite 101  
St. George, UT 84770  
Telephone No. (435) 688-1170

**ORAL ARGUMENT REQUESTED**

**FILED  
UTAH APPELLATE COURTS**

**AUG 25 2011**

---

**IN THE COURT OF APPEALS FOR THE 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 APPELLANT / CROSS-APPELLEE**

---

Appeal from the Sixth District Court of Sanpete County, State of Utah  
The Honorable Marvin Bagley

**COUNSEL FOR PLAINTIFF/  
APPELLEE/CROSS-APPELLANT**

Paul M. King (#5500)  
HOOLE & KING, L.C.  
4276 South Highland Drive  
Salt Lake City, UT 84124-2634  
Telephone: (801)272-7556

**COUNSEL FOR DEFENDANT/  
APPELLANT/CROSS-APPELLEE**

Darwin C. Fisher (#1080)  
A Professional Corporation  
40 North 300 East, Suite 101  
St. George, UT 84770  
Telephone No. (435) 688-1170

ORAL ARGUMENT REQUESTED

## TABLE OF CONTENTS

ARGUMENT .....	1
I.    THE TRIAL COURT INCORRECTLY CONCLUDED THAT THE ONLY STANDARD FOR SETTING ASIDE THE SHERIFF'S SALE IS DEMONSTRATING BOTH INADEQUACY OF PRICE AND IRREGULARITIES ATTENDING THE SALE. ....	1
A. <i>Setting Aside a Sheriff's Sale on the Basis of a Grossly Inadequate Price is Not a Theoretical Construct and it has Been Applied in Utah.</i> .....	1
B. <i>A Sheriff's Sale Must Be Sustained Unless It Is Manifestly Unfair.</i> ..	5
C. <i>One of Defendant's Remedies for a Grossly Inadequate Sale Price is Having the Execution Sale Set Aside.</i> .....	6
D. <i>The Two-Part Test is Not the Only Method to Set Aside a Sheriff's Sale.</i> .....	7
II.   THE TRIAL COURT COMMITTED ERROR IN CONCLUDING THAT THERE WERE NO IRREGULARITIES INVOLVING THE SALE OF THE REAL PROPERTY AT THE SHERIFF'S SALE. ....	9
A. <i>Mr. Meguerditchian's Failure to Sell Personal Property Constitutes Unfairness in His and His Attorney's Conduct.</i> .....	11
B. <i>The Conduct of Mr. Meguerditchian and his Counsel Created Unfairness in the Sale of the Real Property.</i> .....	17
C. <i>The Sheriff's Sale was Conducted on July 10, 2008, instead of July 7, 2008 as Originally Noticed.</i> .....	20
III.  THERE IS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDINGS OF FACT THAT THERE WERE IRREGULARITIES IN THE SALE OF THE WATER RIGHTS. ....	20
CONCLUSION .....	23

## TABLE OF AUTHORITIES

### STATE CASES

<i>Bangerter v. Petty</i> , 228 P.3d 1250 (Ut. Ct. App., 2010) .....	4, 5, 6, 15, 16
<i>Beesley v. Hatch</i> , 863 P.2d 1319, 1322 (Utah, 1993) .....	6
<i>First Nat'l Bank v. Haymond</i> , 89 Utah 151, 57 P.2d 1401 (Utah, 1936) .....	7
<i>J.A. Mollerup v. Storage Sys. Int'l</i> , 569 P.2d 1122, 1124 (Utah 1977) .....	7
<i>Orlob v. Wasatch Medical Management</i> , 124 P.3d 269 (Ut. Ct. App., 2005) .....	21
<i>Papanikolas Bros. Enterprises v. Sugarhouse Shopping Center Associates</i> , 535 P.2d 1256, 1260 (Utah, 1975) .....	15, 16
<i>Parduhn v. Bennett</i> , 112 P.3d 495 (Utah, 2005) .....	21, 22
<i>Pender v. Dowse</i> , 265 P.2d 644 (Utah 1954) .....	3, 4, 7, 10
<i>Peoples-Pittsburgh Trust Co. v. Blickle</i> , 330 Pa. 398, 400 (Pennsylvania, 1938) .....	5
<i>Pyper v. Bond</i> , 224 P.3d 713 (Utah, 2009) .....	1, 4, 8, 10, 12, 15, 16, 17
<i>Pyper v. Bond</i> , 2011 WL 3241459 (Utah, 2011) .....	5, 6, 7, 9, 16
<i>In re Strong</i> , 616 P.2d 583, 587 (Utah, 1980) .....	13, 14
<i>Young v. Schroeder</i> , 37 P. 252 (Ut., 1894) .....	1, 2, 3, 4, 6, 7, 8, 9, 10, 13, 15

### FEDERAL CASES

<i>Butler v. Haskell</i> , 4 Desaus. Eq. 651 .....	2
<i>Byers v. Surget</i> , 60 U.S. 303 (1856) .....	2
<i>Graffam v. Burgess</i> , 117 U.S. 192, 6 Sup. Ct. 686 .....	3

**TABLE OF AUTHORITIES**  
(Continued)

STATE RULES

Rule 69C, Utah Rules of Civil Procedure .....	1, 6
---	------

STATE STATUTES

UCA § 78B-6-906 .....	6
-----------------------	---

OTHER AUTHORITIES

Charles C. Marvel, Annotation, Inadequacy of Price as Basis for Setting Aside Execution or Sheriff's Sale, 5 A.L.R.4th 794 (2011) .....	5, 7
--	------

## ARGUMENT

### **I. THE TRIAL COURT INCORRECTLY CONCLUDED THAT THE ONLY STANDARD FOR SETTING ASIDE THE SHERIFF'S SALE IS DEMONSTRATING BOTH INADEQUACY OF PRICE AND IRREGULARITIES ATTENDING THE SALE.**

The issue before this Court is whether Utah recognizes the setting aside of a sheriff's sale solely on the basis of a grossly inadequate price paid by the purchaser. Mr. Merguerditchian does not dispute that the price he paid for the real property is grossly inadequate.

Mr. Merguerditchian argues that a grossly inadequate price in itself does not justify the setting aside of an execution sale because: 1) it is only a theoretical construct and no case in Utah has applied it; 2) a sheriff's sale must be sustained unless it is manifestly unfair; 3) Defendant's remedy for an inadequate sale price is redemption, under Rule 69C of the Utah Rules of Civil Procedure; and 4) the standard articulated in *Pyper v. Bond*, 224 P.3d 713 (Utah 2009), requiring a two-part test should be upheld as equitably addressing the interests of both parties and being consistent with the intent of the redemption right granted to judgment debtors by Rule 69C.

#### **A. *Setting Aside a Sheriff's Sale on the Basis of a Grossly Inadequate Price is Not a Theoretical Construct and it has Been Applied in Utah.***

The court in *Young v. Schroeder*, 37 P. 252 (Ut., 1894), was presented with the argument "that mere inadequacy of price, alone, does not authorize the disturbance of such a sale" and held that "[i]f the inadequacy is so gross as at once to shock the conscience of all fair and impartial minds, if the sacrifice is such that every honest man

would hesitate to take advantage of it, it may well be doubted whether every such case would be beyond the power of a court of equity to receive against.” (*Young v. Schroeder*, at p. 254).

Mr. Meguerditchian argues that the *Young* court’s statement is dicta and is based on dicta found in the case of *Byers v. Surget*, 60 U.S. 303 (1856). (Appellee’s Brief, at p. 16). Contrary to Mr. Meguerditchian’s contention, the statements in the *Young* and *Byers* cases are not dicta. (Appellee’s Brief, at p. 16).

The *Young* court, in rejecting the appellants’ contention that a sheriff’s sale cannot be set aside solely on the basis of a grossly inadequate price, cites to the language in the *Byers* case that recites the rule that a sheriff’s sale can be set aside solely on the basis of a grossly inadequate price.

To meet the objection made to the sale in this case, founded upon the inadequacy of the price for which the land was sold, it is insisted that the inadequacy of consideration simply cannot amount to proof of fraud. This position, however, is scarcely reconcilable with the qualification annexed to it by the courts, viz. unless such inadequacy be so gross as to shock the conscience; for this qualification implies necessarily the affirmation that, if the inadequacy be of a nature so gross as to shock the conscience, it will amount to proof of fraud.” (*Young v. Schroeder*, at p. 254).

The *Young* court also cited to the holding in *Butler v. Haskell*, 4 Desaus. Eq. 651, that an inference of fraud is raised by a grossly inadequate price.

I consider the result of the great body of the cases to be that, wherever the court perceives that a sale of property has been made at a grossly inadequate price, such as would shock a correct mind, this inadequacy furnishes a strong, and, in general, a conclusive, presumption, though there be no direct proof of fraud, that an undue advantage has been taken of the ignorance, weakness, or the distress or necessity of the vendor; and this imposes on the purchaser a necessity to remove this violent presumption by



the clearest evidence of fairness of his conduct. (*Young v Schroeder*, at p. 254).

Finally, the *Young* court cited the holding in *Graffam v. Burgess*, 117 U.S. 192, 6 Sup. Ct. 686, that an execution sale can be set aside solely on the basis of a grossly inadequate price or can be set aside on the basis of inadequate price coupled with irregularity in the conduct of the purchaser.

From the cases here cited we may draw the general conclusion that, if the inadequacy of price is so gross as to shock the conscience, or if, in addition to gross inadequacy, the purchaser has been guilty of any unfairness, or has taken any undue advantage, or if the owner of the property or party interested has been for any other reason misled or surprised, then the sale will be regarded as fraudulent and void, or the party injured will be permitted to redeem the property sold. Great inadequacy requires only slight circumstances of unfairness in the conduct of the party benefitted by the sale to raise the presumption of fraud. (*Young v Schroeder*, at p. 254).

In *Pender v. Dowse*, 265 P.2d 644 (Utah 1954), the Utah Supreme Court quoted with approval the *Young* language.

\* \* \* It is insisted by appellants that mere inadequacy of price, however gross, will not authorize the courts to set aside a judicial sale. The general rule undoubtedly is that mere inadequacy of price, alone, does not authorize the disturbance of such a sale; but we are not prepared to sanction the unqualified statement of the rule as put by appellants' counsel. If the inadequacy is so gross as at once to shock the conscience of all fair and impartial minds, if the sacrifice is such that every honest man would hesitate to take advantage of it, it may well be doubted whether every such case would be beyond the power of a court of equity to relieve against.'

In support of this statement the court quoted the following from *Graffam v. Burgess*, 117 U.S. 180, 6 S.Ct. 686, 29 L.Ed. 839:

"From the cases here cited we may draw the general conclusion that, if the inadequacy of price is so gross as to shock the conscience, or if, in addition to gross inadequacy, the purchaser has been guilty of any unfairness, or has

taken any undue advantage, or if the owner of the property or party interested has been for any other reason misled or surprised, then the sale will be regarded as fraudulent and void, or the party injured will be permitted to redeem the property sold. Great inadequacy requires only slight circumstances of unfairness in the conduct of the party benefitted by the sale to raise the presumption of fraud." (*Pender v. Dowse*, 1 Utah 2d 283, 265 P.2d 644, 648 (Utah 1954)).

In *Pyper v. Bond*, this Court noted that the *Young* court did not foreclose the setting aside of a sheriff's sale based solely on inadequate price.

[C]ontrary to Respondents' argument, *Young* did not absolutely fore-close the possibility of equitable extension of a redemption period based solely on inadequacy of price. On this subject, the *Young* court stated, It is insisted by appellants that mere inadequacy of price, however gross, will not authorize the courts to set aside a judicial sale. The general rule undoubtedly is that mere inadequacy of price, alone, does not authorize the disturbance of such a sale; but we are not prepared to sanction the unqualified statement of the rule as put by appellants' counsel. If the inadequacy is so gross as at once to shock the conscience of all fair and impartial minds, if the sacrifice is such that every honest man would hesitate to take advantage of it, it may well be doubted whether every such case would be beyond the power of a court of equity to relieve against. (Citations Omitted). (*Pyper v. Bond*, at ¶12 n. 5).

In *Bangerter v. Petty*, 228 P.3d 1250 (Ut. Ct. App., 2010) this Court stated that its decision in the *Pyper* case was based on the grossly inadequate price paid by the purchaser.

The *Young* court addressed both the inadequacy of the price and the irregularity of the proceedings. It remarked, however, that

[i]f the inadequacy [of the price] is so gross as at once to shock the conscience of all fair and impartial minds, if the sacrifice is such that every honest man would hesitate to take advantage of it, it may well be doubted whether every such case would be beyond the power of a court of equity to relieve against. (Citations Omitted).

Building on this analysis, the *Pyper* court affirmed the trial court's

determination that the sale of Pyper's \$75,000 of equity in his property for \$329 "shock[ed] the conscience of an impartial mind" and was "[such a] sacrifice of [Pyper's] property ... that an honest man would hesitate to take advantage of it." 2009 UT App 331, ¶ 12 n. 5, 643 Utah Adv. Rep. 3, 224 P.3d 713 (alterations and omission in original). (*Bangerter v. Petty* 228 P.3d 1250 (Ut Ct. App., 2010) at ¶ 17).

In *Pyper v. Bond*, the Utah Supreme Court, in affirming this Court's decision, noted that a grossly inadequate price, in itself, justifies setting aside an execution sale.

*"Although it is infrequently held that a grossly inadequate price in itself justifies setting aside an execution sale, virtually all courts recognize that inadequacy of price, in some degree, combined with some form of other circumstances, especially those indicative of fraud or unfairness on the part of the purchaser, or mistake, does justify the setting aside of an execution sale, or, as it sometimes happens, justifies allowing late redemption of the property."* (*Pyper v. Bond*, 2011 WL 3241459, (Ut, 2011) at ¶15, n. 13) (Quoting Charles C. Marvel, Annotation, Inadequacy of Price as Basis for Setting Aside Execution or Sheriff's Sale, 5 A.L.R.4th 794 (2011)). (Emphasis added)

Utah is not alone in holding that an execution sale can be set aside solely on the basis of a grossly inadequate price. (See *Peoples-Pittsburgh Trust Co. v. Blickle*, 330 Pa. 398, 400 (Pennsylvania, 1938) ("... the cases cited in the note show that the rule that gross inadequacy of price is sufficient to prompt the court's exercise of equitable powers has been adopted in other jurisdictions."). The Pennsylvania Supreme Court lists several jurisdictions, including Utah, that recognize that gross inadequacy of price alone is sufficient to set aside an execution sale. (*Id.*, at n. 1).

Thus, setting aside a sheriff's sale on the basis of a grossly inadequate price is not a theoretical construct.

**B. *A Sheriff's Sale Must Be Sustained Unless It Is Manifestly Unfair.***

There is a general policy to sustain a sheriff's sale unless it is manifestly unfair. (*Bangerter v. Petty*, at ¶15). The Utah Supreme Court has offered examples of manifest unfairness including gross irregularities, mistake, fraud, and collusion. (*Beesley v. Hatch*, 863 P.2d 1319, 1322 (Utah, 1993)). The Young court held that fraud is proved by a grossly inadequate price. (*Young v. Schroeder*, at p. 254). Therefore, contrary to Mr. Meguerditchian's position, the unfairness is proven by the grossly inadequate price.

**C. *One of Defendant's Remedies for a Grossly Inadequate Sale Price is Having the Execution Sale Set Aside.***

Mr. Meguerditchian contends that Mr. Smith's only remedy for the grossly inadequate sale price is redemption under Rule 69C but fails to cite any legal authority supporting his argument.

"The right of redemption from a sheriff's sale is a statutory right provided in section 78B-6-906 of the Utah Code. That section states that '[s]ales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption.' The procedures for exercising the right to redemption are set out in Rule 69C of the Utah Rules of Civil Procedure. In relevant part, this rule provides that a person seeking to redeem property sold through a sheriff's sale must pay the amount of the bid within six months after the sale. (*Pyper v. Bond*, 2011 WL 3241459, at ¶14).

Usually, strict compliance with the redemption period is required but in some circumstances a court may set aside a sheriff's sale after the period for redemption. (*Id.*, at ¶15). The Utah Supreme Court held that one of the circumstances allowing a trial court to set aside a sheriff's sale is where (1) a debtor's property is sold at a grossly inadequate

price and (2) there were irregularities during the sale that contributed to the inadequacy of price or circumstances of unfairness caused by the conduct of the party benefitted by the sale. (*Id.*, at ¶15). The Utah Supreme Court also recognized that a trial court could set aside a sheriff's sale where there is a grossly inadequate price.

See, e.g., *Pender v. Dowse*, 1 Utah 2d 283, 265 P.2d 644, 647–48 (Utah 1954); *First Nat'l Bank v. Haymond*, 89 Utah 151, 57 P.2d 1401, 1405 (Utah, 1936) (“It is quite generally held that substantial inadequacy of price, coupled with fraud, mistake, or other unfair dealing is sufficient to justify a court of equity upon timely motion to set aside the sale and order a resale.”); *Young v. Schroeder*, 10 Utah 155, 37 P. 252, 254 (Utah 1894); see also Charles C. Marvel, Annotation, Inadequacy of Price as Basis for Setting Aside Execution or Sheriff's Sale, 5 A.L.R.4th 794 (2011) (“Although it is infrequently held that a grossly inadequate price in itself justifies setting aside an execution sale, virtually all courts recognize that inadequacy of price, in some degree, combined with some form of other circumstances, especially those indicative of fraud or unfairness on the part of the purchaser, or mistake, does justify the setting aside of an execution sale, or, as it sometimes happens, justifies allowing late redemption of the property.”). We have also recognized other circumstances that may justify setting aside a sheriff's sale such as “fraud, accident, mistake, or waiver.” *J.A. Mollerup v. Storage Sys. Int'l*, 569 P.2d 1122, 1124 (Utah 1977).” (*Id.*, at n. 13)

Thus, one of Mr. Smith's remedy for a grossly inadequate price is setting aside the sheriff's sale.

**D.     *The Two-Part Test is Not the Only Method to Set Aside a Sheriff's Sale.***

Mr. Meguerditchian argues that the two-part test should be the only method to set aside a sheriff's sale. He contends that setting aside a sheriff's sale solely on the basis of a grossly inadequate purchase price would require the creditor to analyze their purchase price against the value of the property being sold to determine whether there is a gross inadequacy of price, thus frustrating the collections process. As authority for his argument

he cites this Court's decision in *Pyper v. Bond*, 224 P.3d 713, at ¶19.

Mr. Meguerditchian misinterprets this Court's ruling in *Pyper v. Bond*. The respondent in *Pyper* also argued that affirming the trial court's ruling will make it almost impossible to effectively lien property to collect a judgment because every creditor would have to analyze their purchase price against the value of the property being sold to determine whether there is a gross inadequacy of price. (*Id.*, at ¶19). This Court stated that the respondent's argument rested on his understanding that the trial court's judgment was based solely on inadequacy of price. (*Id.*). And went on to explain that the trial court's judgment was based on both inadequacy of price and the unfair actions of respondent. This Court further stated it rejected respondents' contention.

Respondents also argue that affirming the district court's ruling in this case will make it almost impossible to effectively lien property to collect a judgment because "every creditor would have to analyze their purchase price against the value of the property being sold to determine whether there is a gross inadequacy of price." This argument rests on Respondents' erroneous reading of the district court's judgment as extending *Pyper*'s redemption period based solely on inadequacy of price. As explained above, the district court properly relied on both inadequacy of price and the unfair actions of Bond and Dorius when it allowed *Pyper*'s untimely redemption of the property. Thus, creditors and other purchasers at sheriff's sales can ensure the ultimate finality of their purchases either by bidding a reasonably adequate price to begin with or, failing that, by scrupulously avoiding unfair treatment of the debtor. These options are long-established by existing case law, see generally *Young v. Schroeder*, 10 Utah 155, 37 P. 252 (1894), *aff'd*, 161 U.S. 334, 16 S.Ct. 512, 40 L.Ed. 721 (1896), and we reject Respondents' contention that affirming the district court's judgment will frustrate the collections process. (*Id.*, ¶ 19).

Mr. Meguerditchian contends that the statements by this Court eliminate setting aside an execution sale solely on the basis of a grossly inadequate price. However, this

Court's cite to the *Young* case makes clear that it is not ruling that an execution sale can not be set aside solely on the basis of a grossly inadequate price. This is also evident from this Court's statement that "... creditors and other purchasers at sheriff's sales can ensure the ultimate finality of their purchases either by bidding a reasonably adequate price to begin with or, failing that, by scrupulously avoiding unfair treatment of the debtor." (*Id.*).

Setting aside a sheriff's sale solely on the basis of a grossly inadequate price protects both the creditor and the debtor. The creditor is protected because he can bid a reasonably adequate price and obtain the real property. The debtor is protected because a creditor cannot bid an unreasonable price and deprive the debtor of all or most of his property. A grossly inadequate price assumes that there is fraud on the part of the creditor and setting aside a sheriff's sale solely on the basis of a grossly inadequate price prevents that fraud. (*Young v Schroeder*, at p. 254).

## **II. THE TRIAL COURT COMMITTED ERROR IN CONCLUDING THAT THERE WERE NO IRREGULARITIES INVOLVING THE SALE OF THE REAL PROPERTY AT THE SHERIFF'S SALE.**

A trial court may set aside a sheriff's sale where (1) a debtor's property is sold at a grossly inadequate price and (2) there were irregularities during the sale that contributed to the inadequacy of price or circumstances of unfairness caused by the conduct of the party benefitted by the sale. (*Pyper v. Bond*, 2011 WL 3241459, (Utah, 2011) at ¶15).

The greater the disproportionality in price, the less unfairness or fewer irregularities a party must demonstrate before a court may justifiably extend a redemption period or set aside a sheriff's sale. (*Id.*).



... in *Young v. Schroeder*, the Supreme Court for the Territory of Utah noted that “[g]reat inadequacy [of price] requires only slight circumstances of unfairness in the conduct of the party benefitted by the sale to raise [a] presumption of fraud” and to justify setting aside a sale. Similarly, in *Pender v. Dowse*, we noted that “[i]t is well settled that equity will intervene and set aside an execution sale or cancel a sheriff's deed, after the redemption period has expired, where it appears [that] the consideration was grossly inadequate and the sale was attended by unfairness and fraud.” In *Pender*, we also reiterated that “great inadequacy [of price] requires only slight circumstances of unfairness in the conduct of the party benefitted by the sale to raise the presumption of fraud.” (265 P.2d at 647.) (*Id.*, at ¶ 16).

The irregularities need not be in the sale itself. (*Pyper v. Bond*, 224 P.3d 713 at ¶13). The unfairness can be the purchaser's conduct after the sale (*Id.*, at ¶14), it can be the creditor's failure to levy upon and sell the debtor's personal property, which was known to the creditor and of sufficient value to easily cover the judgment (*Id.*, at ¶15), it can be the creditor and his attorney's "studious silence" about their intent to collect the judgment, despite repeated contact with the debtor and his attorney both before and after the execution sale (*Id.*, at ¶15), it can be in the creditor's and/or his attorney's being very careful not to direct the sheriff to levy upon and sell the personal property of the creditor (*Pender v. Dowse*, 265 P.2d 644, at 648); it can be the creditor and his attorney furnishing the officer with the descriptions of the property to be levied on and sold as they direct and requiring the officer to levy upon and sell the property in such parcels as rendered it impossible to realize at the sales a fair price (*Young v. Schroeder*, at p.255), and it can be the creditor's and/or his attorney's design and purpose to exhaust, if possible, all of the property of the debtor. (*Id.*, at p. 254),

The trial court entered its conclusion of law that there were no irregularities



involving the sale of the real property at the Sheriff's sale. (R. 1049, at ¶3). In support of its conclusion, the trial court made the following findings of fact: 1) "[t]he 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." R. 1047, ¶7); 2) "... there was nothing misleading regarding the sale of the real property included in the Sheriff's Certificate of Sale. (R. 1047, ¶8); and 3) there was "no unfairness in the conduct of the purchasing party with respect to the two parcels of real property included in said Certificate of Sale. (R. 1047, ¶8).

Mr. Smith appealed the trial court's factual finding that there was "no unfairness in the conduct of the purchasing party with respect to the two parcels of real property included in said Certificate of Sale." The material facts that support the trial court's factual findings are those facts related to Mr. Meguerditchian's conduct and not the conduct of the Sheriff or Mr. Smith,

Mr. Smith contends that the conduct of Mr. Meguerditchian and his attorney is legally insufficient to support the trial court's factual finding because it does not prove the truth that their conduct did not create any unfairness affecting the sale of the real property.

**A. *Mr. Meguerditchian's Failure to Sell Personal Property Constitutes Unfairness in His and His Attorney's Conduct.***

The trial court made one finding of fact supporting its conclusion that there was no unfairness in the conduct of Mr. Meguerditchian in respect to the two parcels of real property.

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 of real property included in said Certificate of Sale. (R. 1047, ¶8).

Mr. Meguerditchian does not dispute that the marshaled evidence is legally insufficient to support the trial court's factual finding. Instead, he argues that the trial court's factual finding should be upheld by this Court because: 1) the trial court did not make any factual findings that Mr. Meguerditchian or the sheriff knew of or could locate and identify sufficient personal property to satisfy the judgment; 2) the trial court found that there was insufficient information available as to the identity and value of personal property; 3) Mr. Smith did not appear at the Sheriff's sale or otherwise identify personal property and request that certain personal property be first seized and sold; 4) Mr. Smith demanded that all personal property not be sold because it was exempt from execution; 5) there is no evidence that the sheriff failed to exercise reasonable diligence in obtaining information regarding the identity and location of personal property; 6) there is no evidence that Mr. Meguerditchian had access to information regarding the identity and location of personal property.

None of the reasons given by Mr. Meguerditchian constitutes evidence of his conduct. To determine if the evidence is legally sufficient to support the trial court's findings of fact, it must relate to Mr. Meguerditchian's conduct. (See *Pyper v. Bond*, 224 P.3d 713 (Ut. Ct. App., 2009) at ¶12) ("A moving party is not required to prove fraud in the purchase of property for an inadequate price. 'Slight circumstances of unfairness in the conduct of the party benefitted by the sale' are enough to raise 'the presumption of

fraud.' Therefore, the [c]ourt should consider any unfairness in the conduct of a purchasing party.'") (Quoting *Young v. Schroeder*.)

First. Mr. Meguerditchian argues that the trial court's failure to make a finding of fact that Mr. Meguerditchian or the sheriff knew of or could locate and identify sufficient personal property to satisfy the judgment is legally sufficient evidence to support the trial court's factual finding. Mr. Meguerditchian is asking this Court to accept as evidence presented at the evidentiary hearing the failure of the trial court to make a factual finding.

However, a trial court's factual finding is based on the evidence presented at the evidentiary hearing and does not constitute evidence in itself nor does a failure to make a factual finding constitute evidence presented at the evidentiary hearing.

Findings of fact are not evidence but merely constitute the substance of the conclusions made by the judge from the evidence and are the foundation upon which the decree rests and puts the case in proper form for hearing on appeal. They are a statement of the facts in the judge's mind when his decision is reached and upon which his final judgment and decision rest. He does not give a report on the evidence introduced but merely outlines the material facts that he is relying on to reach a conclusion. (In re *Strong*, 616 P.2d 583, 587 (Utah, 1980)).

Thus, the trial court's failure to make a factual finding is not evidence presented at the evidentiary hearing and cannot be used to show that there is legally sufficient evidence to support another factual finding made by the trial court.

Second. Mr. Meguerditchian argues that the trial court found that there was insufficient information available as to the identity and value of personal property and this constitutes legally sufficient evidence to support the trial court's factual finding.

However, this is not a factual finding that the trial court made but rather, it is found in a

transcript prepared by the office staff of Mr. Meguerditchian's counsel. (R. 1045-1048; R. 1053).

Again, even if this is a factual finding, it is not evidence presented at the evidentiary hearing and cannot be used to show that there is legally sufficient evidence to support the trial court's factual finding. (*Id.*)

In addition, the evidence presented at the evidentiary hearing relevant to Mr. Meguerditchian's knowledge of the identity and value of Mr. Smith's personal property does not support a finding that there was insufficient information available as to the identity and value of the personal property. The evidence presented at the evidentiary hearing established that: 1) Mr. Meguerditchian knew of and identified some of Mr. Smith's personal property in the Application for Writ of Execution and in the Praecipe (R. 618, ¶3.A., See Addendum 1; R. 624-625, ¶1, See Addendum 2); 2) Mr. Meguerditchian used Mr. Smith's loader (R. 109, at p. 85:23 to p. 87:1); 3) Mr. Meguerditchian knew that Mr. Smith had equipment to build roads (*Id.*); 4) Mr. Meguerditchian took possession of Mr. Smith's tractor and brush cutter (*Id.*); 5) Mr. Meguerditchian valued the tractor at \$10,000 (R. 109, at 85:10); and the non-exempt personal property had value in excess of \$100,000. (R. 109, at 40:4-19).

Third. Mr. Meguerditchian argues that Mr. Smith's failure to appear at the Sheriff's sale or otherwise identify personal property and request that certain personal property be first seized and sold, and his demand that none of the personal property be sold because it is exempt from execution, bars the equitable relief of setting aside the sale.

(Appellee's Brief, at p. 19). He cites as authority this Court's ruling in the *Bangerter* case remanding the case to the trial court to determine among other things whether Bangerter is barred by her laches. (*Bangerter v. Petty*, at ¶ 23).

Mr. Meguerditchian argues that Mr. Smith's conduct constitutes estoppel or laches.<sup>1</sup> (Appellee's Brief, at p. 26).

This Court in *Pyper v. Bond* held that:

All the cases unite in the doctrine that on gross inadequacy of price, coupled with irregularities attending the sale, especially where such irregularities are not merely formal and technical, but such as have a direct tendency to prevent the realizing of a fair price for the property sold, and are attributable to the purchaser at the sale, it is the duty of the courts to set the sale aside, unless the complaining party is estopped by his own laches. (*Pyper v. Bond*, 224 P.3d 713, at ¶ 13) (Quoting *Young v. Schroeder*, at 37 P. 254) (Emphasis Added).

This Court did not address estoppel in its holding in the *Pyper v. Bond* case nor do any of the other cases addressing the two-part test to set aside a sheriff's sale.

To prove laches at the evidentiary hearing, Mr. Meguerditchian had to prove a lack of diligence on Mr. Smith's part and an injury to himself owing to Mr. Smith's lack of diligence.

Laches is not mere delay, but delay that works a disadvantage to another. To constitute laches, two elements must be established: (1) The lack of diligence on the part of plaintiff; (2) An injury to defendant owing to such lack of diligence. Although lapse of time is an essential part of laches, the length of time must depend on the circumstances of each case, for the propriety of refusing a claim is equally predicated upon the gravity of the prejudice suffered by defendant and the length of plaintiff's delay. (*Papanikolas Bros. Enterprises v. Sugarhouse Shopping Center Associates*,

---

<sup>1</sup>Mr. Meguerditchian has not preserved for appeal the issue of whether the court erred in failing to find and/or conclude that Mr. Smith's conduct barred his claim to set aside the sheriff's sale.

535 P.2d 1256, 1260 (Utah, 1975)).

The trial court did not find a lack of diligence on the part of Mr. Smith or any injury to Mr. Meguerditchian. In addition, Mr. Meguerditchian has not appealed the trial court's failure to find laches or estoppel. Finally, laches is not an issue in this case because the motion was brought prior to the end of the redemption period. (*Bangerter v. Petty*, at ¶18).

Mr. Smith did file an objection to the Writ of Execution, and at a hearing the trial court held that "if there has not been a levy on the personal property, then there's nothing before the court." (R. 633). The trial court did not approve the failure of Mr. Meguerditchian to sell the personal property, and did not approve the sheriff's sale without the personal property, but simply did not make any ruling.

Lastly, the issue before this Court is the unfairness created by Mr. Meguerditchian's conduct, not the conduct of Mr. Smith. (*Pyper v. Bond*, 2011 WL 3241459, at ¶15.) Mr. Smith's conduct is not relevant nor material to the issue of whether Mr. Meguerditchian's conduct created circumstances of unfairness and, therefore, is not legally sufficient evidence to support another factual finding made by the trial court. Nor has Mr. Meguerditchian reserved this issue for appeal. (*Pyper v. Bond*, 224 P.3d 713, at ¶13.)

Fourth. Mr. Meguerditchian argues that the lack of evidence that the sheriff failed to exercise reasonable diligence in obtaining information regarding the identity and location of personal property is legally sufficient evidence to support the trial court's factual finding. (Appellee's Brief, at p. 26.) Again, the issue before the Court is whether Mr. Meguerditchian's and or his attorney's conduct created unfairness, and evidence of

the Sheriff's conduct is not relevant or material to that issue. (*Pyper v. Bond*, 224 P.3d 713, at ¶13)

Fifth. Mr. Meguerditchian argues that there is no evidence that he had access to information regarding the identity and location of personal property. The evidence presented at the evidentiary hearing established that Mr. Meguerditchian knew of and identified Mr. Smith's personal property in the Application for Writ of Execution and in the Praecipe (R. 618, ¶3.A., See Addendum 1; R. 624-625, ¶1, See Addendum 2). Mr. Meguerditchian testified that he used Mr. Smith's loader, that he knew that Mr. Smith had equipment to build roads, that he took possession of a tractor and brush cutter. (R. 109, at p. 85:23 to p. 87: 1). If he did not know the location of the personal property, he could not have listed the personal property in the Application for Writ of Execution or in the Praecipe and he could not have taken possession of the tractor and brush cutter.

***B. The Conduct of Mr. Meguerditchian and his Counsel Created Unfairness in the Sale of the Real Property.***

Mr. Meguerditchian states that the "only evidence supporting this allegation of irregularity is that the Plaintiff, subsequent to the sheriff's sale, formed a limited liability company with the assistance and participation of counsel to hold the property purchased at the sheriff's sale." (Brief of Appellee, at p. 23). That statement is inaccurate.

The marshaled evidence establishes that the conduct of Mr. Meguerditchian and/or his counsel that created unfairness is: 1) Mr. Meguerditchian knew that Mr. Smith had non-exempt personal property to satisfy the judgment because he and his attorney listed some of Mr. Smith's non-exempt personal property in the Application for Writ of

Execution (R. 618, ¶3.A., See Addendum 1) and in the Praeipie (R. 624-625, ¶1, See Addendum 2); 2) Mr. Meguerditchian and his attorney directed the Sheriff to sell the non-exempt personal property first and sell the real property only if there was insufficient non-exempt personal property to satisfy the judgment in the Application for Writ of Execution and in the Praeipie (R. 618, ¶3.A., See Addendum 1; R. 622; R. 625, ¶1, See Addendum 2); 3) Mr. Meguerditchian and his attorney did not supply serial numbers or model numbers or other information to help the officer to identify and seize the non-exempt personal property, (R. 617-626); 4) the officer did not sell the fifth-wheel trailer because it was not properly described as there was no serial numbers or model numbers in the Praeipie, (R. 1089, 12:5-22); 5) the officer did not execute on the non-exempt personal property because he did not know the location of the non-exempt property, (R. 1089, 13:7-9); 6) prior to the sale Mr. Meguerditchian and his attorney knew that the Sheriff had not levied on the personal property, (R. 1089, at 632-633), 7) the officer does not recall if Mr. King or Meguerditchian expressed any concern that the non-exempt personal property was not being sold at the Sheriff's sale, (R. 1089, 14:13-16); and 8) Mr. Meguerditchian divided the judgment and offered an amount on the two parcels of real property and the water rights to equal his judgment. (R. 1089, 89:1-25).

Mr. Meguerditchian does not dispute that the marshaled evidence is legally insufficient to support the trial court's factual finding. Instead, he sets forth statements concerning facts that are not in evidence or are not relevant and/or material to the issue of his conduct creating unfairness.

Mr. Meguerditchian argues that he was the purchaser at the sheriff's sale, which is



true, but his being the purchaser is not evidence of whether his conduct created circumstances of unfairness but confirms that his conduct is the conduct which the trial court will examine to determine if there was unfairness.

Mr. Meguerditchian argues that there is no evidence that any limited liability company had been formed by him prior to the sheriff's sale and states that it had not. No evidence was presented at the evidentiary hearing concerning the date on which Mr. Meguerditchian and his counsel formed the LLC. The evidence presented at the evidentiary hearing is that Mr. Meguerditchian and his counsel are partners in an LLC to develop the real property and sell it as a subdivision. (R. 1089, at p. 91:3-7). Since there is no evidence presented at the evidentiary hearing on when the LLC was formed, Mr. Meguerditchian cannot use the alleged fact to show that there is legally sufficient evidence to support the trial court's factual finding.

Mr. Meguerditchian argues that there is no evidence that Mr. Smith attempted to redeem the real property after the sheriff's sale and there is no evidence that he was compromised or restricted by the formation of the LLC in any attempts to redeem the real property. To prove that the finding of the trial court is supported by legally sufficient evidence, Mr. Meguerditchian must refer to evidence presented at the evidentiary hearing. He cannot use the lack of evidence to prove that the trial court's factual finding is supported by legally sufficient evidence. The trial court did not have before it evidence that was not presented and therefore, could not have used the non-evidence to make its factual finding.

Mr. Meguerditchian argues that counsel's advice after the sheriff's sale relating to

the appropriate method of holding real property cannot be seen as inappropriate or essentially all sheriff's sales would be set aside. (Appellee's Brief, at 23). No evidence was presented at the evidentiary hearing relating to the advice given Mr. Meguerditchian by his counsel. The trial court did not have before it evidence that was not presented and therefore, could not have used the non-evidence to make its factual finding.

**C. *The Sheriff's Sale was Conducted on July 10, 2008, instead of July 7, 2008 as Originally Noticed.***

Mr. Smith agrees that the postponement of the sale was not an irregularity that justifies the setting aside of the Sheriff's sale.

**III. THERE IS LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDINGS OF FACT THAT THERE WERE IRREGULARITIES IN THE SALE OF THE WATER RIGHTS.**

Mr. Meguerditchian appeals the trial court's factual findings that: 1) "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" (R. 1048, at ¶9); and 2) the description of Mr. Smith's water rights "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" (R. 1048, at ¶11). Mr. Meguerditchian is only challenging the trial court's findings of fact regarding Water Right #51-224. (Appellee's Brief, at pp. 27, 29).

In order to challenge the trial court's findings of fact, Mr. Meguerditchian "must first marshal all the evidence in support of the court's factual findings and then

demonstrate that the evidence is legally insufficient to support the finding even when viewing it in a light most favorable to the court below.” (*Orlob v. Wasatch Medical Management*, 124 P.3d 269 (Ut. Ct. App., 2005) at ¶19).

Mr. Meguerditchian has not marshaled the evidence supporting the trial court’s findings of fact. He states that “[t]here is no evidence or finding that Plaintiff or the sheriff failed to adequately describe the Defendant’s interest in Water Right 51-244.” (Appellee’s Brief, at p. 29). Since Mr. Meguerditchian argues that no evidence supports the trial court’s factual findings, the burden to marshal does not shift to Mr. Smith, rather, Mr. Smith may prove that Mr. Meguerditchian did not meet his marshaling burden by presenting a “scintilla” of evidence supporting the trial court’s finding. (*Parduhn v. Bennett*, 112 P.3d 495 (Utah, 2005) at ¶ 25).

The record contains the following evidence that supports the trial court’s factual findings: 1) Evidentiary Hearing Exhibit 6 contains the water rights owned by Mr. Smith in WR# 51-244 and those water rights that have been severed from WR # 51-224 and given new water right numbers including WR # 51-7492 through WR # 7516 (240 water rights), WR # 51- 607, WR # 51-7658, WR # 51-8274. (R. 1089, 25:20 to 26:20; R. , at pp. 3, 6-9, 10, 11, See Addendum 3).

This evidence is legally sufficient to support the trial court’s factual findings because it establishes the truth that most of Mr. Smith’s rights in WR # 51-224 have been segregated into 243 different water right numbers. In addition this evidence is not contradicted by any other documents or by any testimony, and Exhibit 6 was admitted into evidence. (R. 1089, at 29:3-5). This evidence is sufficient to prove that Mr.

Meguerditchian did not meet his marshaling burden. (*Parduhn v. Bennett*, 112 P.3d 495 (Utah, 2005) at ¶ 25).

Mr. Meguerditchian also argues that the price paid for the WR # 51-244 is more than the value of the water right according to Mr. Smith's testimony and therefore, he did not pay an inadequate price. (Appellee's Brief, at p. 28). Mr. Meguerditchian contends that WR# 51-244 contains only 3.275 acre feet of water and therefore, at a value of \$7,500 an acre foot it only has a value of \$24,562.50. However, the Notice of Sale required not only the 3.275 acre feet to be sold but all water rights segregated from WR# 51-244. (Evidentiary Hearing Exhibit 4, See Addendum 4). The segregated water rights total 13.25 af for a total of 16.525 af. (Evidentiary Hearing Exhibit 6, See Addendum 3 ).

Contrary to Mr. Meguerditchian's argument, the value of the water rights in WR# 51-244 including those water rights segregated from WR# 51-244 is \$123,937.50 (16.525 x \$7,500.00). This constitutes legally sufficient evidence supporting the trial court's factual finding. (*Parduhn v. Bennett*, at ¶ 25).

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 . . ." (R. 1089).

Therefore, Mr. Meguerditchian's claim that only 3.275 acre feet of water from WR#51-244 was to be sold and was sold at the Sheriff's Sale is not correct.

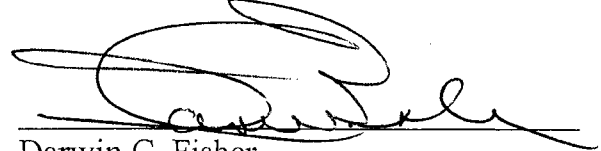
In addition, Mr. Meguerditchian relies on Mr. Smith's reply memorandum in support of his motion to set aside the sheriff's sale which was not admitted into evidence at trial and therefore, cannot be evidence upon which the trial court relied in making its factual finding.

### CONCLUSION

For the reasons set forth above, Max Smith respectfully requests that this Court reverse and remand the trial court's ruling that the Sheriff's sale of the real property is not set aside, and that this Court affirm the trial court's ruling that there were irregularities in the sale of the water rights.

DATED this 25<sup>th</sup> day of August, 2011.

DARWIN C. FISHER P.C.

A handwritten signature in black ink, appearing to read 'Darwin C. Fisher', written over a horizontal line.

Darwin C. Fisher

*Attorney for Defendant/Appellant/Cross-Appellee Max Smith*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of August, 2011, I caused to be served by the method indicated below a true and correct copy of the attached and foregoing **REPLY**

**BRIEF OF APPELLANT / CROSS-APPELLEE** to the following:

\_\_\_\_ VIA FACSIMILE  
\_\_\_\_ VIA HAND DELIVERY  
X \_\_\_\_ VIA U.S. MAIL  
\_\_\_\_ VIA E-MAIL

Paul M. King  
HOOLE & KING, L.C.  
4276 South Highland Drive  
Salt Lake City, UT 84124-2634  
*Attorneys for Appellee/Cross-Appellant*

Cheryl J. Fisher

## ADDENDUM

1. Application for Writ of Execution
2. Praecipe (Evidentiary Hearing Exhibit 2)
3. Utah Division of Water Rights WR 51-224 (Evidentiary Hearing Exhibit 6)
4. Notice of Sale (Evidentiary Hearing Exhibit 4)

## Tab 1



# ADDENDUM 1

Application for Writ of Execution



VD28411255

pages: 4


050600136 SMITH,MAX

PAUL M. KING (5500)  
**HOOLE & KING, L.C.**  
4276 South Highland Drive  
Salt Lake City, Utah 84124  
Telephone (801) 272-7556  
Facsimile (801) 272-7557  
Email paul.king@hooleking.com

*Attorneys for Mike Meguerditchian*

FILED  
SANPETE COUNTY, UTAH

MAR 26 2009

SANDY NEILL  
SANPETE COUNTY CLERK  
BY  DEPUTY

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

MIKE MEGUERDITCHIAN, an individual,  
Plaintiff,

vs.

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

Defendant.

**APPLICATION FOR WRIT OF  
EXECUTION**

Civil No. 050600136

Judge David L. Mower

Plaintiff Mike Meguerditchian, by and through Paul M. King, of and for the law firm of Hoole & King, L.C., attorneys of record for said Plaintiff, hereby makes application to the above-entitled Court for its issuance of a Writ of Execution, and as grounds therefore states as follows:

1. That judgment has been entered in the above-entitled action requiring the payment of money.

2. The original judgment amount entered by this court was for \$54,690.92 as of October 17, 2008. Current judgment balance, with all post judgment interest, fees and costs is \$58,186.86, after applying all credits due to the judgment debtor.

3. The nature of the property is non-exempt real and personal property described and located as follows:

A. All of the right, title and interest in non-exempt personal property including, but not limited to:

- Fifth Wheel Trailer
- Storage Containers
- Grading Equipment: Loader and Tractor with brush cutter
- Vehicles Registered in Max Smith's name
- Accounts
- Claims
- Causes of action
- General Intangibles
- Materials
- Equipment

if known, of Max Smith, located at the real property described in Paragraph C below, or as may be found elsewhere to satisfy the judgment rendered in the above-entitled case as indicated in said Writ.

If sufficient personal property cannot be found and sold pursuant to said writ, then to attach and sell all of the right, title and any interest of said Defendant in the following real property and appurtenant interests:

- B. Beginning at the Southwest corner of Section 31, Township 12 South, Range 4 East, Salt Lake Base and Meridian; thence North 88°59'57" East 1288.94 feet; thence North 79°56'18" East 710.82 feet; thence North 59°13'01" East 819.26 feet; thence North 58°52'40" East 428.89 feet; thence North 25°47'50" East 129.558 feet; thence South 424.763 feet; thence South 60°18'17" West 788.156 feet; thence

South 79°29'31" West 504.635 feet; thence West 1935.19 feet to the point of beginning.

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

C. 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 89°43'46" west 1642.58 feet to the centerline of the Oaker Hills access road and the following 14 courses; South 266.85 feet; thence South 12°56'35" East 282.88 feet; thence south 38°25'13" East 274.87 feet; thence South 44°31'02" East 210.10 feet; thence South 70°54'52" East 244.38 feet; thence South 63°38'47" East 237.37 feet; thence South 43°36'34" East 204.14 feet; thence South 25°21'18" East 209.58 feet; thence South 08°56'10" West 208.94 feet; thence South 32°06'46" West 173.63 feet; thence South 75°26'28" West 292.16 feet; thence North 89°02'18" West 234.57 feet; thence South 48°04'38" West 112.48 feet; thence South 26°52'33" West 394.85 feet; thence leaving said road centerline, South 61°33'22" East 226.25 feet; thence South 00°45'39" West 299.14 feet to a fence corner and sixteen (1/16) corner; thence North 89°24'38" East 2615.95 feet; thence North 00°00'36" East 2675.36 feet; thence South 89°43'47" West 1323.29 Feet to the point of beginning.

D. 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.

The estimated value of the property is unknown.

4. Plaintiff is unaware of any person other than the Defendants known to claim an interest in the property.

DATED this 24 day of March, 2009.

HOOLE & KING, L.C.

By: 

Paul M. King

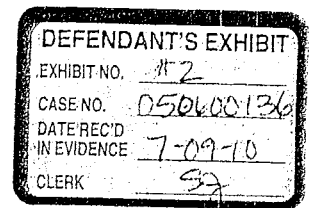
*Attorneys for Mike Meguerditchian*

Plaintiff's Address:

PO Box 1511  
Salt Lake City, Utah 84165

## Tab 2

# ADDENDUM 2



PAUL M. KING (5500)  
HOOLE & KING, L.C.  
4276 South Highland Drive  
Salt Lake City, Utah 84124  
Telephone (801) 272-7556  
Facsimile (801) 272-7557  
Email paul.king@hooleking.com

*Attorneys for Mike Meguerditchian*

IN THE SIXTH JUDICIAL DISTRICT COURT FOR THE STATE OF UTAH

IN AND FOR SANPETE COUNTY, MANTI DEPARTMENT

MIKE MEGUERDITCHIAN, an individual,

Plaintiff,

vs.

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

Defendant.

PRAECIPE

Civil No. 050600136

Judge David L. Mower

TO THE SHERIFF OR CONSTABLE OF SANPETE COUNTY, UTAH, GREETINGS:

You are hereby directed by virtue of the annexed Writ of Execution to levy upon, seize,  
attach, hold in the custody of an appropriate bailee, and sell the following:

1. All of the right, title and interest in non-exempt personal property including, but not  
limited to:

- Fifth Wheel Trailer  
- Storage Containers



- Vehicles Registered in Max Smith's name
- Accounts
- Claims
- Causes of action
- General Intangibles
- Materials
- Equipment

if known, of Max Smith, located at the real property described in Paragraph 3 below, or as may be found elsewhere to satisfy the judgment rendered in the above-entitled case as indicated in said Writ.

If sufficient personal property cannot be found and sold pursuant to said writ, then to attach and sell all of the right, title and any interest of said Defendant in the following real property and appurtenant interests:

2. Beginning at the Southwest corner of Section 31, Township 12 South, Range 4 East, Salt Lake Base and Meridian; thence North 88°59'57" East 1288.94 feet; thence North 79°56'18" East 710.82 feet; thence North 59°13'01" East 819.26 feet; thence North 58°52'40" East 428.89 feet; thence North 25°47'50" East 129.558 feet; thence South 424.763 feet; thence South 60°18'17" West 788.156 feet; thence South 79°29'31" West 504.635 feet; thence West 1935.19 feet to the point of beginning.  
Containing: 9.42 acres, more or less. (S#20232X1)

3. 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 89°43'46" west 1642.58 feet to the centerline of the Oaker Hills access road and the following 14 courses; South 266.85 feet; thence South 12°56'35" East 282.88 feet; thence south 38°25'13" East 274.87 feet; thence South 44°31'02" East 210.10 feet; thence South 70°54'52" East 244.38 feet; thence South 63°38'47" East 237.37 feet; thence South 43°36'34" East 204.14 feet; thence South 25°21'18" East 209.58 feet; thence South 08°56'10" West 208.94 feet; thence South 32°06'46" West 173.63 feet; thence South 75°26'28" West 292.16 feet; thence North

89°02'18" West 234.57 feet; thence South 48°04'38" West 112.48 feet; thence South 26°52'33" West 394.85 feet; thence leaving said road centerline, South 61°33'22" East 226.25 feet; thence South 00°45'39" West 299.14 feet to a fence corner and sixteen (1/16) corner; thence North 89°24'38" East 2615.95 feet; thence North 00°00'36" East 2675.36 feet; thence South 89°43'47" West 1323.29 Feet to the point of beginning.

4. Water Rights:

- A. 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.
- B. Other rights of the Defendants in water rights and/or interests in water wells located in Sanpete County, Utah.

DATED this, the 29 day of March, 2009.

HOOLE & KING, L.C.

By: 

Paul M. King

Attorneys for Mike Meguerditchian

Plaintiff's Address:

PO Box 1511  
Salt Lake City, Utah 84165

## Tab 3

?

# ADDENDUM 3



Select Related Information

DEFENDANT'S EXHIBIT	
EXHIBIT NO.	#6
CASE NO.	050600136
DATE REC'D IN EVIDENCE	7-09-10
CLERK	SA

(WARNING: Water Rights makes NO claims as to the accuracy of this data.) RUN DATE: 01/11/2010

WATER RIGHT: 51-224 APPLICATION/CLAIM NO.: A21239 CERT. NO.: 4635

CHANGES: a2656 Water User's Claim (Issued: )

OWNERSHIP\*\*\*\*\*

NAME: Orin A. & Naomi L. Adams

ADDR: 3908 West 8800 North  
Pleasant Grove UT

REMARKS: 0.45 a.f. for BME Phase I S 1/2 of Lot 47

NAME: Richard Baker

ADDR: Salt Lake City UT

REMARKS: 1.00 acre-feet for H V Plat C 317 (51-5399)

NAME: Harold N. & Janice L. Boone

ADDR: 4532 South Butterfield Circle  
Salt Lake City UT 84123

REMARKS: 1.0 acre-foot tenants in common

NAME: Brian L. and B./Susan Frankowski

ADDR: 255 North 1600 West  
Provo UT 84601

REMARKS: 0.25a.f. Lot 110 Oaker Hills Sub. Phase I

NAME: Leslie Freeman

ADDR: 585 East 600 South  
Heber City UT 84032

REMARKS: 0.25 AF, 0.0625 acre

NAME: Kevin R. & Arnolyn Gordon

ADDR: 719 North 100 West  
Spanish Fork UT 84660

REMARKS: 0.375 Acre-feet

NAME: Wayne Allen Guss and Wendy Guss

ADDR: 1221 East Lori Circle  
Sandy UT 84094

REMARKS: 0.25 AF, 0.0625 acre; joint tenants

NAME: Michael A. and Susan Gutierrez

ADDR: 720 East 930 North  
Pleasant Grove UT 84062

REMARKS: .25 a.f. for lot #138 Oaker Hills phase I

NAME: Antone and Cindy Holmes

ADDR: HC 13 Box 4247  
Fairview UT 84629

REMARKS: 0.25 AF: 0.0625 ac

NAME: Patrick Michael Jenkins

ADDR: c/o Anna Jean King  
1021 South Main  
Springville UT 84663

REMARKS: .25 a.f. with Anna Jean King (J.T.)

NAME: Kenneth L. and Sharleen Kenyon

ADDR: 7086 Chris Lane  
Salt Lake City UT 84121

REMARKS: 0.25 af (with D .Stauffer) Oaker Hills II lot 234

NAME: Anna Jean King

ADDR: 1021 South Main  
Springville UT 84663

REMARKS: 0.25 a.f. with Patrick Michael Jenkins (J.T.)

NAME: Dennis S. Naylor

ADDR: 5051 West Highwood Drive  
Kearns UT 84118

REMARKS: 0.25 a.f.

NAME: Nethercott Family Trust

ADDR: c/o Boyd & Dorothy Nethercott (Trustees)  
1365 East Ft. Pierce Drive #33  
St. George UT 84770

REMARKS: 0.75 a.f.

NAME: Patterson Homes Inc.

ADDR: 11009 North 6400 West  
Highland, Utah 84003

REMARKS: 0.25 acft, 0.0625 acres

NAME: Vint Payne

ADDR: 5320 Knollcrest Street  
Salt Lake City UT 84107-6207

REMARKS: .25af O.H. Phase I #128 with James Payne

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.  
Machine-generated OCR, may contain errors.

NAME: James Payne  
ADDR: c/o Vint Payne  
5320 Knollcrest Street  
Salt Lake City UT 84107-6207  
REMARKS: .25af O.H Phase I #128 with Vint Payne

NAME: Kerry Enid Pollei  
ADDR: 2696 N 162nd Ln  
Goodyear AZ 85395  
REMARKS: joint tenant w/ Allyn Lyman Rigby

NAME: Monty G. Reber  
ADDR: HC 38 Box 248  
Las Vegas NV 89124  
REMARKS: Owns 0.25 a.f.

NAME: Allyn Lyman Rigby  
ADDR: 2696 N 162nd Ln  
Goodyear, AZ 85395  
REMARKS: 0.25 AF, 0.0625 acre; joint tenant w/ Kerry Enid Pollei

NAME: Brent & Carol Severson  
ADDR: 245 Southgate Ave.  
Salt Lake City UT 84115-3615  
REMARKS: 1.0 a.f. for H.V. Plat D Lot 395

NAME: Max Smith  
ADDR: c/o Romona Smith  
485 West 120 North  
Orem UT 84057  
REMARKS: 3.275 AF

NAME: Della D. Stauffer  
ADDR: 7086 Chris Lane  
Salt Lake City UT 84121  
REMARKS: 0.25 a.f. (with Kenyon) for Oaker Hills II lot 234

NAME: Sue Taylor  
ADDR: 527 North Hillside Circle  
Alpine, Utah 84004  
REMARKS: 1 a.f. (adj. Heller deed processed twice)

NAME: Dale A. and Julie Ann Tucker  
ADDR: 1677 North 525 West  
Centerville UT 84014  
REMARKS: 0.25 a f for Oaker Hills Phase II lot 209

NAME: Larry K. & Lois H. Woodcox  
ADDR: UT  
REMARKS: 0.25

DATES, ETC.\*\*\*\*\*

LAND OWNED BY APPLICANT? COUNTY TAX ID#:  
FILED: 12/08/1949|PRIORITY: 12/08/1949|PUB BEGAN: |PUB ENDED: |NEWSPAPER:  
ProtestEnd: |PROTESTED: [No] |HEARNG HLD: |SE ACTION: [Approved]|ActionDate: |PROOF DUE:  
EXTENSION: |ELEC/PROOF:[ ] |ELEC/PROOF: |CERT/WUC: 04/21/1953|LAP, ETC: |LAPS LETTER:  
RUSH LETTR: |RENOVATE: |RECON REQ: |TYPE: [ ]  
PD BOOK: [ 51-2 ]|MAP: [52c] |PUB DATE:  
Type of Right: Application to Appropriate Source of Info: Proposed Determination Status: Water User's Claim

LOCATION OF WATER RIGHT\*\*\* (Points of Diversion: Click on Location to access PLAT Program.)\*\*\*\*\*MAP VIEWER\*\*\*\*\*

FLOW: 12.1 acre-feet SOURCE: Underground Water Well  
COUNTY: Sanpete COMMON DESCRIPTION:

POINT OF DIVERSION -- UNDERGROUND: (Click Well ID# link for more well data.)

[1] N 950 ft E 300 ft from SW cor, Sec 04, T 12S, R 4E, SLBM

DIAMETER OF WELL: 12 ins. DEPTH: 255 to ft. YEAR DRILLED: 1950 WELL LOG? NO  
Comment:

USES OF WATER RIGHT\*\*\*\*\* ELU -- Equivalent Livestock Unit (cow, horse, etc.) \*\*\*\*\* EDU -- Equivalent Domestic Unit or 1 Family

SUPPLEMENTAL GROUP NO. 228337. Water Rights Appurtenant to the following use(s):

51-206(UGWC), 224(WUC), 389(DIL), 390(DIL), 391(DIL)

392(DIL), 584(DIL), 585(DIL), 586(DIL), 4157(DIL)

Sole supply taken from Proposed Determination

STOCKWATER: Sole Supply: 200.0000 ELUs of the Group Total of 1060.0000 Div Limit: 29.68 acft. PERIOD OF USE: 01/01 to 12/31

DOMESTIC: Sole Supply: 0.0 EDUs of the Group Total of 1.0000 Div Limit: PERIOD OF USE: 01/01 to 12/31

SUPPLEMENTAL GROUP NO. 230047. Water Rights Appurtenant to the following use(s):

51-224(WUC), 378(DIL), 382(DIL), 5406(CERT), 6071(CERT)

6177(CERT), 6266(CERT), 6816(CERT), 6842(CERT), 6881(CERT)

6895(CERT), 7039(CERT), 7098(CERT), 7116(CERT), 7165(CERT)

7202(CERT), 7467(CERT), 7468(CERT), 7469(CERT), 7470(CERT)

7471(CERT), 7472(CERT), 7473(CERT), 7474(CERT), 7475(CERT)

7476(CERT), 7477(CERT), 7478(CERT), 7479(CERT), 7480(CERT)

7481(CERT), 7482(CERT), 7483(CERT), 7484(CERT), 7485(CERT)

7486(CERT), 7487(CERT), 7488(CERT), 7489(CERT), 7490(CERT)

7491(CERT), 7492(CERT), 7493(CERT), 7494(CERT), 7495(CERT)

7496(CERT), 7497(CERT), 7498(CERT), 7499(CERT), 7500(CERT)

7501(CERT), 7502(CERT), 7503(CERT), 7504(CERT), 7505(CERT)

7506(CERT), 7507(CERT), 7508(CERT), 7509(CERT), 7510(CERT)

7511(CERT), 7512(CERT), 7513(CERT), 7514(CERT), 7515(CERT)

7516(CERT), 7545(CERT), 7658(CERT), 7775(CERT), 7828(CERT)

7829(CERT), 7896(CERT), 7897(CERT), 7908(CERT), 7938(CERT)

7939 (CERT), 8019 (CERT), 8099 (CERT), 8177 (CERT), 8190 (WUC)  
8210 (CERT), 8228 (WUC), 8229 (CERT), 8234 (CERT), 8237 (CERT)  
8244 (CERT), 8254 (WUC), 8274 (CERT), 8283 (CERT), 8287 (CERT)  
8290 (CERT), 8323 (CERT), 8352 (WUC), 8354 (CERT), 8365 (CERT)  
8376 (CERT), 8383 (CERT), 8384 (CERT), 8385 (CERT), 8387 (CERT)  
8396 (WUC), 55-11979 (CERT), 12210 (CERT)

IRRIGATION: Sole Supply: 2.52 acres of the Group Total of 36.1875 Div Limit: 0.0 acft. PERIOD OF USE: 05/01 TO 10/31  
###PLACE OF USE: \*-----NORTH WEST QUARTER-----\*-----NORTH EAST QUARTER-----\*-----SOUTH WEST QUARTER-----\*-----SOUT  
\* NW | NE | SW | SE \* NW | NE | SW | SE \* NW | NE | SW | SE \* NW | N  
Sec 05 T 12S R 4E SLBM \*

SEGREGATION HISTORY\*\*\*\*\*

This Right was Segregated from , with Appl#: , Approval Date: / / under which Proof is to be submitted.

This Right as originally filed:

FLOW IN	QUANTITY IN	WATER USES					
CFS	ACRE-FEET	IRRIGATED	STOCK	DOMESTIC MUNICIPAL	MINING	POWER	OTHER
		ACREAGE	(ELUs)	(FAMILIES)	ACRE-FEET		
OR	145.0	36.2500	200.0000				

The following Water Rights have been Segregated from 51-224:

( 1) WRNUM: 51-6152 0.25 0.0600

APPL#: A21239

NAME: Gleave, Dahl and Doris

FILED: / / 0 STATUS: CERT

APPR:

For Lot 136, Oaker Hills Phase I, see change a15313 Act. irr. is 0.0625 ac.

( 2) WRNUM: 51-6893 2.0 0.5000

APPL#: A21239

NAME: King, Anna Jean & Jenkins, Patric Michael

FILED: / / 0 STATUS: CERT

APPR:

Additional water for Oaker Hills Phas ll water see ch. a19538 & 51-6262

( 3) WRNUM: 51-5825 0.5 0.1300

APPL#: A21239

NAME: J and C Investment Inc.

FILED: / / 0 STATUS: CERT

APPR:

a-13988 (51-5825 for .5 af) & a16273 51-6266 for 19.5af act. irr. is 0.125ac.

( 4) WRNUM: 51-5406 1.0 0.2500

APPL#: A21239

NAME: Cowley, Thomas

FILED: 03/23/1983 STATUS: CERT

APPR:

See change a12733

( 5) WRNUM: 51-6070 0.25 0.0600

APPL#: A21239

NAME: Durfee, Michael G. & Nadine V.

FILED: 06/28/1988 STATUS: CERT

APPR:

For lot 226 Oaker Hills II, See ch. a19203 & 51-6859. Act. irr is 0.0625 ac.

( 6) WRNUM: 51-6071 0.25 0.0600

APPL#: A21239

NAME: Max Smith

FILED: 06/28/1988 STATUS: CERT

APPR:

For Lot 239 Oaker Hills Phase II, See change a-14714 act. irr. is 0.0625 ac.

( 7) WRNUM: 51-6126 0.25 0.0600

APPL#: A21239

NAME: Russell L. & Teresa A. Voorhees

FILED: 08/22/1989 STATUS: CERT

APPR:

For lot 202, Oaker Hills Phase II, See ch. a29591 act. irr. is 0.0625 ac.

( 8) WRNUM: 51-6165 1.0 0.2500

APPL#: A21239

NAME: Big Horn Mountain Property Owners Assoc. Inc.

FILED: 03/09/1990 STATUS: CERT

APPR:

( 9) WRNUM: 51-6177 0.25 0.0600

APPL#: A21239

NAME: Clair C. & Lucille E. Webster

FILED: 05/03/1990 STATUS: CERT

APPR:

Lot 231 Oaker Hills Phase II, (a15637) act. irr.= .0625 ac. (see a16934 51-6388

( 10) WRNUM: 51-6225 0.25 0.0600

APPL#: A21239

NAME: Hallam, Stanley & Brenda

FILED: 01/24/1991 STATUS: CERT

APPR:

For lot 233 Oaker Hills Phase II, see ch. a15986, act. irr. is 0.625 ac.

( 11) WRNUM: 51-6262 0.25 0.0600

APPL#: A21239

NAME: King, Anna Jean & Patrick Michael Jenkins

FILED: 05/29/1991 STATUS: CERT

APPR:

For Lot 208 Oaker Hills Phase II, see change a16199 act. irr. is 0.0625 ac.

( 12) WRNUM: 51-6266 19.0 4.7500  
APPL#: A21239  
NAME: J and C Investments, A Utah Limited Partnership  
FILED: 06/07/1991 STATUS: CERT  
APPR:

( 13) WRNUM: 51-6268 1.0 0.2500  
APPL#: A21239  
NAME: Tennant, Richard A. and Isabell  
FILED: 06/17/1991 STATUS: CERT  
APPR:

Extra water for Lot #38 Fairview Ranchos

( 14) WRNUM: 51-6351 0.75 0.1900  
APPL#: A21239  
NAME: Rasmussen, Donald E. and Elda D.  
FILED: 05/15/1992 STATUS: CERT  
APPR:

act. irr. is 0.1875 ac. See ch. a16749

( 15) WRNUM: 51-6388 0.25 0.0600  
APPL#: A21239  
NAME: Webster, Clair and Lucille  
FILED: 08/11/1992 STATUS: CERT  
APPR:

Lot 231 Oaker Hill Sub. Phase II act. irr = .625, 51-6388 + 51-6177 = ch. a16934

( 16) WRNUM: 51-6583 1.0 0.2500  
APPL#: A21239  
NAME: Hancock, Kaziah May  
FILED: 12/15/1993 STATUS: CERT  
APPR:

( 17) WRNUM: 51-6687 0.5 0.1250  
APPL#: A21239  
NAME: Woodcox, Larry K.  
FILED: 07/22/1994 STATUS: CERT  
APPR:

For Lot 120 Oaker Hills Phase I See change a18207

( 18) WRNUM: 51-6816 40.0 10.0000  
APPL#: A21239  
NAME: Taylor, Sue  
FILED: 06/01/1995 STATUS: CERT  
APPR:

See ch. a18981

( 19) WRNUM: 51-6842 0.5 0.1250  
APPL#: A21239  
NAME: Studstrup, James W. & Kaye E.  
FILED: 07/11/1995 STATUS: CERT  
APPR:

For Oaker Hills Phase II Lots 235,236 See ch. a19097

( 20) WRNUM: 51-6847 0.75 0.1875  
APPL#: A21239  
NAME: Wiegmann, Dennis & Kathleen  
FILED: 07/21/1995 STATUS: CERT  
APPR:

For lot 205 H.V. Plat C See ch. a19133

( 21) WRNUM: 51-6859 0.25 0.0625  
APPL#: A21239  
NAME: Durfee, Michael G. & Nadine V.  
FILED: 08/14/1995 STATUS: CERT  
APPR:

For Lots 226 & 227 Oaker Hills Phase II See ch. a19203 on 51-6070

( 22) WRNUM: 51-6881 10.0 2.5000  
APPL#: A21239  
NAME: Barlow Family Trust, James I  
FILED: 10/26/1995 STATUS: CERT  
APPR:

( 23) WRNUM: 51-6884 1.0 0.2500  
APPL#: A21239  
NAME: Heller, Kenneth Eugene & Cleo  
FILED: 11/14/1995 STATUS: CERT  
APPR:

extra water for H.V. Plat C Lot 212 See ch. a19458

( 24) WRNUM: 51-6895 2.0 0.5000  
APPL#: A21239  
NAME: King, Anna Jean & Jenkins, Patrick Michael  
FILED: 12/06/1995 STATUS: CERT  
APPR:

See ch. a19550

( 25) WRNUM: 51-6929 10.0 2.5000  
APPL#: A21239  
NAME: Black, George W. & Kathryn D.  
FILED: 03/04/1996 STATUS: CERT  
APPR:

See change a19779.

( 26) WRNUM: 51-6975 0.5 0.1250  
APPL#: A21239



NAME: Miller, Carl G. and Crystal M.  
FILED: 07/15/1996 STATUS: CERT  
APPR:

Owns lot 129 Oaker Hills Sub. Phase I see ch. a20197

( 27) WRNUM: 51-6982 0.25 0.0625  
APPL#: A21239  
NAME: Richardson, Dennis and Eva  
FILED: 08/14/1996 STATUS: CERT  
APPR:

For Lot 211 Oaker Hills Phase II see ch a20304

( 28) WRNUM: 51-6994 0.5 0.1250  
APPL#: A21239  
NAME: Williams, Kenny J. & Dorleen M.  
FILED: 10/03/1996 STATUS: CERT  
APPR:

For Lot 222 Oaker Hills Phase II See ch. a20420.

( 29) WRNUM: 51-7039 0.5 0.1250  
APPL#: A21239  
NAME: Fillmore, D. R. & Layna  
FILED: 11/20/1996 STATUS: CERT  
APPR:

For Oaker Hills Plat II Lots 228 & 229 see ch. a20558

( 30) WRNUM: 51-7098 0.45 0.1125  
APPL#: A21239  
NAME: Wilding, John  
FILED: 04/07/1997 STATUS: CERT  
APPR:

See ch. a20985

( 31) WRNUM: 51-7116 0.25 0.0625  
APPL#: A21239  
NAME: Larsen, Jack and Patricia  
FILED: 04/30/1997 STATUS: CERT  
APPR:

For Oaker Hills Phase II Lot 238. See ch. Acreage amount corrected 3/14/2008

( 32) WRNUM: 51-7126 1.0 0.2500  
APPL#: A21239  
NAME: Johnstone, Leonard and Karin  
FILED: 06/17/1997 STATUS: CERT  
APPR:

For H. V. Plat C Lot 323

( 33) WRNUM: 51-7127 0.75 0.1875  
APPL#: A21239  
NAME: Richardson, Kent and Colleen  
FILED: 06/17/1997 STATUS: CERT  
APPR:

For H. V. Plat C, Lot 325

( 34) WRNUM: 51-7165 0.15 0.0375  
APPL#: A21239  
NAME: Shunk, Tina Dale  
FILED: 10/20/1997 STATUS: CERT  
APPR:

Additional water for Lot 202 H. V. Plat C (see also 51-6265)

( 35) WRNUM: 51-7202 0.5 0.1250  
APPL#: A21239  
NAME: Bennett, Richard Boyd and melissa Ann  
FILED: 04/15/1998 STATUS: CERT  
APPR:

See ch. app. a22130 (Big Hollow Sub. Plat A Lot26 N1/2)

( 36) WRNUM: 51-7206 0.5 0.1250  
APPL#: A21239  
NAME: Sparrow, Boyd L. and Kristina  
FILED: 04/27/1998 STATUS: CERT  
APPR:

For O. H. Lots 114 & 115, See ch. a22163

( 37) WRNUM: 51-7253 0.25 0.0625  
APPL#: A21239  
NAME: Lindley, Roger C. and Nancy  
FILED: 12/14/1998 STATUS: CERT  
APPR:

For Oaker Hills Phase II Lot 204 see ch. a22788

( 38) WRNUM: 51-7269 1.0 0.2500  
APPL#: A21239  
NAME: L J Trust, The  
FILED: 02/05/1999 STATUS: CERT  
APPR:

Extra water for F.R., Lot 8 See ch. a23170

( 39) WRNUM: 51-7285 4.05 1.0125  
APPL#: A21239  
NAME: Wilding, John  
FILED: 04/07/1999 STATUS: CERT  
APPR:

See change a23172

( 40) WRNUM: 51-7324 0.25 0.0625  
APPL#: A21239  
NAME: Miller, Carl G. and Crystal M.

FILED: 07/26/1999 STATUS: CERT  
APPR:

Additional water for O. H. Phase I Lot 129 (see also 51-6975) See ch. a23545

( 41) WRNUM: 51-7418 0.5 0.1250  
APPL#: A21239  
NAME: Nelson, Steven R. and Maxine  
FILED: 04/11/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase II Lot 214 See change a24355

( 42) WRNUM: 51-7492 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 326 See change a24557

( 43) WRNUM: 51-7493 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 327 See change a24558

( 44) WRNUM: 51-7494 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 328 See change a24559

( 45) WRNUM: 51-7495 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 329 See change a24560

( 46) WRNUM: 51-7467 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Plat III Lot 301 See change a24532

( 47) WRNUM: 51-7468 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 302 See change a24533

( 48) WRNUM: 51-7469 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 303 See change a24534

( 49) WRNUM: 51-7470 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 304 See change a24535

( 50) WRNUM: 51-7471 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 305 See change a24536

( 51) WRNUM: 51-7472 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 306 See change a24537

( 52) WRNUM: 51-7473 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 307 See change a24538

( 53) WRNUM: 51-7474 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 308 See change a24539

( 54) WRNUM: 51-7475 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT

APPR:

For Oaker Hills Phase III Lot 309 See change a24540

( 55) WRNUM: 51-7476 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 310 See change a24541

( 56) WRNUM: 51-7477 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 311 See change a24542

( 57) WRNUM: 51-7478 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 312 See change a24543

( 58) WRNUM: 51-7479 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 313 See change a24544

( 59) WRNUM: 51-7480 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 314 See change a24545

( 60) WRNUM: 51-7481 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 315 See change a24546

( 61) WRNUM: 51-7482 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 316 See change a24547

( 62) WRNUM: 51-7483 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 317 See change a24548

( 63) WRNUM: 51-7484 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 318 see change a24549

( 64) WRNUM: 51-7485 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 319 See change a24550

( 65) WRNUM: 51-7486 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 320 See change a24551

( 66) WRNUM: 51-7487 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 321 See change a24552

( 67) WRNUM: 51-7488 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 322 See change a24553

( 68) WRNUM: 51-7489 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 323 See change a24554

( 69) WRNUM: 51-7490 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 324 See change a24555

( 70) WRNUM: 51-7491 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/24/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 325 See change a24556

( 71) WRNUM: 51-7496 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 330 see change a24561

( 72) WRNUM: 51-7497 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

\* For Oaker Hills Phase III Lot 331 See change a24562

( 73) WRNUM: 51-7498 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 332 See change a24563

( 74) WRNUM: 51-7499 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 333 See change a24564

( 75) WRNUM: 51-7500 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 334 See change a24565

( 76) WRNUM: 51-7501 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 335 See change a24566

( 77) WRNUM: 51-7502 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 336 See change a24567

( 78) WRNUM: 51-7503 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 337 See change a24568

( 79) WRNUM: 51-7504 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 338 See change a24569

( 80) WRNUM: 51-7505 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 339 See change a24570

( 81) WRNUM: 51-7506 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 340 See change a24571

( 82) WRNUM: 51-7507 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 05/25/2000 STATUS: CERT  
APPR:

For Oaker Hills Phase III Lot 341 See change a24572

( 83) WRNUM: 51-7508 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 342 See change a24573

( 84) WRNUM: 51-7509 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 343 See change a24574

( 85) WRNUM: 51-7510 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 344 See change a24575

( 86) WRNUM: 51-7511 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 345 See change a24576

( 87) WRNUM: 51-7512 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 346 see change a24577

( 88) WRNUM: 51-7513 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 347 See change a24578

( 89) WRNUM: 51-7514 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 348 See change a24579

( 90) WRNUM: 51-7515 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 349 See change a24580

( 91) WRNUM: 51-7516 0.25 0.0625  
 APPL#: A21239  
 NAME: Smith, Max  
 FILED: 05/25/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase III Lot 350 see change a24581

( 92) WRNUM: 51-7522 0.5 0.1250  
 APPL#: A21239  
 NAME: Coleson, Jessie D. and Carol H.  
 FILED: 06/16/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase II Lot 250 See change a24644

( 93) WRNUM: 51-7523 0.5 0.1250  
 APPL#: A21239  
 NAME: Stowell, R. Glen and Thelma H.  
 FILED: 06/19/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase II Lot 249; See change a24675

( 94) WRNUM: 51-7545 0.25 0.0625  
 APPL#: A21239  
 NAME: Christensen, David K. and Annette H.  
 FILED: 09/08/2000 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase II Lot 241; See change a24926

( 95) WRNUM: 51-7613 0.25 0.0625  
 APPL#: A21239  
 NAME: Warner, Lynn and Klea Z.  
 FILED: 08/31/2001 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase I Lot 131 See change a25945

( 96) WRNUM: 51-7618 0.25 0.0625  
 APPL#: A21239  
 NAME: Payne, Vint & James  
 FILED: 09/25/2001 STATUS: CERT  
 APPR:  
 For Oaker Hills Phase I lot 228 see change a26001

( 97) WRNUM: 51-7658 0.25 0.0625  
APPL#: A21239  
NAME: Smith, Max  
FILED: 03/12/2002 STATUS: CERT  
APPR:

For Oaker Hills Phase I Lot 112 See change a26420

( 98) WRNUM: 51-7719 0.25 0.0625  
APPL#: A21239  
NAME: Graham, Donald J. and Cecelia  
FILED: 10/03/2002 STATUS: CERT  
APPR:

For Oaker Hills Phase II Lot 243 See change a27124

( 99) WRNUM: 51-7761 0.25 0.0625  
APPL#: A21239  
NAME: Measom, Kent and Connie  
FILED: 02/24/2003 STATUS: CERT  
APPR:

For Oaker Hills Phase I Lot 108 See change a27596

( 100) WRNUM: 51-7775 0.25 0.0625  
APPL#: A21239  
NAME: Jim Ceal and Rosellen Bowen  
FILED: 03/10/2003 STATUS: CERT  
APPR:

For Oaker Hills Phas I Lot 116 see change a27615

( 101) WRNUM: 51-7828 0.5 0.1250  
APPL#: A21239  
NAME: Batio, Rebeca  
FILED: 07/28/2003 STATUS: CERT  
APPR:

For H. V. Plat C Lot 363 See change a28135

( 102) WRNUM: 51-7829 0.25 0.0625  
APPL#: A21239  
NAME: Olson, Michael and Sonya  
FILED: 08/06/2003 STATUS: CERT  
APPR:

For Oaker Hills Phase II Lot 212 See change app.

( 103) WRNUM: 51-7897 0.25 0.0625  
APPL#: A21239  
NAME: High Ridge #II  
FILED: 08/10/2004 STATUS: CERT  
APPR:

Change for lot 206

( 104) WRNUM: 51-7896 0.25 0.0625  
APPL#: A21239  
NAME: High Ridge #1 LLC  
FILED: 08/10/2004 STATUS: CERT  
APPR:

Change for Lot 205

( 105) WRNUM: 51-7915 0.75 0.1875  
APPL#: A21239  
NAME: Voorhees, Russell L. & Teresa A.  
FILED: 11/26/2004 STATUS: CERT  
APPR:

For Oaker Hills Phase II Lot 202 see chg a29591

( 106) WRNUM: 51-8177 0.25 0.0625  
APPL#: A21239  
NAME: Pettigrew, Tyrone and Debbie/ Easley, James and Linda  
FILED: 02/09/2007 STATUS: CERT  
APPR:

Change to be filed to Lot 139, Phase I Oaker Hills Subdivision

( 107) WRNUM: 51-8190 0.75 0.1875  
APPL#: A21239  
NAME: Pack, Terrell W. and Elizabeth B.  
FILED: 03/13/2007 STATUS: CERT  
APPR:

( 108) WRNUM: 51-8207 0.25 0.0625  
APPL#: A21239  
NAME: Williams, Kenny and Dorleen  
FILED: 04/06/2007 STATUS: CERT  
APPR:

( 109) WRNUM: 51-8218 0.25 0.0625  
APPL#: A21239  
NAME: Ellsworth, Kenneth M. and Elaine W.  
FILED: 04/18/2007 STATUS: CERT  
APPR:

( 110) WRNUM: 51-8228 1.25 0.3125  
APPL#: A21239  
NAME: Liddiard, Dale W.  
FILED: 05/24/2007 STATUS: CERT  
APPR:

( 111) WRNUM: 51-8229 0.25 0.0625  
APPL#: A21239  
NAME: Garner, Richard F. and Peggy A.  
FILED: 05/29/2007 STATUS: CERT  
APPR:

```

=====
( 112) WRNUM: 51-8234... 0.25 0.0625
      APPL#: A21239
      NAME: Hancock, Monte R.
      FILED: 06/07/2007 STATUS: CERT
      APPR:

=====
( 113) WRNUM: 51-8237... 0.25 0.0625
      APPL#: A21239
      NAME: McLaughlin, Kenneth N
      FILED: 06/12/2007 STATUS: CERT
      APPR:
      Change to be filed

=====
( 114) WRNUM: 51-8244... 0.25 0.0625
      APPL#: A21239
      NAME: Payne, Cory T.
      FILED: 06/25/2007 STATUS: CERT
      APPR:
      Change to be filed

=====
( 115) WRNUM: 51-8254... 0.25 0.0625
      APPL#: A21239
      NAME: Hunsaker, Mike and Tonya, et al
      FILED: 07/27/2007 STATUS: CERT
      APPR:

=====
( 116) WRNUM: 51-8274... 0.25 0.0625
      APPL#: A21239
      NAME: Smith, Max
      FILED: 08/23/2007 STATUS: CERT
      APPR:
      In process of being purchased by Jacob Swapp.

=====
( 117) WRNUM: 51-8283... 0.75 0.1875
      APPL#: A21239
      NAME: Carlyle, Richard W.
      FILED: 10/22/2007 STATUS: CERT
      APPR:
      Change to be filed - Lot 239 Oaker Hille Sub, Phase II

=====
( 118) WRNUM: 51-8287... 0.25 0.0625
      APPL#: A21239
      NAME: Curtis, Norm
      FILED: 11/08/2007 STATUS: CERT
      APPR:

=====
( 119) WRNUM: 51-8290... 0.75 0.1875
      APPL#: A21239
      NAME: Wiley, Karen E.
      FILED: 11/20/2007 STATUS: CERT
      APPR:
      Change to be filed

=====
( 120) WRNUM: 51-8323... 0.25 0.0625
      APPL#: A21239
      NAME: Curtis, Norman R. and Billie Jo
      FILED: 06/06/2008 STATUS: CERT
      APPR:

=====
( 121) WRNUM: 51-8352... 4.25 1.0625
      APPL#:
      NAME: Formen Corp.
      FILED: 09/02/2008 STATUS: CERT
      APPR:

=====
( 122) WRNUM: 51-8365... 0.25 0.0625
      APPL#:
      NAME: Holm, Clarence and Darlene
      FILED: 11/12/2008 STATUS: CERT
      APPR:

=====
( 123) WRNUM: 51-8396... 0.25 0.0625
      APPL#:
      NAME: Harrison Family Trust
      FILED: 10/07/2009 STATUS: WUC
      APPR:

=====
CFS      ACRE-FEET  IRRIGATED  STOCK  DOMESTIC  MUNICIPAL  MINING  POWER  OTHER
51-224 currently has: -      12.1      3.0375  200.0000  (FAMILIES) (*-----ACRE-FEET-----*)
*****E N D   O F   D A T A*****
*****

```

## Tab 4



# ADDENDUM 4

DEFENDANT'S EXHIBIT	
EXHIBIT NO.	#4
CASE NO.	050600136
DATE REC'D IN EVIDENCE	7-09-10
CLERK	SA

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

—oo0oo—

MIKE MEGUERDITCHIAN, an Individual

Plaintiff

605-19-09.

Notice of Sale

Vs.

Notice of Sale  
Civil No. 050600136

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

Defendant(s)

—oo0oo—

To be sold at a Sheriff's Sale which will be held at the Sanpete County Courthouse located at 160 North Main, Manti, Utah on July 7, 2009 at 11:00 a.m. all rights, title and interest of the above named defendant, in and to the following described real 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 79deg 56'18" East 710.82 feet; thence North 59deg 13'01" East 819.26 feet; thence North 58deg 52'40" East 428.89 feet; thence North 25deg 47'50" East 129.558 feet; thence South 424.763 feet; thence South 60deg 18'17" West 788.156 feet; thence South 79deg 29'31" 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 89deg 43'46" west 1642.58 feet to the centerline of the Oaker Hills access road and the following 14 courses; South 266.85 feet; thence South 12deg 56'35" East 282.88 feet; thence south 38deg 25'13" East 274.87 feet; thence South 44deg 31'02" 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

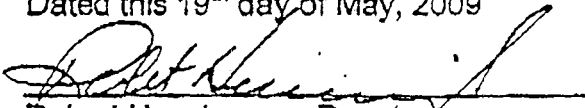
fence corner and sixteen (1/16) corner; thence North 89deg 24'38" East 2615.95 feet; thence North 00 deg 00'36" East 2675.36 feet; thence South 89 deg 43'47" West 1323.29 feet to the point of beginning.

**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.

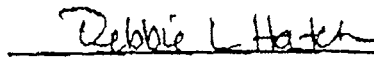
Terms of payment. Cash or certified funds only. Checks will be accepted when accompanied by a letter from maker's bank that certifies funds are available through two weeks after sale. A credit bid will be considered the same as a cash bid when submitted by plaintiff or plaintiff's representative.

Dated this 19<sup>th</sup> day of May, 2009

  
Robert Henningson, Deputy  
Sanpete County Sheriff's Department

On the 19<sup>th</sup> day of May, 2009 before me, a Notary Public, in and for the County of Sanpete, State of Utah, personally appeared Robert Henningson, Deputy Sheriff of Sanpete County, personally known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same as such, freely and voluntarily, and for the uses and purposes as provided for by law.

WITNESS my hand and seal this 19<sup>th</sup> day of May, 2009.

  
Notary Public

