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Lloyd F. Webster and Carl A. Webster v. John J. Knop et al : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

LLOYD F. WEBSTER and CARL A. WEBSTER,

Plaintiffs and Respondents,

—VS.—

JOHN J. KNOP, WYCOTAH OIL & URANIUM CO., a Corporation, DOUGLAS J. DAVIS, GRANT SHUMWAY, JOHN DOE, RICHARD ROE, FIRST ROE,

Defendants and Appellants.

BRIEF OF APPELLANTS

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Appellants Douglas J. Davis
and Grant Shumway*

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Salt Lake City, Utah**

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT of the STATE OF UTAH

LLOYD F. WEBSTER and CARL A.
WEBSTER,

Plaintiffs and Respondents,

—vs.—

JOHN J. KNOP, WYCOTAH OIL &
URANIUM CO., a Corporation, DOUG-
LAS J. DAVIS, GRANT SHUMWAY,
JOHN DOE, RICHARD ROE, FIRST
ROE,

Defendants and Appellants.

Civil No. 8577

BRIEF OF APPELLANTS

PRELIMINARY STATEMENT

The appellants in this case are Grant Shumway and Douglas J. Davis, who will be referred to either by name or as defendants, and respondents, Lloyd F. Webster and Carl A. Webster, will be referred to either by name or as plaintiffs. Other parties to the action, who are no longer before this Court, will be referred to by name.

This appeal arises out of a suit brought by plaintiffs against defendants to adjudge the plaintiffs owners of an undivided two-thirds interest in certain unpatented lode mining claims as against any claim the defendants might assert thereto. The defendants, Shumway and Davis, answered by denying plaintiffs' title in the properties and, by way of an affirmative defense, sought to have the whole title to the Faith Mining Claims quieted in them. The trial court awarded judgment in favor of plaintiffs and against defendants, from which judgment this appeal is taken.

It should be noted, the defendants, Shumway and Davis, exert title only to the Faith Mining Claims Numbers 1 through 10, and not to any other properties named in plaintiffs' Complaint.

STATEMENT OF FACTS

The plaintiffs assert an undivided two-thirds interest in the Faith Mining Claims, Numbers 1 to 10, located in San Juan County, State of Utah. It is alleged that the plaintiffs and defendant, John J. Knop, entered into a grubstake agreement, dated March 23, 1954, and that pursuant to this agreement the plaintiffs, on or about April 15, 1954, located the subject claims. Thereafter, "acting under express agreement with the plaintiffs, the defendant, John J. Knop, relocated said claims on or about the 14th day of August, 1954" (Complaint, par. 3). By doing so the allegation is made that Knop was acting for and in behalf of plaintiffs.

The grubstake agreement (Plaintiffs' Exhibit 1) provides as follows:

"This agreement entered into on the 23rd day of March, 1954, by and between JOHN J. KNOP, Moab, Utah, hereinafter referred to as FIRST PARTY and LLOYD P. WEBSTER and CARL A. WEBSTER of Moab, Utah, hereinafter referred to as SECOND PARTIES,

WITNESSETH:

In consideration of the mutual covenants and agreements herein contained it is agreed as follows:

1. It is mutually agreed and understood that SECOND PARTIES shall during the season of April 1, 1954 through July, 1954 devote not less than 50% of their time and energy to the prospecting of uranium, vanadium and other valuable minerals and deposits in the region known as the Colorado Plateau in the States of Utah and Colorado and to locate, stake and record all discoveries deemed of sufficient value in the names of FIRST and SECOND PARTIES and in no other names.

2. It is mutually understood and agreed that FIRST PARTY shall furnish to SECOND PARTIES during the term of this agreement, one (1) jeep pick-up and one (1) jeep or similar vehicle or any other vehicles which FIRST PARTY may deem necessary and further that FIRST PARTY shall supply to SECOND PARTIES all necessary food stuffs, fuel and tools necessary with the prospecting to be done hereunder, and provided however, that the cost of the aforesaid items of food, fuel and tools shall not exceed \$250.00 per month.

3. It is furthermore specifically understood and agreed that the FIRST PARTY shall advance all of the costs of filing the aforesaid claims whether filing as mineral claims or lease tracts under the Atomic Energy Commission regulation Circular 7.

4. It is mutually understood and agreed that all of the expenses of surveying shall also be born $\frac{1}{3}$ by FIRST PARTY and $\frac{2}{3}$ by SECOND PARTIES.

5. The FIRST PARTY to this contract shall be deemed to own a $\frac{1}{3}$ undivided interest and SECOND PARTIES shall be deemed to own a $\frac{2}{3}$ undivided interest in and to the properties staked pursuant to the terms hereof and shall share any profits on the same basis.

6. The SECOND PARTIES covenant and agree that they shall make no charge for time and labor in performance of this contract except as herein provided.

IN WITNESS WHEREOF the parties hereto have set their hands the 23rd day of March, 1954.

/s/ John J. Knop
JOHN J. KNOP

FIRST PARTY

/s/ Lolyd P. Webster
LLOYD P. WEBSTER

/s/ Carl A. Webster
CARL A. WEBSTER

SECOND PARTIES

STATE OF UTAH }
 COUNTY OF GRAND } ss.

On the 23rd day of March, 1954, personally appeared before me JOHN J. KNOP, LLOYD P. WEBSTER and CARL A. WEBSTER, who being first duly sworn, acknowledged to me that they executed the same.

/s/ A. Reed Reynolds
*Notary Public, Residing in
 Grand County*

My Commission Expires: May 31, 1955"

It was stipulated at pre-trial between plaintiffs and defendants, Douglas J. Davis and Grant Shumway, that a grubstake agreement was entered into between plaintiffs and John J. Knop on March 23, 1954 (Plaintiffs' Exhibit 1); that the Faith Claims were located on April 15, 1954, in the names of the three parties to the grubstake agreement, and recorded on April 24, 1954; that on July 5, 1954, amended notices of location were placed on the Faith Claims, 1 and 2, and on August 10, 1954, amended location notices were placed on Faith Claims 3 to 10, all such amended notices naming the plaintiffs and defendant Knop as locators, and were recorded on August 12, 1954; that at the time of making said original and amended locations, the area covered by the Faith group was under an oil and gas lease in good standing; that on August 14, 1954, the Faith Claims were located by John J. Knop in his own name and recorded August 27, 1954; that a Quit-Claim Deed covering the Faith

group from Wycotah Oil and Uranium Company, a defendant herein, was executed and delivered to the defendant, John J. Knop, on July 29, 1955; that on July 26, 1955, John J. Knop executed and delivered to the defendant, Douglas J. Davis, a Quit-Claim Deed to the Faith group; both aforementioned Quit-Claim Deeds were properly recorded on August 5, 1955. An Abstract of Title was received as Plaintiffs' Exhibit 2.

In this regard, it was additionally stipulated at trial that the defendant, John J. Knop, on August 14, 1954, located the Faith Claims using then existing monuments and corners.

Upon the basis of the Complaint and the aforementioned stipulated matters and evidence, the plaintiffs rested their case upon the premise that such was sufficient to establish that the location by John J. Knop on August 14, 1954, was pursuant to an express trust relationship, sufficient to establish a two-thirds interest in the plaintiffs, and that the defendants, Douglas J. Davis and Grant Shumway, purchased said Faith Claims in bad faith and with notice of said interest.

Without admitting nor conceding the existence of any trust relationship whatsoever, the defendants Douglas J. Davis and Grant Shumway, testified regarding the limited question whether they were bona fide purchasers for value and without notice of plaintiffs' purported equitable interest.

Grant Shumway testified in substance as follows:
That he is a trained geologist and has entered into a

general partnership with Douglas J. Davis for the purpose of locating and developing mining properties (R. 8); that he had occasion during the early summer of 1955, to go into the Elk Ridge area upon a prospecting expedition, and there discover the Faith group of claims, ten in number (R. 9-10); that he walked the full length and breadth of the claims to see that all monuments and corners were properly marked; that he examined location notices contained in two monuments and found that the claims were located in the name of John J. Knop (R. 10-11, 22); that other pieces of paper appeared in these monuments, but that they were illegible and torn up (R. 10-11, 22, 23); that no development work had been performed upon the property, although it was apparent that the claims had been surveyed (R. 10-11); that as a result of this examination he proceeded, together with Douglas J. Davis, to Monticello where they attempted to locate John J. Knop (R. 11-12); that he and Mr. Davis examined the records contained in the Office of the County Recorder (R. 12-13); that no grubstake agreement was found (R. 13); that he had nothing to do with the negotiation for the purchase of the Faith Claims; that he had no knowledge of any grubstake agreement between John J. Knop and the plaintiffs herein; that he had no notice or knowledge of any outstanding claim by or equitable interest in the plaintiffs (R. 16); that the claims were purchased for \$500.00 apiece, which was a fair and reasonable value for undeveloped property in this particular area (R. 13-14); that subsequent to the purchase of the Faith

group, a drilling contract was let and approximately \$3,000.00 worth of development work performed on the claims (R. 14-16); and, that a portion of the property was subsequently leased to third persons by the defendants, Douglas J. Davis and Grant Shumway (R. 16). Mr. Shumway further testified that sometime in the early part of September, 1955, in a Moab blueprint office, Lloyd Webster introduced himself and inquired whether Shumway knew that he, Webster, had an agreement whereby John J. Knop was supposed to pay \$900.00 for the Websters' purported interest in the Faith Claims (R. 16-17). Mr. Shumway testified that he had no knowledge of such alleged interest. The witness further stated that at a meeting during September, 1955, Lloyd Webster advised him that he (Webster) intended to sue and he was sorry that Shumway and Davis were involved because "we (Shumway and Davis) didn't know about it when we purchased the claims" (R. 19).

Thereafter, the defendant, Douglas J. Davis, was sworn and testified as follows:

That at the time of the purchase of the subject Faith Claims, he was a partner of Grant Shumway in the general business of locating and developing mining properties (R. 31); that he had occasion to go into the Elk River area to locate mining claims (R. 31-32); that he found a group of claims located by John J. Knop (R. 32); that the name "John J. Knop" appeared on the location notices examined (R. 32); that on the basis of this information, he examined the records at the Recorder's office in Monticello, and discovered three

groups of location notices regarding the claims, the latter in the name of John J. Knop and dated August 14, 1954 (R. 33); that he located John J. Knop, quite by accident, and called him and arranged a meeting to discuss purchase of the claims (R. 34); that a meeting was held between John J. Knop and Douglas J. Davis approximately July 15, 1955 (R. 34); that the witness was advised by Knop at said meeting that the latter had entered into an agreement to sell the subject claims to the defendant, Wycotah Oil and Uranium Company, but the deed had not been delivered (R. 34-35); that Knop advised Mr. Davis that a possible arrangement could be worked out with Wycotah whereby they would relinquish their rights under the unexecuted contract to enable Mr. Davis to purchase the said group (R. 37); that a day or so later a meeting was held with Mr. Knop, wherein Mr. Knop showed Mr. Davis a survey map of the Faith Claims (Defendants' Exhibit A) designating John J. Knop as the owner (R. 34-35); that at this said meeting Mr. Knop explained that he located the Faith Claims in his own name and in his own behalf, and that he had complete title to the property, unencumbered by any equitable interest in the Websters (R. 36); that Mr. Knop, at said meeting with Mr. Davis, explained his pre-existing relationship with the Websters, stating that when the Faith Claims were originally located, the location was void for the reason the property was situated on a valid oil and gas lease, and that the grubstake agreement that had once existed between Knop and the plaintiffs had terminated by its own terms when

he relocated, and that in any event, it had been terminated prior to that time because of disagreements arising between the parties thereto (R. 36, 46-47, 48); that at this meeting, Mr. Knop stated that his attorney, Robert Gibson, had advised him that he (Knop) had complete title and was free to convey said title to third persons (R. 36); that at said meeting, no mention was made of an agreement between the Websters and Knop dated November 24, 1954, and pertaining to the Faith Claims; that subsequent to the meeting with Mr. Knop on July 15, 1955, the witness went to Denver to discuss the matter with Byron Neid, an officer of Wycotah Oil and Uranium Company, and at this meeting, the witness inquired about title to the property and was informed that attorney Robert Gibson had prepared an Opinion on Title, which showed title to be in Knop (R. 36, 37); that on or about July 26, 1955, he went to the office of Robert Gibson at Moab, Utah, together with John J. Knop, where a Contract of Sale was prepared from Knop to Davis, and at said time, a conversation was had with Knop and Gibson regarding the title to the property, and Mr. Davis was told that Knop had "good" title (R. 38-40); and that prior to going to Denver, Colorado, the witness consulted Scott M. Matheson, Jr., Attorney at Law, in Salt Lake City, Utah, regarding the effect of the locations by the Websters on April 15, 1954, over an existing and valid oil and gas lease, and was advised that in his opinion such locations were void, and was further advised that title to the subject property appeared to be in John J. Knop based upon the locations dated August 14, 1954 (R. 44).

It was stipulated by and between the parties hereto that if Robert Gibson, Attorney at Law, were called as a witness, he would testify in substance that he prepared a title opinion on the Faith Claims, which opinion showed title to be in John J. Knop (R. 54-55). It was further stipulated that if Scott M. Matheson, Jr., Attorney at Law, were called as a witness, he would testify that he was consulted by Douglas J. Davis regarding the Faith Claims, and that he advised Mr. Davis that title to said claims appeared to be in John J. Knop, inasmuch as the earlier location and amended location was upon a valid oil and gas lease, and prior to the effective date of Public Law 585.

Lloyd Webster testified that he gave no one authority to sell the Faith Claims (R. 56).

STATEMENT OF POINTS

POINT I.

THE COMPETENT EVIDENCE IS INSUFFICIENT AS A MATTER OF LAW TO ESTABLISH THAT JOHN J. KNOP LOCATED THE FAITH CLAIMS PURSUANT TO AN EXPRESS OR IMPLIED TRUST AGREEMENT OR RELATIONSHIP WITH THE PLAINTIFFS.

POINT II.

WHERE VOID MINING CLAIMS ARE ATTEMPTED TO BE STAKED DURING THE EXISTENCE OF A GRUBSTAKE AGREEMENT, A PARTNER, IN THE ABSENCE OF ANY EXPRESS OR IMPLIED UNDERSTANDING, MAY SUBSEQUENTLY LOCATE THE SAME CLAIMS AFTER THE TERMINATION OF THE AGREEMENT IN HIS OWN BEHALF AND FOR HIS OWN BENEFIT.

POINT III.

EVEN ASSUMING, *arguendo* ONLY, THAT THE FAITH CLAIMS WERE LOCATED PURSUANT TO A TRUST RELATIONSHIP VESTING AN EQUITABLE INTEREST IN THE PLAINTIFFS, STILL THE DEFENDANTS, DOUGLAS J. DAVIS AND GRANT SHUMWAY, TOOK TITLE AS BONA FIDE PURCHASERS FOR VALUE AND WITHOUT NOTICE.

POINT IV.

ASSUMING, *arguendo* ONLY, THE EXISTENCE OF A VALID TRUST AGREEMENT IN FAVOR OF PLAINTIFFS, UNDER THE UNCONTROVERTED FACTS IN THE INSTANT CASE, THE PLAINTIFFS MUST LOOK FOR THEIR REMEDY TO THE TRUSTEE.

ARGUMENT

POINT I.

THE COMPETENT EVIDENCE IS INSUFFICIENT AS A MATTER OF LAW TO ESTABLISH THAT JOHN J. KNOP LOCATED THE FAITH CLAIMS PURSUANT TO AN EXPRESS OR IMPLIED TRUST AGREEMENT OR RELATIONSHIP WITH THE PLAINTIFFS.

In the instant case, there is no argument against the proposition that the original location of the Faith group was upon land subject to the Mineral Leasing Act of 1920, and was wholly invalid and void for all purposes. This location was void as between the locators and the government, and also as to third parties acquiring rights in the land (*Henrickson v. California Talc Company*, (Cal. 1942) 130 P. 2d 806). It follows there can be no possession where the claim is void because "a location to be effectual must be good at the

time it is made" (*Beek v. Meagher*, 104 U.S. 279). Likewise, there can be no "relocation" in the absence of a prior valid location (*Ibid*).

It must be agreed the original location was defective and absolutely void, leaving only the location by John J. Knop of August 14, 1954, as the sole location upon the subject property. Moreover, it should be pointed out that the invalidity of the purported original location is not based upon minor technical defect, *e.g.*, improper monuments or lack of discovery, but is based upon a conceded inability to place *any* mining claim whatsoever upon the property.

It is submitted that when John J. Knop located the subject mining claims, he did so in his own behalf, and did not thereby create in plaintiffs any beneficial or equitable interest in the property.

Significantly, the Complaint alleges in Paragraph 3 that the subject mining claims were located by John J. Knop acting pursuant to an "express agreement" with the plaintiffs. It is apparent from the evidence that it is wholly devoid of the slightest showing of proof that any express agreement was entered into between plaintiffs and John J. Knop, charging the latter with the responsibility of locating the Faith Claims for the benefit of the plaintiffs. The allegation itself clearly purports to mean the creation of a trust relationship based upon mutual understanding and with the intention of the parties. The absence of any evidence supporting this theory is manifest; indeed, had plain-

tiffs sought to prove its case on the theory of an express trust relationship, they are confronted with the Statute of Frauds, which provides that an interest in real property thereby created must be evidenced in writing. (Section 25-5-1, Utah Code Annotated, 1953).

Despite the allegation of an "express agreement," which has wholly failed of proof, the Court determined that principles of equity created in plaintiffs an interest to the disputed mining claims, because John J. Knop used monuments erected by plaintiffs upon land explored by plaintiffs previously. This, coupled with the evidence supplied by the grubstake agreement, further created a relationship of mutual trust and confidence, according to the Court. This conclusion presumably is reached upon the theory of a trust implied in law, *i.e.*, a resulting trust; although not explicitly raised nor discussed by plaintiffs or the trial court.

A resulting trust arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the person taking or holding the property should have the beneficial interest in the property (3 SCOTT ON TRUSTS (1939 Ed.) §4041). A resulting trust, unlike an express trust, is based upon rule, presumption or inference of law and not an expression of intention by the trustor (54 AM. JUR., Trusts, §187). Both express and implied trusts involve intention to create a trust, but in the case of a resulting trust the intention is implied or presumed in law, the chief source of such implication or presumption being a valuable consideration

(54 AM. JUR., Trusts, §194). This rule is well stated in 4 *Pomeroy, Equity Jurisprudence* (5th Ed.) § 1031, as follows:

“***The equitable theory of *consideration*, *** is the source and underlying principle of the entire class ****. In such case a trust is implied or results in favor of the person for whom the equitable interest is assumed to have been intended, and whom equity deems to be the real owner. This person is the one from whom the consideration actually comes, or who represents or is identified in right with the consideration; the resulting trust follows or goes with the real consideration.”

To establish a resulting trust, plaintiffs must prove not only that they furnished money for acquiring the property but that the money or the consideration was in fact so applied. (*Brown v. Liken* (N.M. 1933) 22 P. 2d 848); See *McDermott v. Sher* (N.M. 1955) 280 P. 2d 660).

Grubstake agreements, whether giving rights in trust relationships, or being enforced by their own terms, must be treated in like manner as other contracts, and must be supported by satisfactory proof of all the essential elements—especially consideration (40 CORPUS JURIS, Mines, page 1154; see *Cisna v. Mallory*, (C.C. Wash. 1898) 84 Fed. 851). 3 *Lindley on Mines* (3rd Ed.) §858, places emphasis upon ordinary contract requirements, stating as follows:

“Should the prospector during the life of the contract locate in his own name to the exclusion of the one supplying the capital, the title thus

accruing to him would be held in trust for his associate in the joint venture to the extent of his interest, not necessarily on the theory of partnership, but for the reason that his advances contributed to the acquisition of the property." (Citing *Meylette v. Brennan*, 20 Colo. 242, 38 Pac. 75; *Byrne v. Knight*, 12 Cal. App. 56, 106 Pac. 593, 594; *Lockhardt v. Leeds*, 195 U.S. 427, 25 S. Ct. 76).

The burden rests on the plaintiffs to establish a fiduciary relationship essential to create the purported trust (*Renshaw v. Tracy Loan & Trust*, 87 U. 359, 35 P. 2d 298, modified 49 P. 2d 403; *Botkin v. Pyle* (Colo. 1932) 14 P. 2d 187; *Maynard v. Taylor* (Okla. 1939) 91 P. 2d 649; *Zioncheck v. Nadeau* (Wash. 1938) 81 P. 2d 811). The evidence sustaining a resulting trust in real property must be clear, convincing, definite, unequivocal, and not conflicting on material points, as to the agreement or understanding upon which the property was obtained. (See 89 C.J.S., Trusts, §137; *Chambers v. Emery*, 13 U. 374, 45 Pac. 192; *Hansen v. Hansen*, 110 U. 272, 171 P. 2d 392). It is submitted that the evidence wholly fails to support this burden. The trust agreement, whether express or implied, alleged to exist between the plaintiffs and Knop, could only have one evidentiary source — the grubstake agreement. When this agreement is strictly construed, the following factors are apparent:

1. The grubstake agreement makes no reference to any trust obligation of the defendant Knop.

2. The grubstake agreement had ended by its terms (July, 1954) prior to the date of the first valid location of the Faith Claims.

3. The grubstake agreement provided expressly that the Websters were to locate all mining claims pursuant to the contract.

4. The agreement provided that John J. Knop was only to supply the grubstake.

The most significant aspect of the grubstake agreement is the complete absence of any obligation on Knop's part to locate the Faith Claims or any other claims on behalf of the plaintiffs. The outstanding mining authority, 3 *Lindley on Mines* (3rd Ed.) § 858, states that it is essential to a right in property under a grubstake contract that such property be acquired by means of the grubstake furnished pursuant to such contract. Again in 40 *Corpus Juris, Mines*, at page 1154, it is stated that equity will not enforce a trust in a mining claim located by an alleged partner under a contract to do so, when the claim was in fact, not located with partnership capital. (*Craw v. Wilson*, 22 Nev. 385, 40 Pac. 1076).

It is apparent from the grubstake agreement that John J. Knop was free to locate claims as he wished and in his own behalf without being required to account to the plaintiffs for such property (See *Kahn v. Smelting Company*, 102 U.S. 641).

Setting aside for the moment the grubstake agreement, an examination might be made of the other evidence to seek an implied intention to create the purported trust. We find that Knop employed the corners placed on the ground by plaintiffs. These were doubtless changed with survey. This feature alone remains the only peg upon which a trust relationship could arguably be based; but, this single factor does not constitute clear, convincing, definite and unequivocal evidence of the quality and quantity sufficient to create a trust in real property (*Chambers v. Emery*, Supra; *Hansen v. Hansen*, Supra). It is hardly sufficient to show, as plaintiffs aver, that Knop located the Faith Claims acting pursuant to the intention of all the parties. It does not follow by any exercise of the imagination that Knop was charged with any duty subsequently to locate the claims on behalf of himself and the plaintiffs. Nor, indeed, can implication and conjecture supply a causal relation between Knop's location and the prior agreement and acts performed thereunder.

POINT II.

WHERE VOID MINING CLAIMS ARE ATTEMPTED TO BE STAKED DURING THE EXISTENCE OF A GRUBSTAKE AGREEMENT, A PARTNER, IN THE ABSENCE OF ANY EXPRESS OR IMPLIED UNDERSTANDING, MAY SUBSEQUENTLY LOCATE THE SAME CLAIMS AFTER THE TERMINATION OF THE AGREEMENT IN HIS OWN BEHALF AND FOR HIS OWN BENEFIT.

This is not the case where co-tenants of real property enter into a relationship of trust, one to the other, so as to preclude one co-tenant from gaining some advantage

with respect to the joint property over his co-tenant; nor where joint tenants are acting in hostility with reference to the joint estate; nor where one of several joint owners of mining claims has sought to amend the location to his own benefit, to secure a patent for his own benefit, or to relocate the claim for his own benefit (See *Speed v. McCarthy* (S.D.) 77 N.W. 590; *Kline v. Wright* (D. C. Id. 1930) 42 F. 2d 927; *Yarwood v. Johnson, et al.*, 29 Wash. 643, 70 Pac. 123; *Henrickson v. California Talc Co.*, (Cal., 1942), 130 P. 2d 806).

None of the evidence produced by plaintiffs in this case tends to show that John J. Knop located the Faith Claims pursuant to an express or implied agreement with plaintiffs, nor during the existence of any grubstake or prospecting agreement. Paramount consideration should be given to the following uncontradicted evidence fortifying the allegation of defendants, Shumway and Davis, that the claims were located by Knop as his own property and free from any entanglement with plaintiffs: 1) The Faith group located by John J. Knop, alone, and in his own name; 2) The claims were located after the termination of the grubstake agreement; 3) This location was achieved by the use of Knop's own money, time and effort; 4) The claims were surveyed by Knop and at his expense; 5) The claims remained on the County records as Knop's sole property; and, 6) Knop held himself out to the world as the sole owner and conveyed title as such. Each of these unrefuted items belies and negatives the allegation that the claims were located on behalf of the plaintiffs. The only direct and substantial evidence be-

fore the Court showed Knop to be the locator and the owner of the whole interest in the real property. If the facts are otherwise they were not produced by plaintiffs.

40 *Corpus Juris, Mines*, page 1155, makes express reference to our precise fact situation, stating:

“It is essential to a right in property under a grubstake contract that such property should be acquired by means of the grubstake furnished and pursuant to a grubstake contract, [Citing cases], *as well as during its existence . . .*” (Emphasis supplied.)

The emphasized portion of the foregoing is amply foot-noted by authorities holding that where there has been no concealment, discoveries by individual members of a former prospecting partnership (grubstake agreement) are not partnership property, although made on grounds prospected during its existence (*Re Laidley* (1910) M.C. (C. 478); and cases holding that where claims staked during the existence of a prospecting partnership turn out to be invalid and are canceled or lapsed, one of the partners who subsequently restakes the same after the termination of the partnership, and maintains and protects them solely by his own labor and money, is entitled to the entire interest therein (*Re Libby*, (1909) M.C.C. 441; *Re Seymour*, (1909) M.C.C. 421; *Re Greene*, (1908) M.C.C. 223). The rule is stated clearly in *Hollingsworth v. Tufts*, 62 Colo. 256, 162 Pac. 155, 159, as follows:

“The law is well settled that the partnership relation between the parties engaged in acquiring mining properties for their joint benefit must ex-

ist at the time such properties are acquired by one of the parties to such an arrangement to entitle the other to an interest therein."

In *Morrow v. Coast Land Co.*, 29 Cal. App. 2d 92, 84 P. 2d 301, it was held in an action by claimants against an oil well driller, that although the claimants and the driller had entered into a prospecting agreement with respect to the land in question, and had even commenced drilling for oil, but had subsequently stopped work and allowed the agreement to terminate, that the driller was entitled to obtain a permit in his own name, and that claimants were not entitled to share therein.

And, in *Bradley v. Andrews*, 91 Colo. 378, 14 P. 2d 1086, the claimants were to supply money and defendant was to prospect and locate oil leases. The claimants failed to supply the money and defendant called the contract off. Later the defendant interested a third party in the leases and the claimants attempted to exert a one-half interest. It was held that before any person who supplies money, etc., may share under a prospecting (grubstake) agreement, the property must have been acquired during the life of the agreement. In that case, the leases were acquired after the contract expired. The Court added further:

"... When the contract was terminated both parties were free to proceed as they saw fit. Bradley availed himself of his opportunity; Andrews neglected his. Now that Bradley, after an expenditure by him and his new associate of considerable time and money, is reaping the fruits of his industry, Andrews seeks to take away from

Bradley, a substantial part thereof. He ought not, and under law he cannot succeed in this attempt."

In a similar case, the plaintiffs and defendants entered into a prospecting agreement to acquire mining claims, and each of the parties was to share equally. One of the defendants and a party plaintiff located two mining properties within two weeks of a subsequent agreement mutually to abandon and dissolve the prospecting agreement. Seven days after the termination of the agreement the defendants and one of the plaintiffs relocated the same claims and erected proper monuments. Thereafter, the plaintiffs by their action sought to have defendants convey to them their alleged interest in the property, contending that the partners occupied a fiduciary relationship to one another, that the subsequent location, after the dissolution of the agreement, should be treated as a completion of the prior attempted locations, and that a trust should be imposed in their favor. The court rejected the contention of plaintiffs, concluding that defendants were not trustees. When the parties mutually agreed to dissolve the agreement, and having done so, the plaintiffs might be concluded to have abandoned all interest in the property. The court further pointed out that *no* duty remained when the agreement was terminated to complete any locations, and that plaintiffs (other than the one who joined in the subsequent locations) could not be compelled to accept a conveyance nor could they be charged with the expenses of location (*Page, et al. v. Summers, et al.*, 70 Cal. 121, 12 Pac. 120; See also *Jennings v. Richards*, 10 Colo. 395, 15 Pac. 677.

where the court refused to create a trust in mining property prospected during life of agreement and located by one party after the termination of agreement).

The instant case is not unlike the above-cited authorities. The grubstake agreement between plaintiffs and defendant, Knop, had clearly terminated when the latter placed the only good and valid location upon the Faith properties. Plaintiffs and Knop were free to proceed as they wished. No residual duties remained according to the proof. Moreover, there is nothing to show that Knop did not act in the utmost good faith when he located the properties and recorded the same for public scrutiny and inspection. And, again, it must be reasserted for the unmistakable and affirmative weight of the fact, that no substantial advances of the Websters contributed to the acquisition of the property. The law treats interests in real property with the greatest circumspection and caution, and will not allow a claim therein to be premised on speculation and conjecture, and especially will not sanction the creation of a trust in real property upon evidence which is not clear, convincing, definite, unequivocal, and which is conflicting on material points. The rule which forbids a co-tenant from acquiring and asserting an adverse title against his companions because of the mutual trust and confidence which is supposed to exist can have no application where the facts show that no cotenancy ever existed in the property and the locator acted only in conformity with federal law to secure an interest in the disputed property (*Hodgson v. Federal Oil & Development Co.*, 274 U.S. 15, 71 L. ed. 901, 47 Sup. Ct. 502).

POINT III.

EVEN ASSUMING, *arguendo* ONLY, THAT THE FAITH CLAIMS WERE LOCATED PURSUANT TO A TRUST RELATIONSHIP VESTING AN EQUITABLE INTEREST IN THE PLAINTIFFS, STILL THE DEFENDANTS, DOUGLAS J. DAVIS AND GRANT SHUMWAY, TOOK TITLE AS BONA FIDE PURCHASERS FOR VALUE AND WITHOUT NOTICE.

It uniformly has been held that a bona fide purchaser for value from a trustee holding under an implied trust, and without notice, takes free of any equities in the beneficiary of the trust (*Peterson v. Peterson*, 112 Utah 554, 190 P. 2d 135). Stated differently, anyone to whom property is transferred in violation of the trust holds the property as an involuntary trustee under such trust, unless he purchased it in good faith and for valuable consideration (*Sampson v. Bruder* (Cal. 1941) 118 P. 2d 28; see also *Rafferty v. Kirkpatrick* (Cal. 1938) 85 P. 2d 147). In this regard it has been held, in a California decision, that a person who purchases a mining claim in good faith and for a valuable consideration is not responsible to plaintiff who has rights under a grubstake agreement (*Kimball v. San Francisco Superior Court*, 38 Cal. App. 761, 177 Pac. 488).

It might be asked: Does the fact that defendant Davis took a Quit-Claim Deed from John J. Knop put him on notice that there may be unrecorded instruments or agreements effecting title or constituting encumbrances on the property? The Supreme Court of the United States in *Moelle v. Sherwood*, 148 U.S. 21, 13 S. Ct. 426, 429, has answered plainly in the negative, as follows:

“There is in this country no difference, in their efficacy and operative force, between conveyances in the form of release and quitclaim, and those in the form of grant, bargain and sale. *** If in either case the grantee takes the deed with notice of an outstanding conveyance of the premises by the grantor, or of the execution by him of obligations to make such conveyance of the premises, or to create a lien thereon, he takes the property subject to the operation of such outstanding conveyance and obligation, and cannot claim protection against them as a bona fide purchaser. But in either case, if the grantee takes the deed without notice of such outstanding conveyance or obligation respecting the property, or notice of facts which, if followed up, would lead to a knowledge of such outstanding conveyance or equity, he is entitled to protection as a bona fide purchaser upon showing that the consideration stipulated has been paid, and that such consideration was a fair price for the claim or interest designated. The mere fact that in either case the conveyance is unaccompanied by any warranty of title, and against encumbrances or liens, does not raise a presumption of the want of bona fides on the part of the purchaser in the transaction.”

This case disaffirmed prior decisions stating that a quitclaim grantee could not be a bona fide purchaser. See also to this effect, *Aitken v. Lane* (Mont. 1939) 92 P. 2d 628.

Certainly, under the facts presented in the instant case no notice could be considered to flow from the mere existence of an unrecorded grubstake agreement defining rights of the parties thereto. From the undisputed evi-

dence presented on behalf of defendants, Davis and Shumway, it is equally apparent that they had no knowledge that the plaintiffs had or were exerting any interest in the Faith Claims, arising from the earlier grubstake agreement. There remains, but a single factor upon which plaintiffs rely to rebut the overwhelming and preponderant evidence of good faith and purchase without notice—the recordation of patently void location notices.

As a general proposition, one who deals with real property is charged with notice of what is shown by the records of the County Recorder of the county in which the property is situated (*Crompton v. Jenson*, 78 U. 55, 70, 1 P. 2d 242). However, a purchaser need not take notice of recorded instruments not in his chain of title (4 *Bogert, Trusts and Trustees*, § 893, n. 82; *Smith v. Williams*, (Okla. 1928) 269 Pac. 1067). So, here, it can properly be argued that the location notices recorded prior to the effective date of Public Law 585 and showing the claims to be on valid oil and gas leases were wholly void and invalid and completely outside the chain of title in the Faith Claims.

This proposition is buttressed in the light of the general principal that “the record of a void instrument is of no effect whatsoever.” (45 AM. JUR., Record and Recording Laws, §105). It is stated further:

“No legal effect is produced upon the rights of the parties, or of subsequent purchasers or encumbrancers, by the recording of a void instrument. ****” (45 AM. JUR., *Supra*, Section 106).

In *Mosley v. Magnolia Petroleum Co.* (N.M. 1941) 114 P. 2d 740, it is stated:

“Only valid instruments are authorized to be filed and recorded, of which purchasers are charged with notice.”

In an Idaho decision, where a deed executed by grantor's attorney in fact was recorded prior to the filing and recording of the power of attorney, it was held that although this did not necessarily render the deed void as between the parties, it did not constitute notice to subsequent purchasers of the land (*Hunt v. McDonald* (Id. 1944) 149 P. 2d 792). The Court stated in *Madden v. Alpha Hardware & Supply Co.*, (Cal. 1954), 274 P. 2d 705, 707:

“It is true that recordation of an instrument is constructive notice of the contents thereof to subsequent purchasers, and that such knowledge is conclusive; however, this rule contemplates only conveyances by one having legal title to the property involved. *** the two quitclaim deeds which Cassidy subsequently negotiated, each of which was void on its face, could not affect the title, and gave no notice to anyone.”

In our case the only valid instruments were recorded by John J. Knop. In this regard Section 57-1-6, UTAH CODE ANNOTATED, 1953, provides as follows:

“Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate or whereby any real estate may be affected, to operate as notice to third persons shall be proved or acknowledged and certified in the manner prescribed by this title and

recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such proofs, acknowledgement, certification or record, and as to all other persons who have had actual notice. Neither the fact that an instrument, recorded as herein provided, recites only a nominal consideration, nor the fact that the grantee in such instrument is designated as trustee, or that the conveyance otherwise purports to be in trust without naming the beneficiaries or stating the terms of the trust, shall operate to charge any third person with notice of the interest of any person or persons not named in such instrument or of the grantor or grantors; but the grantee may convey the fee or such lesser interest as was conveyed to him by such instrument free and clear of all claims not disclosed by the instrument or by an instrument recorded as herein provided setting forth the names of the beneficiaries, specifying the interest claimed and describing the property charged with such interest."

This portion of our Code precludes any notice of third party equities arising from the recordation of the August 14, 1954, location by John J. Knop, the purported trustee.

Disregarding, for the moment, the clear import of the accepted doctrine of law regarding notice afforded by void instruments, and assuming that a grubstake agreement was once known by defendants to exist, yet the defendants, Davis and Shumway, acted in good faith, employed due diligence, and acquired title as bona fide purchasers for value. The following indicia of good faith supplied by the evidence exemplify this result:

- 1) The defendants went upon the ground and walked the entire area of the claims, and determined they were located by John J. Knop.
- 2) The examination of the property revealed that plaintiffs were not in possession, nor had they performed development work.
- 3) The defendants examined the record entries at the office of the County Recorder and determined that the only valid location was in the name of John J. Knop, alone.
- 4) The defendant Davis made complete inquiry of Knop regarding the latter's title and was advised that he (Knop) located the claims in his own behalf and that there were no outstanding equitable interests in third persons.
- 5) The defendant Davis made inquiry of Robert Gibson, Attorney at Law, and was advised that a title opinion had been prepared by him pertaining to the Faith Claims, and that John J. Knop had a good and unencumbered title.
- 6) The defendant Davis made inquiry of Scott M. Matheson, Jr., Attorney at Law, and was advised that the prior mining locations on valid oil and gas leases were void and that John J. Knop appeared to have valid title.
- 7) The defendants paid a reasonable consideration for the Faith Claims.
- 8) The defendants, after making the foregoing exhaustive inquiry, and after purchasing the property for a substantial consideration, then went upon the land and spent considerable additional sums for drilling and development.

One of these factors standing alone might be deemed insufficient to constitute diligence, but when each is considered it is apparent that the defendants Davis and Shunway exerted every reasonable effort to ascertain the true condition of the title, and only after the exercise of a plethora of caution they proceeded to acquire the deed from John J. Knop. To deny this title would be a grossly unfair penalty for unusual, persevering and laudable diligence.

If the facts are as plaintiffs allege, they prejudiced their standing in this matter by failing to make the slightest effort to correct the public records so as to protect innocent third persons against deception and reliance thereon. That this was not done shows how tenuous their claim must be.

POINT IV.

ASSUMING, *arguendo* ONLY, THE EXISTENCE OF A VALID TRUST AGREEMENT IN FAVOR OF PLAINTIFFS, UNDER THE UNCONTROVERTED FACTS IN THE INSTANT CASE, THE PLAINTIFFS MUST LOOK FOR THEIR REMEDY TO THE TRUSTEE.

Where a trustee, holding under a deed absolute on its face, conveys to an innocent purchaser, the cestai que trust cannot disturb the title, but must follow the proceeds of sale in the hands of the trustee (*Cole v. Thompson* (C.C. W. Va. 1909) 169 F. 729). Likewise, in this case the plaintiffs are obliged, assuming the existence of the purported trust, to seek their remedy against the de-

fendant John J. Knop, inasmuch as title to the property rests securely in the laps of defendants, Davis and Shumway.

CONCLUSION

It is respectfully submitted that the competent evidence of record is insufficient as a matter of law to sustain the finding of the trial court that John J. Knop located the Faith Claims pursuant to an express agreement or an implied duty to do so in behalf of plaintiffs; that John J. Knop, who conveyed title to the defendants, Davis and Shumway, was free to locate the subject mining claims in his own name and own behalf after the termination of the grubstake agreement; and, even assuming that plaintiffs did sustain their burden with clear, convincing, unequivocal and definite evidence, still the defendants, Davis and Shumway, took full and complete title as bona fide purchasers for value and without notice.

Accordingly, it is respectfully submitted that this Honorable Court should reverse the judgment of the lower court, and should order that the defendants, Douglas J. Davis and Grant Shumway, have judgment against plaintiffs for the following:

(a) That the Court decree that defendants, Douglas J. Davis and Grant Shumway, are the owners of all right, title and interest to the mining claims, Faith numbers 1 through 10, and entitled to the possession of said property and the holding thereof.

(b) That all other parties to this action be adjudged as having no estate, right, title or interest in said mining claims, or any part thereof, and that they be forever debarred from asserting any estate, right, title or interest of any nature in or to said property adverse to these defendants.

(c) That said defendants have and recover their costs of suit herein expended.

Respectfully submitted,

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