

1983

Henry Thomas Adams And Henry Thomas Adams, III v. Stephen L. Gubler, Ted Gubler, Venla Gubler, Steamboat Vista, Inc., The Leslie Wilcox Family Trust, Laprele G. Orton, Glen L. Gubler And Jean G. Cox, Trustees of The Leslie Wilcox Family Trust : Findings of Fact And Conclusions of Law And Judgment

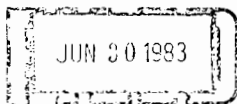
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IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
WASHINGTON COUNTY, STATE OF UTAH

HENRY THOMAS ADAMS and)
TERRY THOMAS ADAMS III,)

Plaintiffs,)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND JUDGMENT

STEPHEN L. GURLEP, TED GURLEP,)
TERRY GURLEP, STEAMBOAT VISTA,)
TRUST, THE LESLIE WILCOX FAMILY)
TRUST, LORRIE G. OPTON, GLEN)
L. GURLEP and JEAN G. COX,)
Trustees of the LESLIE WILCOX)
FAMILY TRUST,)

Defendants.)

Civil No. 7532

The above entitled matter having come on for trial before the court on the 30th day of September, 1981, the Plaintiffs having been represented by their attorney, Steven E. Snow, Esq., and the Defendants having been represented by their attorney, J. MacArthur Wright, Esq., and the court having heard the testimony of witnesses, examined the exhibits and reviewed the evidence, and the court being fully advised in the premises, it now makes the following:

FINDINGS OF FACT

1. The Leslie Wilcox Family Trust was created on or about July 15, 1973 by Ted L. Gubler & Joyce W. Gubler, his

wife, as Trustees, referred to as "creators" in the Declaration of Trust.

2. The beneficiaries of said Leslie Wilcox Family Trust are the five sons of the trustees, one of whom is the defendant, Stephen L. Gubler.

3. The original trustees of the Leslie Wilcox Family Trust were Glen Laub Gubler, Jean Gubler Cox and Steve P. Carter.

4. Steve P. Carter resigned soon thereafter and LaPrele G. Orton was appointed to replace him and said trustee served in that capacity at all times pertinent hereto.

5. The trustees, Ted L. Gubler & Joyce V. Gubler, as the first board of trustees, Glen L. Gubler and Jean Cox and Steve P. Carter, held an organizational meeting of said trust on or about July 10, 1973. Several meetings of the trustees were held thereafter.

6. There is substantial evidence that, and the court finds as a fact, that the trustees consulted with each other, in person and by telephone on numerous other occasions, concerning the trust business, even though written minutes of such meetings or consultations were not always kept.

7. The creators (trustees) Ted L. Gubler & Joyce V. Gubler, transferred most if not all, of the property they owned at the time of the creation of the Leslie Wilcox Family Trust into said trust.

8. Ted L. Gubler was named by the trustees to be the general manager of the trust assets at the organizational

title held on or about July 10, 1973, pursuant to authority vested in the trustees in the Declaration of Trust.

9. Ted L. Gubler served as general manager at all times pertinent hereto, but his activities in that capacity were subject to the approval and control of the trustees pursuant to the declaration of trust.

10. Stephen L. Gubler, at times, served as an adviser, apparently pertaining to real estate matters, to the Leslie Wilcox Family Trust.

11. Stephen L. Gubler's activities, pertaining to the Leslie Wilcox Family Trust, were subject to the approval and control of the trustees of the Leslie Wilcox Family Trust at all times pertinent hereto.

12. The Leslie Wilcox Family Trust entered into an agreement to purchase certain real property, referred to as the "Wolf Farm," on or about December 1, 1979, described as follows:

Parcel 1: Beginning at the Southwest Corner of Section 19, Township 42 South, Range 11 West, SIP&M and running thence North along the West line of said Section 19, 3114.535 feet, more or less, to a point South 131.21 rods from the Northwest corner of said Section 19; thence North 83° East 46.14 rods; thence South 169.0 rods, to a point approximately 25 rods North of the Southwest corner of Sectional Lot 11 in said Section 19; thence East 22.5 rods; thence North 15.0 rods; thence West 12.0 rods; thence North 15.0 rods; thence East 195.5 rods; thence North 67.0 rods; thence Northeasterly 121.5 rods, more or less, to the Northeast Corner of the Northeast Quarter of the Southeast Quarter (NE1/4SE1/4) of said Section 19; thence South 160.0 rods, more or less, to the Southeast corner of said Section 19; thence West 80.0 rods, more or less, to the Northeast Corner of the Northwest Quarter of the Northeast Quarter (NW1/4NE1/4) of Section 30, Township 42 South, Range 11 West, SIP&M thence South 60.0 chains, more or less,

to the Southeast Corner of the Northwest Quarter of the Southeast Quarter (NW1/4SE1/4) of said Section 30; thence West 41.4 chains, more or less, to a POINT West 1.4 chains from the Southeast corner of Sectional Lot 2 of said Section 30; thence Northwesterly to a point on the North line of said Sectional Lot 8 being 7 chains East of the Northwest corner of said Lot 8; thence Northwesterly to a point 10.35 chains South of the Northeast corner of Sectional Lot 4 of said Section 30; thence Northwesterly to the Northwest Corner of said Sectional Lot 4; thence North 20.0 chains, more or less, to the point of beginning.

LESS & EXCEPTING therefrom those portions of said land as conveyed to the State Road Commission of Utah.

Parcel 2: Beginning at the Southwest Corner of Section 24, Township 42 South, Range 12 West, S1R&M, and running thence North 40.0 chains, more or less, to the Northeast corner of the Southeast Quarter of said Section 24; thence West 60.0 chains, more or less, to the Northwest corner of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) of said Section 24; thence South 13.0 chains; thence South 70°43' East 21.19 chains, more or less, to the Southeast corner of said Northeast Quarter of the Southwest Quarter (NE1/4SW1/4); thence South 45° East 22.55 chains; thence North 13° East 1.18 chains; thence South 44° East 34.0 chains, more or less, to the Southeast corner of the Northeast Quarter of the Northeast Quarter (NE1/4NE1/4) of Section 25, Township 42 South, Range 12 West, S1R&M; thence North 20.0 chains, more or less, to the point of beginning.

LESS & EXCEPTING therefrom those portions of said land as conveyed to the State Road Commission of Utah.

Parcel 3: Beginning at a point North 132.2 feet from the Southeast Corner of Section 30, Township 42 South, Range 11 West, S1R&M and running thence North 1176.2 feet; thence West 1634.8 feet; thence South 54°16' East 2014.0 feet to the point of beginning.

LESS & EXCEPTING therefrom those portions of said land as conveyed to the State Road Commission of Utah.

B. Personal Property:

- (1) 1 used New Holland Hay Pacer
- (2) 1 used Gopher Machine
- (3) 1 used field pick-up hay hauler and stacker.
- (4) All water pumps, pipe and sprinklers located upon the above described real property.

C. Water rights evidenced by the following application on file in the office of the Utah State Engineer:

- (1) Application No. 38149 (81-901)
- (2) Application No. 38149-a (81-1798)
- (3) Application No. 40199 (81-1183)
- (4) Application No. 40199-b (81-1797)

13. Stephen L. Gubler, one of the beneficiaries of the Leslie Wilcox Family Trust, a licensed real estate salesman, working for one Steve P. Carter, assisted the trust in acquiring the said real property.

14. The trustees of the Leslie Wilcox Family Trust held numerous meetings, either in person or by telephone concerning the proposed purchase of the "Graf farm."

15. Trustee, Glen Leub Gubler, chairman of the trustees of the Leslie Wilcox Family Trust, visited the property and investigated the proposed purchase and reported back to the remaining trustees concerning his impressions and his opinions of the property.

16. The trustees of the Leslie Wilcox Family Trust effected the purchase of the "Graf farm," by the Trust and signed the "Contract for Purchase and Sale of Real and Personal Property" as trustees of the Leslie Wilcox Family Trust, whereby the Trust acquired the said "Graf farm".

17. Henry Thomas Adams and his son Henry Thomas Adams became interested in purchasing an interest in the "Graf

farm" from the Leslie Wilcox Family Trust sometime prior to the first of the year 1980.

18. Henry Thomas Adams acted for himself and his son, Henry Thomas Adams III, in the negotiations with the Leslie Wilcox Family Trust, its trustees or agents and others involved in transactions important herein.

19. Henry Thomas Adams prepared a hard written agreement dated January 2, 1980, (Pl. Exh. 2), providing for the sale, by the Leslie Wilcox Family Trust, of a 15% interest in the farm to him and his son and presented it to Ted L. Gubler for his signature.

20. Ted L. Gubler signed the hand written agreement (Pl. Exh. 2) with the notation "Subject trustees written approval" adjacent to his signature.

21. Ted L. Gubler informed Henry Thomas Adams when he signed the hand written agreement that his signature had to be signed and was, subject to the approval of the trustees of the Leslie Wilcox Family Trust.

22. The hand written agreement (Pl. Exh. 2) contained additional conditions embodied in it, including:

- (a) The Leslie Wilcox Family Trust being able to raise \$200,000.00 down payment by March 15, 1980.
- (b) Ability of trust to find purchaser for at least 35% of stock in Steamboat Vista for the purchase price of at least \$950,000.00 at \$284,000.00 per share with the balance in 20 years at 8% interest (SIC) of \$2500 per 5% ownership or 6% interest. The remaining acreage to be retained by the Leslie Wilcox Family Trust.

23. There was no evidence that the conditions were met, and the court finds as a fact that the above conditions were never fulfilled.

24. The trustees of the Leslie Wilcox Family Trust, in a meeting held March 12, 1980, voted to reject the offer to purchase a 15% interest in the "Graf farm" by Henry Thomas Adams and his son Henry Thomas Adams III.

25. By letter dated March 12, 1980, the trustees of the Leslie Wilcox Family Trust informed Henry Thomas Adams that the trustees had not approved the sale of 15% of the "Graf farm" to him and his son, and that the trust would not sell to them.

26. Certificate of Incorporation for Steamboat Vista, Inc. was filed with the Secretary of State February 25, 1980 and Stephen L. Gubler was one of the parties instrumental in having said articles filed.

27. There is no evidence that any stock of said corporation was ever issued and therefore the court finds as a fact that there was none issued.

28. The Articles of Incorporation of Steamboat Vista, Inc. listed Ted L. Gubler, Stephen L. Gubler and Venla Gubler as the members of the first Board of Directors.

29. No other members of the Board of Directors were ever elected.

30. No formal meetings of the Board of Directors were held appointing officers of said corporation.

31. Steamboat Vista, Inc. never acquired the necessary assets to enable it to fulfill the purpose for which it was organized.

32. Henry Thomas Adams caused to be prepared two Purchase Agreements (Pl. Exh. 5) whereby he offered to purchase 200 shares of stock, or 10%, of Steamboat Vista, Inc. and a second such agreement (Pl. Exh. 6) whereby his son, Henry T. Adams III offered to purchase 100 shares, or 5%, of the stock of Steamboat Vista, Inc. for \$5000 and \$2500 respectively.

33. Henry Thomas Adams gave to Steve E. Carter \$30,000 to be held by him or his corporation, Assets Holding, Inc. as a deposit on the purchase of said stock.

34. Stephen Gubler affixed his signature to said Purchase Agreements for Steamboat Vista, Inc. as its "authorized agent."

35. Henry Thomas Adams deposited a draft for \$30,000.00 with Southern Utah Title Co. for the balance of the purchase price of the stock in Steamboat Vista, Inc. pursuant to Pl. Exhs. 5 & 6.

36. The Agreements signed by Henry Thomas Adams, Stephen Gubler, (Pl. Exhs. 5 & 6) contained the provision therein that the "sale is subject to board of directors approval for sale of stock as therein mentioned."

37. There was no fraud on the part of defendants against plaintiffs in the inclusion of the aforementioned conditions in the stock purchase agreements. (Pl. Exhs. 5 & 6)

38. Plaintiff, Henry Thomas Adams, was informed and knew of, the conditional language in said documents.

39. The said draft for \$30,300.00, delivered to Northern Utah Title Co., was never given to Leslie Wilcox Family Trust and was returned to Henry Thomas Adams.

40. A writing (Pl. Exh. 11) was signed on or about December 5, 1979 by trustees Jean G. Cox, Glen L. Gubler and (a)Prele G. Orton, of the Leslie Wilcox Family Trust and by Stephen L. Gubler and Henry Thomas Adams as "President" and "Secretary" for Steamboat Vista, Inc. to sell 631 acres, a part of the "Graf farm," by Leslie Wilcox Family Trust to Steamboat Vista, Inc. pursuant to terms contained therein.

41. Steamboat Vista, Inc. at no time pertinent hereto, had the funds or the capability of specifically performing the contract to purchase the said 631 acres from Leslie Wilcox Family Trust, and the contract was not performed.

42. Stephen L. Gubler, Ted L. Gubler and Verla P. Gubler, as the named Board of Directors of Steamboat Vista, Inc., wrote Henry Thomas Adams and Henry Thomas Adams JII on or about March 28, 1980 (Pl. Exh. 18) informing them that the Board of Directors would not sell stock in Steamboat Vista, Inc. to them and rejecting the offer to purchase stock pursuant to the provision in said "Stock Purchase Agreements" making them subject to approval of the Board of Directors.

43. The letter, refusing approval of the sale to Henry Thomas Adams and Henry Thomas Adams III, informed them that Steve R. Carter was being instructed to return the deposit of \$2500 to them, (the Adams').

44. A copy of a letter to Assets Holding Corporation attention Steve P. Carter, was attached to the letter to Wilcox (Def. Exh. 18) which instructed the said Steve P. Carter to refund the \$7500 he had received as deposit, to Adam.

45. Steve P. Carter gave to Stephen L. Gubler a check drawn on his (Carter's), Assets Holding Corporation, account for \$7500.00 on or about January 21, 1980 with the notation on it "Leslie Wilcox - Steamboat Vista."

46. Stephen L. Gubler endorsed said check on the back thereof, "Stephen L. Gubler, agent for Leslie Wilcox Family Trust."

47. The Leslie Wilcox Family Trust sold, on or about March 18, 1980, a one-half interest in the "Graf farm" to one Everett N. Johnston.

From the foregoing Findings of Fact, the court now makes the following:

CONCLUSIONS OF LAW

1. The Leslie Wilcox Family Trust was a legal and viable Trust.
2. Ted L. Gubler is not the owner of the assets of said Trust, but said assets are, in fact, owned by the Leslie Wilcox Family Trust.
3. Ted L. Gubler, acting as general manager of the Leslie Wilcox Family Trust, did not adversely affect the validity of said Trust.

4. The conveyance of his property to the Leslie Wilcox Family Trust by Ted L. Gubler was not a fraudulent conveyance.

5. Stephen L. Gubler, on occasion advising the trustees of the Leslie Wilcox Family Trust as to real estate matters, and acting on occasion as an agent of said Trust did not adversely affect the validity of the said Trust.

6. The trustees of the Leslie Wilcox Family Trust were legally and properly appointed trustees and did not serve under the direction of Ted L. Gubler or Stephen L. Gubler and were independent, valid and legal trustees of the Leslie Wilcox Family Trust.

7. The trustees of the Leslie Wilcox Family Trust considering the size of the Trust, had adequate knowledge of the affairs of the Leslie Wilcox Family Trust, held meetings and discussions concerning the affairs of said Trust and were reasonably apprised of its assets, business and other matters.

8. The conditions contained in the Memorandum Agreement dated January 2, 1980, were proper and legal preconditions to its binding effects.

9. The Memorandum of Agreements dated January 2, 1980 between the Leslie Wilcox Family Trust and Henry Thomas Adams was a conditional agreement, signed subject to the approval of the trustees, and that approval having not been given, does not provide a basis for specific performance in favor of plaintiffs, the Adams.

10. The defendants have not breached the said Memorandum of Agreement by refusing to sell the interest in the "Graf farm" to plaintiffs.

11. The documents entitled Stock Purchase Agreement (Pl. Exhs. 6 & 7) contained legal and valid conditions were not met and the plaintiffs are not entitled to specific performance requiring the issuance of said Stock.

12. Stephen L. Gubler had authority to act on behalf of the Leslie Wilcox Family Trust, but the authority was limited to certain transactions.

13. Steamboat Vista, Inc. was properly formed but allowed to wither away because the purpose of its existence was impossible of completion.

14. Stephen L. Gubler had authority to act on behalf of Steamboat Vista, Inc., he being one of the moving parties in its organization.

15. The defendants had no fiduciary duty to plaintiffs to enforce the contract of sale entered into between the Leslie Wilcox Family Trust and the Steamboat Vista, Inc. to sell to Steamboat the "Graf farm".

16. It was impossible to enforce the contract of sale between the Leslie Wilcox Family Trust and Steamboat Vista, Inc., because Steamboat Vista, Inc. did not have the funds, it never acquired the funds, to purchase the "Graf farm" pursuant to the terms of the agreement.

17. There was not a mutual mistake on the part of the parties concerning the requirement for approval of the Board.

directors of Steamboat Vista, Inc. before the Stock Purchase Agreements would be valid. The conditions were valid and binding on the parties.

18. The plaintiffs are not entitled to reformation of the Stock Purchase Agreements (Pl. Exhs. 5 & 6) on the grounds of fraud by the defendants, or for any other reason.

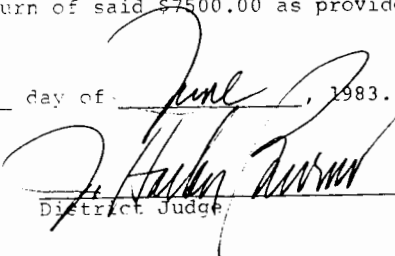
19. The plaintiffs are not entitled to a partition and severance of 15% of the "Graf farm," owned by Leslie Wilcox Family Trust.

20. The sum of \$7500.00 given to Stephen L. Gubler by Steven P. Carter, money which Gubler claimed was owed him by Carter for a separate obligation, because of the notation, "Leslie Wilcox Family Trust/Steamboat Vista, Inc. is concluded, contrary to defendants belief, to have been the deposit of Thomas Henry Adams and Thomas Henry Adams III. toward the purchase of stock in Steamboat Vista, Inc. by plaintiffs.

21. The said \$7500.00 should be returned to plaintiffs by defendants, or if not returned, an additional hearing held on damages.

22. The plaintiffs have no cause of action against the defendants except for the return of said \$7500.00 as provided hereinabove.

DATED this 30 day of June, 1983.



District Judge