

2004

H. C. Massey and Betty Griffiths v. Kenneth A. Griffiths : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS

STATE OF UTAH

H.C. MASSEY and BETTY MASSEY,

Appellants,

vs.

KENNETH A. GRIFFITHS, BKB LLC,
12 X 12 L.L.C., AARON B. BUTTARS,
BRENDA L. BUTTARS, ADELE B.
LEWIS,

Appellees.

**BRIEF OF APPELLANTS
H.C. AND BETTY MASSEY**

Appellate Court No. 20040650-CA

Appeal from the Ruling of the Second District Court
The Honorable Roger S. Dutson
Granting Motion for Summary Judgment

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**FILED
UTAH APPELLATE COURTS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.	iii
JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW	1
ISSUE NUMBER 1	1
STANDARD OF REVIEW FOR ISSUE NUMBER 1	1
ISSUE NUMBER 2	1
STANDARD OF REVIEW FOR ISSUE NUMBER 2	2
CONSTITUTIONAL OR STATUTORY PROVISIONS	2
STATEMENT OF CASE	2
STATEMENT OF FACTS.	3
SUMMARY OF ARGUMENT.	5
ARGUMENT	6
I. THE SUMMARY JUDGMENT MOVANTS BEAR THE BURDEN OF PERSUADING THE COURT THAT DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT.	6
II. THE “CAVEAT EMPTOR” ARGUMENT IS CONTRARY TO UTAH LAW	7
III. THE “DUE PROCESS” ARGUMENT IS ILL FOUNDED	10
IV. THE TRIAL COURTS FINDINGS OF FACT ARE INAPPROPRIATE AND NOT SUPPORTED BY THE RECORD	12

CONCLUSION.	14
SIGNATURE OF COUNSEL OF RECORD.	14
PROOF OF SERVICE	15
ADDENDUM	16

TABLE OF AUTHORITIES

Cases

<i>A.C. Financial, Inc. v. Salt Lake County</i> , 948 P.2d 771 (Utah 1997)	8, 9
<i>Alder v. Bayer Corp.</i> , 61 P. 3d 1068, 1076 (Utah 2002)	1, 2
<i>Buzas Baseball, Inc. v. Salt Lake Trappers, Inc.</i> 925 P.2d. 941 n.3 (Utah 1996), 11	
<i>Dillman v. Foster</i> , 656 P. 2d 974 (Utah 1982)	8
<i>Forbush v. Forbush</i> , 578 P.2d 518, 519 (Utah 1978)	13
<i>Fredriksen v. LaFleur</i> , 632 P. 2d 827, 828 (Utah 1981)	8
<i>Hanson v. Burris</i> , 46 P.2d 400, 406 (Utah 1935) (citations omitted)	8
<i>Harper v. Summit County</i> , 963 P.2d 768,774 (Utah App. 1998)	6
<i>Id.</i> at 57-58 (citations omitted)	10
<i>Kemmerer Coal Co. v. Brigham Young University</i> , 723 F.2d 54 (Utah 1983) . .	10
<i>Robinson v. Hanson</i> , 282 P. 782, 784 (Utah 1929)	7
<i>Shelledy v. Lore</i> , 836 P.2d 786, (Utah 1992)	11
<i>Transamerica Cash Reserve, Inc. v. Dixie Power & Water, Inc.</i> , 789 P.2d 24, 25 (Utah 1990)	6
<i>Union Central Life Insurance Co. v. Black</i> , 67 Utah 268, 247 P. 486(Utah 1926). 8	
<i>Young v. Salt Lake City Sch. Dist.</i> , 2002 UT 64, ¶ 2, 52 P.3d 1230 (Utah 1993). .	6

Statutes

Utah Code Ann. 57-3-2	10
59-2-1362	10
78-2a-3(2)(j)	1

Rules

Utah R. Civ. P. 56 (c)	6
Utah R. Civ. P. 56 (e)	7

JURISDICTIONAL STATEMENT

The Court of Appeals has Jurisdiction over this matter pursuant to Utah Code Ann. 78-2a-3(2)(j).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issue Number 1: Are Masseys' tax deed titles superior to Defendants' titles which are based upon by conveyances dated and recorded subsequent to the date of the conveyance and recording of Masseys' tax deeds, where the grantors of Defendants' subsequent conveyances, and the grantors' predecessors, had been in possession of the property conveyed, and paid all taxes assessed against their legal descriptions, for more than 20 years?

Standard of Review for Issue Number 1: The District Court decided this issue in favor of the Defendants' subsequent conveyances and against the Masseys by granting Defendants' motions for summary judgment. This Court reviews the trial court's summary judgment rulings for correctness, granting no deference, and viewing the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *Alder v. Bayer Corp.*, 61 P. 3d 1068, 1076 (Utah 2002).

Issue Number 2: Are the "Findings of Fact and Conclusions of Law" and resulting "Order Quieting Title to Real Property in 12 X 12 L.L.C. and Aaron Buttars and

Brenda L. Buttars” supported by the pleadings and supporting documents submitted in the trial court’s summary judgment proceedings.

Standard of Review for Issue Number 2: This Court reviews the trial court’s summary judgment rulings for correctness, granting no deference, and viewing the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *Alder v. Bayer Corp.*, 61 P.3d 1068, 1076 (Utah 2002).

CONSTITUTIONAL OR STATUTORY PROVISIONS

There are no constitutional provisions, statutes, ordinances, rules nor regulations whose interpretation is determinative of this appeal or of such central importance as to require their inclusion here.

STATEMENT OF THE CASE

This is an action to quiet title and for trespass and waste to real property commenced by H. C. Massey and Betty P. Massey, Appellants (Masseys) in the District Court. Masseys’ First Amended Complaint also alleged a cause of action for adverse possession; the adverse possession cause was dismissed and is not at issue in this appeal. Masseys’ claim of title is based upon conveyances by tax deeds from Weber County.

Defendants filed motions for summary judgment supported by memoranda containing lengthy statements of undisputed fact purportedly supported by lengthy exhibits including affidavits. R. at 601-83, 785-96 and 852-50. Masseys duly disputed many of the

facts propounded by Defendants. R. at 815-851. Masseys believe that the facts set forth herein fairly states those facts which are not in dispute.

The motions were submitted without oral argument and the Court entered its “Ruling Conditionally Denying Summary Judgment.” R. at 962-67. At a subsequent telephonic hearing between the Court and counsel and based upon certain concessions of fact made by Masseys’ attorney the Court verbally granted the Defendants’ motions for summary judgment and directed counsel for Defendants to prepare appropriate findings of fact, conclusions of law and a final order. R. at 1014. The final findings of fact and conclusions of law prepared by Defendants counsel incorporated by reference the Courts earlier conditional ruling. R. at 984-99. Copies of the trial court’s initial ruling, the transcript of the subsequent telephonic hearing, and the findings, conclusions and final order are included in the Addendum hereto.

Several of the findings of fact recited contain facts duly disputed by Masseys and others have no basis in the record whatsoever. These discrepancies are set out more fully below.

STATEMENT OF FACTS

This case involves real property located in the Southeast Quarter of Section 24, Township 6 North, Range 2 West in Weber County, Utah. Masseys purchased four separate parcels located in the Southeast Quarter at tax sale. Two of the parcels were

conveyed to the Masseys by tax deeds dated June 12, 1986, and recorded June 13, 1986.

R. at 989-90. The other two parcels were conveyed to the Masseys by tax deeds dated on June 8, 1992, and recorded June 10, 1992. R. at 990-91. The four parcels were contiguous. R. at 839.

No facts have been alleged evidencing any irregularity in the tax sales process. However, the trial court apparently agreed with the Defendants' argument that an irregularity can be presumed from the other undisputed facts set forth here.

The Defendants, Kenneth A. Griffiths (Griffiths), BKB LLC (BKB) and 12X12 , L.L.C. (12X12) are each successors in interest to a parcel of real property (the Griffiths Property) also located in the Southeast Quarter of Section 24. R. at 604-05. The Griffiths Property was first conveyed to Griffiths by warranty deed dated after the recording of all of the tax deeds, on September 10, 1993, and recorded on September 23, 1993. R. at 643-44. Griffiths conveyed the Griffiths Property to BKB by warranty deed dated and recorded January 24, 1994. BKB conveyed the Griffiths Property to 12X12 by Quit Claim Deed dated October 26, 2000, and recorded November 1, 2000. R. at 987.

The Defendants Aaron B. Buttars and Brenda L. Buttars (collectively, Buttars) claim an interest in a parcel (the Buttars Property) also located in the Southeast Quarter of Section 24. The Buttars Property was conveyed to Buttars by Brenda's mother, Defendant Adele B. Lewis (Lewis), by Warranty Deed dated and recorded December 5,

1994. R. at 988-89. Lewis accordingly has sold all of her right, title and interest in the Buttars Property although she continues to reside on a portion of the parcel.

The 12X12 Property is located North of the Buttars Property. R. at 839. A “very old fence” serves as the occupation line between the 12X12 Property and the Buttars Property. R. at 818. The legal description of Masseys’ tax deed properties straddles the old fence and overlaps the historical occupation of the 12X12 Property and the Buttars’ Property. R. at 819. The Defendants and their predecessors have paid taxes on legal descriptions contained in the tax notices issued to them by the County. R. at 1014, p. 10.

Not material to the present issues is the fact that Defendant Questar Gas Company (Questar) occupied a small parcel of property along the easterly end of the old fence line between the parcels occupied by the other Defendants’ predecessors. R. at 839. Questar is not a party to this appeal.

SUMMARY OF ARGUMENT

The summary judgment movants bear the burden of persuading the court that they are entitled to summary judgment. They have wholly failed in meeting this burden.

Defendants’ primary arguments which were apparently accepted by the trial court as controlling are referred to herein as the caveat emptor argument and the due process argument. The caveat emptor argument maintains that purchasers at tax sales purchase without warranties of any kind; that they purchase subject to prior recorded interests; that

they are chargeable with notice of and take subject to the full record chain of title; and that they take subject to all of the infirmities of title and subject to the doctrine of caveat emptor. These arguments are contrary to established Utah statutory and case law. In fact Utah law favors tax deed titles and recognizes that tax deed holders take a new and complete title under an independent grant from the sovereign authority which bars or extinguishes all prior titles and encumbrances of private persons and all equities arising out of them. When Defendants took title, Masseys' tax titles were of record and Defendants took title subject to Masseys' interests.

The due process argument fails because it does not recognize the fact that Defendants were on notice of Masseys' interests by reason of the prior recording of Masseys' tax deeds. The Defendants are asserting the deprivation of their predecessors constitutional rights, not their own. Utah law recognizes that no one has standing to assert a third-parties constitutional rights under the facts of this case.

ARGUMENT

I. The Summary Judgment Movants Bear the Burden of Persuading the Court that Defendants are Entitled to Summary Judgment.

Summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). The facts and all reasonable inferences drawn therefrom must be viewed in the light most

favorable to the nonmoving party. *Young v. Salt Lake City Sch. Dist.*, 2002 UT 64, ¶ 2, 52 P.3d 1230, 1233 (Utah 1993). For a moving party to be entitled to summary judgment, it must establish a right to judgment based on the applicable law as applied to the undisputed facts. See Utah R. Civ. P. 56(c); *Transamerica Cash Reserve, Inc. v. Dixie Power & Water, Inc.*, 789 P.2d 24, 25 (Utah 1990). “On summary judgment, the movant bears the initial burden of informing the trial court of the basis for its motion and identifying the portions of the pleadings or supporting documents that the movant believes demonstrate the absence of a genuine issue of material fact.” *Harper v. Summit County*, 963 P.2d 768, 774 (Utah App. 1998). “Supporting and opposing Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the Affiant is competent to testify to the matters stated therein.” Utah R. Civ. P. 56 (e).

Defendants have wholly failed in meeting their burden as will be more fully demonstrated below.

II. The “Caveat Emptor” Argument is Contrary to Utah Law.

In their caveat emptor argument Defendants argued that purchasers at tax sales purchase without warranties of any kind; that they purchase subject to prior recorded interests; that they are chargeable with notice of and take subject to the full record chain of title; and that they take title subject to all of the infirmities of record and subject to the

doctrine of caveat emptor. These arguments must fail as they are contrary to established Utah statutory and case law.

The critical importance of the revenue collection function of government demands that tax titles be highly favored:

The first and paramount necessity for social order, personal liberty, and private property is the maintenance of civil government; and government cannot exist without revenues. The necessity and importance of preferring the lien for general taxes over other claims are so impelling that the priority of the sovereign claims of the state will not be depreciated or denied without warrant from the Legislature in clear and unmistakable terms

Robinson v. Hanson, 282 P. 782, 784 (Utah 1929).

To further enhance the tax collection function, tax titles are considered new grants from the sovereign authority extinguishing all prior titles:

When the period of redemption has expired and the county has received a tax deed for any real estate sold for delinquent taxes, the county tax lien merges into the title as effectively as by execution sale with such further rights of redemption as the statute provides. Purchasers from the county then take with a “new and complete title in the land, under an independent grant from the sovereign authority, which bars or extinguishes all prior titles and encumbrances of private persons, and all equities arising out of them”

Hanson v. Burris, 46 P.2d 400, 406 (Utah 1935) (citations omitted).

In 1951 the Utah Legislature enacted a special statute of limitations applicable to tax titles in order to give increased stability to tax titles and thereby augment the revenues of state and local governments. *Fredriksen v. LaFleur*, 632 P.

2d 827, 828 (Utah 1981). See also, *Dillman v. Foster*, 656 P. 2d 974 (Utah 1982).

The Utah Supreme Court recently reemphasized that tax sales extinguish all prior claims and tax titles are entitled to a high degree of protection. In *A.C. Financial, Inc. v. Salt Lake County*, 948 P.2d 771 (Utah 1997), the court was faced with the issue of whether liens on real property for personal and real property taxes are subject to a trust deed interest created before accrual of the taxes underlying the liens. The trust deed lien holder asked the Court to overrule the Court's earlier decision in *Union Central Life Insurance Co. v. Black*, 67 Utah 268, 247 P. 486, (Utah 1926) (holding that tax liens enjoy priority over previously created contractual liens). In reaffirming *Black*, the Court gives heavy emphasis to the policy that the tax collection function of government requires that tax liens and tax titles be given high priority:

In addition, the holding of *Black* is more closely integrated into Utah law than is immediately apparent. Because *Black* involved not only liens for personal property taxes on real property, but also the liens for the real property taxes owed on the same parcel, it also brought into Utah law the widely accepted rule that real property tax liens have priority over all other claims on the property taxed. *Black* is the earliest Utah case for that rule, but later cases recognize the rule (although they do not cite *Black* for it) in holding that a tax sale extinguishes all prior private claims on the property. See *Hanson v. Burris*, 86 Utah 424, 438-39, 46 P.2d 400, 406 (1935) (acknowledging that purchasers of tax deed receive new title under independent grant of title which extinguishes all previous private titles and encumbrances); see also *Buchanan v. Hansen*, 820 P.2d 908, 910 (Utah 1991) (mentioning same); *Tuft v. Federal Leasing*, 657 P.2d 1300, 1303 (Utah 1982) (citing rule in Hansen). The statute providing for tax sales implicitly recognizes this rule and the underlying holding of *Black* with regard to real property taxes by defining the title granted at a tax sale as a "fee simple" title — i.e., one unencumbered by other claims. See Utah Code Ann. § 59-2-1351.1(9)(a) (1996).

Not recognizing tax lien priority in the context of tax sales would significantly dilute the State's ability to dispose of property at such sales because the buyer would be subject to other claims on the property.

A.C. Financial, Inc. v. Salt Lake County, 948 P.2d 771, 776 (Utah 1997).

The Defendants contended and the trial court adopted the argument that Masseys have the burden of proving that unless Weber County had a proper legal basis to issue their tax deeds, the deeds are void *ab initio*. R. at 855 and 965. These arguments and the courts ruling ignores the fact that Utah law favors tax deed titles and that tax deed holders take a new and complete title under an independent grant from the sovereign authority. It also flies in the face of the statutory presumption of regularity afforded tax deed holders. Utah Code sec. 59-2-1362.

Established Utah law favors tax deed titles. Neither Defendants nor the Court below gave any shrift to this doctrine.

III. The “Due Process” Argument is ill founded.

Defendants argued below that should Masseys’ Tax Deed titles be held superior to theirs, they will have been deprived of their property by due process of law. The trial court apparently adopted this argument although it never addressed it directly. R. at 962-67 and 984-99.

The Defendants’ reasoning fails to recognize the fact that all of their present interests were acquired after the Tax Deeds were of record. The last of the Tax Deeds

was recorded June 8, 1992. All of the Defendants acquired their interests subsequent to that date. The Defendants therefore had constructive notice of Masseys' tax title and took subject thereto. *See* section 57-3-2 (1) Utah Code ("Each document executed, acknowledged, and certified, in the manner prescribed by this title . . . shall from the time of recording with the appropriate County Recorder, impart notice to all persons of their contents.""). In other words, Defendants are asserting the deprivation of their predecessors' constitutional rights, not their own rights.

The Tenth Circuit was faced with this very issue in the case of *Kemmerer Coal Co. v. Brigham Young University*, 723 F.2d 54 10th Cir. (1983). The Court stated its holding as follows:

Kemmerer contends that due process was violated based on the following undisputed facts. Its predecessor, San Rafael, received no notice of the tax assessment on the coal and received only publication notice of the resultant sale of the coal rights These factors arguably indicate that the county deprived San Rafael of due process by its slipshod procedure Kemmerer itself has suffered no due process injury. If a constitutional violation occurred, it was the taking of San Rafael's property without due process. Kemmerer thus seeks to advance its claim by asserting a third-party's constitutional rights. "The general rule is that 'a litigant may only assert his own constitutional rights or immunities'" This rule has been applied to bar a grantee's assertion that its grantor's due process rights were violated We believe the Utah Supreme Court would hold that Kemmerer has no standing to assert a third-party's constitutional rights under the facts of this case [W]e do not believe it fundamentally unfair to apply the statute of limitations to Kemmerer who bought the coal lands in the face of record notice of a rival claim to "underground rights."

Id. at 57-58 (citations omitted).

The Utah Supreme Court has agreed with the Tenth Circuit:

The Tenth Circuit made an accurate forecast When Shelledy purchased the property from SBA in 1988, he was on record notice of defendants' rival claim to the property by virtue of the 1984 tax deed. Therefore, we hold that Shelledy lacks standing to assert the SBA's constitutional rights and defense.

Shelledy v. Lore, 836 P.2d 786, 790 (Utah 1992).

Defendants were all on notice of Masseys' tax title at the time they took title to the property and are in no position to complain that Masseys' title trumps theirs.

**IV. The Trial Courts Findings of Fact are inappropriate and
not supported by the record.**

This case points out the confusion introduced by the entry of findings of fact in summary judgment proceedings. The entry of findings of fact is "clearly inappropriate in any grant of summary judgment." *Buzas Baseball, Inc. v. Salt Lake Trappers, Inc.*, 925 P.2d. 941, n.3 (Utah 1996).

In any event, many of the findings are not supported by the record:

A. For some inexplicable reason new descriptions have been introduced into the findings of fact for the Griffiths Property. Compare Finding No. 1 (R. at 986 and 987) with the quit claim deed from BKB to 12X12. R. at 620. The descriptions are similar, but several of the distance calls have been changed. Masseys are aware of nothing in the record to support these differences.

B. Finding Nos. 1, 2, 3 and 7 each contain the exact wording of a legal conclusion regarding the subject of the paragraph: “owner and holder of the record, legal and equitable title”. R. at 986-989. In each case this is the ultimate legal issue and is not appropriately stated as a finding of the Court.

C. Finding Nos. 4 and 8 state that the Defendants “have timely paid and discharged all Real Property taxes that have been levied upon [their Property] during and throughout a period of more than twenty years immediately preceding the initiation of the above entitled action.” R. at 987-89. Masseys have disputed these assertions. R. at 817 and 826. What Massey did concede was that the Defendants and their predecessors paid taxes on the descriptions contained in the tax notices that were issued to them by the County. R. at 1014, p. 10.

D. Finding No. 14, so far as can be determined by Masseys, is totally without support in the record.

E. The facts contained in Finding No. 15 were disputed by the Masseys. R. at 818-819, par. 7.

F. Finding No. 16 restates a fact proposed by Defendants, but fully disputed by Masseys. R. at 821-822, par. 11.

G. Finding Nos. 17 and 18 contain facts disputed by the Masseys. Masseys conceded that none of the legal descriptions set forth in their tax deeds covered any real

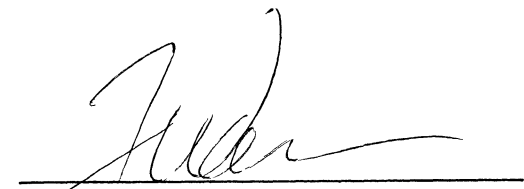
property that the Defendants and their predecessors in interest have not possessed and occupied, but they did dispute that the tax notices on which the taxes have been paid described all of the tax deed property. R. at 1014, p. 10.

The trial court's findings are not supported by the record. It follows that the legal conclusions and order based on the findings must also fail. See *Forbush v. Forbush*, 578 P.2d 518, 519 (Utah 1978) (the findings must be sufficient to provide a sound foundation for the judgment).

CONCLUSION

To assure the governments ability to raise revenue by levying and collecting taxes on real property Utah law strongly favors the stability and priority of tax titles. Indeed a tax title is a new title issued by the sovereign. The Defendants in this case, who all acquired their interests by conveyances dated after the recording of Masseys tax titles, took subject to those titles. The Defendants have failed to carry their burden of demonstrating how undisputed material facts and the law support their motions for summary judgment. The trial court erred in granting those motions.

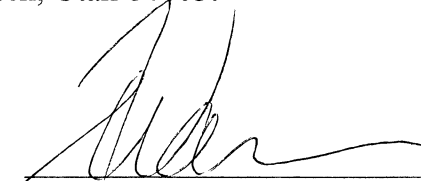
DATED this 10 day of February, 2005


FRANK S. WARNER
Attorney for Appellants

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on this 10 day of February, 2005, I served a copy of the foregoing Brief to Attorneys for Appellees Kenneth A. Griffiths and BKB, L.L.C. and 12 X 12, L.L.C., Douglas L. Stowell and Ray G. Martineau and Attorney for Appellees Aaron B. Buttars, Brenda L. Buttars and Adele B. Lewis, Attorney M. Darin Hammond and by mailing it first class mail with sufficient postage prepaid to the following addresses:

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Frank S. Warner
Attorney For Appellants

ADDENDUM

1. Ruling Conditionally Denying Summary Judgment. Dated February 11, 2004.
2. Video Transcript. Telephone Conference. Dated February 24, 2004.
3. Findings of Fact and Conclusions of Law. Dated May 21, 2004.
4. Order. Dated May 21, 2004.
5. Survey of Cynthia L. Segriff, Registered Land Surveyor. R. at 839.

Tab 1

**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH
WEBER COUNTY, OGDEN DEPARTMENT**

H.C. MASSEY and BETTY P. MASSEY,

Plaintiff's,

vs.

KENNETH A. GRIFFITHS, et al.,

Defendant's.

**RULING
CONDITIONALLY DENYING
SUMMARY JUDGMENT**

Case No. 960900027 PR
Honorable Roger S. Dutson

FEB 11 2004

This matter is before the Court on Defendant 12X12 LLC (12X12) and Defendant's Buttars and Lewis' (Buttars) Motions for Summary Judgment. Both 12X12 and Buttars contend they and their predecessor owners have always paid taxes on the property claimed by Massey's and therefore, Weber County had no title to convey with the tax deeds given to Massey's. They contend that the fence lines have created a boundary by acquiescence that should control ownership of the property in question and resolve any boundary discrepancies from the recorded deeds.

Plaintiff's claim that the descriptions in their tax deeds establish the ownership of the property to them. They further claim that the tax payment evidence filed by movant's is hearsay and that this Court cannot accept such hearsay evidence. They contend that the affidavits filed contain legal conclusions rather than facts, and should be disregarded in that respect, leaving substantial material evidentiary disputes. They further argue that the property interest claims of these present Defendant's are all subsequent to the Massey's tax deeds and therefore are inferior to Massey's claims.

The Court finds that there is insufficient evidence to grant summary judgment and denies those motions. The Court notes, however, that admissible evidence is very possibly available to show

RULING CONDITIONALLY DENYING SUMMARY JUDGMENT



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taxes have been paid by each of the defendant's or their predecessors on the recorded deeds of property they claim.

It will undoubtedly be helpful to all parties to know the tentative conclusions of law the Court has reached in reviewing the case.

1. TAX DEEDS.

Tax deeds in Utah have been given a substantial priority status under UCA §78-12-5.2, 5.3 & Utah case law. However, the Court concludes that based on the uncontroverted facts of this case, the plaintiff tax deed holders do not necessarily gain a priority of position over recorded deed holders, even though subsequent holders behind the Massey tax deeds might not have been in occupancy at the time the tax deeds issued, provided those title holders otherwise held good title. Therefore, based on the uncontroverted evidence in this case, if it is shown by competent evidence that taxes were paid on the deeded property at issue in this case in a timely fashion, the Weber County tax deeds would have been improperly issued, and as to those lands upon which the taxes were paid timely, are inferior to the otherwise valid title holders in this case to such property. The Court also rejects Plaintiff's argument that the Massey Deeds should have priority over subsequent title holders who can trace their titles to title holders described above (and in the next succeeding paragraph.)

2. BOUNDARIES BY ACQUIESCENCE.

The Court concludes that in this case, all relevant deeded property parcels may be modified pursuant to the legal concepts of boundaries by acquiescence, and if that resulted historically in possessed land different than shown by recorded deeds or conveyances, and the tax payment conditions have been met as set forth in the paragraph above relating to 'tax deeds', the resultant

parcels will also possess a priority over the tax deeds. In other words, if Massey claims lands possessed by persons entitled to establish boundaries different than shown by the recorded deeds and they show payment of taxes on their adjacent record deeded property, the Court concludes those property lines established by boundary by acquiescence will be acceptable to include the additional (or exclude the excess) property in their parcels, even though the boundaries are different than shown on the recorded deeds, and may thereby defeat the Massey tax deed claims.

3. QUIT CLAIM DEEDS.

The Court concludes that a quit claim deed conveys everything that the grantor possessed and even though a quit claim deed may have been recorded after a tax deed, it may have priority over the tax deed if the property meets the standards set forth above in the two preceding paragraphs.

4. THE MASSEY WEBER COUNTY TAX DEEDS.

If Weber County issues tax deeds on property upon which the taxes have always been paid on record title and which boundaries have been changed from the recorded title by the concept of boundaries by acquiescence, then those tax deeds on such property are null and void as to any person now holding an otherwise legitimate title by recorded conveyance, including the modified boundary by acquiescence.

5. NONINCLUDED PROPERTY.

In the event the Massey tax deeds include property upon which the taxes were not paid as described above, or pursuant to other legitimate rules regarding assessments and levy for taxes OR property that is not included in the recorded deeded property as modified through the boundary established by acquiescence and Weber County did properly assess and then sell at the Massey tax

sales, this other property the Court finds is 'nonincluded' property pursuant to the foregoing legal conclusions, then it would appear that Massey's would be entitled to a clear title to such property which might be included in their tax deeds (noting the exclusion of the Questar property.).

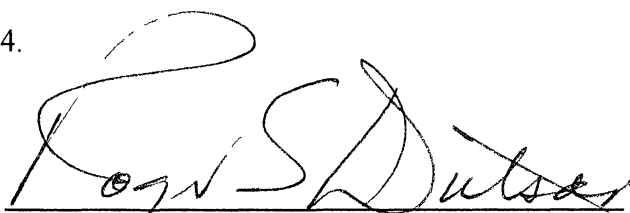
The Court is aware that there may be problems with corner markers, topographical surveys, and perhaps the Gilgen survey in this case. If adjoining parties have historically accepted certain land boundaries that are different than actual surveys and recorded deeds, those boundary lines accepted and acknowledged over many years will prevail over actual surveys or topographical overlays. Additionally, as stated above, the tax deeds will not be given priority over conveyances before and after issuance of the tax deeds, provided the conditions outlined above by the Court are met.

In summary, for Massey to prevail herein, they must show the property they are claiming did not have taxes assessed and paid and was different land than taxes were paid on and this also prohibits the Massey's tax deeds from disturbing boundaries established by acquiescence. On the other hand, if Massey's bought other property which was assessed and taxes were not paid, their claim would be valid as to that property. The Court rejects Plaintiff's argument that the tax deeds should be given such validity as to extinguish the claims of the subsequent title holders to the property described by the Court above. The conclusions apply to the conditions stated by the Court and uncontroverted facts of this case and on the legal concept that unless Weber County had a proper legal basis to issue their tax deeds they are void ab initio as to that land improperly sold.

The Court orders that for trial, the parties stipulate to all tax receipts that are not actually in controversy, and all other official records as such. All other admissible exhibits and documents must be stipulated to for admissibility though weight of all evidence will of course remain with the Court.

Each party should make every effort to complete stipulations and clearly identify all final exhibits at least one week prior to trial. Any objections to any particular exhibits must be forwarded to the Court with the written objection in detail on or before February 26, 2004. Not more than a three (3) page trial brief shall be submitted by each party at least one week prior to trial on or before Tuesday, February 24, 2004. Trial is scheduled to start Wednesday, March 3, 2004 at nine o'clock.

DATED this 9 day of February, 2004.



ROGER S. DUTSON
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

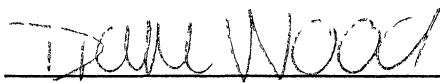
I HEREBY certify that I mailed a true and correct copy of the foregoing Memorandum to the following parties by first class mail, postage prepaid, this 9 day of February, 2004:

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A handwritten signature in dark ink, appearing to read "Jean Wood", is written over a horizontal line.

DEPUTY COURT CLERK

Tab 2

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IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

SEP 18 2004

H.C. MASSEY AND BETTY MASSEY,)
)
PLAINTIFFS,)
)
VS.)
)
KEN GRIFFITHS, ET AL.,)
)
DEFENDANT.)

VIDEO TRANSCRIPT
CASE NO. 960900027

TELEPHONE CONFERENCE

FEBRUARY 24, 2004

HONORABLE ROGER S. DUTSON

APPEARANCES:

FOR THE PLAINTIFFS:	WILLIAM F. DAINES
FOR THE DEFENDANTS:	M. DARIN HAMMOND
	RAY G. MARTINEAU
	DOUGLAS L. STOWELL

REPORTED/TRANSCRIBED BY DEAN OLSEN, CSR
2525 GRANT AVENUE
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1014

SCRIPT 2/24/04 telephone conference - by Dear



VD18070459
BKB LLC
0027

1 OGDEN, UTAH

FEBRUARY 24, 2004

2 **THE COURT:** HI.

3 **THE CLERK:** HI. I'VE GOT FRANK WARNER, DOUG STOWELL,
4 RAY MARTINEAU, AND DARIN HAMMOND ON THE PHONE. AND THIS WAS
5 ON BECAUSE I THINK WE WERE -- WE HAD A JURY TRIAL CONFIRMED
6 FOR FRIDAY, AND WE WERE GONNA CUT THEIR TRIAL SHORT. BUT
7 THERE'S A MOTION TO CONTINUE ON THAT TRIAL FRIDAY, SO --

8 **THE COURT:** OKAY.

9 **THE CLERK:** OKAY. HOLD ON.

10 **OKAY.** I'VE GOT JUDGE DUTSON ON THE LINE.

11 **THE COURT:** GOOD MORNING.

12 **MR. WARNER:** GOOD MORNING, JUDGE. THIS IS FRANK WARNER.

13 **MR. MARTINEAU:** AND, JUDGE, THIS IS RAY MARTINEAU.

14 **MR. STOWELL:** DOUG STOWELL, YOUR HONOR.

15 **MR. HAMMOND:** GOOD MORNING, YOUR HONOR.

16 **THE COURT:** EXCUSE ME, I DIDN'T GET THAT LAST ONE?

17 **MR. STOWELL:** I'M SORRY, DOUG STOWELL, ALSO ON THE LINE,
18 YOUR HONOR.

19 **THE COURT:** OKAY.

20 **MR. HAMMOND:** AND DARIN HAMMOND.

21 **THE COURT:** ALL RIGHT. NOW, I ASSUME ALL OF YOU HAVE
22 GOTTEN MY LATEST RULING?

23 **MR. WARNER:** YES.

24 **MR. MARTINEAU:** WE DID.

25 **THE COURT:** AND I WOULD ASSUME THIS IS GOING TO PERHAPS

1 EXPEDITE SOME OF THE TRIAL TIME, BUT PERHAPS, YOU KNOW, I'M
2 MISTAKEN, I DON'T KNOW. MR. WARNER, WHAT'S YOUR TAKE ON
3 WHERE -- WHERE YOU'RE GOING TO BE GOING NOW WITH THIS RULING?

4 MR. WARNER: WELL, I -- I THINK YOUR RULING'S GOING TO
5 EXPEDITE THINGS TREMENDOUSLY, NOT -- NOT TO MY SATISFACTION,
6 I DARE SAY --

7 THE COURT: RIGHT, I UNDERSTAND THAT.

8 MR. WARNER: BUT IT SEEMS TO ME, IN FACT, AS I'VE BEEN
9 THINKING ABOUT THIS AND EVEN THINKING ABOUT IT MORE THROUGH
10 THE NIGHT THAT WHAT YOU'VE DONE IS YOU'VE -- YOUR RULING IS
11 CALLED A CONDITIONAL DENIAL OF MOTION FOR SUMMARY JUDGMENT.
12 AND AS I READ --

13 MR. MARTINEAU: FRANK, I'M HAVING A LITTLE TROUBLE
14 HEARING YOU. COULD YOU SPEAK UP A LITTLE?

15 MR. WARNER: YOUR MOTION IS CALLED A CONDITIONAL DENIAL
16 OF SUMMARY JUDGMENT, AND AS I ANALYZE IT, PERHAPS THE ONLY
17 REASON IT IS CONDITIONAL IS BECAUSE OF MY OBJECTIONS,
18 SOMEWHAT OF A TECHNICAL NATURE CONCERNING THE HEARSAY NATURE
19 OF SOME OF THE EXHIBITS AND THE CONCLUSIONS OF SOME OF THE
20 EXHIBITS SUPPORTING THE MOTION FOR SUMMARY JUDGMENT.

21 LET ME SAY, YOUR HONOR, THAT I DO NOT HAVE ANY EVIDENCE
22 THAT WOULD SUGGEST THAT THE DEFENDANTS HAVE NOT PAID TAXES ON
23 THE TAX NOTICES THAT HAVE BEEN SENT TO THEM OVER THE YEARS,
24 NOR DO I HAVE ANY EVIDENCE THAT THERE IS ANY PARCEL OF
25 PROPERTY AT ISSUE HERE THAT HASN'T BEEN OCCUPIED BY THE

1 DEFENDANTS OVER THE YEARS. AND THOSE SEEM TO BE THE TWO --

2 THE COURT: RIGHT --

3 MR. WARNER: -- AREAS LEFT OPEN IN YOUR -- IN YOUR
4 JUDGMENT. SO I'M ALMOST -- ALTHOUGH I'D LIKE TO ARGUE THIS
5 FOREVER, I'M ALMOST WONDERING IF -- IF WE ADMIT AND STIPULATE
6 THOSE FACTS, IF -- IF YOU'RE NOT PREPARED TO RULE ON THIS
7 MATTER.

8 THE COURT: WELL, I -- I WAS CONCERNED AND AM CONCERNED
9 AS TO EXACTLY WHERE THERE MIGHT BE ANY PROPERTY THAT WAS NOT
10 COVERED BY WHAT YOU'VE JUST RELATED. IN OTHER WORDS, IF THE
11 TAX DEEDS INCLUDED SOME PROPERTY THAT WAS IN A -- IN AN AREA
12 THAT WAS NOT INCLUDED IN WHAT THE PARTIES WERE CLAIMING --
13 SEE, I DIDN'T -- I HAVE NO WAY OF KNOWING FOR CERTAIN THAT
14 THAT'S THE CASE BASED ON WHAT'S BEFORE ME. AND SO IF WHAT
15 YOU'RE SAYING IS EVERYTHING IS INCLUDED WITHIN THE PROPERTY
16 THAT THEY HAVE OCCUPIED, THEN I THINK YOU'RE RIGHT.

17 MR. WARNER: WELL, IT'S CERTAINLY A FACT. I MEAN, I --
18 WE CAN'T DISPUTE THAT. WHAT WE CLAIM -- WHAT WE'RE CLAIMING
19 IS EITHER OCCUPIED WAS ORIGINALLY OCCUPIED BY MOUNTAIN FUEL
20 OR QUESTAR AS TO THAT PARCEL, AND THEN THE OTHER TWO
21 DEFENDANTS ON THE NORTH --

22 THE COURT: EVERYTHING IS INCLUDED IN IT THEN.

23 MR. WARNER: SO FAR AS OCCUPATION LINES ARE CONCERNED,
24 YES.

25 THE COURT: OKAY. WELL, THEN, THAT DOES SEEM TO BRING

1 IT TO A HEAD.

2 MR. WARNER: THE -- THE ONLY ISSUES THAT REALLY HAVEN'T
3 BEEN DECIDED AND IN THE -- IN VIEW OF -- IF THAT'S THE WAY
4 YOU'RE GOING TO RULE, IT'S PROBABLY MOOT AT THIS POINT. THE
5 ONLY ISSUE THAT HASN'T BEEN DECIDED WOULD BE WHERE EXACTLY
6 THOSE TAX DEEDS LIE, HOW MUCH OF EACH DEFENDANT'S PROPERTY
7 THEY COVER, AND I THINK THERE'S SOME DISPUTE -- I THINK THERE
8 MAY BE SOME DISPUTE ON THAT. MY EXPERT HAS PRESENTED AND
9 WE'VE PRESENTED IN VARIOUS MOTIONS TO THE COURT A COPY OF HER
10 SURVEY. THE DEFENDANT'S ARE WELL AWARE OF IT, BUT I THINK
11 THEY -- I THINK AT LEAST MR. MARTINEAU'S CLIENTS DISPUTE
12 THAT. BUT THAT ALL SEEMS TO BE MOOT AT THIS POINT IF -- IF
13 YOUR HONOR'S --

14 THE COURT: WELL, IF EVERYTHING CLOSES, YES, I THINK SO.

15 UNIDENTIFIED SPEAKER: YOU MEAN IF THE DEED CLOSES --

16 THE COURT: ANYBODY HAVE A DIFFERENT READ ON THIS?

17 UNIDENTIFIED SPEAKER: YOUR HONOR, WHEN YOU SAY IF
18 EVERYTHING CLOSES, ARE YOU REFERRING TO THE LEGAL
19 DESCRIPTIONS IN THE DEEDS?

20 THE COURT: NO. I'M TALKING ABOUT CLOSING THE -- THE
21 BOUNDARIES BY ACQUIESCENCE --

22 UNIDENTIFIED SPEAKER: UH-HUH.

23 THE COURT: -- AS WELL AS LEGAL DESCRIPTIONS. YOU KNOW,
24 IF -- IF THEY DON'T CLOSE BY LEGAL DESCRIPTIONS BUT THEY DO
25 BY BOUNDARIES BY ACQUIESCENCE, THEN I DO THINK MR. WARNER IS

1 CORRECT IN -- IN INTERPRETING WHAT I HAVE RULED.

2 MR. MARTINEAU: YOUR HONOR, I THINK THE RECORD HEREIN
3 ESTABLISHES THAT VERY CLEARLY, THAT EITHER -- THAT WHAT IS IN
4 POSSESSION AND TAXES HAVE BEEN PAID ON INCLUDES NOT ONLY WHAT
5 IS IN THE DEEDS, BUT ALSO WHAT HAS BEEN OCCUPIED TO GIVE US A
6 BOUNDARY BY ACQUIESCENCE CLAIM. I THINK THAT APPLIES BOTH
7 TO -- WITH REGARD TO THE GRIFFITHS' INTERESTS AS WELL AS THE
8 BUTTERS.

9 THE COURT: WELL, THAT -- THAT VERY WELL MAY BE. I --
10 AS I'VE STATED, IN LOOKING AT MS. SEGRIFF'S DIAGRAM, IT'S A
11 LITTLE HARD FOR ME BECAUSE I -- I CANNOT REALLY TELL WHICH OF
12 THE TAX DEEDS COVERS WHAT. I JUST HAVE THE TOTALITY I THINK
13 OF THE TAX DEEDS SHOWN IN THERE. ISN'T THAT CORRECT,
14 MR. WARNER?

15 MR. WARNER: ACTUALLY, THEY'RE -- THEY'RE PLOTTED
16 INDIVIDUALLY THERE, BUT I -- I CONCEDE THAT THE BOUNDARIES
17 BETWEEN THEM ARE HARD TO SEE. THEY -- THEY DO -- THEY DO --
18 THE FOUR OF THEM TOGETHER DO CLOSE AS ONE UNIT --

19 THE COURT: OKAY.

20 MR. WARNER: -- AND HAVE SUBSEQUENTLY BEEN ASSIGNED ONE
21 TAX NUMBER BY THE COUNTY.

22 THE COURT: HAVE THEY? OKAY. ALL RIGHT. THEN IF THE
23 FACTS AREN'T IN CONTROVERSY, I THINK MY RULING WOULD RESOLVE
24 THIS MATTER.

25 MR. WARNER: BUT WHAT I'M CONCERNED ABOUT, YOUR HONOR,

1 IS THAT WE HAVE A GOOD CLEAN RECORD. I OWE MY CLIENT THAT
2 FOR --

3 THE COURT: CERTAINLY.

4 MR. WARNER: -- (UNINTELLIGIBLE) REASON, AND SO I --
5 I -- MY ONLY QUESTION --

6 THE COURT: WELL, SHOULD WE --

7 MR. WARNER: -- IS HOW WE GET FROM HERE TO A -- A
8 RECORD, AND I JUST -- IF I MAY SUGGEST THIS, PERHAPS --
9 PERHAPS IT AMOUNTS TO YOUR ISSUING AN ADDITIONAL RULING --
10 SEE HOW THE OTHER PARTIES FEEL ABOUT THIS, BUT JUST ISSUING
11 ADDITIONAL RULING ACKNOWLEDGING THAT IN THIS TELEPHONE
12 CONFERENCE, THE PLAINTIFF CONCEDED THOSE PARTICULAR FACTS.

13 THE COURT: OKAY.

14 MR. WARNER: THAT MAKE SENSE?

15 THE COURT: THAT MAY VERY WELL THEN CLARIFY EVERYTHING.
16 DOES ANYONE SEE A PROBLEM WITH THAT?

17 MR. MARTINEAU: WE DON'T, YOUR HONOR. WHAT I WOULD
18 LIKE, I THINK WHERE IT IS MR. WARNER'S BURDEN, IF HE WOULD
19 COME UP WITH A STIPULATION TO THAT EFFECT AND LET US, MYSELF,
20 STOWELL, AND DARIN HAMMOND, LOOK AT THAT AND SEE IF WE CAN'T
21 SIGN A STIPULATION THAT PUTS THAT AT REST.

22 THE COURT: AS FAR AS FACTS ARE CONCERNED.

23 MR. MARTINEAU: YES.

24 THE COURT: YES. AND THEN I'LL GO AHEAD WITH MY FINAL
25 RULING ON THE LEGAL QUESTIONS.

NOW, WE HAVE A TRIAL SCHEDULED --

MR. MARTINEAU: NEXT WEDNESDAY.

THE COURT: -- NEXT WEDNESDAY, AND I'D CERTAINLY LIKE TO
EITHER HAVE THIS WRAPPED UP THIS WEEK THEN OR WE CO -- WE
WOULD HAVE TO HAVE A HEARING TO FINALIZE IT ON THE RECORD ON
WEDNESDAY, AND THAT WOULD BE JUST ADDITION EXPENSE FOR EACH
OF YOUR CLIENTS. HOW DO YOU WANNA DO THIS, MR. WARNER?

MR. WARNER: WELL, THAT'S -- THAT'S EXACTLY WHY I,
AFTER -- AFTER CONSIDERING YOUR RULING, AM PREPARED TO MAKE
THE CONCESSIONS I AM. THAT IS --

THE COURT: OKAY.

MR. WARNER: -- BECAUSE I DON'T SEE THE POINT IN THE
ADDITIONAL EXPENSES FOR MY CLIENTS OR THE OTHER PARTIES'
CLIENTS AND --

THE COURT: ALL RIGHT. THEN --

MR. WARNER: -- BUT IT STILL SEEMS TO ME, YOUR HONOR,
THAT IT ISN'T EVEN NECESSARY THAT WE ENTER INTO A WRITTEN
STIPULATION; THAT YOU COULD SIMPLY RECITE IN YOUR RULING
THAT -- THAT WE CONCEDED AS TO THOSE FACTS.

MR. MARTINEAU: WELL, I THINK THERE OUGHTA BE
(UNINTELLIGIBLE) --

MR. WARNER: THERE ARE ONLY TWO FACTS --

MR. MARTINEAU: -- FACTS, JUDGE.

THE COURT: WELL, MR. WARNER, IF YOU'LL JUST PUT ON THE
RECORD VERY CLEARLY RIGHT NOW THEN WHAT YOU ARE CONCEDED.

1 THIS IS BEING RECORDED AND IT WILL BE A GOOD RECORD OF THAT,
2 I AGREE WITH YOU, THEN YOU WOULDN'T HAVE TO DO ANYTHING MORE.
3 WHY DON'T YOU GO --

4 MR. MARTINEAU: THAT SHOULD BE SUFFICIENT.

5 THE COURT: WHY DON'T YOU GO AHEAD AND STATE THEN
6 CLEARLY WHAT YOUR STIPULATION IS.

7 MR. WARNER: WELL, I -- WE -- WE CONCEDE THAT THE
8 PROPERTY IN QUESTION THAT WE CLAIM UNDER THE TAX DEEDS HAS
9 HISTORICALLY BEEN OCCUPIED BY THE DEFENDANTS AND THEIR
10 PREDECESSORS IN INTEREST TOGETHER WITH THE -- THE QUESTAR GAS
11 PROPERTY AND THEIR PREDECESSORS IN INTEREST. IT'S ONE OF THE
12 THREE PARTIES HAVE OCCUPIED ALL OF THAT PROPERTY WHICH WE ARE
13 CLAIMING UNDER OUR TAX DEEDS.

14 UNIDENTIFIED SPEAKER: FOR AT LEAST 20 YEARS?

15 MR. WARNER: FOR AT LEAST 20 YEARS.

16 UNIDENTIFIED SPEAKER: AND DO YOU CONCEDE THAT THE
17 DEFENDANTS PAID TAXES ON ALL THOSE PROPERTIES?

18 MR. WARNER: WELL, I CONCEDE THAT THERE'S AN ISSUE AS TO
19 WHAT THEY PAID TAXES ON, BUT I THINK THE COURT HAS VERY --
20 VERY CLEARLY SEEN OUR POSITION ON THAT, AND THAT IS, THE
21 TAXES HAVE BEEN PAID ON LEGAL DESCRIPTIONS WHICH DON'T
22 NECESSARILY MEET AND CLOSE, AND THERE ARE --

23 THE COURT: RIGHT, RIGHT.

24 MR. WARNER: -- BUT IN -- BUT THE COURT'S RULING GOES
25 BEYOND THAT AND SAYS THAT THAT ISN'T NECESSARY, THAT SO LONG

AS THE BOUNDARY BY ACQUIESCENCE IS THERE, THAT SOLVES THAT PROBLEM FROM THE COURT'S POINT OF VIEW IN THIS RULING.

THE COURT: OKAY. THAT -- YEAH, I DON'T THINK THAT MR. WARNER CAN CONCEDE THAT THE TAXES HAVE BEEN PAID ON ALL THE PROPERTY IN THE LE -- OR -- OR BEYOND THAT PROPERTY WHICH MIGHT EXCEED OR BE DIFFERENT THAN THE LEGAL DESCRIPTIONS. CORRECT?

MR. WARNER: THAT'S -- THAT'S PRECISELY OUR POINT,

UNIDENTIFIED SPEAKER: WE'RE -- WE'RE MERELY ASKING THAT HE CONCEDE THAT -- THAT ALL THE DEFENDANTS PAID TAXES ON THE PARCELS THAT THEY WERE ISSUED BILLS ON.

MR. WARNER: I WOULD CONCEDE THAT THEY HAVE PAID TAXES ON THE TAX NOTICES THAT WERE ISSUED TO THEM BY THE COUNTY.

UNIDENTIFIED SPEAKER: AND --

THE COURT: VERY WELL.

UNIDENTIFIED SPEAKER: -- AND YOU'RE ALSO CONCEDING, FRANK, THAT THE BOUNDARY BY ACQUIESCENCE IS KIND OF A OF WAKE-UP CALL FOR ANY -- ANY CHALLENGE TO ANY -- ANY DESCRIPTION IN ALL OF THE PROPERTY THAT WE'RE DEALING WITH HERE.

MR. WARNER: I THINK THAT WAS THE (UNINTELLIGIBLE) --

THE COURT: HE DOESN'T CONCEDE THAT, BUT THE COURT'S RULED THAT.

UNIDENTIFIED SPEAKER: OKAY.

MR. WARNER: THAT'S A LEGAL ISSUE I THINK THAT THE COURT
WAS RULED AGAINST US ON.

THE COURT: RIGHT. NOW, I HAVE ONE QUESTION NOW THAT
THIS IS ON THE RECORD: HOW DID THESE TAX DEEDS EVER GET
GENERATED? JUST -- WAS THERE -- WAS THERE A REVIEW BY THE
COUNTY SURVEYOR'S OFFICE THAT SAW THE DISCREPANCY IN THE --
THE LEGAL -- RECORDED LEGAL DESCRIPTION AND JUST DID THIS IN
THE OFFICE THEN OR WHAT -- WHAT HAPPENED?

MR. MARTINEAU: THERE WAS NEVER ANY REVIEW BY THE COUNTY
SURVEYOR'S OFFICE. THIS ALL WAS GENERATED AND CAME OUT OF
THE ASSESSOR'S OFFICE --

THE COURT: OKAY.

MR. MARTINEAU: -- BASED --

THE COURT: SO THEY JUST DID IT IN THE OFFICE BASED ON
WHERE THE --

MR. MARTINEAU: BASED --

THE COURT: -- BOUNDARIES CLOSED --

MR. MARTINEAU: BASED (UNINTELLIGIBLE) --

THE COURT: -- ON THE RECORDED DEEDS.

MR. MARTINEAU: IT WAS BASED ON A STRAY DEED BACK IN THE
RECORD TITLE, AND THAT'S HOW THAT CAME ABOUT.

MR. WARNER: YEAH, I DON'T NECESSARILY AGREE WITH THAT.
LET -- LET ME TELL YOU WHAT MY VIEW OF IT IS, YOUR HONOR, AND
I DIDN'T REALLY INTEND TO PRESENT EVIDENCE ON THIS BECAUSE I
DIDN'T THINK (UNINTELLIGIBLE) --

THE COURT: WELL, NO, I THINK IT'S MORE A MATTER OF
CURIOSITY TO THE COURT THAN ANYTHING RIGHT NOW.

MR. WARNER: I -- I'VE SPOKE WITH SOME PEOPLE OF -- FROM
THE ASSESSOR'S OFFICE THAT THERE WERE HISTORICALLY, AND
APPARENTLY WHAT HAPPENS IS THE COUNTY RECORDER RECORDS THESE
DEEDS, AND THEY ARE OBLIGATED TO FURNISH THE LEGAL
DESCRIPTIONS TO THE COUNTY ASSESSOR FOR TAX PURPOSES. THAT'S
WHERE -- THAT'S WHERE THIS ALL ORIGINATES UNDER UTAH LAW.
AND -- AND WHAT HAPPENED BACK AT SOME POINT IN TIME IS, IS
THAT WHEN THESE DESCRIPTIONS DIDN'T MATCH UP ON THE COUNTY'S
PERFECT ONE-MILE SQUARE GRID THAT THEY USE FOR EVERY SECTION
IN THE COUNTY, IT WOULD -- IT WOULD LEAVE GAPS SOMETIMES IN
THE MIDDLE, AND SO THEY WOULD -- THE COUNTY RECORDER WOULD --
WOULD ISSUE COPIES OF -- OR LEGAL DESCRIPTIONS ON THESE GAPS,
THESE -- IN THE LEGAL DESCRIPTIONS TO THE COUNTY ASSESSOR.
AND THE COUNTY ASSESSOR STARTED TAXING THESE AND THEY CALL
THEM REMAINING PARCELS. THE TERM (UNINTELLIGIBLE) --

THE COURT: WHEN DID THAT START?

MR. WARNER: APPARENTLY IT'S A PRACTICE THAT HAS -- HAS
BEEN GOING ON FOR SOME TIME AND -- AND THERE'S BEEN A LOT OF
THESE ISSUED. IT STARTED -- I'M NOT SURE THE EXACT DATE. OF
COURSE PRIOR TO THE DATE OF THESE DEEDS.

MR. MARTINEAU: THESE GAPS ARE BASED UPON A STRAY DEED
BACK IN THE RECORD TITLE.

MR. WARNER: WELL, MR. MARTINEAU (UNINTELLIGIBLE) --

1 THE COURT: WELL (UNINTELLIGIBLE) GENERATED -- THAT WAS
2 PROBABLY A DEED GENERATED BY THE ASSESSOR'S OFFICE OR THE
3 RECORDER'S OFFICE.

4 MR. WARNER: MY VIEW IS, IS THAT STRAY DEED, THERE IS A
5 DEED THERE AND IT'S -- IT -- IT ISN'T IN THE CHAIN OF TITLE,
6 I ADMIT THAT. WAS -- WAS EITHER GENERATED, AS YOU SUGGEST,
7 YOUR HONOR, OR IT WAS GENERATED BY THE PARTIES THEMSELVES
8 RECOGNIZING --

9 MR. MARTINEAU: (UNINTELLIGIBLE)

10 MR. WARNER: -- THAT THE (UNINTELLIGIBLE) --

11 MR. MARTINEAU: IT WAS MISTAKENLY GENERATED BY ONE OF
12 THE PARTIES WAY BACK, AND IT'S -- IT'S NOT IN THE CHAIN OF
13 TITLE, BUT IT'S IN THE RECORD TITLE, AND THAT'S WHERE THIS
14 ALL COMES FROM.

15 MR. WARNER: YEAH, BUT --

16 THE COURT: UH-HUH.

17 MR. WARNER: BUT A LOT OF THESE REMAINING PARCELS DIDN'T
18 HAVE THOSE KIND OF DEEDS TO BACK 'EM UP THAT THIS
19 (UNINTELLIGIBLE) --

20 THE COURT: WELL, NOW, THERE'S ONE OTHER FACTOR HERE,
21 ALTHOUGH THE COUNTY ISN'T BROUGHT INTO THIS, THE MASSEYS PAID
22 SOME MONEY TO THE COUNTY FOR THIS, AND THEY GOT NOTHING,
23 AND --

24 MR. WARNER: WELL, AND THEY CONTINUED TO PAY TAXES ON IT
25 (UNINTELLIGIBLE) --

1 THE COURT: WHAT?

2 MR. WARNER: THEY HAVE CONTINUED TO PAY TAXES ON IT
3 (UNINTELLIGIBLE) --

4 THE COURT: AND THEY'VE CONTINUED --

5 MR. MARTINEAU: YOUR HONOR, THAT GOES WITH THE TAX DEED.
6 THEY GET WHATEVER THE -- THE COUNTY HAD, WHICH IF THEY HAD
7 NOTHING, THEY GET NOTHING.

8 THE COURT: WELL, BUT THEN IF THERE WAS NOTHING THERE,
9 THEY PROBABLY ARE ENTITLED TO A REFUND. BUT I DON'T --
10 THEY'RE NOT BROUGHT INTO THIS ONE, SO I GUESS WE DON'T NEED
11 TO WORRY ABOUT THAT.

12 MR. WARNER: THERE'S -- THERE IS A PROVISION IN STATE
13 LAW WHICH SAYS THAT IN THE EVENT -- IN THE EVENT THE TAX DEED
14 IS FOUND TO BE INVALID, THAT THE GRANTEE OF THE TAX DEED
15 SHALL HAVE A LIEN ON THE PROPERTY WHICH SHALL BE FORECLOSED
16 IN THE SAME PROCEEDING AS THE DETERMINATION OF THE INVALIDITY
17 OF THE TAX DEED. AND I THINK I HAVE THAT IN MY OTHER ROOM
18 THERE SITTING ON TABLE. A LAW I JUST RAN ACROSS THE OTHER
19 DAY, AND IT'S AN ISSUE I'D LIKE TO HOLD OPEN IN THIS
20 MATTER --

21 THE COURT: NOT AGAINST THESE PARTIES, BUT THE COUNTY.

22 MR. WARNER: WELL, IT SAYS A LIEN AGAINST THE PROPERTY,
23 SO --

24 THE COURT: WELL, IF IT SAYS A LIEN AGAINST THE
25 PROPERTY, THEN THAT WOULD BE EXTINGUISHED UNDER MY RULING,

1 HOWEVER --

2 UNIDENTIFIED SPEAKER: YES, ABSOLUTELY.

3 MR. WARNER: IT WOULD --

4 MR. MARTINEAU: ABSOLUTELY. THIS -- THIS IS NO TIME TO
5 RAISE THAT ISSUE AT ALL.

6 THE COURT: WELL, IT -- IT VERY WELL IS THE TIME TO
7 RAISE IT IF IT'S GOING TO BE RAISED BECAUSE IT NEEDS TO BE
8 RESOLVED IF IT'S GOING TO BE RAISED.

9 MR. WARNER: MAY I FURNISH THE COURT AND THE PARTIES A
10 CITATION TO THAT FOR WHAT IT'S WORTH AND PERHAPS --

11 THE COURT: WELL, I -- I WOULD APPRECIATE THAT, AND THEN
12 WHEN I ISSUE MY FINAL RULING IN NEXT COUPLE OF DAYS, I WILL
13 ADDRESS THAT ISSUE AS IT RELATES TO THESE PARTIES.

14 MR. WARNER: I'LL FURNISH A COPY OF THAT.

15 THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE WE NEED
16 TO DISCUSS?

17 UNIDENTIFIED SPEAKER: WELL, YOUR HONOR, WITH REGARD TO
18 THE TAX DEEDS, WILL YOUR RULING INCLUDE SOMETHING THAT
19 SUGGESTS THAT THOSE DEEDS ARE NO LONGER VALID BECAUSE THERE'S
20 NO PROPERTY TO SUPPORT THEM? WE JUST DON'T WANT AN ISSUE
21 LIKE THIS TO COME UP AGAIN IN THE FUTURE.

22 THE COURT: WELL, THAT'S WHAT I'M TALKING ABOUT REALLY.
23 I WANT TO BRING THIS THING TO A FINAL CONCLUSION EVEN IF WE
24 HAVE TO BRING THE COUNTY IN SOME WAY. BUT I WOULD LIKE TO
25 REVIEW THAT STATUTE OR -- OR ORDER THAT -- OR RULING THAT

MR. WARNER HAS FOUND AND -- SO WILL YOU FORWARD THAT TO MY OFFICE IMMEDIATELY AND TO EACH OF THE PARTIES?

MR. WARNER: I WILL.

THE COURT: TODAY.

MR. MARTINEAU: FRANK, COULD YOU GIVE US THE CITATION TO THAT OR THE REFERENCE TO THE CODE?

MR. WARNER: I DON'T HAVE IT IN FRONT OF ME, RAY, BUT I'LL -- I'LL FAX IT TO YOU IMMEDIATELY. IT'S IN MY OFFICE. IF THE PARTIES WANNA HOLD, I'LL SEE IF I CAN PUT MY HANDS ON IT.

THE COURT: WELL --

UNIDENTIFIED SPEAKER: I AM FAMILIAR WITH THAT STATUTE, AND THAT STATUTE SUGGESTS THAT THE SALE WAS ORIGINALLY A VALID SALE. IN OTHER WORDS, YOU CAN'T HAVE A LIEN ON SOMETHING THAT DOESN'T EXIST. AND IF A TAX SALE WAS DONE IMPROPERLY WITHOUT GIVING PROPER NOTICE, THEN IT DOES GO BACK TO THE ORIGINAL OWNER, AND THE TAX DEED CLAIMANT WOULD HAVE A LIEN. BUT THAT DOESN'T APPLY TO OUR SITUATION WHERE THE COURT IS FINDING THAT THE TAX DEED ITSELF WASN'T EVER VALID.

MR. WARNER: WELL, LET ME FAX THAT TO EACH OF THE PARTIES AND THE COURT.

THE COURT: ALL RIGHT. IF THERE'S A FURTHER NEED FOR TELEPHONE CONFERENCE, MY CLERK WILL GET IN TOUCH WITH ALL OF YOU.

MR. WARNER: OKAY.

THE COURT: ANYTHING ELSE WE NEED TO DISCUSS?

UNIDENTIFIED SPEAKER: THAT'S IT. THANK YOU.

MR. MARTINEAU: WE -- WE CERTAINLY WANT FOR THIS TO LAY TO REST ANY CLAIMS THAT THE GRIFFITHS GROUP OR THE -- OR THE -- THE --

MR. WARNER: BUTTERS.

UNIDENTIFIED SPEAKER: BUTTERS.

MR. MARTINEAU: -- BUTTERS GROUP DON'T HAVE A CLEAR TITLE TO THEIR PROPERTY FROM THIS POINT FORWARD.

THE COURT: WELL, OF COURSE --

MR. MARTINEAU: THERE'S A LOT OF EXPENSE INVOLVED HERE, LOT OF LEGAL MANEUVERING, LOT OF ISSUES. WE NEED TO MAKE SURE THAT WHATEVER'S DONE LAYS THIS THING FINALLY TO REST.

THE COURT: WELL, LET ME JUST MENTION ONE THING THAT HAS COME TO MY MIND SEVERAL TIMES, MR. MARTINEAU. THAT IS THIS: MY RULING OR THE -- THE CLAIMS BETWEEN BUTTERS AND THE GRIFFITH GROUP I ADDRESS IN THIS RULING. AND IT SHOULD BE THE END OF IT AS FAR AS THOSE TWO PARTIES ARE CONCERNED ALSO. BUT THEY ARE NOT ADVERSE PARTIES TO EACH OTHER IN THIS CASE. AND -- AND WE ALL KNOW HOW AS YEARS GO ON, BOUNDARIES BY ACQUIESCENCE CAN ALWAYS RAISE THEIR UGLY HEAD. I'M THINKING THAT THESE TWO PARTIES OR THEIR SUCCESSORS IN INTEREST SHOULD MAKE SURE THAT THERE'S SOMETHING RECORDED THAT CLARIFIES THEIR BOUNDARIES OR THAT SOMETHING OCCURS TO RESOLVE ANY FUTURE CLAIMS REGARDING THEIR BOUNDARIES BETWEEN THE TWO OF

1 THEM BECAUSE IT'S CERTAINLY BEEN ADDRESSED IN THIS CASE, BUT
2 IT ISN'T A RULING AS TO WHERE THEIR BOUNDARY LINES ARE
3 BECAUSE I'VE NEVER ACTUALLY HAD A HEARING ON -- BETWEEN THOSE
4 TWO PARTIES WHO COULD BE ADVERSE PARTIES. YOU SEE WHAT I'M
5 SAYING?

6 MR. MARTINEAU: YES. WELL, I THINK IF WE TAKE YOUR
7 HONOR'S RULING WHEN IT COMES DOWN -- AND I ASSUME YOU'LL WANT
8 FINDINGS OF FACT AND CONCLUSIONS OF LAW PREPARED -- I THINK
9 THAT DARIN AND I CAN TAKE THAT AND WE CAN ADD TO THAT
10 WHATEVER WE NEED TO MAKE SURE THAT THEY -- THE ISSUES BETWEEN
11 US AND BUTTERS ARE COVERED.

12 WHAT WOULD YOU THINK OF THAT, DARIN?

13 MR. HAMMOND: I THINK THAT'S WISE. I WOULD LIKE TO
14 HANDLE THIS RIGHT NOW SO THAT IT DOESN'T BECOME A PROBLEM IN
15 THE FUTURE.

16 THE COURT: ALL RIGHT. THEN WHY DON'T I HAVE ONE OF YOU
17 PREPARE THE FINDINGS AND CONCLUSIONS AND THROW IN SOME LEGAL
18 DESCRIPTIONS HERE THAT ARE GONNA ACCOMPLISH THAT?

19 MR. MARTINEAU: I'LL BE HAPPY TO UNDERTAKE THAT.

20 THE COURT: I ASSUME YOU'VE HAD SOME ACCURATE SURVEYS
21 NOW THAT DO LAY OUT THE METES AND BOUNDS.

22 MR. MARTINEAU: YES, WE DO. WE WOULD BE HAPPY TO COME
23 UP --

24 THE COURT: I -- I'M SAYING METES AND BOUNDS TO THE
25 BOUNDARIES BY ACQUIESCENCE BECAUSE I ASSUME THAT'S WHAT WE'D

1 BE TALKING ABOUT AT A TRIAL.

2 MR. MARTINEAU: YES. I'D BE HAPPY TO COME UP WITH SOME
3 PROPOSED FINDINGS AND CONCLUSIONS IF YOUR HONOR WOULD LIKE ME
4 TO.

5 THE COURT: ALL RIGHT.

6 UNIDENTIFIED SPEAKER: YOUR HONOR, WAS THERE -- I ASSUME
7 THAT THERE'S NO TRIAL BRIEF DUE TOMORROW.

8 THE COURT: THERE WON'T BE AS LONG AS -- NO, THERE --
9 THERE WON'T BE ANYTHING MORE NEEDED.

10 MR. MARTINEAU: OKAY. NOW, WILL YOUR HONOR -- WAS YOUR
11 HONOR GOING TO RULE FIRST OR SHOULD I JUST GO AHEAD AND
12 PREPARE THE FINDINGS AND WE'LL HAVE THOSE TAKE CARE OF IT?

13 THE COURT: WELL, MY RULING GIVEN THE STIPULATION IS
14 ALREADY ON THE RECORD.

15 MR. MARTINEAU: OKAY.

16 THE COURT: I DON'T THINK I NEED TO RULE FURTHER AS LONG
17 AS THAT STIPULATION'S ON THE RECORD. DO EITHER OF YOU -- ANY
18 OF YOU SEE A REASON WHY I WOULD NEED TO?

19 MR. MARTINEAU: I DON'T.

20 MR. WARNER: NO, I DON'T EITHER. I --

21 UNIDENTIFIED SPEAKER: NO.

22 MR. WARNER: I QUESTION THE NECESSITY OF BOTH THE
23 FINDINGS OF FACT AND CONCLUSIONS IN A FORMAL SORT OF WAY. IS
24 MY UNDERSTANDING, RULINGS ON MOTIONS FOR SUMMARY JUDGMENT
25 DON'T -- DON'T REQUIRE TECHNICAL FINDINGS OF FACT AND --

THE COURT: WELL, IT'S NOT ABSOLUTELY ESSENTIAL, BUT WHERE IT'S FINALIZING A CASE SUCH -- WITH SUCH COMPLICATED ISSUES AS THIS, I WOULD REQUIRE IT.

MR. WARNER: OKAY.

MR. MARTINEAU: YEAH, WE THINK IT'S VERY MUCH IN ORDER.

THE COURT: UH-HUH.

MR. WARNER: THERE'S ONE OTHER ISSUE THAT I DON'T KNOW IF IT NEEDS TO BE BROUGHT UP. MR. MARTINEAU, THE DEPOSITION COSTS OF OUR EXPERT, DID YOU GET HER BILL AND ARE YOU GOING TO TAKE CARE OF THAT OR DO WE NEED TO PROCEED --

MR. MARTINEAU: I DID GET IT. I HAVEN'T HAD A CHANCE TO REALLY CONSIDER IT. I DON'T THINK THAT WE SHOULD BE LIABLE FOR WORK THAT SHE DID IN STUDYING TO GET READY. WE DIDN'T ASK HER TO STUDY AND GET READY. WE JUST WANTED HER TO TESTIFY TO THE FACTS THAT SHE'S AWARE OF.

MR. WARNER: OKAY. WELL, IT'S PRETTY MODEST BILL. WHY DON'T YOU LOOK IT OVER AND IF THERE'S A PROBLEM, LET US KNOW.

THE COURT: AND I'VE ALREADY ISSUED A RULING ON THE EXPERTS, HOW I WOULD ALLOW THAT, AND I THINK IT SHOULD BE HERE, TOO.

MR. MARTINEAU: THAT JOHN STALL?

THE COURT: YEAH.

MR. MARTINEAU: OKAY. THAT PROBABLY WILL OFFSET AT LEAST THE OTHER BILL THEN. OKAY.

MR. WARNER: WHAT -- IS THAT IN YOUR -- IS THAT IN YOUR

RULING THAT YOU --

THE COURT: NO. THAT WAS IN A EARLIER MOTION WHERE I LIMITED WHAT HE COULD CHARGE FOR.

MR. WARNER: I'M NOT FAMILIAR WITH THAT.

THE COURT: OH, RECALL HE WANTED TO CHARGE WHAT, \$200 AN HOUR FOR ALL OF THE TIME THAT HE SPENT IN PREPARATION, AND I REFUSED THAT?

THE CLERK: WAS THAT IN THE OTHER CASE, YOUR HONOR?

THE COURT: NO, IT WAS IN THIS CASE. I BELIEVE.

MR. WARNER: I THINK --

THE COURT: WASN'T IT -- WAS IT IN ANOTHER -- I HAD STALL IN ANOTHER CASE.

MR. WARNER: I THINK IT MAY HAVE BEEN IN THE OTHER --

THE COURT: OH, I'M SORRY. IT WAS. I DID NOT ALLOW HIM TO CHARGE ALL OF HIS PREPARATION TIME. I DID ALLOW HIM TO CHARGE FOR THE ACTUAL DEPOSITION TIME.

MR. MARTINEAU: OKAY. I'M NOT AWARE OF THAT.

THE COURT: NO, AND I -- I'M SORRY. THAT WAS ANOTHER LAND CASE THAT I HAD RECENTLY THAT --

MR. WARNER: SAME WITNESS.

THE COURT: -- I WAS CONFUSED ON. BUT HE WAS A WITNESS IN THAT ONE AS WELL.

UNIDENTIFIED SPEAKER: WILL WE NEED TO COME TO THE FIRST DAY OF THE TRIAL TO FINALIZE ANYTHING --

THE COURT: NO.

UNIDENTIFIED SPEAKER: -- AND WILL THE OTHER DAY BE CANCELLED?

THE COURT: IT'LL ALL BE CANCELLED. YOU WON'T EVEN NEED TO APPEAR.

UNIDENTIFIED SPEAKER: OKAY.

MR. MARTINEAU: OKAY.

THE COURT: UNLESS SOMEBODY SEES A NEED TO APPEAR. I DON'T.

MR. MARTINEAU: YOUR HONOR, IN PREPARING THESE FINDINGS AND CONCLUSIONS, I WILL -- WE'LL WANT TO GET A COPY OF THE -- OF THIS HEARING SO THAT I CAN HAVE EXACTLY BEFORE ME WHAT YOUR HONOR'S RULED AND WHAT STIPULATIONS HAVE BEEN, SO (UNINTELLIGIBLE) --

THE COURT: ALL RIGHT. I'LL ASK -- I'LL DIRECT MY CLERK TO HAVE THE COURT REPORTER PREPARE A COPY OF THIS HEARING.

MR. MARTINEAU: OH, BOY, THAT WOULD BE --

THE COURT: THE TELEPHONE CONFERENCE.

MR. MARTINEAU: AND THEN BRETT CRAGUN WHO'S IN MY OFFICE LIVES IN OGDEN. I'LL HAVE HIM PICK UP A COPY. ONCE WE GET THE COPY, WE'LL COME UP WITH SOME FINDINGS AND CONCLUSIONS WITHOUT DELAY.

THE COURT: ALL RIGHT. AND WE'LL CANCEL ALL HEARINGS THEN UNLESS SOMEBODY SEES A NEED FOR ONE.

THE CLERK: WE'LL NEED A CHECK OR SOME TYPE OF PAYMENT FOR THAT COPY OF THE TAPE.

THE COURT: HOW MUCH IS THAT, \$12 OR SOMETHING?

THE CLERK: FIFTEEN -- 15.

THE COURT: DIANE?

THE CLERK: \$15.

THE COURT: \$15. GET IT TO MY CLERK, DIANE,
MARTINEAU.

MR. MARTINEAU: OKAY.

THE COURT: ALL RIGHT.

MR. MARTINEAU: I UNDERSTOOD THAT YOU WAS GONNA HAVE A
TRANSCRIPT PREPARED THERE?

THE COURT: NO. IT'LL BE A VIDEOTAPE.

MR. MARTINEAU: OKAY.

THE COURT: THAT'S ALL YOU'LL NEED.

MR. MARTINEAU: OKAY. WE'LL GET IT -- WE'LL GET THE
PAYMENT AND WE'LL PICK UP IT UP AS SOON AS WE CAN.

THE COURT: AND MY CLERK IS DIANE AT 395-1156.

MR. MARTINEAU: OKAY.

THE COURT: ANYTHING ELSE WE NEED TO DISCUSS?

MR. WARNER: THINK NOT.

MR. MARTINEAU: THANKS, JUDGE.

UNIDENTIFIED SPEAKER: (UNINTELLIGIBLE)

UNIDENTIFIED SPEAKER: THANK YOU, YOUR HONOR.

THE COURT: UH-HUH.

CERTIFICATE

STATE OF UTAH)
) SS
COUNTY OF WEBER)

THIS IS TO CERTIFY THAT THE FOREGOING 23 PAGES OF
TRANSCRIPT CONSTITUTE A TRUE AND ACCURATE RECORD OF THE
PROCEEDINGS TO THE BEST OF MY KNOWLEDGE AND ABILITY AS A
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH.

DATED AT OGDEN, UTAH THIS 10TH DAY OF SEPTEMBER, 2004.



DEAN OLSEN, CSR

Tab 3

?

SECOND DISTRICT COURT

2004 MAY 21 P 4:45

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Attorneys for Defendants
Kenneth A. Griffiths, BKB, LLC and 12 X 12, L.L.C.

MAY 21 2004

IN THE SECOND DISTRICT COURT IN AND FOR
WEBER COUNTY, OGDEN DEPARTMENT, STATE OF UTAH

H.C. MASSEY; and BETTY P. MASSEY,)

Plaintiffs,)

vs.)

KENNETH A. GRIFFITHS; BKB LLC;)
QUESTAR GAS COMPANY; WILSON)
IRRIGATION CO.; AARON B. BUTTARS;))
BRENDA L. BUTTARS; ADELE B.)
LEWIS; FRANCES E. HANKS; KIMEL P.)
FISHER; and JOHN DOES 1 through 100,)

Defendants.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

Civil No. 960900027
Judge Roger S. Dutson

Findings of Fact and Conclusions of Law



960900027 VD11644372 BKB LLC

)
12 X 12, L.L.C., a Limited Liability)
Company;)
)
Third-Party Plaintiff,)
)
vs.)
)
H.C. MASSEY; BETTY P. MASSEY;)
QUESTAR GAS COMPANY, a)
Corporation; AARON B. BUTTARS;)
BRENDA L. BUTTARS; and ADELE B.)
LEWIS,)
)
Third-Party Defendants.)
)

The above-entitled cause came on regularly before the Honorable Roger S. Dutson for a Final Pretrial Telephone Conference on February 24, 2004 at 8:30 a.m., the plaintiffs appearing by and through their counsel Frank S. Warner, the defendants Kenneth A. Griffiths and BKB LLC, and third-party plaintiff 12 X 12, L.L.C., appearing by and through their counsel Ray G. Martineau and Douglas L. Stowell, the defendants Aaron B. Buttars, Brenda L. Buttars and Adele B. Lewis appearing by and through their counsel M. Darin Hammond, and the Court having previously approved and signed its Order Of Dismissal As To The Defendant Wilson Irrigation Company Only, dated February 19, 2003, and the Stipulation, Order, And Judgment Of Dismissal With Prejudice Of Plaintiffs' Claims Against Questar Gas Company, dated October 9, 2003, and the named defendants Frances E. Hanks and Kimel P. Fisher not having been served with process or having entered any appearance herein and the Court having heretofore issued its Ruling Conditionally Denying Summary Judgment, dated February 9, 2004, and the Court having

heard and carefully considered the statements and arguments of counsel, including the statement by plaintiffs' counsel that plaintiffs "concede that the property in question that we claim under the tax deeds has historically been occupied by the defendants and their predecessors in interest, together with the Questar Gas property and their predecessors in interest . . . for at least 20 years," and that the "defendants and their predecessors in interest have paid taxes on the tax notices that were issued to them by the County", and the Court being fully advised in the premises and good cause appearing therefor hereby makes the following:

FINDINGS OF FACT

1. On or about September 10, 1993 Frances B. Hanks, as the then owner and holder of the record, legal and equitable title to the following described real property ("Griffiths Property") located in Weber County, State of Utah, conveyed the same to the defendant Kenneth A. Griffiths ("Griffiths") by Warranty Deed dated September 10, 1993, which Warranty Deed was subsequently recorded in the office of the Weber County Recorder on September 23, 1993 in Book 1681 at Pages 1038 and 1039 as Entry No. 1248223:

15-063-0035 and 15-062-0036: Part of the Southeast Quarter of Section 24, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point in the center of 1200 West Street, said point being West 942.09 feet and South 286.17 feet from the East Quarter Corner of said Section 24, and running thence South along said center 201.72 feet, thence West 863.79 feet to the East line of the Willard Canal right-of-way; thence Northwesterly along said East line along the arc of a 495 foot radius curve to the right a distance of 210.22 feet, the long chord of which bears North 15°20'47" West 209.21 feet; thence East 929.15 feet to the point of beginning. Excepting therefrom the Street on the East.

15-063-0037 and 15-063-0038: Part of the Southeast Quarter of Section 24, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point in the center of 1200 West Street, said point being West 942.09 feet and South 487.89 feet from the East Quarter Corner of said Section 24, and running thence South along said center 157 feet; thence West along a fence 183 feet; thence South along a fence 40 feet; thence West along a fence 202 feet; thence South along a fence 289.80 feet in the East line of the Willard Canal right of way; thence Northwesterly along said East line as follows: North 45°01' West 559.61 feet to the point of a curve; thence along the arc of a 495 foot radius curve to the right a distance of 150.93 feet, the long chord of which bears North 36°16'53" West 150.35 feet; thence East 269.79 feet to the point of beginning. Excepting therefrom the street on the East.

2. On or about January 24, 1994 Kenneth A. Griffiths, as the then owner and holder of the record, legal and equitable title to the Griffiths Property conveyed the same to the defendant BKB LLC, a Utah limited liability company ("BKB"), by Warranty Deed dated January 24, 1994, which Warranty Deed was subsequently recorded in the office of the Weber County Recorder on January 24, 1994 in Book 1699 at Pages 1947 and 1948 as Entry No. 1270446.

3. On or about October 26, 2000 BKB LLC, as the then owner and holder of the record, legal and equitable title to the Griffiths Property conveyed the same to the third-party plaintiff 12 X 12, L.L.C., a Utah limited liability company ("12 X 12"), by Quit Claim Deed dated October 26, 2000, which Quit Claim Deed was recorded in the office of the Weber County Recorder on November 1, 2000 in Book 2099 at Pages 1904-1906 as Entry No. 1735201.

4. 12 X 12 and each of its predecessors in interest in and to the Griffiths Property have timely paid and discharged all real property taxes that have been levied upon

the Griffiths Property during and throughout a period of more than 20 years immediately preceding the initiation of the above-entitled action.

5. On or about February 26, 1953 Kenneth H. De Vries and Ruth Carver De Vries, as the then owners and holders of the record, legal and equitable title to the following described real property ("Buttars Property") located in Weber County, State of Utah, conveyed the same to James H. Lewis and the defendant Adele B. Lewis, as joint tenants, by Warranty Deed dated February 26, 1953, which Warranty Deed was subsequently recorded in the office of the Weber County Recorder on June 26, 1962 in Book 714 at Page 232 as Entry No. 382225:

A part of the northeast quarter of the southeast quarter of Section 24; in Township 6 North, Range 2 West of the Salt Lake Meridian, U.S. Survey, in Weber County, State of Utah; Beginning at a point 20 chains south and 14.58 chains west of the northeast corner of said quarter section; thence west 5.44 chains; thence north $7\frac{1}{2}$ chains; thence east 5.44 chains; thence south $7\frac{1}{4}$ chains to the place of beginning, containing $4\frac{1}{2}$ acres, more or less.

6. On or about June 23, 1962 Wesley De Vries and Phyllis De Vries, executed and delivered a certain Quit Claim Deed covering the Buttars Property to James H. Lewis and the defendant Adele B. Lewis, as joint tenants, which Quit Claim Deed was subsequently recorded in the office of the Weber County Recorder on June 26, 1962 in Book 714 at Page 233 as Entry No. 382226.

7. On or about December 5, 1994 the defendant Adele B. Lewis, as the then owner and holder of the record, legal and equitable title to the Buttars Property (her husband and joint tenant having theretofore died) conveyed the same to the defendants Aaron B. Buttars and Brenda L. Buttars ("the Buttars") by Warranty Deed dated December

5, 1994, which Warranty Deed was subsequently recorded in the office of the Weber County Recorder on December 5, 1994 in Book 1740 at Page 912 as Entry No. 1324178.

8. The Buttars and each of their predecessors in interest in and to the Buttars Property have timely paid and discharged all real property taxes that have been levied upon the Buttars Property during and throughout a period of more than 20 years immediately preceding the initiation of the above-entitled action.

9. The boundaries between the Griffiths Property, the Buttars Property and the Questar Gas property have been clearly marked and identified, as they are now, by long established fence lines, which fence lines have been recognized and acquiesced in by the respective owners of the Griffiths Property, the Buttars Property and the Questar Gas property as the actual boundaries between their respective properties, for a period of not less than twenty continuous years immediately preceding the initiation of the above-entitled action.

10. On or about June 12, 1986 Weber County, acting by and through the Weber County Auditor, executed and delivered to plaintiffs that certain Tax Deed ("Tax Deed No. 1") purporting thereby to convey to plaintiffs the following described real property located in Weber County, State of Utah, which deed was subsequently recorded in the office of the Weber County Recorder on June 13, 1986 in Book A-8 at Page 397 as Entry No. 971917:

PART OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE MERIDIAN, U.S. SURVEY: BEGINNING 20 CHAINS EAST, AND 737.89 FEET SOUTH OF THE NORTHWEST CORNER OF SAID QUARTER SECTION: RUNNING THENCE SOUTH 47.11 FEET: THENCE EAST 377 FEET MORE OR LESS TO A POINT WEST 942.09 FEET FROM THE EAST LINE OF SAID QUARTER SECTION: THENCE NORTH 47.11 FEET;

THENCE WEST 377. FEET, MORE OR LESS TO THE POINT OF BEGINNING.

11. On or about June 12, 1986 Weber County, acting by and through the Weber County Auditor, executed and delivered to plaintiffs that certain Tax Deed ("Tax Deed No. 2") purporting thereby to convey to plaintiffs the following described real property located in Weber County, State of Utah, which deed was subsequently recorded in the office of the Weber County Recorder on June 13, 1986 in Book A-8 at Page 398 as Entry No. 97198:

PART OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 1291.37 FEET WEST AND 1040.37 FEET SOUTH OF THE EAST QUARTER CORNER OF SAID SECTION 24: THENCE NORTH 325.49 FEET; THENCE WEST 35.71 FEET; THENCE SOUTH 289.80 FEET: THENCE SOUTH 45D01' EAST 50.49 FEET TO THE POINT OF BEGINNING.

12. On or about June 8, 1992 Weber County, acting by and through the Weber County Auditor, executed and delivered to plaintiffs that certain Tax Deed ("Tax Deed No. 3") purporting thereby to convey to plaintiffs the following described real property located in Weber County, State of Utah, which deed was subsequently recorded in the office of the Weber County Recorder in Book 1629 at Page 700 as Entry No. 1181275:

PART OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING 20 CHAINS EAST AND 785 FEET SOUTH OF THE NORTHWEST CORNER OF SAID QUARTER SECTION, RUNNING THENCE SOUTH 40 FEET; THENCE EAST 176.04 FEET, THENCE NORTH 40 FEET, THENCE EAST 150 FEET, THENCE SOUTH 40 FEET, THENCE EAST TO A POINT WEST 942.09 FEET FROM THE EAST LINE OF SAID QUARTER SECTION, THENCE NORTH 40 FEET, THENCE WEST 377 FEET TO THE POINT OF BEGINNING.

13. On or about June 8, 1992 Weber County, acting by and through the Weber County Auditor, executed and delivered to plaintiffs that certain Tax Deed ("Tax Deed No. 4") purporting thereby to convey to plaintiffs the following described real property located in Weber County, State of Utah, which deed was subsequently recorded in the office of the Weber County Recorder in Book 1629 at Page 702 as Entry No. 1181277:

PART OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN: BEGINNING 20 CHAINS EAST 714.89 FEET SOUTH OF THE NORTHWEST CORNER OF SAID QUARTER SECTION; RUNNING THENCE SOUTH 23 FEET; THENCE EAST 377 FEET; THENCE NORTH 63 FEET; THENCE WEST 183 FEET, THENCE SOUTH 40 FEET; THENCE WEST 194.91 FEET TO THE POINT OF BEGINNING.

14. A cursory inspection by the Weber County Assessor or the plaintiffs of the Griffiths Property, the Buttars Property and the Questar Gas property would readily and clearly have disclosed that the boundaries of and between the same were clearly marked and identified by long established fence lines and that the same had been occupied by the owners of said properties over an extended period of time.

15. E. Paul Gilgen, a former Weber County Surveyor, prepared a survey of the real property, of which the Griffiths Property, the Buttars Property and the Questar Gas property are now a part, dated October 22, 1963, which survey accurately shows the location of the boundary lines as they now exist, between the Griffiths Property, the Buttars Property and the Questar Gas property.

16. The root of the title to the legal descriptions that are set forth in Tax Deed No. 1, Tax Deed No. 2, Tax Deed No. 3 and Tax Deed No. 4 ("Tax Deeds") is a Quit

Claim Deed, dated September 25, 1979, that purports to convey the real property described therein, to which property the grantor named therein held no title or interest.

17. None of the legal descriptions set forth in the Tax Deeds cover any real property that the defendants, 12 X 12, and their respective predecessors in interest have not occupied, possessed and paid taxes on as above stated for a continuous period of not less than 20 years immediately preceding the initiation of the above-entitled action.

18. None of the legal descriptions that are set forth in the Tax Deeds cover any real property that the defendants and their predecessors in interest have not possessed, occupied and paid taxes on as above stated.

From the foregoing Findings Of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. The Court's findings and ruling set forth in the Court's Ruling Conditionally Denying Summary Judgment, dated February 9, 2004 are by this reference incorporated herein and made a part hereof.

2. The defendants Kenneth A. Griffiths, BKB LLC, Aaron B. Buttars, Brenda L. Buttars and Adele B. Lewis, and the third-party plaintiff 12 X 12, and each of them, are entitled to the entry of an order herein dismissing all of plaintiffs' claims herein with prejudice and upon the merits and awarding plaintiffs nothing thereby.

3. The defendant 12 X 12, is entitled to the entry of an order herein quieting the title to the Griffiths Property, including all portions thereof heretofore occupied by the defendant 12 X 12 and its predecessors in interest up to and including the present boundaries thereof, in 12 X 12, free and clear of any and all claims, rights, titles, interests

and estates of every kind and description therein and thereto of plaintiffs and any other party hereto.

4. The defendants Aaron B. Buttars, Brenda L. Buttars and Adele B. Lewis are entitled to the entry of judgment herein quieting the title to the Buttars Property, including any and all portions thereof heretofore occupied by the Buttars and their predecessors in interest, in the Buttars, free and clear of any and all claims, rights, titles, interests and estates of every kind and description therein and thereto of plaintiffs and any other party hereto.

5. Tax Deed No. 1, Tax Deed No. 2, Tax Deed No. 3 and Tax Deed No. 4 are invalid and of no force and effect as such relate to the parties in this action.

6. The defendants and 12 X 12 are entitled to be awarded their respective costs of court and disbursements pursuant to the provisions of Rule 54(d), URCP.

DATED this 20 day of ^{May}~~April~~, 2004.

A handwritten signature in black ink, appearing to read "Roger S. Dutton", written over a horizontal line.

Roger S. Dutton
District Court Judge

Certificate of Service

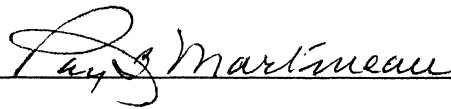
I hereby certify that a true and correct copy of the foregoing proposed Findings Of Fact And Conclusions Of Law was served upon the following individuals, and by mailing a copy thereof, postage prepaid, to each of said individuals at the addresses shown below, this 27 day of April, 2004.

Frank S. Warner
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Ogden, UT 84401

Abigail L. Jones
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Salt Lake City, UT 84145

Perrin R. Love
Clyde, Snow, Sessions & Swenson
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Salt Lake City, UT 84111

M. Darin Hammond
Smith Knowles & Hamilton PC
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Ogden, UT 84403



Tab 4

3/23/04 10:32:41 AM 5822

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Attorneys for Defendants
Kenneth A. Griffiths, BKB, LLC and 12 X 12, L.L.C.

SECOND DISTRICT COURT

2004 MAY 21 P 4:45

Order Quietening Title to Real Property in 12x12, L.L.C. ar



960900027 VD11644379
BKB LLC

IN THE SECOND DISTRICT COURT IN AND FOR
WEBER COUNTY, OGDEN DEPARTMENT, STATE OF UTAH

H.C. MASSEY; and BETTY P. MASSEY,)

Plaintiffs,)

vs.)

KENNETH A. GRIFFITHS; BKB LLC;)
QUESTAR GAS COMPANY; WILSON)
IRRIGATION CO.; AARON B. BUTTARS;)
BRENDA L. BUTTARS; ADELE B.)
LEWIS; FRANCES E. HANKS; KIMEL P.)
FISHER; and JOHN DOES 1 through 100,)

Defendants.)

) ORDER QUIETING TITLE TO REAL
) PROPERTY IN 12 X 12, L.L.C. AND
) IN AARON B. BUTTARS AND
) BRENDA L. BUTTARS
)

MAY 21 2004

Civil No. 960900027
Judge Roger S. Dutson

)
12 X 12, L.L.C., a Limited Liability)
Company;)
)
Third-Party Plaintiff,)
)
vs.)
)
H.C. MASSEY; BETTY P. MASSEY;)
QUESTAR GAS COMPANY, a)
Corporation; AARON B. BUTTARS;)
BRENDA L. BUTTARS; and ADELE B.)
LEWIS,)
)
Third-Party Defendants.)
)

The above-entitled cause came on regularly before the Honorable Roger S. Dutson for a Final Pretrial Telephone Conference on February 24, 2004 at 8:30 a.m., the plaintiffs appearing by and through their counsel Frank S. Warner, the defendants Kenneth A. Griffiths and BKB LLC, and third-party plaintiff 12 X 12, L.L.C., appearing by and through their counsel Ray G. Martineau and Douglas L. Stowell, the defendants Aaron B. Buttars, Brenda L. Buttars and Adele B. Lewis appearing by and through their counsel M. Darin Hammond, and the Court having previously approved and signed its Order Of Dismissal As To The Defendant Wilson Irrigation Company Only, dated February 19, 2003, and the Stipulation, Order, And Judgment Of Dismissal With Prejudice Of Plaintiffs' Claims Against Questar Gas Company, dated October 9, 2003, and the named defendants Frances E. Hanks and Kimel P. Fisher not having been served with process or having entered any appearance herein, and the Court having heretofore issued its Ruling Conditionally Denying Summary Judgment, dated February 9, 2004, and the Court having

heard and carefully considered the statements and arguments of counsel, including the statement by plaintiffs' counsel that plaintiffs "concede that the property in question that we claim under the tax deeds has historically been occupied by the defendants and their predecessors in interest, together with the Questar Gas property and their predecessors in interest . . . for at least 20 years," and that the "defendants and their predecessors in interest have paid taxes on the tax notices that were issued to them by the County", and the Court having heretofore made and entered its Findings Of Fact And Conclusions Of Law and being fully advised in the premises and good cause appearing therefor hereby makes and enters the following judgment:

1. Plaintiffs' Complaint and Amended Complaint, and all of plaintiffs' claims related thereto, should be and the same are hereby dismissed with prejudice and upon the merits.

2. The fee simple title to the following described real property located in Weber County, State of Utah should be and the same is hereby quieted in third-party plaintiff 12 X 12, L.L.C. against and free and clear of any and all claims of every kind and nature therein or thereto of the plaintiffs, or either of them, or of any other party hereto, including any and all such claims based upon the legal doctrine of boundary by acquiescence:

15-063-0035 and 15-062-0036: Part of the Southeast Quarter of Section 24, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point in the center of 1200 West Street, said point being West 942.09 feet and South 286.17 feet from the East Quarter Corner of said Section 24, and running thence South along said center 201.72 feet, thence West 863.79 feet to the East line of the Willard Canal right-of-way; thence Northwesterly along said East line along the arc of a 495 foot radius curve to the right a distance of 210.22 feet, the long chord of which bears

North 15°20'47" West 209.21 feet; thence East 929.15 feet to the point of beginning. Excepting therefrom the Street on the East.

15-063-0037 and 15-063-0038: Part of the Southeast Quarter of Section 24, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point in the center of 1200 West Street, said point being West 942.09 feet and South 487.89 feet from the East Quarter Corner of said Section 24, and running thence South along said center 157 feet; thence West along a fence 183 feet; thence South along a fence 40 feet; thence West along a fence 202 feet; thence South along a fence 289.80 feet in the East line of the Willard Canal right of way; thence Northwesterly along said East line as follows: North 45°01' West 559.61 feet to the point of a curve; thence along the arc of a 495 foot radius curve to the right a distance of 150.93 feet, the long chord of which bears North 36°16'53" West 150.35 feet; thence East 269.79 feet to the point of beginning. Excepting therefrom the street on the East.

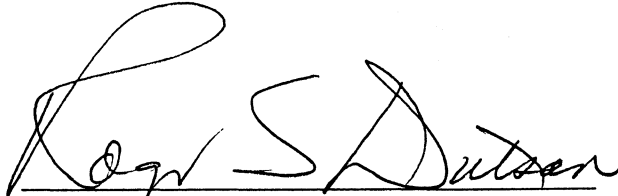
3. The fee simple title to the following described real property located in Weber County, State of Utah should be and the same is hereby quieted in the defendants Aaron B. Buttars and Brenda L. Buttars against and free and clear of any and all claims of every kind and nature therein or thereto of the plaintiffs, or either of them, or of any other party hereto, including any and all such claims based upon the legal doctrine of boundary by acquiescence:

A part of the northeast quarter of the southeast quarter of Section 24; in Township 6 North, Range 2 West of the Salt Lake Meridian, U.S. Survey, in Weber County, State of Utah; Beginning at a point 20 chains south and 14.58 chains west of the northeast corner of said quarter section; thence west 5.44 chains; thence north 7½ chains; thence east 5.44 chains; thence south 7¼ chains to the place of beginning, containing 4½ acres, more or less.

4. Tax Deed No. 1, Tax Deed No. 2, Tax Deed No. 3 and Tax Deed No. 4 are hereby decreed invalid and of no force and effect as such relate to the parties in this action.

5. Each of the parties hereto should be and are hereby ordered to bear and pay such party's costs and attorney's fees incurred herein.

DATED this 20 ^{May} day of ~~April~~, 2004.


Roger S. Dutson
District Court Judge

Certificate of Service

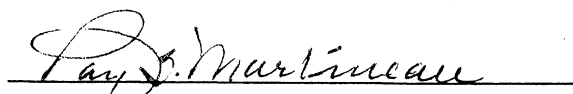
I hereby certify that a true and correct copy of the foregoing Order Quieting Title To Real Property In 12 X 12, L.L.C. And In Aaron B. Buttars And Brenda L. Buttars was served upon the following individuals, and by mailing a copy thereof, postage prepaid, to each of said individuals at the addresses shown below, this 27 day of April, 2004.

Frank S. Warner
3564 Lincoln Ave, Suite 6
Ogden, UT 84401

Abigail L. Jones
180 East 100 South
Salt Lake City, UT 84145

Perrin R. Love
Clyde, Snow, Sessions & Swenson
201 South Main Street, Suite 1300
Salt Lake City, UT 84111

M. Darin Hammond
Smith Knowles & Hamilton PC
4723 Harrison Blvd, Suite 200
Ogden, UT 84403



Tab 5

Cor. Sec. 24,
R.2W.,
T.6N.,
Sb. C

89'18"

24,

M. 1298.23'

Cor. Sec. 24,
R.2W.,
T.6N.,
Sb. C

NOTE:

Holding North Line of SE 1/4 Section.
Holding the as located 1/16 line &
Record South Deed Distances

12 x 12 LLC
15-063-0035
15-063-0037

12 x 12 LLC
15-063-0036
15-063-0038

S 0°25'27" E 714.89'
S 0°25'27" E M. 715.32'

Scale: 1" = 100'

N A R R A T I V E

SEE ATTACHMENT "A" SHEETS 1-3 FOR NARRATIVE OF THIS SURVEY.

15-063-0035
15-063-0037
WILLARD
U.S.A.

EX. 5

SURVEYORS CERTIFICATE

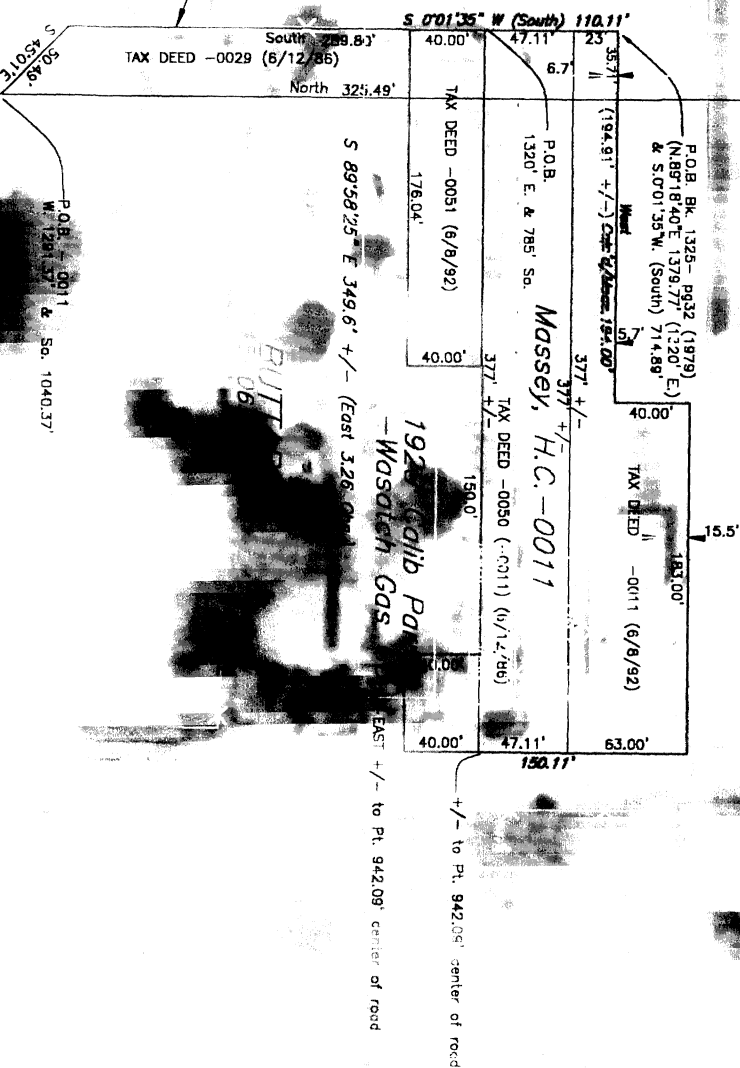
I, CYNTHIA L. SEGRIFE, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR,
AND THAT I HOLD CERTIFICATE NO. 7511 (170143) AS PRESCRIBED BY THE LAWS
OF THE STATE OF ILLINOIS, AND THAT I HAVE MADE A SURVEY ON THE GROUND
AND FROM RECORDS OF THE WILLARD COUNTY RECORDERS OFFICE AS

CYNTHIA L. SEGRIFE

4/22/2015

[Signature]

As Monumented
7/16 Fence Line



Use P.O.B. for a Fence for a Fence (S.86°47'W. 385.6')
which intersects along this Position to C.L. of Road

Cor. Sec. 24,
R.2W.,
T.6N.,
Sb. C

①

Sec. 24,
R.2W.,
T.6N.,
Sb. C

SLBM,
T.6N.,
Sb. C

1426.53'