

1993

Williams v. Hoopiiana : Brief of Appellant

Utah Court of Appeals

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930758 CA

IN THE UTAH COURT OF APPEALS

STEVEN WILLIAMS and KYLE
WILLIAMS,

Plaintiff/Appellant,

vs.

MALUALANI B. HOOPIIANA,
Trustee of the MALUALANI B.
HOOPIIANA TRUST,

Defendant/Appellee.

Case No. 930758-CA

Priority No. 15

APPELLANT'S BRIEF

APPEAL FROM THE THIRD DISTRICT COURT, STATE OF UTAH
HONORABLE HOMER F. WILKINSON, PRESIDING

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FILED
Utah Court of Appeals

FEB 16 1994


Mary T. Noonan
Clerk of the Court

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Western Gateway Storage Co. v. Treseder, 567 P.2d 181
(Utah 1977)

STEVEN WILLIAMS and KYLE)	
WILLIAMS,)	
)	
Plaintiff/Appellant,)	Case No. 930758-CA
)	
vs.)	
)	
MALUALANI B. HOOPIIANA,)	Priority No. 15
Trustee of the MALUALANI B.)	
HOOPIIANA TRUST,)	
)	
Defendant/Appellee.)	
)	

Jurisdiction is appropriate in this Court pursuant to §78-2a-3(2)(k) U.C.A. (1953, as amended).

STANDARD OF REVIEW

1

PROPERTY WHEN THE RAILROAD COMPANY HAD ABANDONED ITS EASEMENT DUE TO NON-USE AND WHERE THE PURPOSE FOR THE EASEMENT HAS CEASED TO EXIST?

The Standard of Appellate Review applicable to this case is the correct application of the common law on termination of easements based upon the facts of this case which are not in dispute. Gauger v. State of Kansas, 815 P.2d 501 (Kan. 1991); Kearney & Sons v. Fancher, 401 S.W.2d 897 (Tex. 1966).

STATEMENT OF THE CASE

The case on appeal is an action by the Plaintiff/Appellant to terminate a railroad easement across its property after the railroad disclaimed and abandoned its easement and removed the tracks. The Defendant/Appellee, the owner of the adjacent property, continued to claim an easement across the land of the Plaintiff/Appellant. The Plaintiff brought suit to quiet the title to his property. A subsequent Motion for Summary Judgment by the Plaintiff/Appellant was denied by the trial court. The case was then tried before the trial court as a bench trial, where the trial court refused to terminate the easement in behalf of the Defendant/Appellee. The Plaintiff/Appellant brings this appeal on the judgment of the trial court.

STATEMENT OF FACTS.

1. The Plaintiffs/Appellants are residents of Salt Lake County and are owners of certain real property located at 737 South 300 West, Salt Lake City, Utah 84101, and more particularly described as follows:

Lot 5, Block 12, Plat "A", Salt Lake City Survey, as is recorded in the Salt Lake County Recorder's Office.

2. The Plaintiffs/Appellants have been in open common, notorious, exclusive, continuous and adverse possession of all said property for more than eighteen (18) years and have paid property taxes on the property referred to above.

3. On or about April 6, 1917, the then owner of Lot 5, referred to above, Theodore T. Burton and Florence Burton, his wife, granted to the Oregon Shortline Railroad Company a railroad easement for a right-of-way for the construction, operation and maintenance of a railroad spur that traversed through all of Lot 5. (Please see Exhibit "A" attached and incorporated by reference). (Transcript P.5)

4. A condition of the Easement of April 6, 1917, granted by the previous owner of Lot 5 was that:

"If at any time the said spur track or any portion thereof shall be removed from the above-described land, then and in that event this conveyance shall become null and void and have no affect between the parties hereto or their successors, or assigns, as to such trackage so removed."

5. Subsequently, on or about February 8, 1947, the then owner of Lot 5, Florence M. Burton, granted to the then owner of the following real property;

The West 1/2 of Lot 6, Block 12, Plat "A"
Salt Lake City Survey.

a right-of-way for a spur track in perpetuity. However the right-of-way was granted for the exclusive use of the real property as a "spur track" and could not be extended to any other property adjacent to the west half of Lot 6, Block 12, Plat "A", Salt Lake City Survey. Said Easement of February 8, 1947 was subject to the terms and conditions of the original Easement of April 6, 1917. (Please see Exhibit "B" attached and incorporated by reference). (Transcript P.6)

6. The successor-in-interest to Edward L. Burton, the Grantee of the right-of-way for a railroad spur on the west 1/2 of Lot 6, is the Defendant/Appellee who is the current owner and

in possession of certain real property at 349 West 700 South, Salt Lake City, Salt Lake County, State of Utah, more particularly described as follows:

West 1/2 of Lot 6, Block 12, Plat "A", Salt Lake City Survey.

The Defendant/Appellee, claims some right, title, or interest to the right-of-way for the spur track (railroad) granted by the Plaintiff's predecessor-in-interest to the Oregon Shortline Railroad Company on or about April 16, 1917.

7. On or about July 6, 1983, the Union Pacific Railroad Company, the Lessee of the railroad spur across Lot 5, notified the Plaintiffs/Appellants, who are now the owners of Lot 5, of their Notice of Intent to Terminate the Easement of April 6, 1917, that was originally granted to the railroad company for the creation of the railroad spur track. The railroad's basis to terminate the easement was due to the non-use by the owners of Lot 5 and Lot 6. The owner of Lot 6 had failed to use the railroad spur line during the past ten (10) years. (See Exhibit "C-1" attached).

8. On December 17, 1987, the Union Pacific Railroad for and in behalf of the Oregon Shortline Railroad Company, recorded a Disclaimer releasing all of their rights, title and

interest to the Easement of April 6, 1917, and removed the railroad track, ties, and other equipment and vacated the railroad spur easement. (Please see Exhibit "C-2" attached and incorporated by reference). (Transcript P.7,10). Said Disclaimer of December 17, 1987, was granted based upon the original terms of the railroad spur Easement of April 6, 1917, which stated:

"If at any time the said spur tracks, or any portion thereof shall be removed from the above-described land, then and in the event this conveyance shall become null and void and of no effect between the parties thereto or their successors or assigns as to such trackage so removed."

9. The Defendant/Appellee has been notified of the Disclaimer of December 17, 1987, as to the railroad spur Easement by the Oregon Shortline Railroad Company and/or the Union Pacific Railroad Company, and the railroad's conclusion that the Easement is terminated based upon the removal of the railroad tracks and equipment by the railroad company. (Transcript P.45) However, Defendant/Appellee continues to assert an interest in the disclaimed railroad spur easement across the Plaintiff's/Appellant's property claiming that the granting of a easement was perpetual, despite the fact that the easement has failed by virtue of the cessation of the "specific purpose" upon which the Defendant's predecessor in interest was granted an

easement, that is, the continued existence of the railroad spur. (Please see Exhibit "D" for a copy of Plat showing the alignment of the extinguished railroad easement).

10. The Defendants/Appellees, subsequent to December 17, 1987, removed from Lot 6 the rails and ties on their property and a portion of the ties and rails on the Plaintiff's/Appellant's property.

11. Plaintiffs/Appellants brought this suit to Quiet Title to the property located in Lot No. 5, in view of the continued assertion of a real property interest by the Defendant/Appellee in his continued claim for a railroad easement through Plaintiffs/Appellants' property.

SUMMARY OF ARGUMENT

1. The Easement of April 6, 1917, across the lot of the Plaintiff/Appellant was conditional upon the tracks being removed. This condition was applicable to any assignment of the owner of the real property of Lot 5. The subsequent Assignment of Easement to the owner of Lot 6, on February 8, 1947, was subject to the conditions of the first Easement of April 6, 1917. When the railroad disclaimed its easement and removed the tracks

on Lot 5, that disclaimer and track removal effectively terminated the easement of February 8, 1947, to the owner of Lot 6.

2. The easement of April 6, 1917, and February 8, 1947, were "specific purpose easements". The disclaimer of easements by the railroad and the subsequent removal of the tracks terminated the special purpose of the easement. The use was abandoned. Thereupon the easement as to Lot 6 is terminated.

3. Non-use of the easement by both owners of Lot 5 and 6 are reflected by the failure to use the easement by either owner in the last ten (10) years. The owner of Lot 6 removed the tracks from his property and the railroad removed the tracks on Lot 5 and in the adjacent streets. This removal of tracks established intent on the part of the Defendant/Appellee to abandon his easement. Public policy favors the clearing of titles of property where an easement has been abandoned.

ARGUMENT

POINT I.

DEFENDANT'S EASEMENT WAS CONDITIONAL UPON PLAINTIFFS' EASEMENT. A careful reading of Exhibit "A" which is the Easement of April 6, 1917, clearly indicates that the original Easement across the Plaintiffs' land was conditional upon its "specific use", and that any assignment was also bound by that condition which is found in the last paragraph of Exhibit "A":

" and if at any time the said spur tracks, or any portion thereof shall be removed from the above-described land, then and in that event this conveyance shall become null and void and of no effect between the parties hereto or their success or assigns, as to such trackage so removed."

The owner of Lot 5, subsequently conveyed a right-of-way to Lot 6. Reference to the Agreement Creating Right-of-Way of February 8, 1947, clearly indicates that it was contemplated by the Grantor and the Grantee that the easement to the owner of Lot 6, was conditional upon the existence of the railroad easement granted by the owner of Lot 5. The Paragraph 3 of the Agreement Creating Right-of-Way of February 8, 1947, reads as follows:

"All of Lot 5, Block 12, Plat "A", Salt Lake City Survey, over which a spur track of the Union Pacific Railroad Company is located which leads into the property of the party of the second part (emphasis added)."

Furthermore, same Agreement refers to the existence of the rail-road easement in Paragraph 4, which reads as follows:

" which is served by the spur track above referred to which crosses the property of the first part (owner of Lot 5). Emphasis added.

Again, in Paragraph 5, of the same Agreement the Grantee and the Grantor both acknowledge the fact that the Agreement Creating Right-of-Way of February 8, 1947, acknowledges the existence of the previous right-of-way established on April 6, 1917 on the property of the owner of Lot 5, where the Agreement says as follows:

"Whereas, said parties are desirous of establishing the right-of-way for said spur track of record, now therefore, this Agreement witnesseth:"

Clearly, the reading of Exhibit "A" and Exhibit "B" are inter-related and conditional upon one another. The time of the easements being granted are sequential and dependant. The owner of Lot A could only give to Lot B something that previously existed. That is, the railroad easement of April 6, 1917. The

terminology in Exhibit "B" regarding granting the easement as a "perpetual right" is conditional upon the existence of the easement through Lot 5. As long as the easement for the railroad existed on Lot 5, the owner of Lot 6 had that perpetual right to use the easement. However, if the easement terminated on Lot 5, the easement of Lot 6 became null and void as the easement had a "specific purpose" which had terminated.

POINT II.

"SPECIFIC PURPOSE EASEMENTS" ARE CONDITIONAL UPON THE CONTINUED EXISTENCE OF THAT "SPECIFIC PURPOSE". It is settled law that where an easement is granted for a specific purpose that upon the termination of that specific purpose the easement terminates and the underlying real property for which the easement was granted reverts back to the owner of the underlying property. That is to say, that the Plaintiffs as the owners of Lot 5, received their property back free and clear of any claim or encumbrance when the Union Pacific Railroad disclaimed any further interest in the rail-road right-of-way across Lot 5. (Please see Exhibit "C" which constitutes the Disclaimer and abandonment by the Union Pacific Rail-Road which is the successor-in-interest to the Oregon Short Line Rail-Road Company,

which occurred on December 17, 1987, and was duly recorded with the Salt Lake County Recorder's Office.

In the case of Gauger v. State of Kansas, et al., 815 P.2d 501 (Kan. 1991), the Supreme Court of the State of Kansas on a case closely in point indicated that the owner of the property over which the easement existed received the property back without any encumbrance or existing easement when the purpose for the easement, that is, the railroad right-of-way, terminated. The Court stated on Page 504:

In Pratt v. Griesse, 196 Kan. 182, Syl. ¶1, 409 P.2d 777 (1966), this court said,
"An easement for a railroad right-of-way is limited by the use for which the easement is acquired, and when that use is abandoned the easement is terminated and the property reverts to the owner of the servient estate."

And the court further stated in the same opinion on Page 505:

"Whatever its name, the interest was taken for use as a right of way, it was limited to that use, and must revert when the use is abandoned."

This same basic doctrine has been affirmed by the Court of Civil Appeals of Texas in the case of Kearney & Son v. Fancher, 401 S.W.2d 897 (Tex. 1966), where the Court in a case in

point, was dealing with an easement over property in which the railroad had terminated its easement to an adjacent landowner. The Court stated the following on Page 906:

"The record reflects that the purpose for which the easement was granted has ceased to exist. Because of the cessation of, and impossibility of, use in accordance with the specific purpose, granted, the easement has now terminated and appellant's title should be cleared of the cloud cast by the prior grant of such easement. This rule is stated in Shaw v. Williams, 332 S.W.2d 797, P. 800 (Eastland Civ.App., 1960, no writ. hist.) as follows: 'An easement granted for a particular purpose terminates as soon as such purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment.' 28 C.J.S. Easements §54, p. 718". (Emphasis added).

This same basic doctrine is affirmed by the Court of Appeals of the State of Oregon, 1977, in the case of Firebaugh v. Boring, Or. App., 591 P.2d 421.

In the case now before the Court, the owner of Lot 6, (the Defendants) are unable to claim an easement over Lot 5, (owned by the Plaintiffs) due to the fact that the easement was abandoned and terminated by the railroad company. The owner of Lot 5, is unable to grant an easement to the owner of Lot 6, even if he wished to do so, due to the lack of impossibility of use as the railroad easement no longer exists.

POINT III

THE DISCLAIMER OF THE EASEMENT BY THE RAILROAD COMPANY TERMINATES THE DEFENDANTS EASEMENT. Based upon the case law stated above, the review of Exhibit "C", and the Disclaimer of December 17, 1987, wherein the railroad company abandoned and terminated its easement over Lot No. 5, clearly voids and terminates the Agreement Creating Right-of-Way of February 8, 1947, (Exhibit "B") granted by the prior owner of Lot 5 to the owner of Lot 6. The right-of-way for the owner of Lot 6 was conditional upon the existence of the railroad easement. Subsequent to the issuing of the Disclaimer and recording the same of December 17, 1987, the railroad company removed the rails, ties, switches and all other equipment which enabled the railroad to traverse Lot 5. Furthermore, the railroad company disclaimed any further right, title or interest in maintaining an easement across the property of Lot 5. The Plaintiffs, the owners of Lot 5, are faced with the "impossibility of accomplishment" in providing a spur track for the use and benefit of the owner of Lot 6. Therefore, the easement claimed by owner of Lot 6 is now null and void and the property under which the previous railroad track existed on Lot 5 reverts to the owner of Lot 5, without any further encumbrances or easements claimed by the owner of Lot 6.

POINT IV.

THE EASEMENT OF APRIL 6, 1917, AND THE RIGHT-OF-WAY OF FEBRUARY 8, 1947, ARE SEQUENTIAL AND ARE LINKED. A clear and careful reading of the Easement and Right-of-Way referred to above clearly indicates that the Right-of-Way of February 8, 1947, refers to the railroad spur which exists only as a direct result of the Easement of April 16, 1917. The owner of Lot 5 could not give a spur track right-of-way in 1947 if he had not previously entered into an Easement in 1917 with the railroad. Furthermore, both the Easement of 1917 and Right-of-Way of 1947 are "specific in purpose", that is, both refer to a "spur track". The Grantor of the Right-of-Way of 1947 (the owner of Lot 5) could not grant the Right-of-Way without first having the Easement of 1917. When the Easement of 1917 was disclaimed in 1987 and the railroad tracks, ties and switches were removed, the owner of Lot 5 could no longer provide a right-of-way on the existing Easement because the Easement ceased to exist. It ceased to exist not because of any overt act on the part of the owner of Lot 5 or of any act of the owner of Lot 6. The Easement and subsequently the Right-of-Way ceased to exist because of the railroad's disclaiming any interest in the Easement and removing physical equipment making the use of the "spur track" impossible.

POINT V.

PUBLIC POLICY FAVORS REMOVING DISCONTINUED RIGHT-OF-WAYS. There is a public policy benefit in terminating easement and right-of-ways where the specific purpose of that right-of-way or easement ceases to exist. Otherwise, properties would continue to have encumbrances and encroachments by adjacent property owners who could not use discontinued rights-of-way or easements which would continue to cloud the title of the these properties with no realistic possibility of ever using the right-of-way. This doctrine is spelled out in detail in the case of Kearney & Son v. Fancher, 401 S.W. 2nd 897 (Tex. 1966), on page 906, previously quoted.

POINT VI.

THE EASEMENT HAS BEEN ABANDONED THROUGH NON-USE BY ITS' OWNER. In the State of Utah the case of Western Gateway Storage Company v. Treseder, 567 P.2d 181 (Utah 1977) clearly established the criteria for abandonment of an easement through non-use. The Court has stated on Page 182 the following:

"It is well recognized that an easement or right-of-way may be abandoned. . . . This court has previously recognized a right gained by conveyance may not be lost by non-use alone and that an actual intent to abandon be evident."

In viewing the facts of this case we find that the easement owned by the Defendant/Appellee is by conveyance or by grant rather than by prescriptive use. Other relevant factors which the Court set out as essential for abandonment in Western Gateway Storage Company v. Treseder, supra, are present in the case at hand as follows:

- (a) **Non-Use.** The facts are undisputed that the subject right-of-way has not been used by the owner of Lot 5 or Lot 6 for approximately ten (10) years. This fact is further supported by the letter from the Union Pacific Railroad to the owner of Lot 5, Mr. Richard Williams, dated July 6, 1983, (Exhibit C-1) in which they indicate that the railroad spur was not being used and that the railroad intended to terminate its easement. Four years later on December 17, 1987, the railroad filed a Disclaimer of the easement which was recorded on June 2, 1988.
- (b) **Intent to Abandon.** The Defendant/Appellee has also demonstrated his intent to abandon the easement through its failure to utilize the easement which was specific in nature as a railroad spur. Subsequent to the Disclaimer of the easement by the Union Pacific Railroad Company

recorded on June 2, 1988, the Defendant had the railroad rails and ties removed from his property and apparently sold for salvage or scrap. Defendant/Appellee also caused his agent to enter onto the property of the Plaintiffs and remove a portion of the railroad ties and rails for the same purpose. This conduct after having been placed on notice of the railroads intent to disclaim and terminate the right-of-way of 1983 and then the actual Disclaimer of 1988, and the Defendant/Appellee then removes the rails and ties, clearly shows the Defendant/Appellee's intent to abandon the easement. As this easement was for the specific purpose of providing only a railroad spur line to the Defendant/Appellee's property, the Defendant/Appellee was precluded from utilizing the easement for any other purpose. The removal of the railroad rails and ties clearly indicate that it was his intent to no longer utilize the easement in question. This conduct coupled with the actual notice that the Defendant/Appellee had of the railroad's disclaimer and eventual termination of the right-of-way coupled with the specific nature of the

railroad's easement shows actual intent on the part of Defendant to abandon that easement. The easement in its present condition cannot be used by the Defendant/Appellee whatsoever due to the specific nature of the Defendant/Appellee's easement over the Plaintiff's property; that is for the use of a railroad spur line. There has been no occasional use during the last approximately ten (10) years and now there can be no use whatsoever due to the removal by the Defendant/Appellee of his own railroad rails and ties and the further removal of the ties and rails by the railroad from the Plaintiff/Appellant's property and its termination of the railroad's right-of-way on 700 South and the further removal of the rails and ties from that public street which provided access to the Plaintiff/Appellant's property.


The intent to abandon by the non-use of the Defendant/Appellee of his easement is clear and convincing and meets the criteria as set out in the Western Gateway Storage Company v. Treseder, cited above.

CONCLUSION

Easements that have specific purposes cease when that specific purpose is extinguished, removed, or no longer exists. When the railroad terminated and abandoned its easement through Lot 5, the owner of Lot 6, who had received a perpetual right-of-way for a railroad track through Lot 5, could no longer claim such right as the owner of Lot 5, could no longer provide such an easement as the railroad easement was terminated and the railroad track was removed. A review of the two (2) Easements in Exhibit "A" and "B" clearly indicate that they were linked and conditional. The owner of Lot 5, should have his title to his property free and clear without any further claim or encumbrance by the owner of Lot 6, as to a railroad easement. Not only was the easement for a "specific purpose" but the easement had been abandoned by the Defendants/Appellees through "non-use" over a ten (10) year period of time, continued non-use after receiving notification by the railroad of its intent to abandon or disclaim the easement and then after the abandonment by the railroad, the Defendants/Appellees removed the railroad ties and rails further indicating his intent to abandon the easement, as the easement was specific and limited in its use as a railroad spur. The Defendants/Appellees were unable to use the easement for any other purpose.

Plaintiff/Appellant's prays that the Court of Appeals reverse the ruling of the trial court as a matter of law and require the trial court to terminate the easement of the Defendant/Appellee and quiet the title of the real property owned by the Plaintiff/Appellant.

DATED this 16th day of February, 1994.


HOLLIS S. HUNT
Attorney at Law

CERTIFICATE OF MAILING

This certifies that two (2) true and correct copies of the foregoing Appellant's Brief was mailed to attorney for Defendants/Appellees, George K. Fadel, at 170 West Fourth South, Bountiful, Utah 84010 this 16 day of February, 1994.

Heidi J. Hunt

wp5\williams\brief.app

ADDENDUM "A"

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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

STEVEN WILLIAMS, and KYLE
ANN WILLIAMS,

Plaintiffs,

vs.

MALUALANI B. HOOPIIANA,
Trustee of the MALUALANI B.
HOOPIIANA TRUST,

Defendants.

PLAINTIFF'S TRIAL BRIEF

Civil No. 92090600PR

Judge Homer F. Wilkinson

Plaintiffs submit the following Trial Brief in support of arguments at trial:

I. FACTS

1. The Plaintiffs are residents of Salt Lake County and are owners of certain real property located at 737 South 300 West, Salt Lake City, Utah 84101, and more particularly described as follows:

Lot 5, Block 12, Plat "A", Salt Lake City Survey, as is recorded in the Salt Lake County Recorder's Office.

2. The Plaintiffs have been in open common, notorious, exclusive, continuous and adverse possession of all said property for more than eighteen (18) years and have paid property taxes on the property referred to above.

3. On or about April 6, 1917, the then owner of Lot 5, referred to above, Theodore T. Burton and Florence Burton, his wife, granted to the Oregon Shortline Railroad Company a railroad easement for a right-of-way for the construction, operation and maintenance of a railroad spur that traversed through all of Lot 5. (Please see Exhibit "A" attached and incorporated by reference).

4. A condition of the Easement of April 6, 1917, granted by the previous owner of Lot 5 was that:

"If at any time the said spur track or any portion thereof shall be removed from the above-described land, then and in that event this conveyance shall become null and void and have no affect between the parties hereto or their successors, or assigns, as to such trackage so removed."

5. Subsequently, on or about February 8, 1947, the then owner of Lot 5, Florence M. Burton, granted to the then owner of the following real property;

The West 1/2 of Lot 6, Block 12, Plat "A"
Salt Lake City Survey.

a right-of-way for a spur track in perpetuity. However the right-of-way was granted for the exclusive use of the real property as a "spur track" and could not be extended to any other property adjacent to the west half of Lot 6, Block 12, Plat "A", Salt Lake City Survey. Said Easement of February

8, 1947 was subject to the terms and conditions of the original Easement of April 6, 1917. (Please see Exhibit "B" attached and incorporated by reference).

6. The successor-in-interest to Edward L. Burton, the Grantee of the right-of-way for a railroad spur on the west 1/2 of Lot 6, is the Defendant who is the current owner and in possession of certain real property at 349 West 700 South, Salt Lake City, Salt Lake County, State of Utah, more particularly described as follows:

West 1/2 of Lot 6, Block 12, Plat "A", Salt Lake City Survey.

The Defendant, claims some right, title, or interest to the right-of-way for the spur track (railroad) granted by the Plaintiff's predecessor-in-interest to the Oregon Shortline Railroad Company on or about April 16, 1917.

7. On or about July 6, 1983, the Union Pacific Railroad Company, the Lessee of the railroad spur across Lot 5, notified the Plaintiffs, who are now the owners of Lot 5, of their Notice of Intent to Terminate the Easement of April 6, 1917, that was originally granted to the railroad company for the creation of the railroad spur track. The railroad's basis to terminate the easement was due to the non-use by the owners of Lot 5 and Lot 6. The owner of Lot 6 had failed to use the railroad spur line during the past twenty (20) years. (See Exhibit "c-1" attached).

8. On December 17, 1987, the Union Pacific Railroad for and in behalf of the Oregon Shortline Railroad Company, recorded a Disclaimer releasing all of their rights, title

and interest to the Easement of April 6, 1917, and removed the railroad track, ties, and other equipment and vacated the railroad spur easement. (Please see Exhibit "C-2" attached and incorporated by reference). Said Disclaimer of December 17, 1987, was granted based upon the original terms of the railroad spur Easement of April 6, 1917, which stated:

"If at any time the said spur tracks, or any portion thereof shall be removed from the above-described land, then and in the event this conveyance shall become null and void and of no effect between the parties thereto or their successors or assigns as to such trackage so removed."

9. The Defendant has been notified of the Disclaimer of December 17, 1987, as to the railroad spur Easement by the Oregon Shortline Railroad Company and/or the Union Pacific Railroad Company, and the railroad's conclusion that the Easement is terminated based upon the removal of the railroad tracks and equipment by the railroad company. However, Defendant continues to assert an interest in the disclaimed railroad spur easement across the Plaintiff's property claiming that the granting of a easement was perpetual, despite the fact that the easement has failed by virtue of the cessation of the "specific purpose" upon which the Defendant's predecessor in interest was granted an easement, that is, the continued existence of the railroad spur. (Please see Exhibit "D" for a copy of Plat showing the alignment of the extinguished railroad easement).

10. The Defendants, subsequent to December 17, 1987, removed from Lot 6 the rails and ties on their property and a portion of the ties and rails on the Plaintiff's property.

11. Plaintiffs brought this suit to Quiet Title to the property located in Lot No. 5, in view of the continued assertion of a real property interest by the Defendant in his continued claim for a railroad easement through Plaintiffs' property.

II. ISSUE

DOES THE DEFENDANT'S EASEMENT FOR A "SPUR TRACK" ACROSS PLAINTIFFS' REAL PROPERTY CONTINUE WHEN THE RAILROAD COMPANY HAS ABANDONED ITS EASEMENT DUE TO NON-USE AND WHERE THE PURPOSE FOR THE EASEMENT HAS CEASED TO EXIST?

III. POINTS AND AUTHORITIES

1. **DEFENDANT'S EASEMENT WAS CONDITIONAL UPON PLAINTIFFS' EASEMENT.** A careful reading of Exhibit "A" which is the Easement of April 6, 1917, clearly indicates that the original Easement across the Plaintiffs' land was conditional upon its "specific use", and that any assignment was also bound by that condition which is found in the last paragraph of Exhibit "A":

" and if at any time the said spur tracks, or any portion thereof shall be removed from the above-described land, then and in that even this conveyance shall become null and void and of no effect between the parties hereto or their success or assigns, as to such trackage so removed."

The owner of Lot 5, subsequently conveyed a right-of-way to Lot 6. Reference to the Agreement Creating Right-of-Way of February 8, 1947, clearly indicates that it was

contemplated by the Grantor and the Grantee that the easement to the owner of Lot 6, was conditional upon the existence of the railroad easement granted by the owner of Lot 5. The Paragraph 3 of the Agreement Creating Right-of-Way of February 8, 1947, reads as follows:

"All of Lot 5, Block 12, Plat "A", Salt Lake City Survey, over which a spur track of the Union Pacific Railroad Company is located which leads into the property of the party of the second part (emphasis added)."

Furthermore, same Agreement refers to the existence of the rail-road easement in Paragraph 4, which reads as follows:

" which is served by the spur track above referred to which crosses the property of the first part (owner of Lot 5). Emphasis added.

Again, in Paragraph 5, of the same Agreement the Grantee and the Grantor both acknowledge the fact that the Agreement Creating Right-of-Way of February 8, 1947 acknowledges the existence of the previous right-of-way established on April 6, 1917 on the property of the owner of Lot 5, where the Agreement says as follows:

"Whereas, said parties are desirous of establishing the right-of-way for said spur track of record, now therefore, this Agreement witnesseth:"

Clearly, the reading of Exhibit "A" and Exhibit "B" are inter-related and conditional upon one another. The time of the easements being granted are sequential and dependant.

The owner of Lot A could only give to Lot B something that previously existed. That is, the rail-road easement of April 6, 1917. The terminology in Exhibit "B" regarding granting the easement as a "perpetual right" is conditional upon the existence of the easement through Lot 5. As long as the easement for the rail-road existed on Lot 5, the owner of Lot 6 had that perpetual right to use the easement. However, if the easement terminated on Lot 5, the easement of Lot 6 became null and void as the easement had a "specific purpose" which had terminated.

2. "SPECIFIC PURPOSE EASEMENTS" ARE CONDITIONAL UPON THE CONTINUED EXISTENCE OF THAT "SPECIFIC PURPOSE". It is settled law that where an easement is granted for a specific purpose that upon the termination of that specific purpose the easement terminates and the underlying real property for which the easement was granted reverts back to the owner of the underlying property. That is to say, that the Plaintiffs as the owners of Lot 5, received their property back free and clear of any claim or encumbrance when the Union Pacific Railroad disclaimed any further interest in the rail-road right-of-way across Lot 5. (Please see Exhibit "C" which constitutes the Disclaimer and abandonment by the Union Pacific Rail-Road which is the successor-in-interest to the Oregon Short Line Rail-Road Company, which occurred on December 17, 1987, and was duly recorded with the Salt Lake County Recorder's Office.

In the case of Gauger v. State of Kansas, et al., 815 P.2d 501 (Kan. 1991), the Supreme Court of the State of Kansas on a case closely in point indicated that the owner of the property over which the easement existed received the

property back without any encumbrance or existing easement when the purpose for the easement, that is, the railroad right-of-way, terminated. The Court stated on Page 504:

In Pratt v. Griesse, 196 Kan. 182, Syl. ¶1, 409 P.2d 777 (1966), this court said,
"An easement for a railroad right-of-way is limited by the use for which the easement is acquired, and when that use is abandoned the easement is terminated and the property reverts to the owner of the servient estate."

And the court further stated in the same opinion on Page 505

"Whatever its name, the interest was taken for use as a right of way, it was limited to that use, and must revert when the use is abandoned."

This same basic doctrine has been affirmed by the Court of Civil Appeals of Texas in the case of Kearney & Son v. Fancher, 401 S.W.2d 897 (Tex. 1966), where the Court in a case in point, was dealing with an easement over property in which the railroad had terminated its easement to an adjacent landowner. The Court stated the following on Page 906:

"The record reflects that the purpose for which the easement was granted has ceased to exist. Because of the cessation of, and impossibility of, use in accordance with the specific purpose, granted, the easement has now terminated and appellant's title should be cleared of the cloud cast by the prior grant of such easement. This rule is stated in Shaw v. Williams, 332 S.W.2d 797, P. 800 (Eastland Civ.App., 1960, no writ. hist.) as follows: 'An easement granted for a particular purpose terminates as soon as such purpose ceases to exist, is

abandoned, or is rendered impossible of accomplishment.' 28 C.J.S. Easements §54, p. 718". (Emphasis added).

This same basic doctrine is affirmed by the Court of Appeals of the State of Oregon, 1977, in the case of Firebaugh v. Boring, Or. App., 591 P.2d 421.

In the case now before the Court, the owner of Lot 6, (the Defendants) are unable to claim an easement over Lot 5, (owned by the Plaintiffs) due to the fact that the easement was abandoned and terminated by the railroad company. The owner of Lot 5, is unable to grant an easement to the owner of Lot 6, even if he wished to do so, due to the lack of impossibility of use as the railroad easement no longer exists.

3. THE DISCLAIMER OF THE EASEMENT BY THE RAILROAD COMPANY TERMINATES THE DEFENDANTS EASEMENT. Based upon the case law stated above, the review of Exhibit "C", the Disclaimer of December 17, 1987, wherein the railroad company abandoned and terminated its easement over Lot No. 5, clearly voids and terminates the Agreement Creating Right-of-Way of February 8, 1947, (Exhibit "B") granted by the prior owner of Lot 5 to the owner of Lot 6. The right-of-way for the owner of Lot 6 was conditional upon the existence of the railroad easement. Subsequent to the issuing of the Disclaimer and recording the same of December 17, 1987, the railroad company removed the rails, ties, switches and all other equipment which enabled the railroad to traverse Lot 5. Furthermore, the railroad company disclaimed any further right, title or interest in maintaining an easement across the property of Lot 5. The Plaintiffs, the owners of Lot 5, are faced with

the "impossibility of accomplishment" providing a spur track for the use and benefit of the owner of Lot 6. Therefore, the easement claimed by owner of Lot 6 is now null and void and the property under which the previous railroad track existed on Lot 5 reverts to the owner of Lot 5, without any further encumbrances or easements claimed by the owner of Lot 6.

4. THE EASEMENT OF APRIL 6, 1917, AND THE RIGHT-OF-WAY OF FEBRUARY 8, 1947, ARE SEQUENTIAL AND ARE LINKED. A clear and careful reading of the Easement and Right-of-Way referred to above clearly indicates that the Right-of-Way of February 8, 1947, refers to the railroad spur which exists only as a direct result of the Easement of April 16, 1917. The owner of Lot 5 could not give a spur track right-of-way in 1947 if he had not previously entered into an Easement in 1917 with the railroad. Furthermore, both the Easement of 1917 and Right-of-Way of 1947 are "specific in purpose", that is, both refer to a "spur track". The Grantor of the Right-of-Way of 1947 (the owner of Lot 5) could not grant the Right-of-Way without first having the Easement of 1917. When the Easement of 1917 was disclaimed in 1987 and the railroad tracks, ties and switches were removed, the owner of Lot 5 could no longer provide a right-of-way on the existing Easement because the Easement ceased to exist. It ceased to exist not because of any act on the part of the owner of Lot 5 or of any act of the owner of Lot 6. The Easement and subsequently the Right-of-Way ceased to exist because of the railroad's disclaiming any interest in the Easement and removing physical equipment making the use of the "spur track" impossible.

5. **PUBLIC POLICY FAVORS REMOVING DISCONTINUED RIGHT-OF-WAYS.** There is a public policy benefit in terminating easement and right-of-ways where the specific purpose of that right-of-way or easement ceases to exist. Otherwise, properties would continue to have encumbrances and encroachments by adjacent property owners who could not use discontinued rights-of-way or easements and continue to cloud the title of these properties with no realistic possibility of ever using the right-of-way. This doctrine is spelled out in detail in the case of Kearney & Son v. Fancher, 401 S.W. 2d 897 (Text. 1966), on page 906, previously quoted in the Plaintiff's Trial Memorandum on Page 8.

6. **THE EASEMENT HAS BEEN ABANDONED THROUGH NON-USE BY ITS' OWNER.** In the State of Utah the case of Western Gateway Storage Company v. Treseder, 567 P.2d 181 (Utah 1977) clearly established the criteria for abandonment of an easement through non-use. The Court has stated on Page 182 the following:

"It is well recognized that an easement or right-of-way may be abandoned. . . . This court has previously recognized a right gained by conveyance may not be lost by non-use alone and that an actual intent to abandon be evident."

In viewing the facts of this case we find that the easement owned by the Defendant is by conveyance or by grant rather than by prescriptive use. Other relevant factors which the Court set out as essential for abandonment in Western Gateway Storage Company v. Treseder, supra, are present in the case at hand as follows:

- (a) **Non-Use.** The facts are undisputed that the subject right-of-way has not been used by the owner of Lot 5 or Lot 6 for approximately twenty (20) years. This fact is further supported by the letter from the Union Pacific Railroad to the owner of Lot 5, Mr. Richard Williams, dated July 6, 1983, (Exhibit C-1) in which they indicate that the railroad spur was not being used and that the railroad intended to terminate its easement. Four years later on December 17, 1987, the railroad filed a Disclaimer of the easement which was recorded on June 2, 1988.
- (b) **Intent to Abandon.** The Defendant has also demonstrated his intent to abandon the easement through its failure to utilize the easement which was specific in nature as a railroad spur. Subsequent to the Disclaimer of the easement by the Union Pacific Railroad Company recorded on June 2, 1988, the Defendant had the railroad rails and ties removed from his property and apparently sold for salvage or scrap. Defendant also caused his agent to enter onto the property of the Plaintiffs and remove a portion of the railroad ties and rails for the same purpose. This conduct after having been placed on notice of the railroads intent to disclaim and terminate the right-of-way of 1983 and then the actual Disclaimer of 1988, the Defendant then removes the rails and ties, clearly shows the Defendant's intent to abandon the easement. As this easement was for the specific purpose of providing only a railroad spur line to the

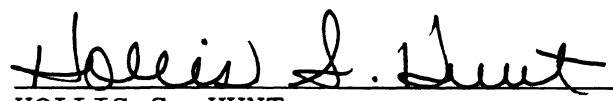
Defendant's property, the Defendant was precluded from utilizing the easement for any other purpose. The removal of the railroad rails and ties clearly indicate that it was his intent to no longer utilize the easement in question. This conduct coupled with the actual notice that the Defendant had of the railroad's disclaimer and eventual termination of the right-of-way coupled with the specific nature of the railroad's easement shows actual intent on the part of Defendant to abandon that easement. The easement in its present condition cannot be used by the Defendant whatsoever due to the specific nature of the Defendant's easement over the Plaintiff's property; that is for the use of a railroad spur line. There has been no occasional use during the last approximately twenty (20) years and now there can be no use whatsoever due to the removal by the Defendant of his own railroad rails and ties and the further removal of the ties and rails by the railroad from the Plaintiff's property and its termination of the railroad's right-of-way on 700 South and the further removal of the rails and ties from that public street which provided access to the Plaintiff's property.

The intent to abandon by the non-use of the Defendant of his easement is clear and convincing and meets the criteria as set out in the Western Gateway Storage Company v. Treseder, cited above.

V. CONCLUSION

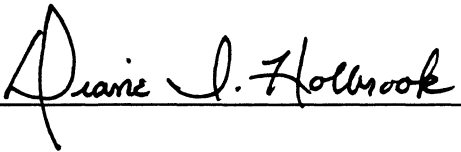
Easements that have specific purposes cease when that specific purpose is extinguished, removed, or no longer exists. When the railroad terminated and abandoned its easement through Lot 5, the owner of Lot 6, who had received a perpetual right-of-way for a railroad track through Lot 5, could no longer claim such right as the owner of Lot 5, could no longer provide such an easement as the railroad easement was terminated and the railroad track was removed. A review of the two (2) Easements in Exhibit "A" and "B" clearly indicate that they were linked and conditional. The owner of Lot 5, should have his title to his property free and clear without any further claim or encumbrance by the owner of Lot 6, as to a railroad easement. Not only was the easement for a "specific purpose" but the easement had been abandoned by the Defendants through "non-use" over a twenty (20) year period of time, continued non-use after receiving notification by the railroad of its intent to abandon or disclaim the easement and then after the abandonment by the railroad, the Defendant removed the railroad ties and rails further indicating his intent to abandon the easement, as the easement was specific and limited in its use as a railroad spur. The Defendant was unable to use the easement for any other purpose. Plaintiffs pray the Court to Quiet the Title in this matter and terminate the Defendant's easement.

DATED this 27th day of May, 1993.


HOLLIS S. HUNT
Attorney at Law

CERTIFICATE OF HAND DELIVERY

This certifies that a true and correct copy of the foregoing Plaintiffs' Trial Brief was hand-carried to attorney for Defendant, George K. Fadel, this 27th day of May, 1993.

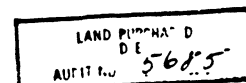


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OREGON SHORT LINE RAILROAD COMPANY

Deed C.E. 5922 Audit 5685

EASEMENT



THIS INDENTURE, made this 6 day of April,
A.D. 1917, between Theodore T. Burton and Marion Burton,
his wife, of Salt Lake Co. Utah, grantors,
and the Oregon Short Line Railroad Company, a corporation of the
State of Utah, grantees:

WITNESSETH, That said grantors, for the sum of One and
No/100 (1.00) Dollars, hereby grant and convey unto the said
grantee, and to its successors and assigns, a perpetual easement
to the sole and exclusive use for a right of way for its two
spur tracks, in and to the following described land in Salt Lake
City, Salt Lake County, Utah:-

A strip of land eight and five-tenths (8.5) feet in
width on each side of the center line of the two spur tracks
of said Railroad Company, as same are now located on the
grantor's property in Lots Five (5) and Six (6) of Block
Twelve (12) Plat "A" Salt Lake City Survey, the location of
the center line of said spur tracks being more particularly
described as follows:

Beginning at a point in the North line of said Block
Twelve (12) and twenty-six (26) feet, more or less, East
of the Northwest corner thereof; thence Southeasterly along
a 20° 10' curve to the right, for a distance of nine and
four-tenths (9.4) feet; thence South 19° 30' East, for a
distance of forty-four and five-tenths (44.5) feet; thence
along a 24° 32' curve to the left, for a distance of one
hundred one and two-tenths (101.2) feet; thence South
44° 20' East, for a distance of one hundred (100) feet;
thence along a 25° 00' curve to the right, for a distance
of one hundred twenty-five (125) feet, to end of said spur
track; also

Beginning at a point in the center line of the above
described spur track at a point one hundred sixteen and two-
tenths (116.2) feet Southeasterly measured along said center
line of track from its intersection with the North line of
said Block Twelve (12); thence Southerly along a number 6
turnout curve to the right for a distance of fifty-five
and seven-tenths (55.7) feet; thence along a 32° 00' curve
to the right, for a distance of one hundred eight and six-
tenths (108.6) feet; thence South, for a distance of seventy
seven and seven-tenths (77.7) feet, to the South line of
Lot Five (5) of said Block Twelve (12).

This conveyance is given to provide a right of way for
the construction, operation and maintenance of the aforesaid spur
tracks, and if at any time the said spur tracks, or any portion
thereof, shall be removed from the above described land, then and
in that event this conveyance shall become null and void and of no

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Book 11 for page 180

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AGREEMENT CREATING RIGHT OF WAY

THIS AGREEMENT made this 2nd day of February, 1947 by and between FLORENCE M. BURTON, Party of the first part, and EDWARD L. BURTON, Party of the second part, witnesseth:

WHEREAS, the party of the first part is the owner of the following described property situated in Salt Lake County, State of Utah, to-wit:

All of Lot 5, Block 12, Flat "A", Salt Lake City Survey.

over which a spur track of the Union Pacific Railroad Company is located which leads into the property of the party of the second part, and

WHEREAS, the party of the second part is the owner of the following described property situated in Salt Lake County, State of Utah, to-wit:

The West half of Lot 6, Block 12, Flat "A", Salt Lake City Survey.

which is served by the spur track above referred to which crosses the property of the party of the first part, and

WHEREAS, said parties are desirous of establishing the right of way for said spur track of record, now therefore, this agreement witnesseth:

That in consideration of the sum of Ten and no/100 (\$10.00, and other good and valuable considerations paid by the said party of the second part to the said party of the first part, the receipt of which is hereby acknowledged, said party of the first part hereby grants and conveys to said party of the second part a right of way over the real property above described of said party of the first part for a perpetual right of way of a spur track crossing said property of the said party of the first part to serve and for the use and benefit of the above described real property of the party of the second part.

It is further understood and agreed, however, that the party of the first part has the right and privilege of changing the location of the right of way for said spur track or other spur tracks to meet her convenience providing that said right of way as changed will continue to permit the spur track to continue to serve the property of the party of the second part and to permit said spur track to enter the property of the party of the second part at the same place as said spur track now enters the property of the said party of the second part.

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-2-

It is further understood and agreed however that said right of way for said spur track is granted for the exclusive use of the real property of said party of the second part and cannot be extended for the use of any other real property adjacent to the said West half of Lot 6, Block 12, Plat "A", Salt Lake City Survey.

WITNESS THE HANDS of said parties this day and year first above written.

Florence M. Burton
Party of the first Part

Edward L. Burton
Party of the second Part.

State of Utah,
County of Salt Lake

S.S.

On the 16th day of June, A.D. 1947 personally appeared before me Florence M. Burton and Edward L. Burton, the signers of the within instrument, who duly acknowledged to me that they executed the same.

W. J. Bannan
Notary Public



My commission expires January 30, 1948 Residing in Salt Lake City, Utah.

DISCLAIMER

TO WHOM IT MAY CONCERN:

Notice is hereby given that Oregon Short Line Railroad Company and its lessee, Union Pacific Railroad Company, acting through their Vice President disclaim any right, title, or interest in and to the following described real property situated in Salt Lake County, State of Utah:

A strip of land eight and five-tenths (8.5) feet in width on each side of the center line of the two spur tracks of said Railroad Company, as same are now located on the grantor's property in Lots Five (5) and Six (6) of Block Twelve (12) Plat "A" Salt Lake City Survey, the location of the center line of said spur tracks being more particularly described as follows:

Beginning at a point in the North line of said Block Twelve (12) and twenty-six (26) feet, more or less, East of the Northwest corner thereof; thence Southeasterly along a $20^{\circ} 10'$ curve to the right, for a distance of nine and four-tenths (9.4) feet; thence South $19^{\circ} 30'$ East, for a distance of forty-four and five-tenths (44.5) feet; thence along a $24^{\circ} 32'$ curve to the left, for a distance of one hundred one and two-tenths (101.2) feet; thence South $44^{\circ} 20'$ East, for a distance of one hundred (100) feet; thence along a $25^{\circ} 00'$ curve to the right, for a distance of one hundred twenty-five (125) feet, to end of said spur track; also

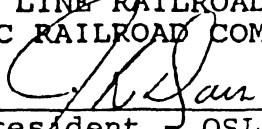
Beginning at a point in the center line of the above described spur track at a point one hundred sixteen and two-tenths (116.2) feet Southeasterly measured along said center line of track from its intersection with the North line of said Block Twelve (12); thence Southerly along a number 6 turnout curve to the right for a distance of fifty-five and seven-tenths (55.7) feet; thence along a $32^{\circ} 00'$ curve to the right, for a distance of one hundred eight and six-tenths (108.6)

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 Request of Western States Title Company
 KATIE L DIXON, Recorder
 Salt Lake County, Utah
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feet; thence South, for a distance of seventy seven and seven-tenths (77.7) feet, to the South line of Lot Five (5) of said Block Twelve (12).

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed by their duly authorized Vice-President ^{and} _{Presid} on this 17th day of December, 1927.

OREGON SHORT LINE RAILROAD COMPANY
UNION PACIFIC RAILROAD COMPANY

By 
Their President - OSLRRCo.
Executive Vice President-UPRRCo.

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

On the 17th day of December,
1987, personally appeared before-me J. R. Davis,
who being by me duly sworn, did say that he is the President
Executive Vice President of
of Oregon Short Line Railroad Company and/Union Pacific Railroad
Company and that said instrument was signed in behalf of said
corporations by authority of their bylaws and acknowledged to me
that said corporations executed the same.

Notary Public
Residing at Omaha

My Commission 'Expires:



UNION PACIFIC RAILROAD COMPANY
OPERATING DEPARTMENT

EXT 4307

~~R. E. IRION~~
GENERAL MANAGER
SOUTH CENTRAL DISTRICT



406 WEST 1ST SOUTH ST
SALT LAKE CITY UTAH 84101

AW. REES

350-3323

BILL GARDNER 4340

July 6, 1983

9193

Mr. Richard Williams
2662 East Comanche Drive
Salt Lake City, Utah 84108

Dear Mr. Williams:

Under date of December 7, 1907, the Oregon Short Line Railroad Company, party of the first part, entered into an agreement with The Mount Pickle Company, party of the second part, covering construction of an extension to and rearrangement of an existing industry spur track known as Track No. 113 at Salt Lake City, Salt Lake County, Utah as identified by yellow line on the print dated November 29, 1907, thereto attached. Said agreement is identified in the records of the Railroad Company as C. E. No. 794, Audit No. 3199.

Section 4 of said agreement provides that the agreement may be terminated by the Railroad Company by giving 60 days' written notice to the party of the second part, if the party of the second part causes for a continuous period of six (6) months the discontinuance or abandonment of the business contemplated to be done on the track covered under provisions of said agreement.

Since you are successor in interest to the premises owned by The Mount Pickle Company, this letter is sent to advise you that under the terms of Section 4 of the above-named agreement the Railroad Company elects to, and does hereby, terminate said agreement effective 60 days following receipt of this letter by you.

Dated this 6th day of July, 1983.

OREGON SHORT LINE RAILROAD COMPANY

By RE Irion General Manager

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DISCLAIMER

TO WHOM IT MAY CONCERN:

Notice is hereby given that Oregon Short Line Railroad Company and its lessee, Union Pacific Railroad Company, acting through their Vice President disclaim any right, title, or interest in and to the following described real property situated in Salt Lake County, State of Utah:

A strip of land eight and five-tenths (8.5) feet in width on each side of the center line of the two spur tracks of said Railroad Company, as same are now located on the grantor's property in Lots Five (5) and Six (6) of Block Twelve (12) Plat "A" Salt Lake City Survey, the location of the center line of said spur tracks being more particularly described as follows:

Beginning at a point in the North line of said Block Twelve (12) and twenty-six (26) feet, more or less, East of the Northwest corner thereof; thence Southeasterly along a $20^{\circ} 10'$ curve to the right, for a distance of nine and four-tenths (9.4) feet; thence South $19^{\circ} 30'$ East, for a distance of forty-four and five-tenths (44.5) feet; thence along a $24^{\circ} 32'$ curve to the left, for a distance of one hundred one and two-tenths (101.2) feet; thence South $44^{\circ} 20'$ East, for a distance of one hundred (100) feet; thence along a $25^{\circ} 00'$ curve to the right, for a distance of one hundred twenty-five (125) feet, to end of said spur track; also


Beginning at a point in the center line of the above described spur track at a point one hundred sixteen and two-tenths (116.2) feet Southeasterly measured along said center line of track from its intersection with the North line of said Block Twelve (12); thence Southerly along a number 6 turnout curve to the right for a distance of fifty-five and seven-tenths (55.7) feet; thence along a $32^{\circ} 00'$ curve to the right, for a distance of one hundred eight and six-tenths (108.6)

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 KATIE L. DIXON, Recorder
 Salt Lake County, Utah
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feet; thence South, for a distance of seventy seven and seven-tenths (77.7) feet, to the South line of Lot Five (5) of said Block Twelve (12).

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed by their duly authorized Vice-President and President on this 17th day of December, 1927.

OREGON SHORT LINE RAILROAD COMPANY
UNION PACIFIC RAILROAD COMPANY

By 
Their President OSLRRCo.
Executive Vice President-UPRRCo.

SCALE 60 FT = ONE INCH

STREET

THIS PLAT IS FOR ORIENTATION PURPOSES ONLY. IT DOES NOT CONSTITUTE A SURVEY. THE COMPANY ASSUMES NO LIABILITY FOR VARIATIONS, IF ANY, WITH AN ACTUAL SURVEY.