

2005

LPM Corporation v. Paul C. Smith and Sandra A. Smith: Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LPM CORPORATION,
A Nevada corporation,

Plaintiff and Appellant,

vs.

PAUL C. SMITH and
SANDRA A. SMITH,

Defendants and Appellees.

Appellate Case No. 20050950-CA

Priority No. 15

BRIEF OF APPELLANT

**APPEAL FROM FINAL ORDER
BY THE HONORABLE GLEN R. DAWSON,
SECOND DISTRICT COURT, DAVIS COUNTY, BOUNTIFUL DEPT.**

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ORAL ARGUMENT REQUESTED

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JURISDICTION

This Court has jurisdiction in this matter pursuant to UTAH CODE ANN. §78-2-2a(3)(j) (2004).

STATEMENT OF ISSUES

ISSUE 1: Whether the trial court erred in granting the Smiths' rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted.

Standard of Review: "On appeal from a motion to dismiss, the court reviews the facts as they are alleged in the Complaint. The court accepts the factual allegations in the Complaint as true and considers all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff." Ramsey v. Hancock, 2003 UT App 319, 79 P.3d 423. "A rule 12(b)(6) dismissal is merely a recognition by the trial court that a plaintiff's claim is formally deficient; therefore, a motion to dismiss is appropriate only where it clearly appears that the plaintiff would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim." Sony Electronics, Inc. v. Reber, 2004 UT App 420, ¶10, 103 P. 3d 186 (citations and quotations omitted). A trial court's decision granting a motion to dismiss a complaint for failure to state a claim is a question of law that is reviewed for correctness, giving no deference to the trial court's ruling. Oakwood Village LLC v. Albertsons, Inc., 2004a UT 101, ¶9, 104 P.3d 1226.

Preservation of Issue: R. 1-5, R. 23, R.95.6

ISSUE 2: Whether the trial court erred in finding that the doctrine of boundary by acquiescence cannot, as a matter of law, be applied to obtain title to an entire, separately platted parcel of land, when the doctrine could have operated to vest legal title in LPM's predecessor before the disputed parcel was severed from the larger parcel in the 1960s.

Standard of Review: A trial court's conclusions of law are reviewed for correctness, according the trial court no particular deference. RHN Corp. v. Veibell, 2004 UT 60, 96 P.3d 935, 941 (Utah 2004).

Preservation of Issue: R. 20-21, R. 28(Exhibit "A" to *Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss*), R. 95.7-8, R.70(Exhibit presented by LPM at oral argument)

ISSUE 3: Whether the trial court erred by allowing the Smiths to present matters outside the pleadings, then failing to treat their motion as one for summary judgment and give LPM reasonable opportunity to present all material facts made pertinent to such a motion.

Standard of Review: Same as for Issue 2

Preservation of Issue: [R 39-43, R 95.10, 95.3(lines 14-15), 95.11(lines 17-25), 95.13(lines11-12), 95.15(lines 11-13)]

DETERMINATIVE RULES

Utah R. Civ. Proc. 12(b):

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

STATEMENT OF THE CASE

I. Nature of the Case

This is a boundary by acquiescence action to quiet title in LPM to a disputed parcel of land that LPM and its predecessors have exclusively and continuously occupied and farmed for over 60 years.

LPM Corporation (“LPM”) and its predecessors have operated a large farm and fruit orchard (“the farm”) in Kaysville, Utah for over 60 years. Since at least 1940, the farm was bounded on its north boundary by a fence that still stands today. Also since 1940, the land has been continuously farmed up to this north fence. LPM, its predecessors and the Smiths’ predecessors have always treated the fence as the north boundary line of the property.

In the 1960s, unbeknownst to LPM’s predecessors, the Smiths’ predecessors created parcel 11-041-0006, describing a .39-acre rectangular parcel of land located on the farm, just inside (south of) the north fence line (“the disputed parcel”). Thereafter,

LPM's predecessors continued to farm the land up to the north fence, with no notice from anyone disputing their ownership of the parcel. After acquiring the farm from its predecessors in 1990, LPM continued to farm the land with no notice from anyone claiming to own the disputed parcel.

On February 28, 2005, the Smiths approached LPM seeking to acquire additional land to add to their prospective building lot located on the north side of the fence. During negotiations, LPM discovered that the Smiths claimed record title to the disputed parcel that LPM and its predecessors have occupied and farmed for over 60 years. LPM also discovered that the Smiths intended to include the disputed parcel in their prospective building lot.

II. Course of Proceedings and Disposition at Trial Court

On April 29, 2005, LPM filed this action to quiet title to the disputed parcel in LPM based on the doctrine of boundary by acquiescence. The Smiths filed a motion to dismiss under Utah R. Civ. Proc. 12(b)(6) for failure to state a claim upon which relief can be granted. No answer to the complaint has been filed.

In their supporting memorandum, the Smiths argued that the doctrine of boundary by acquiescence did not apply because the doctrine cannot operate to take a neighbor's entire parcel. LPM countered that 1) LPM's predecessors acquired title to the disputed parcel through boundary by acquiescence *before* the disputed parcel was

created, and 2) LPM is not claiming an “entire parcel” because the disputed parcel is only a small portion of the Smith’s prospective building lot.

The Smiths replied that LPM alleged new facts outside the pleadings and asked the trial court to convert their Rule 12(b)(6) motion to a Rule 56 motion for summary judgment. The trial court did not convert the motion to one for summary judgment, nor did it exclude the new facts alleged. After oral arguments the trial court dismissed LPM’s complaint on the grounds that the doctrine of boundary by acquiescence cannot be used to acquire an entire parcel of land. This appeal follows.

STATEMENT OF RELEVANT FACTS

1. LPM is the owner of an 88-acre farm and fruit orchard in Kaysville, Utah (“the farm”), which it acquired in 1990. [R 2 ¶2, 20]
2. Since 1940, the farm has been fenced on its north boundary by an existing old wire fence (“the north fence”) that still stands today. [R 3 ¶8, R 20] Also since 1940, LPM and its predecessors continuously occupied the farm, up to the north fence, and continuously used it for farming, livestock grazing and for ingress and egress to and from its property. [R 2 ¶4, R 20]
3. The Smiths own the property north of the fence. [R 70, R 95.7]
4. The north fence is a physical boundary marker between the farm and the Smith’s property to the north. [R 22, R 95.7, 95.9]

5. At the time the fence was erected, the property to the north of the fence had not yet been subdivided and was comparable in size to LPM's 88-acre farm on the south side of the fence. [R 95.9]

6. LPM and its predecessors have always acquiesced to the north fence being the north boundary line of the farm property. [R 3 ¶9]

7. The Smiths' predecessors have also always acquiesced to the north fence being the boundary line between their property and the farm. [R 3 ¶9]

8. The mutual acquiescence began at least as early as 1940, and was continuous for more than 20 years. [R 3 ¶10]

9. In the 1960s, after LPM's predecessors had satisfied the elements of boundary by acquiescence, the Smiths' predecessors recorded a document severing the disputed parcel from their larger parcel. [R 2 ¶3, R 95.3, 95.11, 95.13, 95.15, R 20, 22]

10. The disputed parcel is about 55 feet wide and 312 feet long [R 70], and is located entirely on the LPM farm, just inside (south of) the north fence, such that the north boundary line of the disputed parcel runs along a portion of LPM's north fence line. [R 2 ¶3, R 20, 70]

11. The Smiths claim record title to the disputed parcel, pursuant to a single deed describing a single parcel. [R 2 ¶3, R 95.7-8]

12. LPM's predecessors continuously occupied and farmed the disputed parcel right along with the rest of its property, both before and after the disputed parcel was

created. Thereafter, LPM also continuously occupied and farmed the disputed parcel.

[R 2 ¶4, R 20]

13. The use and occupation of its property up to the north fence, including the disputed parcel, by LPM's predecessors was exclusive of anyone else's use both before and after the disputed parcel was created, as was LPM's occupation and use thereafter.

[R 3 ¶8-10] In addition, all of said use and occupation was also open, notorious and adverse under a claim of right. [R 3 ¶8-10]

14. The Smiths presented matters outside of the pleadings. In their reply memorandum and at the hearing on their Rule 12(b)(6) motion their attorney argued, without supporting evidence, that the purpose of the north fence was to serve as a barrier rather than a boundary. [R 41, 95.3(line 19), 95.10(line 11), 95.15(lines 1-2)]; that the Smith's paid all of the taxes on the disputed parcel [R 48, 95.11(lines 14-17), 95.14(lines 15-16)] and that the disputed parcel was created in 1967. [R 95.3, 95.11, 95.13, 95.15]

15. The trial court dismissed the complaint, rather than convert the motion to dismiss into a motion for summary judgment. [R 67, 78-80]

16. The trial court did not exclude the matters the Smiths' attorney submitted outside the pleadings. Rather, it relied on them in deciding to dismiss LPM's complaint. [R 79]

SUMMARY OF ARGUMENTS

LPM is entitled to relief because the elements of boundary by acquiescence were met with respect to the disputed parcel, before it was severed from the larger parcel to the north in the 1960s. Even if the elements were not met beforehand, they were met after the parcel was created because the doctrine of boundary by acquiescence can operate to take a separately platted parcel as long as the four required elements are met.

The court failed to treat the Smiths' motion to dismiss as a motion for summary judgment when matters outside the pleadings were presented to the court and not excluded.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING THE SMITH'S RULE 12(b)6 MOTION TO DISMISS LPM'S COMPLAINT BECAUSE LPM'S FACTUAL ALLEGATIONS WERE SUFFICIENT TO STATE A CLAIM OF BOUNDARY BY ACQUIESCENCE

A boundary by acquiescence claim in Utah requires "i) occupation up to a visible line marked by monuments, fences, or buildings, (ii) mutual acquiescence in the line as a boundary, (iii) for a long period of time, (iv) by adjoining landowners." Veibell, 2004 UT 60 at ¶23, 96 P.3d at 941. The Utah Supreme Court held that "a long period of time" must be "a period of at least 20 years" for purposes of proving boundary by acquiescence. Jacobs v. Hafen, 917 P.2d 1078, 1081 (Utah 1996).

A. LPM's Predecessors Acquired Title to the Disputed Parcel Before it was Severed from a Larger Parcel

Since at least 1940, LPM and its predecessors continuously occupied and used the disputed parcel for farming, grazing and for ingress and egress, along with the rest of the farm, up to the visible north fence line. [Facts 2, 12, 13]

Since at least 1940, LPM and its predecessors in interest, and the adjoining landowners, the Smiths' predecessor's in interest, all acquiesced in the fence serving as the boundary between their respective properties. [Fact 7] The north fence is a physical boundary on the north side of the farm. [Fact 4] When the fence was erected, prior to 1940, the property to the north of the fence had not yet been subdivided and was comparable in size to LPM's 88-acre farm on the south side of the fence. [Fact 5]

The court below struggled to understand how reasonable landowners could acquiesce to the fence line as the boundary when it is so far off (55 feet) from the presently platted record boundary line. [R 95.8-9] Moreover, the court relied on the fact that the disputed parcel is 50 feet wide and several hundred feet long in its dismissal order. [R 79] However, that question is not legally relevant to whether the Complaint states a valid claim. Utah courts have upheld claims of boundary by acquiescence to much larger disputed parcels. See, e.g., Brown v. Peterson Development Company, 622 P.2d 1175 (Utah 1980), (70 feet wide and 969 feet long); Mason v. Loveless, 420 UT App 145, ¶20, 24 P.3d 997,1004 (UT App. 2001) (a 22-acre triangular shaped parcel 204 feet wide at its wide end and 9,240 feet long). Veibell, 2004 UT 60 at

Attached Map of Property, 96 P.3d at Attached Map of Property (a 2-acre triangular parcel about 150 feet wide at its wide end and about 600 feet long).

In this case, considering that the landowners on each side of the fence had such large parcels, [Fact 5] the chance that one would be overly concerned about 55 feet is slim if it represented only a small fraction of his property. Thus, not only is it apparent how the parties' predecessors could have acquiesced in the fence being the boundary when it was 55 feet off the true boundary line, but historically Utah courts have upheld acquiescence involving large disputed parcels.

LPM and its predecessors have continuously occupied and used the disputed parcel for over sixty years. Their use of the property was exclusive, open, notorious and adverse under a claim of right. [Facts 12-13] From at least 1940 to 2005 neither the Smith's nor their predecessors ever came forward to say that LPM or its predecessors were using their property, or to object to the north fence line serving as the boundary, even after the disputed property was created as a separate parcel in the 1960s, after LPM's predecessors had already acquired legal title through boundary by acquiescence.

"Our settled case law...clearly provides that acquiescence may be established by silence." Mason, 420 UT App 145 at ¶20, 24 P.3d at 1004. In fact, the Utah Supreme Court even noted that "[a]cquiescence' is more nearly synonymous with 'indolence,' or 'consent by silence'." Lane v. Walker, 29 Utah 2.d 119, 505 P.2d 1199, 1200 (Utah

1973). Acquiescence may also be shown by the failure of a party to object to the line as a boundary. See Veibell, 2004 UT 60, at ¶25, 96 P.3d at 942.

The Smith's predecessors allowed their neighbors (LPM's predecessors) exclusive use of the disputed parcel. The use was so exclusive that they even failed to object to the treatment of the fence as the boundary. Since acquiescence may be shown by silence or the failure to object to a fence as the boundary, LPM's predecessors, therefore, acquired title no later than 1960, twenty years after they began occupying and using the property to the fence line.

The fourth element requires the acquiescence to occur between adjoining landowners. LPM, as did its predecessors, owns the farm. [Fact 2] The Smiths, as did their predecessors, own the adjacent disputed parcel. [R 2 ¶3] The parties who acquiesced were, therefore, adjoining landowners.

If the pleadings left any uncertainty about whether the parties are adjoining landowners, it was clarified on the record at the motion hearing. LPM introduced an exhibit [R 70] showing clearly that the parties are adjoining landowners. [R. 95.5]

A boundary by acquiescence, once established, vests legal title of the property in the occupier of the property regardless of the record title. Veibell, 2004 UT 60 at ¶30, 96 P.3d at 935. "Once adjacent landowners have acquiesced in a boundary for a long period of time, the operation of the doctrine of boundary by acquiescence is not vitiated by a subsequent discovery of the true record boundary by one of the parties." Id. at

¶31, 96 P.3d at 943. It does not vanish just because the record owner conveys the property to a grantee who is unaware of the established boundary. See Dahl Investment Co. v. Hughes, 2004 UT App. 391, ¶11, 101 P.3d 830, 832 (UT App. 2004); and Rydalch v. Anderson, 37 Utah 99, 107 P. 25, 30 (1910). Thus, title gained through boundary by acquiescence remains with the occupier, despite subsequent conveyances of record title.

When LPM's predecessors acquired legal title to the disputed parcel in 1960, the Smiths' predecessors were simultaneously divested of any legal title they had in it. From that point forward, any purported conveyance of title to the disputed parcel by the Smiths' predecessors was ineffective, null and void because they had no title to give. Legal title to the disputed parcel remained in LPM's predecessors, and was ultimately conveyed to LPM. Therefore, even if the Smiths did not know about the established boundary by acquiescence, and could not have acquiesced to the north fence being the boundary, legal title in the disputed parcel remained with LPM's predecessors and subsequently LPM.

A rule 12(b)(6) motion to dismiss cannot be granted unless "it clearly appears that the plaintiff would not be entitled to relief under the facts alleged, or under any state of facts it *could* prove to support its claim." Sony Electronics, Inc. v. Reber, 2004 UT App 420, ¶10, 103 P. 3d 186 (Utah App. 2004) (citations and quotations omitted) (emphasis added). The trial court is required to accept the alleged facts as true, and to

consider all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff. See Ramsey v. Hancock, 2003 UT App 319, 79 P.3d 423 (Utah App. 2003).

Accepting as true the facts alleged in the complaint, and considering all of the reasonable inferences in a light most favorable to LPM, the complaint states a valid claim to quiet title through boundary by acquiescence. Therefore, the trial court erred when it dismissed LPM's claim for failure to state a claim.

B. Boundary by Acquiescence Can Operate to Take an Entire Separately Platted Parcel

The trial court ruled as a matter of law that the doctrine of boundary by acquiescence cannot be used to acquire an entire, separately platted parcel of land when the parcel, and that such a parcel can only be taken if the elements of adverse possession are met. [R 78]

Under basic principles of legal reasoning, if two causes of action are available to achieve the same end, just because the elements of one cause of action cannot be met does not make the other cause of action unavailable. Each cause of action stands on its own merits. If the legal doctrines of boundary by acquiescence and adverse possession can each operate to obtain title to a neighbor's land, and the elements of adverse possession cannot be met, that fact, does not preclude a cause of action for boundary by acquiescence. Whether a boundary by acquiescence can be established depends on

whether the elements of that claim are established, not whether the elements of adverse possession can be met.

There is no case law supporting the trial court's ruling. The doctrine of boundary by acquiescence is long established in Utah and has been applied by Utah courts for 100 years. See Holmes v. Judge, 3 Utah 269, 87 P.1009, 1014 (1906) (applying boundary by acquiescence doctrine for first time in Utah). Nevertheless, whether boundary by acquiescence can operate to take an entire, separately platted parcel is an undecided issue in Utah.

To hold boundary by acquiescence cannot operate to take an entire, separately platted parcel, would add a new fifth element to the doctrine of boundary by acquiescence. In Utah, boundary by acquiescence has no fifth element. See Veibell, 2004 UT 60 at ¶23, 96 P.3d at 941. There is no requirement that the disputed parcel not be an entire separately platted parcel. Such a requirement would be inconsistent with the purpose of the doctrine of boundary by acquiescence, which is to “establish stability in boundaries, repose of titles, and the prevention of litigation.” Mason, 420 UT App 145 at ¶17, 24 P.3d at 1003. Moreover, an adjoining property owner could always avoid boundary by acquiescence by simply deeding the disputed parcel to someone else, or by otherwise creating a new separate parcel, as was done here.

Utah courts have upheld boundary by acquiescence claims to larger disputed parcels that contain portions of separately platted parcels. See Brown, 622 P.2d at 1177

(Plaintiff obtained title to a disputed parcel 70 feet wide and 969 feet long under the doctrine of boundary by acquiescence, even though the disputed parcel contained portions of three separately platted parcels that defendants held record title to) and Mason, 420 UT App 145 at ¶20, 24 P.3d at 1004 (Plaintiff obtained title to a 22-acre triangular shaped disputed parcel that was 204 feet wide at its wide end, even though said disputed parcel contained at least parts of six separately platted subdivision lots). Thus, the mere fact that a disputed parcel is separately platted and is substantially larger than the disputed parcel at issue here does not bar a claim of boundary by acquiescence.

It is unclear from the record exactly why an “entire” parcel should be immune from a boundary by acquiescence claim when a partial parcel is not. The Smiths argue in their reply memorandum that for boundary by acquiescence to take a neighbor’s entire parcel, the record owner would have to acquiesce to a boundary that leaves him no parcel at all. [R 44]

However, LPM is not claiming to take the Smiths’ entire parcel because the Smiths are record owners of the disputed parcel and the property on the north side of the north fence, which they purchased together with other property under a single deed describing a single parcel. [Fact 11] Thus, the argument fails because if the disputed parcel were taken, the Smiths would retain their property north of the fence.

The Smiths also quote Davis v. Riley, 20 Utah 2.d 325, 329, 437 P.2d 453,456 (Utah 1968), in which the Utah Supreme Court stated in a 1968 concurring opinion that the “doctrine of boundary by acquiescence cannot be utilized as a subterfuge to avoid compliance with the statutory provisions of adverse possession. [R 44] In that case, the plaintiff claimed title by boundary by acquiescence to a mere portion of his neighbor’s parcel, not an entire parcel. See Id. And yet during the 37 years since Davis, numerous claims to parcels through boundary by acquiescence have been upheld by Utah Courts. See, e.g., Veibell, 2004 UT 60 at ¶56, 96 P.3d at 948, Mason, 420 UT App 145 at ¶24, 24 P.3d at 1005, Brown, 622 P.2d at 1178, Etc. Thus, the doctrine of boundary by acquiescence is still applicable, notwithstanding Justice Callister’s statement in Davis.

In conclusion, even if the disputed parcel were Smiths’ entire parcel, the elements of boundary by acquiescence were met before the parcel was severed from the larger parcel. See point I.A., supra. If boundary by acquiescence was not established by LPM’s predecessors before the disputed property was severed from the larger parcel, the doctrine operated to vest title to the disputed parcel in LPM’s predecessors even after it was created because the occupation and acquiescence continued through 2005. [Facts 1, 2, 6, 7, 8, 12, 13]

II. THE TRIAL COURT ERRED BY 1) FAILING TO TREAT THE SMITHS’ RULE 12(b)(6) MOTION AS A MOTION FOR SUMMARY JUDGMENT WHEN MATTERS OUTSIDE THE PLEADINGS WERE PRESENTED, AND 2) FAILING TO GIVE LPM A REASONABLE

**OPPORTUNITY TO PRESENT ALL MATERIAL MADE
PERTINENT TO SUCH A MOTION BY RULE 56.**

If matters outside the pleadings are presented to and not excluded by the court on a 12(b)(6) motion, “the motion shall be treated as one for summary judgment...and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Utah R. Civ. Proc. 12(b) (emphasis added). Use of the word “shall” makes the conversion to summary judgment mandatory.

The Smiths presented matters outside of the pleadings. In their reply memorandum and at the hearing on their Rule 12(b)(6) motion their attorney argued, but did not present any evidence, that the purpose of the north fence was to serve as a barrier rather than a boundary; that the Smiths paid all of the taxes on the disputed parcel; and that the disputed parcel was created in 1967. [Fact 14] After these new matters were presented, LPM made an oral motion at the hearing requesting leave to amend its complaint. [R95.17(lines 9-11)] The court denied the request [R 95.17(lines 12-13)] and dismissed the complaint with prejudice [Fact 15], effectively denying LPM any reasonable opportunity to present all materials made pertinent to the motion by these new facts. The trial court did not exclude the matters the Smiths presented outside the pleadings. Instead, it relied upon them, referencing them in the court’s dismissal

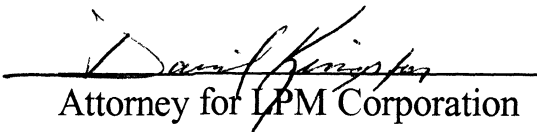
order, even though the Smiths offered no evidentiary support for those matters. [Fact 16]

When the Smiths presented the new facts outside the pleadings, the court was required by Rule 12(b) to treat the Smiths' motion as one for summary judgment and afford LPM an opportunity to present materials made pertinent to the motion. Because it failed to do either, the trial court erred.

CONCLUSION – RELIEF SOUGHT

LPM asks this Court to reverse the trial court's dismissal of LPM's complaint and remand the decision to the trial court on the grounds that the complaint stated a valid claim for boundary by acquiescence, or on alternative grounds that LPM was denied the opportunity to present materials made pertinent to the 12(b)(6) motion after the Smith presented matters outside the pleadings.

DATED January 4, 2006.

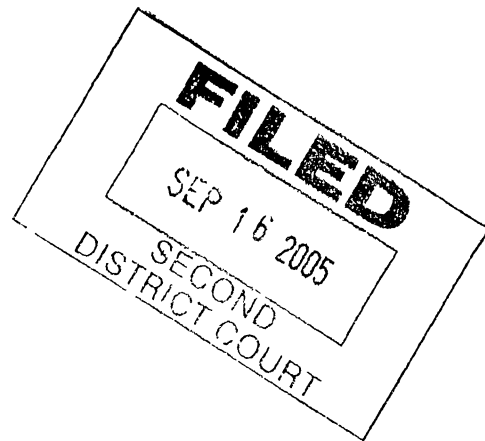

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ADDENDUM

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**IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR DAVIS COUNTY, STATE OF UTAH**

<p>LPM CORPORATION, a Nevada corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>PAUL C. SMITH, and individual, and SANDRA A. SMITH, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">ORDER GRANTING DEFENDANTS' MOTION TO DISMISS</p> <p style="text-align: center;">Civil No. 050800569</p> <p style="text-align: center;">Honorable Glen R. Dawson</p>
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This matter came before the Court on August 15, 2005, for a hearing on Defendants' *Motion to Dismiss* (the "**Motion**"). At the hearing, David E. Kingston appeared on behalf of Plaintiff, and Michael R. Johnson and Troy L. Booher appeared on behalf of Defendants. Prior to the hearing, the Court carefully considered the pleadings and papers submitted by the parties concerning the Motion. At the hearing, the Court carefully considered the arguments of counsel. At the conclusion of the hearing, the Court made its ruling on the record, and the same are incorporated herein.

Based upon the foregoing, this Court rules that Plaintiff's Complaint fails to state a claim against Defendants upon which relief can be granted and that Plaintiff's Complaint should be




dismissed with prejudice. Plaintiff's Complaint asserts claims for quiet title and boundary by acquiescence. Plaintiff's quiet title claim, however, is wholly predicated on its boundary by acquiescence claim. Plaintiff's boundary by acquiescence claim fails as a matter of law.

It is undisputed that Plaintiff is attempting in this action to acquire an entire, separately platted parcel of land, that the parcel of land at issue had been separately platted for decades prior to the filing of this action, and that this parcel of land is over 50 fifty feet wide and several hundred feet long. The doctrine of boundary by acquiescence cannot, as a matter of law, be used to acquire an entire, separately platted parcel of land in such circumstances. Rather, in order for Plaintiff to obtain title to the parcel of land at issue, Plaintiff must satisfy the elements of adverse possession. Plaintiff acknowledged at the hearing that it cannot satisfy the elements of adverse possession, because it has not paid the real property taxes on the parcel of land at issue, at least since it was created as a separate parcel in 1967. Therefore, Plaintiff's attempt to acquire the entire parcel of land fails as a matter of law, and any amendment by Plaintiff to amend its Complaint to assert an adverse possession claim would be futile. Based upon the foregoing,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss shall be, and it hereby is, granted, and that Plaintiff's Complaint shall be, and it hereby is, dismissed with prejudice and on the merits, with each party to bear its own attorneys' fees and costs of suit.

DATED this 15th day of September, 2005.

BY THE COURT


Honorable Glen R. Dawson
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2005, true and correct copies of the foregoing were sent via first-class mail, postage prepaid, to:

DAVID E. KINGSTON
3212 South State Street
Salt Lake City, UT 84115
(801) 486-1458
Attorney for LPM Corporation

CERTIFICATE OF SERVICE

I certify on January 4, 2006 copies of the above were served by first class mail
to:

Michael R. Johnson
Troy L. Booher
Snell & Wilmer, L.L.P.
15 West South Temple, Suite 1200
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Salt Lake City, Utah 84101-1004



Attorney for LPM Corporation