

2005

Marjean Deakin v. Bernard Gomez and Ramona Gomez : Brief of Appellant

Utah Court of Appeals

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James H. Deans; Attorney for Appellant.

Christian W. Clinger; Attorney for Appellee.

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No. 20050953-CA

IN THE UTAH COURT OF APPEALS

MARJEAN DEAKIN
Appellee

vs.

BERNARD GOMEZ AND RAMONA GOMEZ,
Appellants

ON APPEAL FROM

THE THIRD DISTRICT COURT FOR THE STATE OF UTAH

BRIEF FOR THE APPELLANT

CHRISTIAN W. CLINGER
Attorney for Appellee
3760 So. Highland Drive
Salt Lake City, Utah 84106

JAMES H. DEANS
Counsel for Appellants
440 So. 700 East, #101
Salt Lake City, Utah 84102

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JAMES H. DEANS
Counsel for Appellants
440 So. 700 East, #101
Salt Lake City, Utah 84102

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The district court's unpublished opinion can be found on pages 358-378 of the record.

JURISDICTIONAL STATEMENT

Jurisdiction over this appeal lies with the Utah Court of Appeals pursuant to Utah Code Ann. §78-2a-3(2)(j).

STATEMENT OF ISSUES

- (1) Did the statute of limitations run against appellee's claims that an oral agreement was entered into in 1976 to give appellee real estate?
- (2) Is there any evidence of adverse possession?

STANDARD OF REVIEW

A question of law can be reviewed for correctness and a clearly erroneous standard of review of the subsidiary factual determination of when the plaintiff should have known of their alleged legal injuries. Spears v. Warr, 44 P.3d 742.

STATUTORY PROVISIONS

The relevant statutory provision for statute of limitations is UCA 78-12-25 (2002)

The relevant statutory provision for adverse possession is U.C.A. 78-12-5 through 78-12-14.

STATEMENT OF THE CASE

The events of this case surround a relationship between Bernard Gomez and Marjean Deakin that began in 1973. (R. 319) Several years into the relationship, in 1977, Mr. Gomez purchased a duplex at 468 and 470 East Sherman Ave. that was titled in his name. (R. 316) Mr. Gomez testified that at sometime after 1977, he added his wife's name to the title. (Trial Transcript P. 37) In order to purchase the home, he both obtained a loan from a friend and a mortgage on the property. (Temporary Restraining Order Transcript P.32)

Shortly after the purchase of the home, Ms. Deakin became a resident of 468 East Sherman Avenue, while the other portion of the duplex was occupied by various tenants since 1977 (R. 316). The central contention between the parties at the present date is the nature of the transaction in which Ms. Deakin became the occupant of the home. Ms. Deakin believes that the home was given to her as a gift, (R. 316), while Mr. Gomez contends that Ms. Deakin was to live in a portion of the home and manage the other portion of the duplex (Trial P. 39).

Under either theory, since Ms. Deakin has occupied the home, she has collected rent on the 470 E. Sherman Ave. portion of the duplex and used those rents to pay for repairs and to pay Mr. Gomez's mortgage. (R. 316). The relationship between Mr. Gomez and Ms. Deakin continued for several years, eventually ending in 1993. (R. 319). During the duration of their relationship, Ms. Deakin represents that she requested a deed of Mr. Gomez often, but that Mr. Gomez never gave her a deed.(R. 317).

In October of 2004, Mr. Gomez enlisted a real estate agent to sell the Sherman Avenue duplex, titled in the names of Mr. and Mrs. Gomez. Id. After conversations with both the real estate agent and Mr. Gomez, (Temp. Rest. Order P. 93), Ms. Deakin filed an action to quiet title against Mr. Gomez (R. 1-16).

The lower court found Ms. Deakin the prevailing party under two of the six causes of actions alleged in plaintiff's complaint. (R. 322) First, that she was entitled to the property under Quiet Title/Adverse possession pursuant to U.C.A. 78-12-5 through 78-12-14 and U.C.A. 78-40-1 et seq. Second, that she had prevailed under a theory of detrimental reliance and promissory estoppel. (R. 322) From this judgment, the defendant filed an appeal on October 11, 2005. (R. 416-17).

SUMMARY OF THE ARGUMENT

This Court should reverse the lower courts ruling enforcing an oral agreement that gave title to appellee because the cause of action is barred by the statute of limitations and the evidence does not support adverse possession. This case is based on an alleged oral agreement between the parties in 1978 that gave appellee a home owned by appellant. However, enforcement of the agreement is barred by the statute of limitations. In order to enforce an oral agreement, the action must be brought within four years. The statute of limitations for a cause of action begins to run when the last event necessary to complete the cause of action arises. It is not necessary that the party know that a legal cause of action is associated with the relevant facts.

Ms. Deakin's cause of action is barred by the statute of limitations because it seeks to enforce an oral agreement. In order to enforce an oral agreement, she must have

brought her cause of action within four years, or by 1982. All elements necessary to prove a cause of action were present in 1978. She knew Mr. Gomez had gifted her a piece of real property, that she had accepted it, and that she had not received a deed after repeated requests of Mr. Gomez.

In order to sustain a cause of action for adverse possession, the possession must be actual, adverse, exclusive, open, notorious, visible, continuous, and undisturbed possession for a period of seven years. Moreover, the legal titleholder must be put on notice of the adverse claim.

The findings of fact in this case do not support a conclusion of adverse possession. The element of adverse was not met. Moreover, Mr. Gomez was not placed on notice that she intended to hold the property adversely.

ARGUMENT

THE LOWER COURT ERRED WHEN IT FOUND IN MS. DEAKIN'S FAVOR BECAUSE HER CAUSE OF ACTION WAS BARRED BY THE STATUTE OF LIMITATIONS AND BECAUSE A CONCLUSION OF ADVERSE POSSESSION IS UNSUPPORTED BY THE FACTS.

- A. Ms. Deakin's cause of action is barred by the statute of limitations because the events surrounding her cause of action occurred in 1978.

The statute of limitations barred recovery in this case after 1982. The statute of limitations begins to run when the last event necessary to complete the cause of action arises. Burtkholz v. Joyce, 972 P.2d 1235 (1998); Cheves v. Williams, 993 P.2d 191 (1999); Valley Colour, Inc. v. Beuchert Builders, Inc., 944 P.2d 361 (1997).

When a child was abused by a priest in the 1970's, but did not file a cause of action until after 2000, the court found that the action was barred by the statute of limitations. Colosimo v. Roman Catholic Bishop, 104 P.3d 646, 652 (Utah App. 2004). The court articulated the general rule "[t]hat a cause of action accrues upon the happening of the last event necessary to complete the cause of action." (Court quoting Myers v. McDonald, 635 P.2d 84, 86 (Utah 1981)). The court also noted that "mere ignorance of the existence of a cause of action does not prevent the running of the statute of limitations." Id. Because the victims were aware of all facts necessary to constitute a claim during the limitations period, the statute of limitations had run.

Moreover, the statute of limitations continues to run if a cause of action has arisen even if there is no knowledge that the events lead to a legal cause of action. In the case of a wrongful death suit, the court noted that "the mere ignorance of the existence of a cause of action does not prevent the running of the statute of limitations." Myers, 635 P.2d at 86

As is similar to the Colosimo case, the events surrounding this suit occurred many years ago, beyond the statute of limitations. (R. 316) Moreover, the events necessary to create a cause of action occurred many years ago. Whereas, the injured parties in the Colosimo case could have filed a cause of action prior to the running of the statute of limitations, so could the parties in this action. According to Ms. Deakin's recollection of the events, Mr. Gomez gave her the home as a gift. (R. 316) She asked him for the deed, and after many years of requests, he did not give her the deed. (R. 317) Within a reasonable time period after requesting the deed and not receiving it, Ms. Deakin could

have sued Mr. Gomez for enforcement of the promise. However, she did not. She waited until almost thirty years later, well beyond the limitations period. (R. 1-16)

As an exception to the “last event necessary” rule, the courts have articulated some exceptions where a discovery rule may be applicable. In the case of Burkholtz, the court articulated as follows:

“The Utah Supreme Court has recognized three situations in which the discovery rule applies:

(1) in situations where the discovery rule is mandated by statute; (2) in situations where the plaintiff does not become aware of the cause of action because of the defendant's concealment or misleading conduct; and (3) in situations where the case presents exceptional circumstances and the application of the general rule would be irrational or unjust, regardless of any showing that the defendant has prevented the discovery of the cause of action.

Burkholz, 972 P.2d at 1237 (quotations and citation omitted).”

The first situation is when the discovery rule is mandated by statute. There appears to be no application of that situation to this case.

The second situation where the discovery rule applies is where the plaintiff does not become aware of the cause of action because of the defendant's concealment or misleading conduct. The courts have further limited this to be concealment of facts necessary to bring a cause of action. “Even if Defendants somehow concealed facts related to their knowledge of abuse, those facts would not require application of the discovery rule because they would not reveal any facts necessary for Plaintiff's to bring their claims.” Colosimo, 104 P.3d at 653.

The third situation in which the discovery rule is applicable is the presence of exceptional circumstances. The court notes that “[b]efore a period of limitations may be tolled under the [exceptional circumstances] version[] of the discovery rule, an initial

showing must be made that the plaintiff did not know and could not reasonably have discovered the facts underlying the cause of action in time to commence an action within that period. Burkholz, 972 P.2d at 1237 (second and third alterations in original) (quotations, citations, and emphasis omitted).

In applying the discovery principles outlined in Burkholtz, the Colosimo court found that regardless of defendant's actions, if the plaintiff "at some point during the limitations period, ha[d] knowledge of the facts underlying his claim." Burkholtz, 972 P.2d at 1237. In applying, the court articulated that "[e]ven if Defendants somehow concealed their knowledge of [priest's] abuse, those fact would not require application of the discovery rule because they would not reveal any facts necessary for Plaintiff's to bring their claim." Colosimo, 104 P.3d at 653.

Like in the Colosimo case, Mr. Gomez did not conceal any facts necessary for Ms. Deakin to bring her claim. According to her recollections, she knew she had received a gift. She knew she had accepted the gift, and most importantly, she knew she had not received a deed despite her requests. These were all the facts necessary to sustain a cause of action. No facts have evolved since that time period that affect the ability to bring a cause of action.

The third option does not apply in this case because not only could she have reasonably discovered the facts necessary, she already knew the facts necessary to file a cause of action within the limitations period.

B. The lower court erred in concluding that Appellee acquired the home through adverse possession.

The conclusion of law based on adverse possession is unsupported by the facts. In order to meet the elements of adverse possession, there must be actual, adverse, exclusive, open, notorious, visible, continuous, and undisturbed possession for a period of seven years. U.C.A. 78-12-5 through 14.

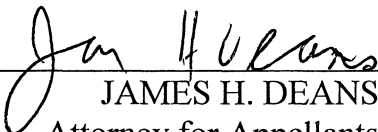
As titled, adverse possession seems to denote a threshold consideration as to whether the possession of the property is adverse. In the case of a property dispute between a current and former titleholder, the court articulated that “one who claims adversely must be able to show possession such that the legal titleholder is put on notice of his claim.” Dillman v. Foster, 656 P.2d 974, 980.

There is no evidence to support any elements of adverse possession. The conclusion of adverse possession is inconsistent with the contention and finding that the house was a gift. According to appellee’s account of the events surrounding this case, Mr. Gomez gifted her the duplex. (R. 316) Under either Ms Deakin’s representation of the events and the courts finding or Mr. Gomez’s claim that she was to be the property manager, the possession was not adverse. Ms. Deakin could not hold a property adverse to Mr. Gomez when she believed she owned the home.

CONCLUSION

This court should reverse the lower court's judgment, finding no cause of action exists due to the running of the statute of limitations and the lack of evidence supporting a finding of adverse possession.

Respectfully Submitted,

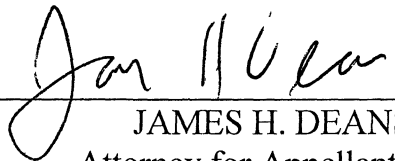


JAMES H. DEANS
Attorney for Appellants

May 5, 2006

CERTIFICATE OF MAILING

I hereby certify that on this 5th day of May, 2006, I mailed two true and correct copies of the foregoing Brief of Appellants to Christian W. Clinger, Attorney for Appellee, 3760 So. Highland Drive, Salt Lake City, Utah 84106.



JAMES H. DEANS
Attorney for Appellants

ADDENDUM

WEST VALLEY DEPARTMENT

MARJEAN A. DEAKIN,

Plaintiff,

vs.

BERNARD GOMEZ AND RAMONA GOMEZ

Defendants.

**AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER
QUIETING TITLE IN PLAINTIFF**

Case No.: 050100573

Judge John Paul Kennedy

The above referenced case came before the Court for a bench trial on February 25, 2005. Present at trial was Plaintiff Marjean A. Deakin (hereinafter referred to as "Plaintiff") represented by and through her counsel, Christian W. Clinger, and Defendant Bernard Gomez (hereinafter referred to as Defendant Mr. Gomez), represented by his attorney, James Deans. Defendant Ramona Gomez (Mr. Gomez's wife) failed to appear at any of the hearings or the trial, but was properly a party to this action and was represented by Mr. Gomez's counsel. Hearings on Plaintiff's motion for a temporary restraining order and preliminary injunction were held in November and December 2004. The evidence admitted therein was stipulated to be admitted for the purpose of the bench trial. After the initial issuance of the Court's Findings, Conclusions, and Order in April 2005, Defendants moved that an amendment be made thereto addressing Defendants' statute of limitations contentions. Argument on the Defendants' motion was heard on June 3, 2005. These Amended Findings, Conclusions, and Order are issued in response thereto.

The Court has heard and received the parties' stipulations of fact, the testimony of various witnesses for the Plaintiff and the Defendants and has received into evidence the following exhibits from the parties:

Plaintiff's Exhibits and Evidence

1. Plaintiff's Exhibit 1, Love letter and pictures from Defendant to Plaintiff
2. Plaintiff's Exhibit 2, Love letter and pictures from Defendant to Plaintiff

3. Plaintiff's Exhibit 3, promissory note

4. Plaintiff's Exhibit 4, Notarized letter from Defendant transferring car to Plaintiff
5. Plaintiff's Exhibit 5, copies of cancel checks evidencing mortgage payments from 1980 to 2004
6. Plaintiff's Exhibit 6, Mortgage statement showing balance
7. Plaintiff's Exhibit 7, Receipt and payment for new water main line
8. Plaintiff's Exhibit 8, compilation of receipts for repairs and improvements to the duplex paid for by Plaintiff
9. Plaintiff's Exhibit 9, November 2004 Eviction Notice
10. Plaintiff's Exhibit 10, copy of October/November 2004 mortgage payment
11. Plaintiff's Exhibit 11, Notice to show house
12. Plaintiff's Exhibit 12, copy of lease from Plaintiff
13. Plaintiff's Exhibit 13, copy of lease between Plaintiff and Tralaye Procelle
14. Plaintiff's Exhibit 14 copy of audiotape of messages left on Tralaye Procelle's voicemail at work and at home, produced with these Initial Disclosures.
15. Plaintiff's Copies of checks to Mortgage company for December 2004 mortgage and tax payment, January 2005 mortgage and tax payment, and February 2005 mortgage and tax payment.

Defendant's Exhibits and Evidence

1. Defendant's Exhibit 4, part of Mr. Gomez's 2001, 2002, and 2003 tax returns
2. Defendant's Exhibit 5, 1984 receipt from Chris & Dick's
3. Defendant's Exhibit 6, receipt for nails

Based upon the parties' stipulations, testimony, and the evidence received, the Court now enters the following Findings of Fact:

FINDINGS OF FACT

1. In April 1977, Defendant Bernard Gomez bought the duplex located at 468 E. and 470 E. Sherman Ave, Salt Lake City, Utah, as a gift for Plaintiff Deakin. Mr. Gomez asserted that at an uncertain date sometime after April 1977, he added his wife's name to the title. Though Plaintiff agrees that the Certificate of Title speaks for itself as to the names thereon, neither a copy of the Certificate of Title nor the Mortgage was offered into evidence by the Defendants as evidence that Mrs. Gomez's name was added to the title to the property in question. While no evidence was introduced on this point, Mrs. Gomez appeared in this case as a party defendant and was represented by counsel. There was no evidence submitted which would indicate that Mrs. Gomez's name was placed on the title at any time materially prior to the filing of this action, nor was any evidence submitted which would indicate that Mrs. Gomez ever took any actions of her own which were contrary to the actions of her husband in this matter.

2. In April 1977, Mr. Gomez gave Plaintiff the keys to the duplex and gave her possession and exclusive control of the house. Based on the testimony of Plaintiff, Defendant Mr. Gomez told her the house was hers and she could do with it as she chose. Plaintiff has never filed a Notice of Interest with the Salt Lake County Recorder since 1977. Plaintiff did file and record a Lis Pendis Notice and an Amended Lis Pendis Notice with the Salt Lake County Recorder on November 8, 2004, at the same time she commenced this lawsuit.

3. Plaintiff Deakin has continuously resided and occupied the premises located at 468 E. Sherman Ave., Salt Lake City, Utah (hereinafter "the property"), since 1977. Since 1977, she has openly claimed that the duplex was hers. She has told people and held out to the public that she was the owner of the house. Plaintiff's brother, Ed Aho, testified at the Preliminary Injunction Hearing that Plaintiff has always believed that the duplex was hers, and she has always claimed to be the owner. Defendants have never occupied the premises.

4. In 1977, when Defendant Mr. Gomez gave the keys, possession, and exclusive control of the duplex to Plaintiff Deakin, he told her to pay the mortgage on the duplex to the mortgage company, pay the taxes through the mortgage escrow account, pay for all of the improvements, pay for all of the utility bills, and so forth. Plaintiff is an unsophisticated, uninformed, and inexperienced person when it comes to real estate and taxes. There is no evidence that she was represented by counsel with respect to this property until this action was

commenced. Plaintiff has never claimed any deductions for the payment of property taxes or interest on her tax returns since 1977. Plaintiff has never reported any rental income from the duplex on her tax returns since 1977.

5. Nonetheless, for 28 years Plaintiff has paid the mortgage, paid the taxes, paid for all of the improvements, and paid the utility bills. Plaintiff has detrimentally relied on Mr. Gomez's commitment for 28 years. The Court received into evidence copies of checks for at least 20 years proving payment of the mortgage. In regard to the monies Plaintiff has received on the property, Plaintiff has never sent the Defendants any monies she has collected for rent on the duplex. All monies have gone to the Plaintiff. Plaintiff has never sent the Defendants any accounting for the monies collected at the duplex.

For 28 years, Defendants have never asked Plaintiff to send them any of the monies from the duplex. Furthermore, the Defendants have never asked Plaintiff for any accounting.

6. For 28 years, Plaintiff has acted consistently with her position as owner of the property in regard to her paying the mortgage, the taxes, and the improvements.

7. Plaintiff has asked Mr. Gomez numerous times for him to put the title of the duplex in her name as he promised. Plaintiff has followed up with Mr. Gomez in regard to putting the title in her name, and he has responded to her, "I'll get around to it, Babe; I'll get around to it." Plaintiff has never requested in writing that the Defendants send her a deed conveying ownership to her. Plaintiff has never sent the Defendants any proposed deed for them to sign conveying the property to Plaintiff. The reason Plaintiff never requested in writing for such a deed was that she relied on Mr. Gomez's promises that he would get around to putting the title in Plaintiff's name. No evidence was presented which would indicate that the parties regarded the conveyance of a formal deed to be essential to completing the gift of the property or anything more than a mere formality. In fact, the actions of the parties indicated to the contrary.

8. Mr. Gomez stopped contacting Plaintiff in about 1993. Plaintiff had not heard anything contrary to Mr. Gomez's commitment until Mr. Gomez abruptly informed her through a real estate agent on October 27, 2004, that he was planning to sell the duplex, implicitly indicating for the first time to Plaintiff that he was taking action inconsistent with the gift. On that date, for the first time, Defendant Mr. Gomez, through his agent, stated he wanted the property back.

9. Plaintiff has made the following improvements to the property. NEW 1001, NEW water/sewer main line, new back porch and railings for 468 E., new porch railings for 470 E., torn down the garages for 468 E. and 470 E., new 220 volt electrical wiring for 468 E. and 470 E., new air conditioning units for 468 E. and 470 E., new water heaters for 468 E. and 470 E., new light fixtures and ceiling fans for 468 E. and 470 E., new carpet for 468 E. and 470 E., several coats of new paint for 468 E. and 470 E., new storm doors for 468 E. and 470 E., 2 stoves and 2 refrigerators for 470 E., 2 stoves and 3 refrigerators for 468 E., and new pipes and drains for clothes washers in 468 E. and 470 E. The Court received into evidence copies of receipts and proof of payment of many of the improvements listed above.

Plaintiff never requested orally or in writing permission to do any repairs. This was because she primarily relied on Mr. Gomez's statements that, because the property was hers, she was responsible for all improvements, repairs, and the payments therefor. When Ms. Deakin did ask on one occasion for Mr. Gomez to provide some financial help to pay for repairs or improvements, it was her testimony that he refused because he told her that it was her house and she could do with it as she pleased. Furthermore, in regard to tearing down the garages, the notices from Salt Lake City and Salt Lake County to tear down the garages came to Plaintiff and not to Mr. Gomez.

10. On October 27, 2004, Plaintiff learned for the first time through Mr. Gomez's real estate agent that he was planning to sell the duplex in question.

10. Plaintiff -- not the Defendants -- has rented the other side of the duplex for at least the past 28 years. Plaintiff is currently in a lease with Tralaye Procelle.

11. On November 22, 2004, two weeks after this action was filed, Ms. Procelle received several telephone messages from Mr. Gomez and his daughter. They both instructed Ms. Procelle to send her monthly rental payment to Mr. Gomez and not to pay Plaintiff. There was no evidence that such a request had been submitted to this or to any other tenant prior to November 22, 2004.

**DEFENDANT HAS ADMITTED THE FOLLOWING FACTS THROUGH HIS ANSWER
AND ADMISSIONS:**

12. In 1973, Plaintiff met the Defendant, Bernard Gomez, in Salt Lake City, Utah.

13. In 1976, Mr. Gomez had talked a lot about improving Plaintiff's living conditions and getting her out of her rental apartment. He wanted Plaintiff to have a better quality of life.

14. Mr. Gomez admitted that from 1977 to the present, there has never been any understanding or conversation between him and Plaintiff that Plaintiff was in a lease agreement with Mr. Gomez for the duplex in question.

15. Mr. Gomez admitted that he has never had a lease agreement from 1977 to the present with any tenant in 470 E. Sherman Ave.

16. Mr. Gomez admitted that he has never personally collected any rent from the duplex.

17. Mr. Gomez admitted that he has never paid any of the property taxes for the duplex in question.

18. Mr. Gomez admitted that for at least the past ten years the monthly mortgage invoices and tax notices have been sent to 468 E. Sherman Ave.

19. Mr. Gomez admitted that he has never paid for any of the following improvements or repairs: new roof, new water/sewer main line, new back porch and railings for 468 E., new porch railings for 470 E., torn down the garages for 468 E. and 470 E., new 220 volt electrical wiring for 468 E. and 470 E., new air conditioning units for 468 E. and 470 E., new water heaters for 468 E. and 470 E., new light fixtures and ceiling fans for 468 E. and 470 E., new carpet for 468 E. and 470 E., several coats of new paint for 468 E. and 470 E., new storm doors for 468 E. and 470 E., 2 stoves and 2 refrigerators for 470 E., 2 stoves and 3 refrigerators for 468 E., and new pipes and drains for clothes washers in 468 E. and 470 E.

20. From 1993 to the present, Plaintiff has not seen Mr. Gomez. They have had very limited telephone contact.

21. Prior to the commencement of this action, the monthly mortgage invoices and the annual payment and interest notices were mailed to 468 E. Sherman Ave.

22. Neither Mr. Gomez nor Mrs. Gomez have ever lived in or occupied the duplex.

23. For nearly 28 years, Plaintiff has leased 470 E. Sherman Ave. without any restraint or objections from Mr. Gomez or Mrs. Gomez.

24. Plaintiff has never been required to send Mr. Gomez the rent collected from 770 E. Sherman, and during the past 28 years, Mr. Gomez has not asked for the rent.

25. Mr. Gomez admitted that prior to October 27, 2004, he had not informed Plaintiff that he was going to sell the house. Plaintiff did not receive any notice of legal injury prior to October 27, 2004.

TESTIMONY RECEIVED

26. Though Mr. Gomez testified that he had paid two or three monthly mortgage payments over 28 years, he did not remember specifically when those payments may have been made and he did not offer any documentary evidence of proof of such payments or their timing.

27. Mr. Gomez testified that neither he nor Mrs. Gomez has ever paid the property taxes on the duplex.

28. In regard to Mr. Gomez's tax returns, Mr. Gomez testified that he has never collected any rent from the property. However, he did report some rental income on his taxes (for the years 2001–2004), though he did not know the monthly rental amount collected. He merely estimated what he thought the rental income was and then reported it on those tax returns. No tax return evidence, however, tied the income reported therein to the property in this case.

29. In regard to improvements made to the property, Mr. Gomez testified that he has not made or paid for any improvements to the property during at least the last ten years. He also testified that he did not know of the improvements made by Plaintiff during at least the past ten years because he has not visited the property during that time.

30. Mr. Gomez did testify that sometime in 1984 he made repairs to the roof of the duplex and he offered two receipts which were received into evidence. However, the receipts do not identify Mr. Gomez's name and there is no proof of payment. Only one of the receipts even refers to the property's address, but the telephone number on that receipt is not that of Defendant.

31. Prior to April 1977, and continuing thereafter until sometime prior to 1993, Plaintiff and Defendant engaged in a prolonged romantic relationship. During that relationship, Mr. Gomez gave Plaintiff a number of expensive gifts, including two automobiles and a ring. In

view of the fact that the gift of the duplex was subject to a mortgage, the value of that gift was not out of proportion to the value of the other gifts given by the Defendant Mr. Gomez to the Plaintiff.

32. In April 1977, Defendant's prior statements and prior and continuing actions led Plaintiff to believe that Defendant had also made a gift of the real property at issue in this case to Plaintiff, and Plaintiff acted in detrimental reliance upon those statements and actions, reasonably believing that the property was her own property commencing in April 1977.

33. Since April 1977 Plaintiff acted consistent with her good faith belief that the Defendant had given the property to her. Nothing in Defendants' actions until October 2004 would be contrary to such belief.

34. For 28 years, because she believed in good faith that the Defendant had given the property to her, Plaintiff paid the mortgage, the taxes, other bills, and the costs of the improvements on the property.

35. Acting in reasonable reliance upon Defendant's statement that he would "get around to" putting title in Plaintiff's name, Plaintiff never requested in writing that the Defendant send her a deed conveying ownership to her. In further reliance upon that assurance, Plaintiff continued to act consistently with her good faith belief that the property had been given to her by paying the mortgage, taxes, insurance, for improvements, etc.

36. Based upon all the evidence and the Court's evaluation of the demeanor and credibility of Plaintiff and Defendant Mr. Gomez on the witness stand, the Court further finds based on clear, convincing, and unequivocal evidence, that in the context of Defendant Mr. Gomez's actions, the extended relationship of the parties, the statements made to Plaintiff by Defendant Mr. Gomez in April 1977 and thereafter, and Plaintiff's consistent behavior for 28 years, Defendant did make a gift of the property to the Plaintiff in April 1977 and the Plaintiff reasonably believed in good faith that such a gift had been made, and Plaintiff acted in good faith reliance upon that belief. Moreover, in acting upon her belief that such a gift had been made, the Plaintiff made valuable, substantial, and beneficial improvements to the property along with paying the costs of such improvements and paying the mortgage on the property for 28 years.

37. Further, the Court finds that revoking the gift or rescinding the gift at this time would be inequitable to the parties, and specifically to Plaintiff who, for 28 years, has detrimentally relied upon her good faith belief that a gift was made to her by Defendant Mr. Gomez.

CONCLUSIONS OF LAW

Based on the Findings of Fact as stated above, the Court now enters the following Conclusions of Law.

Plaintiff has specifically alleged the following six causes of action: 1. Quiet Title/Adverse Possession pursuant to U.C.A. 78-25-5 through 14 and U.C.A. 78-40-1 et seq.; 2. In the Alternative, Unjust Enrichment pursuant to the Utah Occupying Claimant Act, U.C.A. 57-6-1 et seq.; 3. Detrimental Reliance/Promissory Estoppel; 4. Fraud; 5. Interference with Contract; and 6. Violation and Contempt of Court. Because the Court concludes that Plaintiff has prevailed on her first and third causes of action, as indicated below, it is not necessary to address the other causes of action.

As set forth below, the statutory and case law elements for quiet title and adverse possession have been met by Plaintiff in that she has shown that she was given the property in question and thereafter has had actual, adverse, exclusive, open, notorious, visible, continuous, and undisturbed possession for a period of seven years or greater and that she has continuously paid the property taxes on the property during a period exceeding seven years, and that she has made and paid for improvements to the property.

1. Since 1977 to the present date, Plaintiff Deakin has paid substantially all mortgage payments, paid all taxes, and made and paid for substantially all improvements and repairs to the duplex located at 468 E. and 470 E. Sherman Ave., Salt Lake City, Utah.
2. Defendants have never paid taxes for the property or made or paid for any repairs or improvements for at least the past 10 years.
3. Defendant Mr. Gomez intended to give and indeed did make a gift of the property to the Plaintiff in April 1977. The actions of the parties with respect to each other and with

respect to the property since that time.

gift and those actions would remove the transaction from the Statute of Frauds.

4. With respect to Defendants and all others, Plaintiff has had actual, adverse, exclusive, open, notorious, visible, continuous, and undisturbed possession of 468 E. and 470 E. Sherman Ave., Salt Lake City, Utah for at least the past 10 years.
5. Mr. and Mrs. Gomez have never possessed or exclusively occupied the premises in question.
6. Ms. Deakin and Defendants have never been in a lease agreement for the premises in question.
7. Defendant Mr. Gomez initially purchased the property so he could make a gift of the property to Plaintiff. In April 1977, before changing title to the property, Defendant Mr. Gomez in fact gave the property to Plaintiff. As between Mr. Gomez and Ms. Deakin, the following matters, established by clear, convincing, and unequivocal evidence, constituted the elements of the gift: Mr. Gomez expressed his intent to give the property to Plaintiff, he delivered the gift by presenting to her the keys to and exclusive possession and control of the premises, and she accepted the keys and took exclusive possession and control of the property. These facts occurred in April 1977. Plaintiff believed that the gift occurred at that time based upon those events. Thereafter, the conduct of the parties over 28 years reaffirmed that the gift had occurred when Mr. Gomez advised the Plaintiff that the property was hers and when he continuously acquiesced in her on-going actions wherein she performed consistently with the occurrence of the gift by paying the mortgage, insurance, and taxes, collecting and keeping the rents, dealing with tenants and the City, and arranging for and paying for significant improvements and maintenance of the property.

upon the statements and actions of Defendant Mr. Gomez that she was the owner of the duplex that Mr. Gomez gave her.

9. Because Plaintiff was given the duplex located at 468 E. and 470 E. Sherman Ave., Salt Lake City, Utah, and because she has had exclusive, continuous, open, notorious, and adverse possession since 1977, and because she has paid all taxes and mortgage payments and because she has made substantial valuable improvements to the property, the Court concludes she is entitled under the doctrine of adverse possession to an Order quieting title to the property in question in her, subject to any existing mortgage balance and subject to any valid third-party lien. Neither Mr. Gomez nor anyone else ever took any action which would constitute conduct which contradicted or breached the intent to make a gift of the property until October 2004. Hence, no statute of limitations began to run against Plaintiff until that time. Because Defendants took no action contrary to Plaintiff's interest until October 2004, Plaintiff's continuing belief that Defendants would not attempt to revoke the gift was justified until October 2004. Plaintiff timely filed this action immediately thereafter.
10. Defendants are equitably estopped from any action to revoke the gift and from taking any action which may be inconsistent with said gift.
11. The Court concludes that Ms. Deakin is the prevailing party. As such, she is entitled to have the title in the said property quieted in her name and also to receive an award of her costs in this action pursuant to Rule 54 of the Utah Rules of Civil Procedure. In view of the fact that no deed was recorded in favor of Plaintiff Deakin, her right and interest in and to the said property is subject to the existing first mortgage and any other valid lien of a third party. No evidence of any such third-party lien was presented at the trial. Ms.

opposing counsel pursuant to the Utah Rules of Civil Procedure.

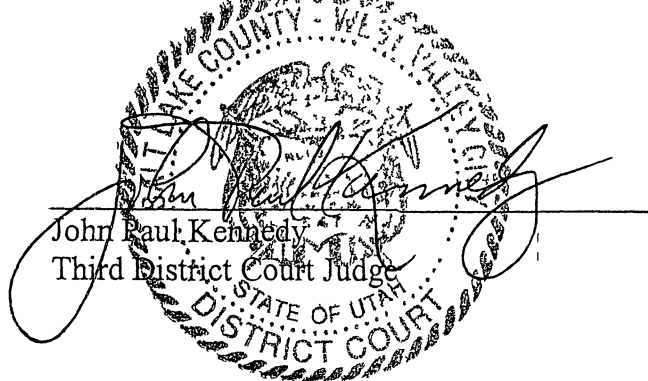
12. The Court concludes that because Ms. Deakin has prevailed on the merits of her case, the \$1,000.00 cash bond that she deposited with the Third District Court, Salt Lake City Department, in conjunction with the Preliminary Injunction Order, shall be released to her.
13. No award of attorneys' fees is made at this time.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that title in and to the property described below is hereby quieted in and to MARJEAN A. DEAKIN, subject to any mortgage existing on the property as of the date hereof and further subject to any valid lien of any third party, but free and clear of any claim by Bernard Gomez and/or Ramona Gomez:

**Lots 53, and 54, Block 2, WASHINGTON PLACE, a subdivision of Lots 12, and 13, Five Acre Plat "A", A Big Field Survey,
Together with ½ of the vacated alley abutting on the South and East.
Tax ID No. 16-07-460-013
Commonly known as 468--470 East Sherman Avenue, Salt Lake City, Utah
84115.**

Dated June 3, 2005.


John Paul Kennedy
Third District Court Judge
STATE OF UTAH
DISTRICT COURT

CERTIFICATE OF MAILING

I certify that on the 6TH day of June, 2005, I mailed a true and correct copy of the forgoing AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER, to the following:

CHRISTIAN W. CLINGER
ATTORNEY FOR PLAINTIFF
3760 S. Highland Drive, Ste 415
Salt Lake City, Ut 84106

JAMES H. DEANS
ATTORNEY FOR DEFENDANTS
440 South 700 East, Ste 101
Salt Lake City, Ut 84102

Ormond

IN THE THIRD DISTRICT COURT SALT LAKE COUNTY STATE OF UTAH
WEST VALLEY DEPARTMENT

MARJEAN A. DEAKIN,
Plaintiff,

vs.

BERNARD GOMEZ AND RAMONA GOMEZ
Defendants.

Certification of Judgment

Case No.: 050100573

Judge John Paul Kennedy

FILED DISTRICT COURT
Third Judicial District

SEP 13 2005

SALT LAKE COUNTY

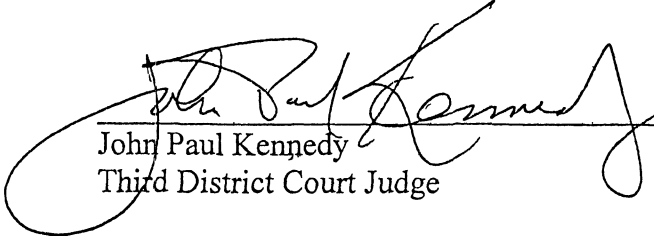
By _____

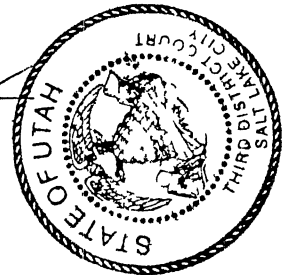
Deputy Clerk

On June 3, 2005, the court entered its Amended Findings and Conclusions in this matter and then at the same time "ordered, adjudged, and decreed" that title to the disputed property be vested in the Plaintiff.

The Court signed the order on costs on July 27, 2005. The signing of that order finalized the district court proceedings in this matter.

Dated 9/13/2005.


John Paul Kennedy
Third District Court Judge




CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 050910468 by the method and on the date specified.

METHOD NAME

Mail	CHRISTIAN W CLINGER ATTORNEY PLA 3760 S HIGHLAND DR STE 415 SALT LAKE CITY, UT 84106
Mail	JAMES H DEANS ATTORNEY DEF 440 SOUTH 700 EAST SUITE 101 SALT LAKE CITY UT 84102

Dated this 13 day of Sept, 2005.



Deputy Court Clerk