

2005

H.C. Massey, Betty Massey v. Kenneth A. Griffiths,
BKB LLC, Aaron B. Buttars, Brenda L. Buttars,
Adele B. Lewis : Brief of Appellant

Utah Court of Appeals

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.	ii
JURISDICTIONAL STATEMENT.	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW.	1 - 2
ISSUE.	1
STANDARD OF REVIEW.	1 - 2
CONSTITUTIONAL OR STATUTORY PROVISIONS.	2 - 3
STATEMENT OF CASE.	3 - 5
STATEMENT OF FACTS.	5 - 7
SUMMARY OF ARGUMENT.	7
ARGUMENT.	7 - 15
CONCLUSION.	15
SIGNATURE OF COUNSEL OF RECORD.	15
PROOF OF SERVICE.	16
ADDENDUM.	17

TABLE OF AUTHORITIES

Cases

<i>State v. Dean</i> , 2004 UT 63, ¶ 7, 95 P.3d 276	1
<i>Hansen v. Eyre</i> , 2005 UT 29, ¶ 8, 116 P.3d 290	1
<i>Mitchell</i> , 2001 UT 80 at ¶ 8	1
<i>Ron case Roofing & Asphalt Paving, Inc. v. Blomquist</i> , 773 P.2d 1385 (Utah 1989).	1
<i>Salt Lake County v. Metro West Ready Mix, Inc.</i> , 2004 UT 23, ¶ 11, 89 P.3d 155.	2
<i>Hermansen v. Tasulis</i> , 2002 UT 52, ¶ 10, 48 P. 3d 235	2
<i>Dowling v. Bullen</i> , 2004 UT 50, ¶ 7, 94 P. 3d 915	2
<i>Mason v. Loveless</i> , 2001 UT App 145, ¶ 17, 24 P.3d 997	5, 12, 13
<i>Massey v. Griffith</i> , 2005 UT App 410, ¶ 11	5
<i>Tintic Undine Mining Co. v. Ercanbrack</i> , 93 Utah 561, 567, 74 P.2d 1184 (1938) (citations omitted)	8
<i>Fredriksen v. LaFleur</i> , 632 P. 2d 827, fn. 1 (Utah 1981)	8
<i>Robinson v. Hanson</i> , 282 P. 782, 784 (Utah 1929)	9
<i>Hanson v. Burris</i> , 46 P.2d 400, 407 (Utah 1935)	9, 10
<i>A.C. Financial, Inc. v. Salt Lake County</i> , 948 P.2d 771 (Utah 1997)	9, 10
<i>Union Central Life Insurance Co. v. Black</i> , 67 Utah 268, 247 P. 486(Utah 1926) . 9	
<i>Hayes v. Gibbs</i> , 110 Utah 54, 169 P.2d 781 (1946)	13
<i>Kemmerer Coal Co. v. Brigham Young University</i> , 723 F.2d 54 (Utah 1983) . .	14

Statutes

Utah Code Ann. § 78-2-2 (3)(a)	1
§ 78-2-2 (5)	1
§ 59-2-1351.1 (9)(a)	2, 11
§ 59-2-1351.1 (9)(b)	2, 11
§ 59-2-1362	2, 11
§ 59-2-1363	11
§ 57-3-2 (1)	13

JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2-2 (3)(a) and (5), and the Order of the Supreme Court granting certiorari dated February 21, 2006.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issue: Are Masseys' tax deed titles superior to Defendants' titles claimed under the doctrine of boundary by acquiescence.

Standard of Review: The District Court decided this issue in favor of the Defendants' boundary by acquiescence titles and against Masseys' tax deed titles by granting Defendants' motions for summary judgment. The Court of Appeals affirmed the District Court's summary judgment.

“ ‘On certiorari, [this court] reviews the court of appeals' decision for correctness; focusing on ‘whether that court correctly reviewed the trial court's decision under the appropriate standard of review.’ *State v. Dean*, 2004 UT 63, ¶ 7, 95 P.3d 276.” *Hansen v. Eyre*, 2005 UT 29, ¶ 8, 116 P.3d 290. “ ‘[B]ecause a summary judgment presents questions of law, [this court] accord[s] no particular deference to the court of appeals' ruling' and review it for correctness. *Mitchell*, 2001 UT 80 at ¶ 8 (citing *Ron*

Case Roofing & Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1385 (Utah 1989)).” *Salt Lake County v. Metro West Ready Mix, Inc.*, 2004 UT 23, ¶ 11, 89 P.3d 155. “‘In the context of a summary judgment motion, which presents a question of law, [this Court] employ[s] a correctness standard and view[s] the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party.’ *Hermansen v. Tasulis*, 2002 UT 52, ¶ 10, 48 P. 3d 235.” *Dowling v. Bullen*, 2004 UT 50, ¶ 7, 94 P. 3d 915.

CONSTITUTIONAL OR STATUTORY PROVISIONS

Utah Code Ann. § 59-2-1351.1 (9)(a):

The county auditor shall, after acceptance by the county governing body, and in the name of the county, execute deeds conveying in fee simple all property sold at the public sale to the purchaser and attest this with the auditor’s seal.

Utah Code Ann. § 59-2-1351.1 (9)(b):

When the [tax] deed is executed and delivered by the auditor, it shall be prima facie evidence of the regularity of all proceedings subsequent to the date the taxes initially became delinquent and of the conveyance of the property to the grantee in fee simple.

Utah Code Ann. § 59-2-1362:

A copy of the record of any tax sale duly certified by the official custodian of the record at the time of the certificate under the seal of office as a true copy of the entry in the official record showing the sale is prima facie evidence of the facts shown in the record. The regularity of all proceedings connected with the assessment, valuation, notice, equalization, levies, tax notices,

advertisement, and sale of property described in the record is presumed, and the burden of showing any irregularity in any of the proceeding resulting in the sale of property for the nonpayment of delinquent taxes shall be on the person who asserts it.

STATEMENT OF THE CASE

This is an action to quiet title and for trespass and waste to real property commenced by H. C. Massey and Betty P. Massey (Masseys), Plaintiffs in the District Court.

Defendants are adjacent property owners whose claim of title is based on the doctrine of boundary by acquiescence. Masseys' claim of title is based upon conveyances by tax deeds from Weber County recorded prior to Defendants' conveyances.

Defendants filed motions for summary judgment supported by memoranda containing lengthy statements of undisputed fact purportedly supported by lengthy exhibits including affidavits. R. at 601-83, 785-96 and 852-50. Masseys duly disputed many of the facts propounded by Defendants. R. at 815-851. Masseys believe that the facts set forth herein fairly state those facts which are not in dispute.

The motions were submitted without oral argument and the Court entered its "Ruling Conditionally Denying Summary Judgment." R. at 962-67. At a subsequent telephonic hearing between the Court and counsel and based upon certain concessions of fact made by Masseys' attorney the Court verbally granted the Defendants' motions for summary judgment and directed counsel for Defendants to prepare appropriate findings of

fact, conclusions of law and a final order. R. at 1014. The final findings of fact and conclusions of law prepared by Defendants counsel incorporated by reference the Courts earlier conditional ruling. R. at 98 - 99. Copies of the trial court's initial ruling, the transcript of the subsequent telephonic hearing, and the findings, conclusions and final order are included in the Addendum hereto.

On the issue before this court on certiorari, the trial court ruled that "all relevant deeded property parcels may be modified pursuant to the legal concepts of boundaries by acquiescence, and if that resulted historically in possessed land different than shown by recorded deeds or conveyances, and the tax payment conditions have been met as set forth in the paragraph above [that is, taxes were timely paid on tax notices issued on the land described in the recorded deeds]... the resultant parcels will also possess a priority over the tax deeds. In other words, if Massey claims lands possessed by persons entitled to establish boundaries different than shown by the recorded deeds and they show payment of taxes on their adjacent record deed property, the Court concludes those property lines established by acquiescence will be acceptable to include the addition (or exclude the excess) property in their parcels, even though the boundaries are different than shown on the recorded deeds, and may thereby defeat the Massey tax deed claims." R. at 963-64.

The Court of Appeals affirmed the trial court, holding that "even if a small portion of the land was not described in the tax notices, it became part of Defendants' parcels,"

citing *Mason v. Loveless*, 2001 UT App 145, ¶ 17, 24 P.3d 997. *Massey v. Griffith*, 2005 UT App 410 at ¶11. Addendum 5. (The Court of Appeals described the differences between the deed/tax notice descriptions and the boundaries by acquiescence as not “precisely” matching; “slight”; and “small”. *Id.* The record does not support these descriptions See Addendum 6.).

This Court granted certiorari only on the issue of “whether a tax sale takes priority over property claimed under the doctrine of boundary by acquiescence.” Order, Feb. 21, 2006.

STATEMENT OF FACTS

This case involves real property located in the Southeast Quarter of Section 24, Township 6 North, Range 2 West in Weber County, Utah. Masseys purchased four separate parcels located in the Southeast Quarter at tax sale. Two of the parcels were conveyed to the Masseys by tax deeds dated June 12, 1986, and recorded June 13, 1986. R. at 989-90. The other two parcels were conveyed to the Masseys by tax deeds dated on June 8, 1992, and recorded June 10, 1992. R. at 990-91. The four parcels were contiguous. R. at 839.

Kenneth A. Griffiths (Griffiths), BKB LLC (BKB) and 12X12, L.L.C. (12X12) are each successors in interest to a parcel of real property (the Griffiths Property). The Griffiths Property was first conveyed to Griffiths by warranty deed dated after the

recording of all of the tax deeds, on September 10, 1993, and recorded on September 23, 1993. R. at 643-44. Griffiths conveyed the Griffiths Property to BKB by warranty deed dated and recorded January 24, 1994. BKB conveyed the Griffiths Property to 12X12 by Quit Claim Deed dated October 26, 2000, and recorded November 1, 2000. R. at 987.

The Defendants Aaron B. Buttars and Brenda L. Buttars (collectively, Buttars) claim an interest in a parcel (the Buttars Property) also located in the Southeast Quarter of Section 24 to the south of the Griffiths Property. R. at 839. The Buttars Property was conveyed to Buttars by Brenda's mother, Defendant Adele B. Lewis (Lewis), by Warranty Deed also dated and recorded after Masseys' tax deeds, on December 5, 1994. R. at 988-89.

A "very old fence" serves as the occupation line between the Griffiths Property and the Buttars Property. R. at 818. The legal description of Masseys' tax deed properties straddles the old fence and overlaps the historical occupation of the Griffiths Property and the Buttars' Property. R. at 819. The Defendants and their predecessors have paid taxes on legal descriptions contained in the tax notices issued to them by the County. R. at 1014, p. 10. However, Masseys contend that these legal descriptions are not adjacent and do not include the properties described in their tax deeds. R. at 1014, § 9 and 10 and R. at 839. Addendum 6. This remains a disputed fact.

Thus the facts for purposes of this summary judgment are that Masseys purchased at tax sale properties not included in Defendants' deeds or tax notices but occupied by Defendants on both sides of a boundary by acquiescence (the very old fence).

SUMMARY OF ARGUMENT

The old rule of *strictissimi juris* as it applied to the tax sale process has been abandoned. The modern rule recognizes the importance of the tax collection process to the continuation of essential government services and accords tax titles with the utmost degree of sanctity. The trial court and court of appeals failed to recognize this important shift in public policy. They also failed to accord Masseys' tax titles the presumptions to which they were entitled and improperly shifted the burden to Masseys to show lack of defect in the tax collection process.

Tax titles should enjoy priority over titles claimed by boundary by acquiescence. The decision of the Court of Appeals should be reversed and this case remanded to the District Court.

ARGUMENT

Some early Utah cases dealing with tax sale issues applied the rule of *strictissimi juris* and required that every aspect of the tax sale process must be conducted according to the strict requirements of the governing statutes:

It is elemental, and settled beyond argument in this jurisdiction, that tax sale proceedings and statutes are *strictissimi juris*. The sales are

made exclusively under statutory authority. The seller is making a sale not coupled with an interest, and derives his authority solely from the statute, and it is derived from no rule or principle of the common law. He can have no authority to sell except as he is made the agent of the law for that purpose, and, if the steps necessary to precede his action fail, he is not invested with legal right to make the sale; if one step fails, they all fail. The rule, therefore, is that all the preliminary requirements of the statute, made conditions to the exercise of the right and power to sell, and designating the various proceedings which culminate in the sale, must have been strictly complied with. The officers who execute this power should follow the steps outlined for its exercise with precision. It is a special jurisdiction and must be strictly pursued. As was said in *Wister v. Kemmerer*, 2 yeates 100, “An exact and punctual adherence to the laws can alone divest the title of lands on a sale for nonpayment of taxes.” When the statutes governing the sale of lands for taxes direct an act to be done, or the manner, time, form, or place of doing it, such act must be done as prescribed, and the statutes must be strictly, if not literally, complied with.

Tintic Undine Mining Co. v. Ercanbrack, 93 Utah 561, 567, 74 P. 2d 1184 (1938)

(citations omitted).

This attitude followed the long established tradition of American courts to look upon tax titles with a jaundiced eye:

It had become proverbial, that a tax title was no title at all; and a sale for taxes was as near a mockery as any proceeding having the appearance of legal sanction could be. The principal cause was the difficulty in proving the various steps essential to the validity of such sale ...

Fredericksen v. LaFleur, 632 P. 2d 827, fn. 1 (Utah 1981).

However, other early Utah cases recognized that the critical importance of the revenue collection function of government requires that tax titles be highly favored and procedural flaws overlooked:

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

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

The purchaser from the county (not a redemptioner) takes title free and clear of liens, otherwise the county would be hampered in collection of taxes and prevented from again having the property returned to the assessment rolls.

Hanson v. Burris, 46 P.2d 400, 407 (Utah 1935).

These two seemingly contradictory lines of authority appear to have been resolved by this Court in favor of the later in the case of *A.C. Financial, Inc. v. Salt Lake County*, 948 P.2d 771 (Utah 1997). In *A.C. Financial* this court was faced with the issue of whether liens on real property for personal and real property taxes are subject to a trust deed interest created before accrual of the taxes underlying the liens. The trust deed lien holder asked the Court to overrule the Court's earlier decision in *Union Central Life Insurance Co. v. Black*, 67 Utah 268, 247 P. 486, (1926) (holding that tax liens enjoy priority over previously created contractual liens). In reaffirming *Black*, the Court gives heavy emphasis to the policy that the tax collection function of government requires that tax liens and tax titles be given high priority:

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

A.C. Financial at 776.

To promote the strength of tax deeds and thus the revenue collection function of State and local government, the legislature has adopted several provisions.

Utah Code Section 59-2-303(1):

No mistake in the name or address of the owner or supposed owner of property render the assessment invalid.

Utah Code Section 59-2-1351.1(9)(a):

The county auditor shall, after acceptance by the county governing body, and in the name of the county, execute deeds conveying in fee simple all property sold at the public sale to the purchaser and attest this with the

auditor's seal.

Utah Code Section 59-2-1351.1(9)(b):

When the [tax] deed is executed and delivered by the auditor, it shall be prima facie evidence of the regularity of all proceedings subsequent to the date the taxes initially became delinquent and of the conveyance of the property to the grantee in fee simple.

Utah Code Section 59-2-1362:

A copy of the record of any tax sale duly certified by the official custodian of the record at the time of the certificate under the seal of office as a true copy of the entry in the official record showing the sale is prima facie evidence of the facts shown in the record. The regularity of all proceedings connected with the assessment, valuation, notice, equalization, levies, tax notices, advertisement, and sale of property described in the record is presumed, and the burden of showing any irregularity in any of the proceedings resulting in the sale of property for the nonpayment of delinquent taxes shall be on the person who asserts it.

Utah Code Section 59-2-1363:

If property is sold for correctly imposed taxes as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to ownership, affects the sale or renders it void or voidable.

In the trial court and the court of appeals Masseys essentially argued that since tax titles are favored as a matter of public policy and they are entitled to a presumption that all aspects of the tax sale process was regularly conducted, then they should prevail on a motion for summary judgment as against the boundary by acquiescence occupiers (the Defendants) unless the Defendants could demonstrate some defect in the process. Since

the Defendants failed in their burden of demonstrating any defect in the process, they should not have been granted summary judgment. The trial court and court of appeals both erroneously shifted the burden to the Masseys to prove a lack of defect in the process. This was error.

Both courts below held that the claims of the Defendants to the property in dispute under the doctrine of boundary by acquiescence had priority over Masseys' claims under their tax deeds. The trial court failed to explain the basis of its decision. The Court of Appeals relied on *Mason v. Loveless*, 2001 UT App 145, 24 P.3d 997.

Mason v. Loveless is the only case found by Masseys' counsel that has ever addressed the issue of priority of tax deed titles vs. titles claimed under the doctrine of boundary by acquiescence. It was not the primary issue in the *Mason* case and the court spends only two paragraphs analyzing the issue. The court bases its conclusion on two factors.

First the court notes that ordinarily a tax sale does not extinguish easements and restrictive covenants charged upon the property sold, citing *Holly Piehler Rockwell*, Annotation, Easement, Servitude, or Covenant as Affected by Sale for Taxes, 7 A.L.R. 5th 187, 203 (1992), and *Hayes v. Gibbs*, 110 Utah 54, 169 P.2d 781 (1946). The court reasoned that since a tax deed does not extinguish an adverse claim such as an easement or covenant, then it must not extinguish other adverse claims either. This reasoning

overlooks the fact that tax deed titles extinguish trust deed interests, *A. C. Financial*, and judgment liens, special assessment liens, statutory liens, landlord liens, claims of homestead, claims of attaching creditors or ground rents and rent charges, among other claims against title 72 Am. Jur. 2d, State and Local Taxation, § 874.

Second, the *Mason v. Loveless* court reasoned that to hold otherwise would contravene the Fifth Amendment's protection against taking property without due process of law. Without analyzing the correctness of that holding on the basis of the *Mason v. Loveless* facts, the same reasoning does not apply in the instant case. In the instant case the last of the tax deeds was recorded June 8, 1992. All of the Defendants acquired their interests subsequent to that date. The Defendants therefore had constructive notice of Masseys' tax title and took subject thereto. *See* section 57-3-2 (1) Utah Code ("Each document executed, acknowledged, and certified, in the manner prescribed by this title... shall from the time of recording with the appropriate County Recorder, impart notice to all persons of their contents."). In other words, Defendants are asserting the deprivation of their predecessors' constitutional rights, not their own rights.

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

Kemmerer contends that due process was violated based on the following undisputed facts. Its predecessor, San Rafael, received no notice of the tax

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

Id. at 57-58 (citations omitted).

The Utah Supreme Court has agreed with the Tenth Circuit:

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

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

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

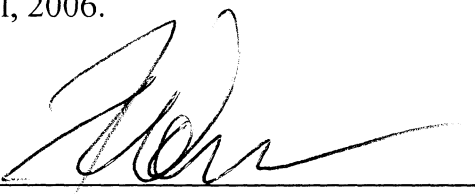
It is the clear intent of the legislature that tax titles are new grants from the sovereign and should be accorded the highest priority. Previous decisions of this Court have recognized this doctrine. If tax titles are not accorded the highest priority, the tax collecting authority of the state will be seriously hampered.

If an error has been made by the county resulting in the taking of Defendants property, that error can be compensated by the County to the Defendants. Better that than a depreciation in the prospective tax title purchaser's expectations of the value of the tax titles being offered for sale.

CONCLUSION

Contrary to earlier times, tax titles are favored and enjoy priority over most other interests. They are a new fee simple title issued by the sovereign. They have been held by this court and the courts of many other states to have priority over a variety of other interests in the foreclosed property. Absent some defect in the assessment or sale process Masseys' tax titles should be granted priority over Defendants' titles based on the boundary by acquiescence doctrine. Defendants have failed to demonstrate any defect in the assessment or sale process. They are not entitled to claim the due process interest of their predecessors. The ruling of the Court of Appeals should be reversed and the case remanded to the district court.

Respectfully submitted, this 12TH day of April, 2006.


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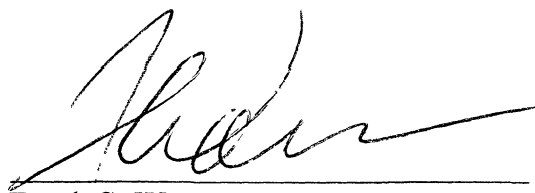
CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and correct copy of the foregoing APPELLANT'S BRIEF ON CERTIORARI was served upon the Respondents by mailing two copies thereof, postage prepaid, to each of the Respondents attorneys at the following addresses this 12 day of April, 2006.

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ADDENDUM

1. Ruling Conditionally Denying Summary Judgment. Dated February 11, 2004.
2. Video Transcript. Telephone Conference. Dated February 24, 2004.
3. Findings of Fact and Conclusions of Law. Dated May 21, 2004.
4. Order. Dated May 21, 2004.
5. Opinion. Dated September 29, 2005.
6. Survey of Cynthia L. Segriff, Registered Land Surveyor. R. at 839.

Tab 1

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

H.C. MASSEY and BETTY P. MASSEY,

Plaintiff's,

vs.

KENNETH A. GRIFFITHS, et al.,

Defendant's.

**RULING
CONDITIONALLY DENYING
SUMMARY JUDGMENT**

Case No. 960900027 PR

Honorable Roger S. Dutson

FEB 11 2004

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

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

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

RULING CONDITIONALLY DENYING SUMMARY JUDGMENT



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

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

1. TAX DEEDS.

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

2. BOUNDARIES BY ACQUIESCENCE.

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

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

3. QUIT CLAIM DEEDS.

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

4. THE MASSEY WEBER COUNTY TAX DEEDS.

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

5. NONINCLUDED PROPERTY.

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

Massey vs. Griffiths, et al.
960900027 PR
Page 4 of 6

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

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

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

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

Massey vs. Griffiths, et al.
960900027 PR
Page 5 of 6

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

DATED this 9 day of February, 2004.



ROGER S. DUTSON
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

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

FRANK S. WARNER
Attorney for Plaintiff's
3544 Lincoln Avenue, Suite F
Ogden, UT 84401

M. DARIN HAMMOND
Attorney for Defendant's
Aaron B. Buttars, Brenda L. Buttars,
and Adele B. Lewis
4723 Harrison Blvd., #200
Ogden, UT 84403

RAY G. MARTINEAU
Attorney for Defendant's
Kenneth A. Griffiths, BKB, L.L.C and
12 X 12, L.L.C.
3098 Highland Drive #450
Salt Lake City, UT 84106

Massey vs. Griffiths, et al.
960900027 PR
Page 6 of 6

DOUGLAS S. STOWELL
Attorney for Defendant's
Kenneth A. Griffiths, BKB, L.L.C. and
12 X 12, L.L.C.
307 East Stanton Avenue
Salt Lake City, UT 84111



DEPUTY COURT CLERK

Tab 2

SECOND DISTRICT COURT
2004 MAY 21 2 45

Ray G. Martineau (#2105)
Anthony R. Martineau (#5859)
Brett D. Cragun (#8683)
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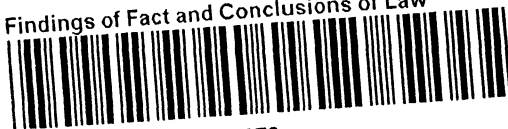
Attorneys for Defendants
Kenneth A. Griffiths, BKB, LLC and 12 X 12, L.L.C.

MAY 21 2004

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

H.C. MASSEY; and BETTY P. MASSEY,)	
)	
Plaintiffs,	)	FINDINGS OF FACT
	)	AND
vs.	)	CONCLUSIONS OF LAW
)	
KENNETH A. GRIFFITHS; BKB LLC;)	
QUESTAR GAS COMPANY; WILSON)	
IRRIGATION CO.; AARON B. BUTTARS;)	
BRENDA L. BUTTARS; ADELE B.)	
LEWIS; FRANCES E. HANKS; KIMEL P.	)	Civil No. 960900027
FISHER; and JOHN DOES 1 through 100,	)	Judge Roger S. Dutson
)	
Defendants.)	

Findings of Fact and Conclusions of Law



960900027 VD11644372
BKB LLC

Tab 3

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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


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

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

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

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

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


Roger S. Dutton
District Court Judge

Certificate of Service

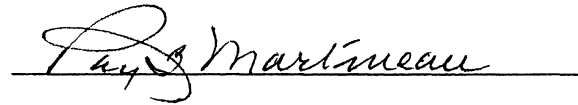
I hereby certify that a true and correct copy of the foregoing proposed Findings Of Fact And Conclusions Of Law was served upon the following individuals, and by mailing a copy thereof, postage prepaid, to each of said individuals at the addresses shown below, this 27 day of April, 2004.

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

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

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

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

A handwritten signature in cursive script, reading "Ray Martineau", is written over a horizontal line.

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IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

H.C. MASSEY AND BETTY MASSEY,)

PLAINTIFFS,)

VS.)

KEN GRIFFITHS, ET AL.,)

DEFENDANT.)

SEP 10 2004

VIDEO TRANSCRIPT

CASE NO. 960900027

TELEPHONE CONFERENCE

FEBRUARY 24, 2004

HONORABLE ROGER S. DUTSON

APPEARANCES:

FOR THE PLAINTIFFS:

WILLIAM F. DAINES

FOR THE DEFENDANTS:

M. DARIN HAMMOND
RAY G. MARTINEAU
DOUGLAS L. STOWELL

REPORTED/TRANSCRIBED BY DEAN OLSEN, CSR
2525 GRANT AVENUE
OGDEN, UTAH 84401
(801) 395-1056

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ORIGINAL

TRANSCRIPT 2/24/04 telephone conference - by Dear



VD18070459
960900027 BKB LLC

1 OGDEN, UTAH

FEBRUARY 24, 2004

2 **THE COURT:** HI.

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

8 **THE COURT:** OKAY.

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

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

11 **THE COURT:** GOOD MORNING.

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

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

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

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

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

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

19 **THE COURT:** OKAY.

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

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

23 **MR. WARNER:** YES.

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

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

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

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

7 THE COURT: RIGHT, I UNDERSTAND THAT.

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

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

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

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

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

THE COURT: RIGHT --

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

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

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

THE COURT: EVERYTHING IS INCLUDED IN IT THEN.

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

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

1 IT TO A HEAD.

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

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

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

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

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

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

22 UNIDENTIFIED SPEAKER: UH-HUH.

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

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

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

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

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

19 THE COURT: OKAY.

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

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

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

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

THE COURT: CERTAINLY.

MR. WARNER: -- (UNINTELLIGIBLE) REASON, AND SO I --

I -- MY ONLY QUESTION --

THE COURT: WELL, SHOULD WE --

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

THE COURT: OKAY.

MR. WARNER: THAT MAKE SENSE?

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

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

THE COURT: AS FAR AS FACTS ARE CONCERNED.

MR. MARTINEAU: YES.

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

1 NOW, WE HAVE A TRIAL SCHEDULED --

2 MR. MARTINEAU: NEXT WEDNESDAY.

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

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

11 THE COURT: OKAY.

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

15 THE COURT: ALL RIGHT. THEN --

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

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

22 MR. WARNER: THERE ARE ONLY TWO FACTS --

23 MR. MARTINEAU: -- FACTS, JUDGE.

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

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

MR. MARTINEAU: THAT SHOULD BE SUFFICIENT.

THE COURT: WHY DON'T YOU GO AHEAD AND STATE THEN
~~NEARLY~~ WHAT YOUR STIPULATION IS.

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

UNIDENTIFIED SPEAKER: FOR AT LEAST 20 YEARS?

MR. WARNER: FOR AT LEAST 20 YEARS.

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

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

THE COURT: RIGHT, RIGHT.

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

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

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

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

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

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

UNIDENTIFIED SPEAKER: AND --

THE COURT: VERY WELL.

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

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

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

UNIDENTIFIED SPEAKER: OKAY.

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

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

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

THE COURT: OKAY.

MR. MARTINEAU: -- BASED --

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

MR. MARTINEAU: BASED --

THE COURT: -- BOUNDARIES CLOSED --

MR. MARTINEAU: BASED (UNINTELLIGIBLE) --

THE COURT: -- ON THE RECORDED DEEDS.

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

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

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

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

THE COURT: WHEN DID THAT START?

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

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

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

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

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

MR. MARTINEAU: (UNINTELLIGIBLE)

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

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

MR. WARNER: YEAH, BUT --

THE COURT: UH-HUH.

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

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

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

THE COURT: WHAT?

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

THE COURT: AND THEY'VE CONTINUED --

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

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

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

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

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

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

1 HOWEVER --

2 UNIDENTIFIED SPEAKER: YES, ABSOLUTELY.

3 MR. WARNER: IT WOULD --

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

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

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

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

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

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

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

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

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

MR. WARNER: I WILL.

THE COURT: TODAY.

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

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

THE COURT: WELL --

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

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

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

MR. WARNER: OKAY.

THE COURT: ANYTHING ELSE WE NEED TO DISCUSS?

UNIDENTIFIED SPEAKER: THAT'S IT. THANK YOU.

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

MR. WARNER: BUTTERS.

UNIDENTIFIED SPEAKER: BUTTERS.

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

THE COURT: WELL, OF COURSE --

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

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

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

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

12 WHAT WOULD YOU THINK OF THAT, DARIN?

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

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

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

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

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

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

BE TALKING ABOUT AT A TRIAL.

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

THE COURT: ALL RIGHT.

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

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

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

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

MR. MARTINEAU: OKAY.

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

MR. MARTINEAU: I DON'T.

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

UNIDENTIFIED SPEAKER: NO.

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

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

MR. WARNER: OKAY.

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

THE COURT: UH-HUH.

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

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

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

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

MR. MARTINEAU: THAT JOHN STALL?

THE COURT: YEAH.

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

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

10 RULING THAT YOU --

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

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

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

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

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

19 MR. WARNER: I THINK --

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

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

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

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

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

MR. WARNER: SAME WITNESS.

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

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

THE COURT: NO.

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

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

5 **UNIDENTIFIED SPEAKER:** OKAY.

6 **MR. MARTINEAU:** OKAY.

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

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

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

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

17 **THE COURT:** THE TELEPHONE CONFERENCE.

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

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

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

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

THE CLERK: FIFTEEN -- 15.

THE COURT: DIANE?

THE CLERK: \$15.

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

MR. MARTINEAU.

MR. MARTINEAU: OKAY.

THE COURT: ALL RIGHT.

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

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

MR. MARTINEAU: OKAY.

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

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

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

MR. MARTINEAU: OKAY.

THE COURT: ANYTHING ELSE WE NEED TO DISCUSS?

MR. WARNER: THINK NOT.

MR. MARTINEAU: THANKS, JUDGE.

UNIDENTIFIED SPEAKER: (UNINTELLIGIBLE)

UNIDENTIFIED SPEAKER: THANK YOU, YOUR HONOR.

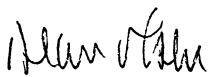
THE COURT: UH-HUH.

CERTIFICATE

STATE OF UTAH)
) SS
COUNTY OF WEBER)

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

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



DEAN OLSEN, CSR

Tab 4

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

SECOND DISTRICT COURT

2004 MAY 21 P 4:45

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



960900027 VD11644379
 BKB LLC

IN THE SECOND DISTRICT COURT IN AND FOR

WEBER COUNTY, OGDEN DEPARTMENT, STATE OF UTAH

H.C. MASSEY; and BETTY P. MASSEY,)	
)	
Plaintiffs,	)	ORDER QUIETING TITLE TO REAL
	)	PROPERTY IN 12 X 12, L.L.C. AND
vs.	)	IN AARON B. BUTTARS AND
	)	BRENDA L. BUTTARS
)	
KENNETH A. GRIFFITHS; BKB LLC;)	
QUESTAR GAS COMPANY; WILSON)	
IRRIGATION CO.; AARON B. BUTTARS;)	
BRENDA L. BUTTARS; ADELE B.)	
LEWIS; FRANCES E. HANKS; KIMEL P.)	
FISHER; and JOHN DOES 1 through 100,)	
)	
Defendants.)	

MAY 21 2004

Civil No. 960900027
 Judge Roger S. Dutson

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

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

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

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

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

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

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

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

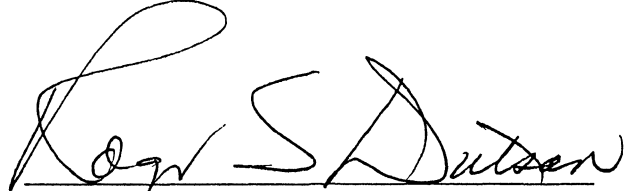
3. The fee simple title to the following described real property located in Weber County, State of Utah should be and the same is hereby quieted in the defendants Aaron B. Buttars and Brenda L. Buttars against and free and clear of any and all claims of every kind and nature therein or thereto of the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

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

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

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

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


Roger S. Dutson
District Court Judge

Certificate of Service

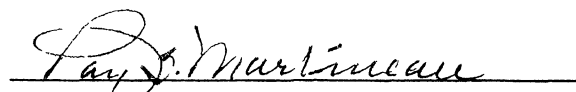
I hereby certify that a true and correct copy of the foregoing Order Quieting Title To Real Property In 12 X 12, L.L.C. And In Aaron B. Buttars And Brenda L. Buttars was served upon the following individuals, and by mailing a copy thereof, postage prepaid, to each of said individuals at the addresses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

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Tab 5

This opinion is subject to revision before
publication in the Pacific Reporter.

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

H.C. Massey and Betty Massey,	)	OPINION
	)	(For Official Publication)
Plaintiffs and Appellants,)	
	)	Case No. 20040650-CA
v.)	
)	
<u>Kenneth A. Griffiths; BKB,</u>	)	F I L E D
<u>L.L.C.; 12X12, L.L.C.; Aaron</u>	)	(September 29, 2005)
<u>B. Buttars; Brenda L. Buttars;</u>)	
<u>Adele B. Lewis; Questar Gas</u>	)	2005 UT App 410
<u>Company; Wilson Irrigation</u>)	
<u>Co.; Frances E. Hanks; Kimel</u>)	
<u>P. Fisher; and John Does 1</u>)	
<u>through 100,</u>)	
)	
Defendants and Appellees.)	

Second District, Ogden Department, 960900027
The Honorable Roger S. Dutson

Attorneys: Frank S. Warner, Ogden, for Appellants
Ray G. Martineau, Anthony R. Martineau, Brett D.
Cragun, Lloyd R. Jones, and Douglas L. Stowell, Salt
Lake City, and M. Darin Hammond, Ogden, for Appellees

Before Judges Billings, McHugh, and Orme.

McHUGH, Judge:

¶1 H.C. and Betty Massey appeal the trial court's grant of summary judgment in this quiet title action in favor of BKB L.L.C. (BKB), 12X12 L.L.C. (12X12), Aaron B. Buttars, Brenda L. Buttars, Adele B. Lewis, and Kenneth A. Griffiths (collectively, Defendants). The Masseys contend on appeal that their tax deeds are superior to Defendants' deeds. We affirm.

BACKGROUND

¶2 The subject of this case is real property located in Weber County, Utah. At a tax sale, the Masseys purchased four separate but contiguous parcels of this property. Two parcels were

conveyed to the Masseys by tax deeds dated June 12, 1986, and recorded June 13, 1986, and two were conveyed by tax deeds dated June 8, 1992, and recorded June 10, 1992.

¶3 Defendants are successors in interest or current occupiers of property located in the same quarter section of Weber County as the Masseys' property. Lewis sold her property to her daughter and son-in-law, the Buttarses, on December 5, 1994, but Lewis continues to live on the property. Griffiths conveyed his parcel of land to BKB by warranty deed dated and recorded January 24, 1994. BKB in turn conveyed the Griffiths property to 12X12 by quit claim deed October 26, 2000, and the deed was recorded November 1, 2000.

¶4 Griffiths's property, now owned by 12X12, is located directly north of the Buttarses' property. A "very old fence" has historically served as the boundary between Griffiths's property and the Buttarses' property. However, the properties the Masseys acquired at the tax sale, according to their legal descriptions, straddle the fence and overlap the properties historically occupied by Griffiths and the Buttarses. This overlap is the crux of this conflict.

¶5 The record demonstrates that there is no dispute that Defendants occupied their respective properties for twenty years prior to the Masseys bringing this quiet title action. It is also undisputed that Defendants have consistently paid taxes on the property described in the notices issued to them by the county and that Defendants did not receive notice of the tax sale at which the Masseys obtained their tax deeds.

ISSUE AND STANDARD OF REVIEW

¶6 In determining whether the trial court properly granted summary judgment in favor of Defendants after determining that their deeds were superior to the Masseys' tax deeds, "we view the facts, and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." GNS P'ship v. Fullmer, 873 P.2d 1157, 1159 (Utah Ct. App. 1994) (quotations and citation omitted). "A grant of summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Id. at 1160; see Utah R. Civ. P. 56(c).

ANALYSIS

¶7 In general, "a tax sale extinguishes all prior private claims on the property." A.C. Fin., Inc. v. Salt Lake County,

948 P.2d 771, 776 (Utah 1997) (discussing Union Cent. Life Ins. Co. v. Black, 67 Utah 268, 247 P. 486, 489 (1926)). "The statute providing for tax sales implicitly recognizes this rule and the underlying holding of Black with regard to real property taxes by defining the title granted at a tax sale as a 'fee simple' title --i.e., one unencumbered by other claims." Id. (citing Utah Code Ann. § 59-2-1351.1(9)(a) (1996)). A tax deed therefore usually takes precedence over other interests.

¶8 To be valid, however, a tax sale must be conducted according to the strict requirements of the governing statutes. See Tintic Undine Mining Co. v. Ercanbrack, 93 Utah 561, 74 P.2d 1184, 1187 (1938); see also Page v. McAfee, 26 Utah 2d 208, 487 P.2d 861, 862 (1971) (holding tax sale invalid because it was not conducted by the county auditor, as required by statute). The Utah Supreme Court stated in Fivas v. Petersen that

it is necessary to keep in mind the fundamental principles which have been established since time immemorial underlying adjudications on tax titles. The forfeiture of one's property for the nonpayment of taxes has always been regarded as a harsh procedure, which may work great hardships on property owners. An awareness of this fact invariably pervades the decisions in such cases, with the result that, in the interpretation and application of statutory requirements antecedent to forfeiture of property, they are construed in favor of the taxpayer and against the taxpaying authority, and are strictissimi juris.

5 Utah 2d 280, 300 P.2d 635, 637 (1956) (footnotes omitted) (holding tax deed to be invalid because the county treasurer failed to mail valuation notices to property owners, as required under statute for valid tax sale).

¶9 Elemental to a valid proceeding is a "failure to pay a tax assessed against the property[.] . . . [N]o validity can attach to any sale except of the property assessed and delinquent for failure to pay the tax levied on the assessment as made." Ercanbrack, 74 P.2d at 1189 (emphasis added); see also Utah Code Ann. § 59-2-1351(1)(a) (2004) ("Upon receiving the tax sale listing from the county treasurer, the county auditor shall select a date for the tax sale for all real property on which a delinquency exists that was not previously redeemed" (emphasis added)); Thirteenth S. Ltd. v. Summit Vill., Inc., 866 P.2d 257, 259 (Nev. 1993) ("A sovereign may only convey in a tax sale an estate subject to delinquent taxes.").

¶10 No dispute of material fact exists as to whether Defendants paid the property taxes assessed on the property they had long occupied. At a pretrial conference conducted via telephone, the Masseys' attorney conceded that "the property in question that we claim under the tax deeds has historically been occupied by the [D]efendants and their predecessors in interest . . . for at least 20 years" and that Defendants "have paid taxes on the tax notices that were issued to them by the county." Several other experts and witnesses similarly testified by affidavit that Weber County had no interest to convey at the tax sale because property taxes were not delinquent.¹

¶11 The Masseys also argue there is a material dispute about whether the property occupied by Defendants, up to the "very old fence" line, precisely matches the legal descriptions of the property in the tax notices paid by Defendants. The court below determined that if a slight discrepancy existed, it was not material because the equitable doctrine of boundary by acquiescence would apply.² See Mason v. Loveless, 2001 UT App 145, ¶17, 24 P.3d 997. We agree. Even if a small portion of the

1. Even if the Masseys were able to produce evidence that Defendants were delinquent in paying their taxes, the sale would be void for another reason. Utah law requires that notice of a tax sale be provided to "the last-known recorded owner, the occupant of any improved property, and all other interests of record." Utah Code Ann. § 59-2-1351(2)(a) (2004). It is undisputed that Defendants, the occupiers of the property, received no notice of the sale.

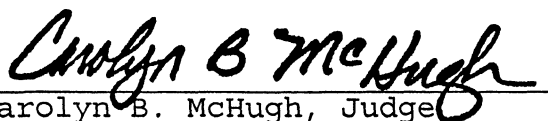
2. "To establish boundary by acquiescence, a claimant must show (i) occupation up to a visible line marked by monuments, fences, or buildings, (ii) mutual acquiescence in the line as a boundary, (iii) for a long period of time, (iv) by adjoining landowners." Mason v. Loveless, 2001 UT App 145, ¶17, 24 P.3d 997 (quotations and citation omitted). The trial court concluded, based on the undisputed facts presented by the parties, that

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

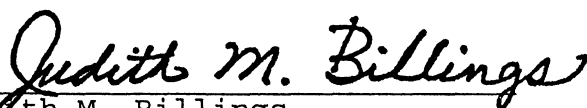
land was not described in the tax notices, it became a part of Defendants' parcels. Moreover, the Masseys still have not produced any evidence that Defendants were delinquent in paying property taxes assessed on this portion or that they had an opportunity to rectify any delinquency. See Royal St. Land Co. v. Reed, 739 P.2d 1104, 1107 (Utah 1987) (holding that taxpayer is only required to pay taxes levied and assessed on property even though assessment may not cover all uses of property or entire area of property). Thus, this factual dispute is not material and summary judgment was proper.

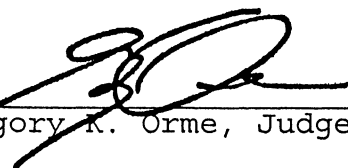
CONCLUSION

¶12 The trial court properly granted summary judgment in favor of Defendants because no dispute of material facts exists regarding Defendants' payment of taxes on the disputed property. Therefore, Weber County could not have conveyed valid tax deeds to the Masseys. We affirm.


Carolyn B. McHugh, Judge

¶13 WE CONCUR:


Judith M. Billings,
Presiding Judge


Gregory K. Orme, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of September, 2005, a true and correct copy of the attached OPINION was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

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ANTHONY R. MARTINEAU
BRETT D CRAGUN
ATTORNEY AT LAW
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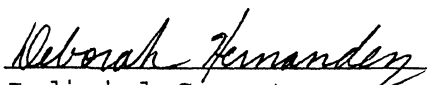
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Judicial Secretary

TRIAL COURT: SECOND DISTRICT, OGDEN DEPT, 960900027
APPEALS CASE NO.: 20040650-CA

Scale: 1" = 100'

Scale: 1" = 100'

EAST +/- to Pt. 942.09' center of road

EAST +/- to Pt. 942.09' center of road

EAST +/- to Pt. 942.09' center of road



Scale: 1" = 100'