

1995

Glen D. Wardle and Thora Wardle v. Lester Romero : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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JATD
DOCKET NO. 950203CA

IN THE UTAH COURT OF APPEALS

GLEN D. WARDLE and THORA
WARDLE,

Plaintiffs-Appellees,

vs.

LESTER ROMERO,

Defendant-Appellant.

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Case No. 950203-CA
940700002

Priority No. 15

BRIEF OF PLAINTIFFS-APPELLEES

Appeal from the Judgment of the Second District Court,
Davis County, State of Utah.
Honorable Rodney S. Page, Judge

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FILED

APR 21 1995

COURT OF APPEALS

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Case No. 950203-CA
940700002

Priority No.

BRIEF OF PLAINTIFFS-APPELLEES

JURISDICTION OF THE COURT

The Court of Appeals has appellate jurisdiction in this matter pursuant to § 78-2a-3(2)(k), Utah Code Annotated.

STATEMENT OF THE ISSUES FOR REVIEW

1. Was service of summons by publication accomplished for an action in rem where the sheriff made 23 attempts to serve defendant at his residence, believed defendant to be avoiding service of process, and pursuant to court order a copy of summons and complaint were mailed to the address designated by the court, which address defendant presented to the Davis County Recorder and Treasurer for use in tax notices?

2. Did the trial court abuse its discretion in denying the motion to set aside default under Rules of Civil Procedure 60 (b) where defendant had personally examined the District Court file which contained the Complaint and Lis Pendens, and thus had

actual knowledge of the pendency of the action in March 1994, whereas first publication of summons was April 15, 1994, the last publication May 6, 1994, and defendant was given thirty days after the last publication in which to file an answer?

3. What is the effect of defendant's failure to file a proposed answer setting forth a meritorious defense and the fact that a memorandum of the defendant characterized the attempt to argue the merits as inappropriate?

4. Is there merit to defendant's claim that plaintiffs failed to exercise reasonable diligence in designating the address of defendant where the address given by defendant to the County Recorder and County Treasurer was utilized by plaintiff and where defendant from time to time designated Airport Motel as a return address on envelopes?

STANDARD OF REVIEW

1. "The district court judge is vested with considerable discretion under Rule 60(b) in granting or denying a motion to set aside a judgment. State ex. rel. Utah State Department of Social Services v. Musselman, 667 P.2d 1053 (Utah 1983); Airkem Intermountain, Inc. V. Parker, 513 P.2d 429 (Utah 1973). The court should be generally indulgent toward setting a judgment aside where there is reasonable justification or excuse for the defendant's failure to answer and when timely application is made. Where there is doubt about whether a default should be set aside, that doubt should be resolved in favor of doing so. But, before we will interfere with the trial court's exercise of

discretion, abuse of that discretion must be clearly shown.

Russell v. Martell, 681 P.2d 1193, 1194 (Utah 1984). That some basis may exist to set aside the default does not require the conclusion that the court abused its discretion in refusing to do so when facts and circumstances support the refusal. Cf. Wilson v. Miller, 424 P.2d 271 (Kan. 1967)." Katz v. Pierce, 732 P.2d 92, 93 (Utah 1986).

The legal standard to be used by trial courts in determining whether a defense is meritorious is a question of law which is reviewed for correctness. State v. Pena, 869 P.2d 932, 936 (Utah 1994); Erickson v. Schenkers Intern. Forwarders, 882 P.2d 1147, 1148 (Utah 1994). The trial court need not reach the question of meritorious defense unless it first finds a reason to set aside the default under Rule 60 (b) (1), (2), (3), or (4). State by and through D. of S. S. v. Musselman, 667 P.2d 1053, 1056 (Utah 1983); Downey State Bank v. Major-Blakeney Corp., 545 P.2d 507, 510 (Utah 1976).

DETERMINATIVE STATUTES AND RULES

In addition to the rules cited and appended by the appellant, the following rules and statutes may be pertinent:

(a) Rule 4 (g) Utah Rules of Civil Procedure: Other Service.

Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party

seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication, by mail, or by some other means. The supporting affidavit shall set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties. If the motion is granted, the court shall order service of process by publication, by mail from the clerk of the court, by other means or by some combination of the above, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. A copy of the court's order shall be served upon the defendant with the process specified by the court.

(b) Rule 8 (c) Utah Rules of Civil Procedure: Affirmative Defenses.

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation.

(c) Utah Code Ann. § 78-12-44. Effect of payment, acknowledgment, or promise to pay.

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same, shall have been made, an action may be brought within the period prescribed for the same after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby. When a right of action is barred by the provisions of any statute, it shall be unavailable either as a cause of action or ground of defense.

(d) Utah Code Ann. § 78-40-8 Mortgage not deemed a conveyance -- Foreclosure necessary.

A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

(e) Utah Code Ann. § 78-37-1. Form of action - Judgment - Special execution.

There can be one action for the recovery of any debt or the enforcement of any right secured solely by mortgage upon real estate which action must be in accordance with the provisions of this chapter. Judgment shall be given adjudging the amount due, with costs and disbursements, and the sale of mortgaged property, or some part thereof, to satisfy said amount and accruing costs, and directing the sheriff to proceed and sell the same according to the provisions of law relating to sales on execution, and a special execution or order of sale shall be issued for the purpose.

NATURE OF THE CASE, COURSE OF PROCEEDINGS
AND DISPOSITION OF TRIAL COURT

Plaintiffs commenced the action to quiet title against the defendant to the home property of plaintiffs in North Salt Lake, Davis County, Utah, where the defendant had on May 24, 1993,

improperly recorded a quitclaim deed. The quitclaim deed was dated March 1, 1960 and held by defendant as security for payment of his equity in sale of his interest to plaintiffs. Upon defendant's failure to answer after service by publication and after having previous knowledge of the filing of the complaint and lis pendens, the court received evidence of the title of plaintiff and entered a Judgment and Decree Quietening Title In Plaintiffs, June 16, 1994. On September 7, 1994, defendant filed a motion to set aside the decree. The court reviewed memoranda filed by the parties and issued its ruling and order denying the motion to set aside the default of the defendant. Defendant appealed from the order denying his motion to set aside the default.

STATEMENT OF FACTS

Plaintiffs do not agree with most of the defendant's Statement of Relevant Facts. Most of the relevant facts are contained in the record on file in the District Court. No transcript of the proceedings has been made. Plaintiffs set forth the allegations of the complaint which was filed January 3, 1994: (R1)

1. This is an action to quiet title to real property situated at 320 East Center Street, North Salt Lake, Davis County, State of Utah, and for damages for slander of title.

2. Plaintiffs complain of the Defendant who claims some right, title, estate, lien, right to possession, or interest in the following described tract of land in North Salt Lake, Davis County, State of Utah:

All of Lot 39, Hillside Gardens

Subdivision, a subdivision of Part of Sections 11 and 12, Township 1 North, Range 1 West, Salt Lake Meridian.

3. Plaintiffs are owners absolutely in fee simple and are in sole exclusive possession of said premises. For more than thirty three years last past, the Plaintiffs have possessed and paid all taxes assessed against said premises since 1960. At no time has the Defendant possessed or paid taxes on said premises since 1960.

4. On or about May 24, 1993, the Defendant caused to be recorded a Quit Claim Deed dated March 1, 1960, wherein Plaintiffs are named as grantors and Defendant is named as grantee of said premises. Said deed was delivered to Defendant at the same time as the premises were mortgaged to Defendant, and said deed was never intended as a conveyance nor intended to be recorded without consent of Plaintiffs. The Plaintiffs are not obligated to the Defendant and the Defendant had no right to record said deed or to pursue any note, mortgage or claim against the Plaintiffs.

5. By letter dated November 18, 1993, the Plaintiff's attorney requested that the Defendant quitclaim the property back to Plaintiffs to avoid damages. Defendant has refused and neglected to remove the cloud created by his improper recording of the quitclaim deed dated March 1, 1960. Pursuant to statute, Utah Code Annotated §§ 38-9-1 and 38-9-4, Plaintiffs are entitled to \$1,000.00 or for treble actual damages and for reasonable attorneys fees and costs because the Defendant has wilfully refused to release or correct the wrongful recording of the quitclaim deed within twenty days from November 18, 1993, the date of the letter to Defendant requesting the release.

Plaintiffs recorded a Lis Pendens in the office of the Davis County Recorder on January 7, 1994 and filed a copy thereof with the clerk of District Court on the same date. (R4)

A summons and copy of the complaint were delivered to the Sheriff of Salt Lake County on January 5, 1994, and the "Return

On Process Unserved" dated May 15, 1994, stated that the Sheriff was "unable to make contact after several attempts (23)." (R9)

When the defendant moved to set aside the default by claiming that no attempt was made to serve him at his residence, 6270 Margray Drive, West Jordan, Utah, the affidavit of the Sheriff was filed stating the 23 attempts of service were made at 6270 South Margray Drive. (R64)

The defendant did not designate the 6270 South Margray Drive as being a mailing address in his official communications as shown by documents in the record and copied in the addendum to this brief. (R 15, 34, 56)

The Quit-Claim Deed recorded by the defendant on May 24, 1993 shows an address "c/o Horace Knowlton General Delivery 1760 W. 2100 S., S.L.C. Ut. 84111" (R15) There was once a practicing attorney named Horace Knowlton who died prior to May 24, 1993.

The 1993 Davis County Tax Notice shows an address as follows:

Romero, Lester c/o Horace Knowlton
GENERAL DELIVERY
1760 West 2100 South
Salt Lake City, Utah 84111

(R17)

On November 18, 1993, Thora Wardle paid the taxes on a "Duplicate" notice, not having received the original. (R17)

Romero, on July 20, 1994, mailed to the clerk of the district court a message on a form headed "AIRPORT MOTEL 2255 West North Temple, Salt Lake City, Utah 84116, Phone 363-0795" containing this handwritten message:

Dear Clerk,
I was at your court in March and found a case
against me and thought it would be delivered
to me but as of today I have never been
served as yet. I have been told sometime a
person have been served by publication.
Please look at case and inform me if it shows
if it has been served
Case 940700002
Glen & Thora Wardle
vs
Lester Romero
Reply to (arrow to Lester Romero on prior
line)
6270 S 2005 W
West Jordan Utah 84084

The notation by the Clerk in response to Romero was:

"Mailed copy of docket to Lester Romero at address indicated
above. Case closed, Service by publication. D.M." (R34)

The handwritten portion by Romero shows that he reviewed the
file in the Clerk's office in "March" at which time he would have
seen the Complaint and Lis Pendens. Default of the defendant was
not taken until June 15, 1994 and entered June 16, 1994. (R28).

The letter which Romero mailed to George Fadel postmarked
December 13, 1993 was mailed in an envelope showing a return
address "AIRPORT MOTEL 6270 S. 2005 W. West Jordan, Utah 84084."
(R56) Said address of the "Airport Motel" appears to be the
street address of his residence and a different address of
"Airport Motel" was shown on the message sent to the Clerk, as
2255 West North Temple. (R34).

On April 12, 1994, Plaintiffs filed a Motion for Service of
Process by Publication (R26-27), and the order recited that
publication be made in the Davis County Clipper and a copy of
summons and complaint be mailed to the defendant at his last

known address: 1760 West 2100 South, Salt Lake City, Utah 84111.
(R27)

The envelope from plaintiffs' counsel addressed to "Mr. Lester Romero, 1760 West 2100 South, Salt Lake City, Utah 84111 postmarked April 13, 1994, was stamped "Return to sender" by the post office, and other markings made by bold permanent marker handwriting on the face of the envelope was "opened in error."
(R25) Apparently someone had received the letter and opened it. Romero claims that said address was the post office address and it appears to be the same for his general delivery.

Also, another envelope from plaintiffs' counsel post marked April 12, 1994, addressed "Mr. Lester Romero General Delivery 1760 West 2100 South Salt Lake City, Utah 84111 Important Document" was stamped "Return to Sender" "Apr 29" "unclaimed."
(R24) The record shows that plaintiffs received a Warranty Deed recorded March 16, 1960, from Lester Romero and Maxine Romero, his wife to said Lot 39 subject to a mortgage recorded August 24, 1959 in favor of Granite Investment Company in the sum of \$12,500.

The property was refinanced by Plaintiffs by mortgage dated March 14, 1960 in favor of the Equitable Life Assurance Society of the United States in the sum of \$14,500.00. (R19 and 21).

Plaintiffs made the last payment due to Equitable in March 1980 and received a satisfaction of mortgage April 8, 1980.
(R23)

Plaintiffs' memorandum in opposition to the motion to set

aside default recited that: "No payment or acknowledgment of the debt was made after 1980, and the applicable statute of limitations is six years." (R52)

Defendant's reply to plaintiffs' memorandum was Romero's affidavit stating "at no time did I allow more than three years to go by without receiving a payment from the plaintiffs." (R58) Defendant did not file a proposed answer with a statement of an affirmative defense, nor did he file a proposed counterclaim for foreclosure of the quitclaim deed which he acknowledges was given as security. Defendant's said reply memorandum did not indicate a meritorious defense and in fact stated "First, plaintiffs' attempts to argue the merits of their case is inappropriate here." (R58) Romero's affidavit also stated in paragraph 10: "There have been disagreements between me and the plaintiffs on the amount still due on promissory note for several years." (emphasis added). (R43)

SUMMARY OF ARGUMENT

Romero had actual notice of the pendency of the action before the publication of summons as evidenced by his message to the clerk of the court. There were 23 attempts to serve him at his residence, and notices were mailed to him at the recent address he gave to the county treasurer. Therefore, service of process was adequate to apprise him of the pendency of the action under Rule 4 (g). Accordingly, the default was properly entered by the court and no basis for relief under Rule 60 (b) exists.

Assuming that for any reason Romero had grounds for relief

from default, he failed to plead any meritorious defense to the suit to quiet title and in absence thereof, he is not entitled to have default and judgment thereon set aside.

ARGUMENT

POINT I. IN THIS ACTION WHERE ONLY IN REM RELIEF WAS GRANTED, THE TRIAL COURT PROPERLY RULED THAT SERVICE OF PROCESS WAS SUFFICIENT UNDER RULE 4(a) "Other Service."

There was good cause to believe that the defendant was avoiding service of process where the sheriff of Salt Lake County was unable after 23 attempts between January 13, 1994 and March 11, 1994 (R64) to serve defendant at his residence, which Romero states in his affidavit as being 6270 Margray Drive, West Jordan, Utah 84084. (See Appellant's Appendix p. 3, paragraph 14)

Defendant's counsel, on page 3 of his memorandum in support of the motion to set aside the judgment and decree (R39), mistakenly represents: "Defendant was not personally served with a summons and complaint and was not aware of this case or the judgment until July 21, 1994." This mistake was related to Romero's affidavit, paragraph 17 and 18, which stated:

17. On July 20, 1994, I visited the clerk of the court in Davis County to determine what additional action, if any, I needed to take after recording the quitclaim deed.

18. At that time, personnel in the clerk's office indicated that a case had been filed which involved the property. I left a written request that the clerk's office send me a copy of the docket sheet.

Apparently, defendant's counsel had not seen the message to the clerk written on the Airport Motel message form in which the

defendant begins, "I was at your court in March and found a case against me and thought it would be delivered to me but as of today I have not been served as yet. I have been told sometime a person have been served by publication. . . ." (R34)

The defendant's representation in his affidavit paragraph 17 and 18 appear to be false in view of the written message on file with the clerk. Defendant had actual notice of the complaint and Lis Pendens in March 1994, whereas the Motion for Service of Process by Publication and Order were filed April 12, 1994. If the defendant saw the complaint and lis pendens in March, he may also have seen the motion for service by publication in April because he makes reference to service by publication.

The complaint contained a claim for damages and attorneys fees for improperly recording the quitclaim deed which may have been a reason why the sheriff could not serve Romero personally at his residence after 23 attempts. Copies of the summons and complaint were mailed April 12, 1994, and April 13, 1994, addressed to Romero at the address given by him to the county recorder and treasurer. Both envelopes were returned by the post office, on marked "opened in error" and the other "unclaimed, April 29."

Plaintiffs' use of Romero's mailing address shown on the official records of the Davis County Recorder and the Treasurer, to wit: General Delivery, 1760 West 2100 South, Salt Lake City, Utah 84111, appears to be the appropriate mailing address, where doubt exists as to which address is the mailing address. In

Weber v. Snyderville West, 800 P.2d 316, 319 (Utah App. 1990), the trial court determined that there was no adequate explanation for the failure to personally serve Snyderville West at its known tax address. Id. at 317. The Court of Appeals stated that while the plaintiff had searched telephone directories, motor vehicle filings, corporate filings, County Recorder's files and postal records, it was apparent "that Snyderville's address was set forth in the Summit County tax records pertaining to the very property in issue." Id. at 319.

POINT II. PLAINTIFFS COMPLIED WITH THE
REASONABLE DILIGENCE REQUIREMENT OF THE RULE
FOR SERVICE OF PROCESS BY PUBLICATION.

Utah Rules of Civil Procedure Rule 4(g) "Other Service" is primarily to apprise interested parties of the pendency of the action. In Downey State Bank v. Major-blakeney Corp., 545 P.2d 507 (Utah 1976), the Utah Supreme Court found reasonable diligence where the plaintiff contacted the last registered agent of the defendant and obtained a most recent address of the defendant assignee, who could not be found by the sheriff at that address. Specifically, the court stated:

It is true that the plaintiff did not exhaust all possibilities pointed out by the defendant that it appears by hindsight might have been used as a means of finding and serving him. But that is not what is required. The requirement is that there be exercised reasonable diligence in good faith. On the basis of what has been said above and the further facts shown to the trial court that Dr. Krofcheck's assignor, Major-Blakeney Corporation had ceased doing business in Utah, had discontinued its post office box address in California, and that there had been a bona fide attempt to serve Dr.

Krofcheck at the only address known to or reasonably obtainable by the plaintiff, the court was convinced that the requirement for publication of summons has been met. We are not persuaded to disagree with that ruling.

Id. at 509.

The relevant portions of Rule 4(g) state that

where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication, by mail, or by some other means. . . . If the motion is granted, the court shall order service of process by publication, by mail from the clerk of the court, by other means, or by some combination of the above, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable.

The rule is stated in the alternative and may not require all of the stated alternate methods of service, and literally requires only notice of pendency of the action. The defendant, Romero, had actual knowledge of the pendency of the action in March, 1994, whereas the order for publication was April 12, 1994. The date of the last publication was May 6, 1994, and the time for answering commenced on the date of the last publication. (R10)

Notwithstanding that defendant's actual notice of the pendency of the action precludes his right to have default set aside, the plaintiffs properly mailed the summons and complaint to his last known current mailing address. The quitclaim deed recorded by the defendant shows c/o Horace Knowlton, General Delivery, 1760 W. 2100 S. SLC Utah 84111. The defendant's

affidavit, paragraph 11, states "I recorded the quitclaim deed on May 24, 1993. (emphasis added)" His use of Horace Knowlton's name is suggestive of his efforts to avoid being personally contacted, although it was known to the trial court that Horace Knowlton, an attorney, had been deceased for years prior to the recording in 1993.

The 1993 county treasurer's tax notice (which the courts regard as best evidence) shows the address:

Romero, Lester c/o Horace Knowlton
General Delivery
1760 West 2100 South
Salt Lake City, Utah 84111

and the envelope sent to that address by plaintiffs' counsel was returned "unclaimed" fourteen days after the postmarked date. This suggests that defendant was using an address at which he could pick and choose which mail to accept.

In Carlson v. Bos, 740 P.2d 1269 (Utah 1987), the Utah Supreme Court explained the "diligence" requirement where defendant does not have actual notice of the pendency of the action:

The second diligence requirement is one we imply to avoid constitutional infirmities in section 41-12-8. To satisfy it, plaintiff must establish that a diligent attempt has been made to obtain defendant's current address. If a current address is discovered, that address is the one to which the mailed notice would be sent. Mailed notice to defendant's current address clearly satisfies Mullane's requirement that the notice be reasonably calculated to apprise defendant of the pending action. If, despite diligent effort, plaintiff is unable to determine defendant's current address, then due process will be satisfied if notice is mailed to an

address that has been determined, after diligent efforts, to be defendant's last known address, even though it is clear that defendant does not presently reside at the address.

We recognize that notice thus mailed to a last known address may never reach a defendant. However, under appropriate circumstances, Mullane permitted not only notice mailed to a last known address but notice by publication alone. In contrast to published process, which is brought to a party's attention by "chance alone," notice mailed to a last known address has at least a chance of reaching a defendant inasmuch as either the post office or the current resident might forward the mail to defendant. We think that in the circumstances presented by the normal action to which section 41-12-8 applies, the mailing of notice to a last known address discovered through diligent efforts is reasonably calculated to notify defendant of the action certainly this form of service "is not substantially less likely to bring home notice than other of the feasible and customary substitutes."

Id. at 1277 (quoting Mullane v. Central Hanover Bank & Trust, 339 U.S. at 315).

It is true that plaintiffs' counsel addressed a letter prior to commencement of suit to two addresses (R47):

Mr. Lester Romero
6270 Margray Drive
West Jordan, Utah 84084

General Delivery
1760 West 2100 South
Salt Lake City, Utah 84111

Neither envelope was returned undelivered. Since Romero was not answering the door to the 23 attempts by the sheriff, it was thought that the best mailing address of the defendant was the one given the recorder and treasurer of Davis County.

Romero's letter responding to plaintiff's attorney was sent

in an envelope showing a return address: AIRPORT MOTEL, 6270 S. 2005 W. West Jordan, Utah 84084. (R56).

This now appears to be the same address of the defendant as Margray Drive, however, the AIRPORT MOTEL designation did not appear to be a residence location. If in fact an AIRPORT MOTEL existed (not found in telephone directories), was it at the West Jordan address or the address shown for AIRPORT MOTEL on the message form defendant sent to the clerk, 2255 West North Temple? (R34)

POINT III. ONE WHO SEEKS TO VACATE A DEFAULT JUDGMENT MUST PROFFER SOME DEFENSE AS WOULD JUSTIFY A TRIAL OF THE ISSUE THUS RAISED EVEN ASSUMING OTHER RULE 60 (b) REQUIREMENTS WERE MET.

The plaintiff's complaint to quiet title recites that "the plaintiffs are not obligated to the defendant and the defendant had no right to record said deed or to pursue any note, mortgage or claim against plaintiffs." No proposed answer or counterclaim was filed. In Downey State Bank v. Major-Blakeney Corp., 545 P.2d 507 (Utah 1976) the Utah Supreme Court stated:

The other issue to be dealt with is defendant's contention that the court abused its discretion in refusing to set aside the default judgment. A primary difficulty he confronts is that, as a general proposition, one who seeks to vacate a default judgment must proffer some defense of at least sufficient ostensible merit as would justify a trial of the issue thus raised. As the trial court appropriately remarked on this point: the defendant failed to proffer any meritorious defense, or in fact any defense at all.

Id. at 507. In a more recent case, Erickson v. Schenkers Intern.

Forwarders, 882 P.2d 1147 (Utah 1994), the Utah Supreme Court held that "the court should only examine the defendant's proposed answer and determine whether as a matter of law it contains a defense which is entitled to be tried." Id. at 1148 (citing Downey, 545 P.2d 507).

Defendant failed to file an answer or counterclaim and even suggested it was inappropriate to discuss the merits. Defendant's reply memorandum made reference to Romero's affidavit that "at no time did I allow more than three (3) years to go by without receiving a payment from the plaintiffs." However, he also states: "There have been disagreements between me and the plaintiffs on the amount still due on the promissory note for several years," and "In addition, the plaintiffs executed a quit claim deed on the property which I held as additional security."

As a matter of law, Utah Code Ann. section 78-40-8 provides:

A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

A deed given as security is deemed a mortgage. In Hess v. Anger, 53 Utah 186, 177 P. 232 (1918), the court held:

In our state a deed absolute in form, executed and delivered as a security under a parol agreement, and with the understanding that it shall be so held, will be construed as a mortgage. . . . So, too, a deed, when intended as a mortgage, may be given to secure an unliquidated claim, or whatever indebtedness may thereafter be contemplated to be contracted between the parties under it and the same foreclosed in a court of equity.
. . . .

Id. at 1300 (cited and followed in Bybee v. Stuart, 180 P.2d 118 (Utah 1948)).

If he had acted timely, Romero's remedy was to bring suit upon the 1960 promissory note and foreclose the quitclaim deed dated March 1, 1960, as a mortgage. On the faces thereof, both the note and deed of 1960 would long ago have been barred by the statute of limitations. Romero would have had to plead an acknowledgment in writing or a payment before expiration of any six-year period in order to toll the statute as required by 78-12-44:

In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same, shall have been made, an action may be brought within the period prescribed for the same after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby. When a right of action is barred by the provisions of any statute, it shall be unavailable either as a cause of action or ground of defense.

Justice Wolfe, in Attorney General of Utah v. Pomeroy, 73 P.2d 1277 (Utah 1937), wrote:

The next and last question presented by appellant for determination is that respondents in writing signed by them acknowledged the claims sued on. The signed acknowledgment claimed is the answer of the White Star acknowledging that they owed the debt. There is nothing in this contention. It is questionable whether the acknowledgment in writing, which by section 104-2-45 R.S. 1933, will extend the period, applies to any liability, debt, or claim other than one founded on contract, and this obligation to pay the tax is not one founded on contract.

But even though it need not be an obligation founded on contract, the acknowledgment must be made before the statute has run and the same pleaded to show the tolling of the statute, or, if made after the statute has run so as to revive the debt as against the statute, such acknowledgment must be pleaded as a basis of the action.

Id. at 1300.

Therefore, Romero, instead of recording the quitclaim deed claiming ownership, would have had to plead the note, the deed as a mortgage, and the facts which would toll the statute under 78-12-44 Utah Code Annotated 1953, which is identical to 104-2-45 R.S. 1933 quoted by Justice Wolfe.

Romero's recording the deed was wrongful and should have rendered him liable to plaintiffs for damages under Section 38-9-1 and 38-9-4 Utah Code Annotated as pleaded in the complaint if he had been personally served. The court specifically stated that only "in rem" relief was afforded by the service by publication of summons. Since Romero knew by the letter of plaintiffs' counsel dated November 18, 1993, that plaintiffs would bring suit to quiet title and request punitive damages if he failed to execute a quitclaim deed to clear the title of record, this, together with his having reviewed the action in March 1994, may explain why the sheriff could not affect service after 23 attempts.

Romero's only meritorious defense would be a valid counterclaim upon the 1960 note, to be foreclosed based upon the 1960 deed, which of necessity would have required a pleading tolling the statute. This he did not do. His affidavit is an

express admission that the deed was a mortgage, that there were disagreements between him and plaintiffs on the amount still due on the note for several years, and not being able to convince plaintiffs to make payments still due, he recorded the deed May 24, 1993. It is not clear what Romero claims by his statement that at no time did he allow more than three years to go by without receiving a payment from the plaintiffs. If he in fact intended to state that plaintiffs made a payment within three years of the filing of the complaint (January 3, 1994) he should have stated at a minimum the date and amount of payment, how it was credited upon the note as interest on principal and the balance, if any, still due. Nor does he state what action he had ever taken if a payment had not been made within three years. He never recorded the deed at any previous time during its 33 year existence. We should not be required to speculate as to the meaning of his ambiguous affidavit, nor should the trial court have been required to do so, knowing that the plaintiffs claimed to have fully paid by 1980.

Romero did not file in court copies of any note or other evidence of debt or security to which he made reference in his affidavit.

CONCLUSION

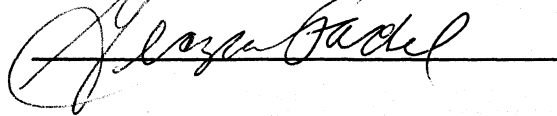
Plaintiffs exercised due diligence in attempting to serve defendant personally 23 times, and Romero had actual notice of the pendency of the action before the publication of the summons. Plaintiffs mailed copies of the summons and complaint to

defendant at the address defendant gave to the county recorder and county treasurer, one copy being returned "opened in error" and the other "unclaimed." Therefore, there are no grounds for setting aside defendant's default. The judgment of the trial court should be affirmed.


George K. Fadel

Attorney for Plaintiffs/Appellees

I certify that I mailed two copies hereof to Mr. Scott Lundberg and Mr. William A. Meaders, Attorneys for Defendant/Appellant, Lundberg & Meaders, P.O. Box 1290, Salt Lake City, Utah 84110, this 21st day of April, 1995.



INDEX TO THE ADDENDUM

All items listed are in the record and are numbered as listed in the record with a prefix of A - .

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Summons	A-R 11
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ITEMS OF RECORD BEFORE DEFAULT DATE

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

JAN 3 3 34 PM '94

#1027
GEORGE K. FADELL
Plaintiffs
ATTORNEY FOR
170 WEST FOURTH SOUTH
BOUNTIFUL, UTAH 84010
TELEPHONE 295-2421

CLERK, 2ND DIST. COURT
BY AB
DEPUTY CLERK

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

GLEN D. WARDLE and
THORA WARDLE,

Plaintiffs,

vs.

LESTER ROMERO,

Defendant.

)

)

)

)

)

C O M P L A I N T

Civil No. 940700002

Judge RSP

80.00 pd.

1. This is an action to quiet title to real property situated at 320 East Center Street, North Salt Lake, Davis County, State of Utah, and for damages for slander of title.

2. Plaintiffs complain of the Defendant who claims some right, title, estate, lien, right to possession, or interest in the following described tract of land in North Salt Lake, Davis County, State of Utah:

All of Lot 39, Hillside Gardens Subdivision, a subdivision of Part of Sections 11 and 12, Township 1 North, Range 1 West, Salt Lake Meridian.

3. Plaintiffs are owners absolutely in fee simple and are in sole exclusive possession of said premises. For more than thirty three years last past, the Plaintiffs have possessed and paid all taxes assessed against said premises since 1960. At no time has

the Defendant possessed or paid taxes on said premises since 1960.

4. On or about May 24, 1993, the Defendant caused to be recorded a Quit Claim Deed dated March 1, 1960, wherein Plaintiffs are named as grantors and Defendant is named as grantee of said premises. Said deed was delivered to Defendant at the same time as the premises were mortgaged to Defendant, and said deed was never intended as a conveyance nor intended to be recorded without consent of Plaintiffs. The Plaintiffs are not obligated to the Defendant and the Defendant had no right to record said deed or to pursue any note, mortgage or claim against the Plaintiffs.

5. By letter dated November 18, 1993, the Plaintiff's attorney requested that the Defendant quitclaim the property back to Plaintiffs to avoid damages. Defendant has refused and neglected to remove the cloud created by his improper recording of the quitclaim deed dated March 1, 1960. Pursuant to statute, Utah Code Annotated §§ 38-9-1 and 38-9-4, Plaintiff are entitled to \$1,000.00 or for treble actual damages and for reasonable attorneys fees and costs because the Defendant has wilfully refused to release or correct the wrongful recording of the quitclaim deed within twenty days from November 18, 1993, the date of the letter to Defendant requesting the release.

WHEREFORE, Plaintiffs demand judgment:

1. For a decree of the Court declaring and adjudging that the Plaintiffs own absolutely and in fee simple, and are entitled to the quiet and peaceful possession of said premises as against the Defendant and all persons claiming under him, and that the

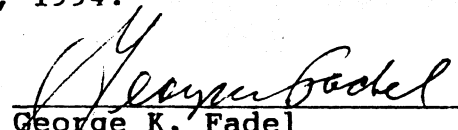
Defendant and all persons claiming by, through or under him have no estate, right, title, lien or interest in or to said property or any part thereof, and that said title to said property is quieted in the Plaintiff against the Defendant and all persons claiming under him;

2. For said decree to permanently enjoin the Defendant and all other persons claiming under him from asserting any estate, right, title, possession, lien or interest in or to said premises adverse to the Plaintiffs or in any way interfering with Plaintiffs' full use and enjoyment of said property;

3. For damages, costs and a reasonable attorneys fee; and

4. For such other relief as the Court deems just in the premises.

DATED this 3rd day of January, 1994.


George K. Fadel
Attorney for Plaintiffs

Plaintiffs' Address:
320 East Center Street
North Salt Lake, Utah 84054

GEORGE K. FADEL #1027
ATTORNEY FOR Plaintiffs
170 WEST FOURTH SOUTH
BOUNTIFUL, UTAH 84010
TELEPHONE 295-2421

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH
JAN 7 3 23 PM '94 1-7-94 Page 571
CLERK, 2ND DIST. COURT
BY AB DEPUTY CLERK *hus*

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

GLEN D. WARDLE and
THORA WARDLE,

Plaintiffs,

vs.

LESTER ROMERO,

Defendant.

)

)

)

)

)

LIS PENDENS

Civil No. 940700002

Judge Rodney S. Page

NOTICE is hereby given that an action is pending in the above-entitled cause wherein the Plaintiffs are demanding judgment quieting title in the Plaintiffs to the following described tract of land in Davis County, State of Utah:

All of Lot 39, Hillside Gardens Subdivision a Subdivision of Part of Section 11 and 12, T 1 North Range 1 West.

The complaint seeks to set aside all conveyances to the Defendant as being null and void for various reasons as recited in the complaint.

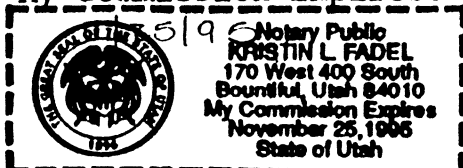
DATED this 7th day of January, 1994.

George K. Fadel
George K. Fadel
Attorney for Plaintiffs

Sworn to and subscribed before me this 7th day of January, 1994.

Kristin L. Fadel
Notary Public
Davis County, Utah

My Commission Expires:



Served this Summons on the within
named Defendant.

Lester Romero

on the 19 day of 94, at Salt Lake County, Utah
AARON D. KENIARD
Sheriff, Salt Lake County, Utah

By _____ Deputy

GEORGE K. FADEL #1027
ATTORNEY FOR Plaintiffs
170 WEST FOURTH SOUTH
BOUNTIFUL, UTAH 84010
TELEPHONE 295-2421

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

GLEN D. WARDLE and
THORA WARDLE,

Plaintiffs,

vs.

LESTER ROMERO,

Defendant.

S U M M O N S

Civil No. 940700002
Judge Page

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to file, with the clerk of the Second District Court at the Justice Complex, 800 West State Street, P.O. Box 769, Farmington, Utah 84025 an answer in writing to a complaint filed, in the above-entitled case, and to serve upon, or mail to George K. Fadel, Plaintiffs' attorney, at 170 West 400 South, Bountiful, Utah 84010, a copy of said answer within twenty (20) days after service of this summons upon you.

If you fail to do so, judgment by default will be taken against you for the relief demanded in said Complaint which is filed with the Clerk of said court and a copy of which is attached hereto and herewith served upon you.

DATED this 3rd day of January, 1994.

George K. Fadel
Attorney for Plaintiffs
170 West 400 South
Bountiful, Utah 84010

RETURN ON PROCESS UNSERVED

STATE OF UTAH

COUNTY OF SALT LAKE

)
) ss. SHERIFF'S OFFICE
)

☒ Original
☐ Amended
☐ Duplicate

I hereby certify and return that I received the attached Summons
on (date) 1-5-94.

1. I am returning same unserved:

- ☐ No such address
- ☐ Deceased
- ☒ Return request of ☒ Attorney ☐ Plaintiff ☐ Other _____
- ☒ Unable to make contact after several attempts (23)
- ☐ Need new court date
- ☐ Need employment or daytime address
- ☐ Other _____

2. After due search and diligent inquiry, I am unable to locate the within named

- ☐ Defendant ☐ Plaintiff ☐ Other _____
- ☐ Moved _____ ☐ No forwarding
- ☐ Unknown at given address ☐ Need apartment number
- ☐ Doesn't live at given address

AARON D. KENNARD, Sheriff of Salt Lake County, State of Utah

Docket # 94001658
Processed by QR
Mileage \$ 11.00

I certify and return that the foregoing
is true and correct and that this certificate is
executed on (date) 5-17-94

By [Signature]
Deputy Sheriff

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

MAY 13 1 25 PM '94

940700002

CLERK, 2ND DIST.

BY ab
DEPUTY CLERK

PROOF OF PUBLICATION

Davis County Clipper

United States of America
County of Davis, State of Utah, ss:

I, Ruby Evans being duly sworn deposes and says that she is the clerk of the DAVIS COUNTY CLIPPER, a weekly newspaper published at Bountiful, Davis County, State of Utah.

That the Notice

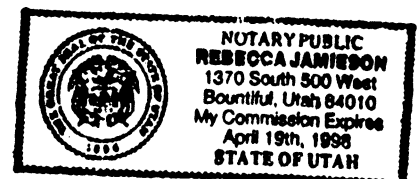
Summons: Wardle vs. Romero

a true copy of which is hereto attached, was first published in said newspaper in its issue dated the 15th day of April, 1994, and was published in each issue of said newspaper, for 3 week(s) thereafter, the full period of 4 insertion(s) the last publication thereof being in the issue dated the 6th day of May, 1994

Subscribed and sworn to before me this 10th day of May, A.D. 1994.

Rebecca Jamieson
Notary Public
Residing at Bountiful

Commission expires Apr 19 19 98



SUMMONS
Civil No. 940700002
Judge Rodney S. Page

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

GLEN D. WARDLE and THORA
WARDLE,
Plaintiffs,

vs.
LESTER ROMERO,
Defendant.

THE STATE OF UTAH TO THE
ABOVE-NAMED DEFENDANT:

You are hereby summoned and re-
quired to file with the clerk of the Se-
cond District Court at the Justice Com-
plex, 800 West State Street, P.O. Box
769, Farmington, Utah 84025 an answer
in writing to the attached complaint be-
ing mailed to you and to serve upon, or
mail to George K. Fadel, Plaintiffs' at-
torney, at 170 West 400 South, Boun-
tiful, Utah 84010, a copy of said answer
within thirty (30) days after service of
this summons upon you. Service of
this summons is required by the State of
Utah.

If you fail to answer the complaint
within the time specified, you may be
relief demanded in said Complaint
which is filed with the Clerk of said
court and a copy of which is being
mailed to you at your last known ad-
dress and is herewith served upon you.

This is an action to quiet title and
possession in the plaintiffs against you
and any of your successors or assigns,
and to enjoin you and any successors or
assigns from asserting any estate, title,
possession, lien, or interest in the
following described tract at 320 East
Center Street, North Salt Lake, Davis
County, State of Utah:

All of Lot 39, Hillside Gardens
Subdivision, a subdivision of
Part of Section 11E and 12E
township 1 North, Range 1
West, Salt Lake Meridian.

Dated this 12th day of April, 1994.

GEORGE K. FADEL
Attorney for Plaintiffs

Published in the Davis County
Clipper
First publication April 15, 1994
Last publication May 6, 1994
Issue No. 20 C-108

GEORGE K. FADEL #1027
ATTORNEY FOR Plaintiffs
170 WEST FOURTH SOUTH
BOUNTIFUL, UTAH 84010
TELEPHONE 295-2421

FILED IN CLERK'S OFFICE
MAY 25 11 20 AM '94

CLERK OF COURT
BY Ch
DEPUTY CLERK

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

GLEN D. WARDLE and
THORA WARDLE,

Plaintiffs,

vs.

LESTER ROMERO,

Defendant.

S U M M O N S

Civil No. 940700002

Judge Page

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to file, with the clerk of the Second District Court at the Justice Complex, 800 West State Street, P.O. Box 769, Farmington, Utah 84025 an answer in writing to a complaint filed, in the above-entitled case, and to serve upon, or mail to George K. Fadel, Plaintiffs' attorney, at 170 West 400 South, Bountiful, Utah 84010, a copy of said answer within twenty (20) days after service of this summons upon you.

If you fail to do so, judgment by default will be taken against you for the relief demanded in said Complaint which is filed with the Clerk of said court and a copy of which is attached hereto and herewith served upon you.

DATED this 3rd day of January, 1994.

George K. Fadel
George K. Fadel
Attorney for Plaintiffs
170 West 400 South
Bountiful, Utah 84010

Lester Romero
6270 So. Margray Ave.
West Jordan

fill

George K. Fadel #1027
Attorney for Plaintiffs
170 West 400 South
Bountiful, Utah 84010

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

JUN 6 2 47 PM '94

CLERK, DISTRICT COURT
BY Lau
DEPUTY CLERK

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

GLEN D. WARDLE and
THORA WARDLE,

Plaintiffs,

vs.

LESTER ROMERO,

Defendant.

)
) **PLAINTIFFS' APPLICATION FOR**
) **ENTRY OF DEFAULT OF**
) **DEFENDANT AND FOR JUDGMENT**
) **BY DEFAULT**

) Civil No. 940700002 QT

) Judge Rodney S. Page

Plaintiffs make this application to the above entitled court to enter the default of the defendant, Lester Romero, and to grant the relief prayed for in Plaintiffs' Complaint quieting title in the plaintiffs against the defendant and those claiming by, through or under the defendant, and in support hereof the plaintiffs represent:

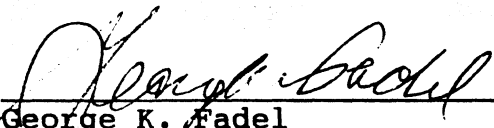
1. The Complaint was filed on January 3, 1994, and on said date plaintiffs deposited an original Summons and copy of Summons and Complaint with the Civil Process Division of the Salt Lake County Sheriff's office to be served upon the defendant, Lester Romero.

2. The deputy sheriff's return of process "unserved" recites that he received the Summons on January 5, 1994, and was unable to contact the defendant or serve the Summons after 23 attempts.

3. On April 12, 1994, this Court issued an order for service by publication in the Davis County Clipper. The first publication was on April 15, 1994, and the last publication was May 6, 1994. The published summons recited that service of summons is complete on the date of the last publication and the defendant was granted 30 days in which to answer. Separate mailings of the summons and complaint were addressed to Mr. Lester Romero, 1760 West 2100 South, Salt Lake City, Utah. The one post marked April 12, 1994 was marked "return to sender" on April 29, 1994. The one post marked April 13, 1994 was returned with a notation, "opened in error."

4. Plaintiffs request a hearing for the purpose of providing the information in support of a decree quieting title in the plaintiffs, and upon such hearing that the court enter judgment by default in favor of plaintiffs.

Dated this 6th day of June, 1994.


George K. Fadel
Attorney for Plaintiffs

JUN 14 4 03 PM '94

CASE NO. 9407-00002

CLEARED FOR COURT

Glen + Thora Wardle

vs

Lester Romero KB

PLAINTIFF

DEFENDANT

George Fadel

ATTORNEY/S FOR PLAINTIFF/S

ATTORNEY/S FOR DEFENDANT/S

Sheet No.

6/14/94

Date

6/14/94

PLAINTIFF'S EXHIBITS

DEFENDANT'S EXHIBITS

No.	Mark'd	Offr'd	Rec'd	Rejt'd	W/dm	DESCRIPTION	No.	Mark'd	Offr'd	Rec'd	Rejt'd	W/dm	DESCRIPTION
1	✓	✓	✓			Arbit Claim Book + other documents	1						
2							2						
3							3						
4							4						
5							5						
6							6						
7							7						
8							8						
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26							26						
27							27						
28							28						

Recorded at Request of _____
at _____ M. Fee Paid \$ _____
by _____ Dep. Book _____ Page _____ Ref. _____
Mail tax notice to _____ Address So. Hancock Rowell
General Delivery
1160 W 2100 S, SEC. 14 84111

RETURNED

E 1034839 8 1618 P 39
CAROL DEAN PAGE, DAVIS CNTY REC'D
1993 MAY 24 7:29 AM FEE 10.00
REC'D FOR ROMERO, LESTER

QUIT-CLAIM DEED

Glen D. and Thora Wardle
of 423 North 10th West Salt Lake
County of _____ State of Utah, hereby
QUIT-CLAIM to
Lester Romero

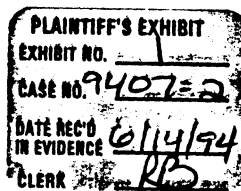
of Salt Lake
Ten _____ granted
for the sum of
DOLLARS,

the following described tract of land in Davis County,
State of Utah:

411 of lot 38 Hillside Gardens Subdivision a
Subdivision of part of Sections 11 and 12
Township 1 North Range 1 West Salt Lake Meridian.

01-111-0037

RECORDED MEMO -
LEGIBILITY OF TYPING OR PRINTING
UNSATISFACTORY IN THE DOCUMENT
WHEN RECEIVED



Witness the hand of said grantor, this 1st
March, A. D. one thousand nine hundred and Sixty day of

Signed in the presence of

Glen D. Wardle
Thora Wardle

STATE OF UTAH,
County of _____

On the 1 day of March A. D. one
thousand nine hundred and Sixty personally appeared before me

I, the undersigned, of the foregoing instrument, who duly acknowledge to me that he executed the

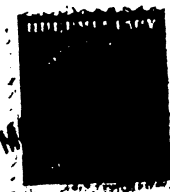
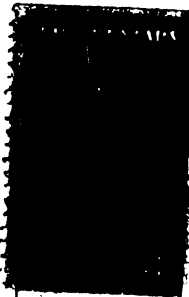
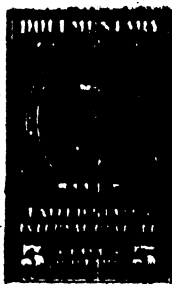
MAR 16 1960

Recorded at Request of Black's Title and Abstract Order No. 2566at 12³⁰ P. M. Fee Paid \$ 2.00 EMILY T. ELDREDGE, Recorder Davis County
by Grace R. Bybee Dep. Book 184 Page 115 Ref.: Hillside Gardens Subd.

Mail tax notice to _____ Address _____

201291

WARRANTY DEED

LESTER ROMERO and MAXINE ROMERO, his wife, grantor &
of Salt Lake City, County of Salt Lake, State of Utah, hereby
CONVEYS and WARRANTS toGLEN D. WARDLE and THORA WARDLE, his wife,
as joint tenants with full rights of survivorship and not as tenants
in commonof Bountiful, Utah grantee
TEN DOLLARS and other good and valuable consideration ---- ~~DOLLARS~~ for the sum ofthe following described tract of land in Davis County,
State of Utah:All of Lot 39, Hillside Gardens Subdivision, a subdivision
of part of Sections 11 and 12, Township 1 North, Range
1 West, Salt Lake Meridian;SUBJECT TO a mortgage executed by the grantor herein
in favor of GRANITE INVESTMENT COMPANY in the original
amount of \$12,500.00, recorded August 24, 1959 in
Book 169, page 622 as Entry No. 192966, office of the
County Recorder of Davis County, Utah, which said
Mortgage the grantees herein hereby assume and agree
to pay.WITNESS, the hand of said grantor, this
March, A. D. 1960.15TH

day of

Signed in the Presence of

Lester Romero

Maxine Romero

STATE OF UTAH,

County Treasurer
Box 618
Farmington, Utah 84025

1993 DAVIS COUNTY TAX NOTICE

Make Check Payable To: DAVIS COUNTY TREASURER

(801)451-3243

RETURN THIS PORTION WITH YOUR MAIL PAYMENT. Your cancelled check will be your receipt. If a validated receipt is desired return the entire tax notice and a stamped, self addressed envelope with your payment. Payment of property taxes may be made with check or money order in U.S. exchange only. If check or money order is returned by financial institution as not being honored, payment will be cancelled without notice to property owner.



00566558

* DUPLICATE *

Tax District #: 045
1993 BALANCE DUE:

Serial #: 01:111:0039
\$483.06

(45) 01:111:0039
ROMERO, LESTER & HORACE KNOWLTON
GENERAL DELIVERY
1760 WEST 2100 SOUTH
SALT LAKE CITY, UT 84111

RETAIN THIS PORTION FOR YOUR RECORDS

Property Description (not for legal documents):

ALL OF LOT 39, HILLSIDE GARDENS. CONT. 0.29 ACRES.

Property Address: 92 SOUTH 300 EAST NORTH SALT LAKE

* DUPLICATE *

Value of Property			Distribution of General Taxes			
Type	Taxable Value	Market Value	Eff. Tax Rate	Taxing Unit	Tax Rate	Amount
RES. LAND	12,280	18,334	.006915	SCHOOL DISTRICT	.010325	474.85
RES. IMPROV	33,710	50,334	.001558	DAVIS COUNTY	.002326	106.97
			.001585	N.S.L CITY	.002367	108.86
			.000532	COUNTY BOND FUND	.000795	36.56
			.000261	COUNTY LIBRARY	.000389	17.89
			.000125	WEBER WATER DIST.	.000187	8.60
			.000052	MOSQUITO ABATEMENT	.000078	3.59
			.000341	SO.DAVIS WATER DIST	.000509	23.41
			.000392	SO. DAVIS SEWER DST	.000586	26.95
			.000035	N.S.L WATER DIST.	.000052	2.39
			.000335	STATE ASSESS & COLL	.000500	22.99
	45,990	68,668	.012132		.018114	833.06

Delinquent Information

Taxes are Delinquent at 5:00 P. M. Nov. 30, 1993

State statute prevents the County Treasurer from accepting payment of current years taxes between DEC. 1 AND DEC 15. Payments received between DEC. 15, 1993 and JAN. 15, 1994 must include a 2 percent or \$10.00 penalty, whichever is greater. After JAN. 15, 1994, interest is charged from JAN. 1, 1994 at the rate defined by state statute 59-2-1331.

Adjustments To Taxes

CIRCUIT BREAKER ABATEMENT
INDIGENT ABATEMENT

\$50.00-
\$300.00-

Total Adjustments:

Total General Taxes:

Total Payments:

\$350.00-
\$833.06
\$.00

1993 Tax Balance Due:

\$483.06

Name:

Serial #:

Loan Company:

ROMERO, LESTER & HORACE KNO
01:111:0039 (45)

Failure to receive tax notice does not excuse penalty or interest. This office is not responsible if you pay taxes on property other than your own. Newly purchased property is the tax responsibility of the buyer. If this property was subdivided or combined, other delinquencies may apply which do not appear on this notice. Make check payable to DAVIS COUNTY TREASURER and return to Box 618, Farmington, Utah 84025. Payments made by Mail must be postmarked no later than Nov. 30, 1993. Our office hours are Mon-Fri 8:30-5:00. Your taxes may be paid by your loan company.

OWNER'S POLICY

Order No. 2566

Kansas City Title Insurance Company

(A STOCK COMPANY)

No. O-UB-

Kansas City, Missouri

929

AMOUNT \$19,950.00

This Policy of Title Insurance Witnesseth, That KANSAS CITY TITLE INSURANCE COMPANY, herein called the Company, in consideration of the payment of the premium for this Policy, does hereby covenant and agree that it will pay to GLEN D. WARDLE and THORA WARDLE, his wife,

hereinafter called the Insured, the heirs, devisees, or personal representatives of the Insured, all loss or damage not exceeding

NINETEEN THOUSAND NINE HUNDRED FIFTY AND 10/100----- Dollars.

(\$ 19,950.00-----), which they, or any of them shall sustain by reason of any defect or defects in the title of the Insured to the estate or interest of the Insured in the real estate described under Schedule A, hereto annexed, or by reason of liens or encumbrances against the same as of the date of the final examination of the title thereto, to wit: March 21, 1960 at 4:05 P.M.

which date shall be deemed the effective date of this Policy, excepting the defects, estates, interests, objections, liens or encumbrances mentioned in Schedule B, hereto annexed, or excepted by the conditions or stipulations of this Policy hereto annexed and incorporated herein as a part of this contract. Any loss hereunder shall be established and the amount thereof ascertained in the manner provided in said conditions and stipulations and be payable upon compliance with the provisions of same and not otherwise.

In Witness Whereof, KANSAS CITY TITLE INSURANCE COMPANY has caused its corporate seal to be hereto affixed and these presents to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding on the company as of the day and date countersigned by its designated home office authority or by its duly authorized agent, whose identity as authenticating signatory is subjoined hereto for reference and whose authority is guaranteed as of such date, all in accordance with its by-laws.

KANSAS CITY TITLE INSURANCE COMPANY

Local Service Unit:

BLACK'S TITLE AND ABSTRACT COMPANY

429 West 5th South

Bountiful, Utah

Phone AXtell 5-5528

Validating Signatory:

Merrill L. Black



ATTEST:

[Signature]
President

[Signature]
Secretary

Countersigned and validated this 21st day of March, 1960, at 4:05 o'clock P.M. (Here insert date of Special Counsel's final certificate of title.)

[Signature]
Authorized Signatory.

SCHEDULE A

1. The estate of the Insured in the real estate described below covered by this Policy is

FEE SIMPLE TITLE

2. The deed or other means by which the estate or interest covered by this Policy is vested in the Insured is described as follows:

SCHEDULE B

This Policy does not insure or indemnify against the estates, interest, defects, objections to title, liens, charges and encumbrances affecting said real estate, or the estate or interest therein insured, as are scheduled below:

1. The title to appliances installed on deferred payments whether attached to or otherwise used in connection with the premises hereby insured.

2. Rights of parties in actual possession of all or any part of the premises other than the Insured.

3. Mechanics' and materialmen's liens not of record at the effective date of this Policy.

4. Any discrepancies, conflicts, encroachments, or shortages in area and boundaries which a correct survey would show.

5. Taxes for the year 1960 now accruing as a lien, not yet due.

6. Said property is included within the boundaries of the Weber Basin Water Conservancy District; the Davis County Mosquito Abatement District; the Bonneville Irrigation District; South Davis County Water Improvement District; and the South Davis County Sewer Improvement District, and is subject to any assessments which may hereafter accrue in their favor.

7. Subject to the Protective Covenants affecting Hillside Gardens Subdivision, dated January 25, 1956, executed by Mary Godbe Gibbs, et al, recorded February 28, 1956 in Official Records, Book 101, Page 157, Entry No. 154491.

8. A Mortgage dated March 14, 1960, executed by Glen D. Wardle and Thora Wardle, his wife, given to secure the payment of a certain promissory note of even date therewith, in the principal sum of \$14,500.00, payable together with interest as therein provided, in favor of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a corporation, recorded March 16, 1960 in Official Records, Book 184, Page 116, Entry No. 201292.

THE EQUITABLE LIFE ASSURANCE SOCIETY
OF THE UNITED STATES

HOME OFFICE NEW YORK 1, NEW YORK

G. A. BAKER, CASHIER
608 FIRST SECURITY BLDG.
405 SO. MAIN ST.
P. O. BOX 1800, SALT LAKE CITY 10, UTAH

Mr. Glen D. Wardle
320 East Center Street
Bountiful, Utah

March 16, 1960

Dear Mr. Wardle:

Loan Number 151002

The closing of your Equitable Loan provides an opportunity to congratulate you on your decision to assure the purchase of your home for your family.

Installment payments are due on the first of each month. It is to your advantage to make payments promptly since in this manner the portion of each installment applied to loan principal increases and the portion applied to interest decreases each month.

While monthly notices or receipts are not furnished, you will receive an annual statement of the amounts applied during the calendar year to principal, interest and insurance premiums, and the balance of unpaid principal. Shortly after the due date of the first monthly loan installment our Home Office will send you a set of remittance advices (one to accompany each remittance), a supply of envelopes and a wallet for your convenience in maintaining remittance records. In the meantime we are enclosing several self-addressed envelopes for your use in making payments prior to receipt of this packet.

Taxes and fire insurance premiums should be paid directly by you. Your fire insurance broker should be instructed to forward the original renewal policy to this office at least 5 days prior to the expiration of any fire insurance policy, and to send you a copy of the policy with a bill for the premium.

Yours very truly,

G. A. Baker

Cashier

Due	Insurance Premium		\$
Due 60-5-1	Monthly Installment	\$151.97	
Irregular Interest from 60-3-15	to 60-4-1	40.52	\$ 192.49
Due 60-6-1	and each succeeding month		\$ 151.97

Enc.

THE **EQUITABLE** LIFE ASSURANCE SOCIETY OF THE UNITED STATES
120 Montgomery St., Suite 750, San Francisco, California 94104 (415) 397 0000
REAL ESTATE OPERATIONS -- MANAGEMENT DEPARTMENT
WESTERN REGIONAL SERVICE CENTER

LARRY D. BURNETT, CIU, FIAA
Manager

Mr. Glen D. Wardle
320 E. Center Street
N. Salt Lake City, Utah

March 13, 1980

Re: H Loan No. 403 516

Dear Mr. Wardle:

Congratulations! The last payment due under your mortgage is that payment due April 1, 1980. Our records indicate it will be for an amount of \$89.06. Please use this letter as your official notification of final payment due.

Please be assured that we appreciated your business and if you have any questions in reference to this letter, please let us hear from you.

Sincerely,)

P. J. Ries
Assistant Manager - Servicing

PJR/ir
Enclosure



THE **EQUITABLE** LIFE ASSURANCE SOCIETY OF THE UNITED STATES
120 Montgomery St., Suite 750, San Francisco, California 94104 (415) 397-0800
REALTY OPERATIONS AREA — MANAGEMENT DEPARTMENT
WESTERN REGIONAL SERVICE CENTER

LARRY D. BURNETT, CIU, FLM
Manager

Glen D. Wardle
320 East Center St.
Bountiful, Utah

April 8, 1980

Loan No.: 403 516

Dear Mr. Wardle:

We are pleased to enclose the following documents signifying the full repayment of your mortgage:

1. NOTE 2. MORTGAGE 3. RELEASE 4. POLICY TITLE

The Satisfaction of Mortgage should be taken promptly to the County Clerk for recording thereby releasing the Equitable's interest in the property.

A copy of this letter has been provided for your signature acknowledging receipt of the documents. Please return it in the stamped self-addressed envelope enclosed for your convenience.

Congratulations on reaching this significant milestone! We appreciate your having chosen the Equitable as your mortgagee and for giving us the opportunity to service your loan.

If you have questions regarding any insurance you may have purchased for mortgage protection, please contact your Equitable agent or nearest Equitable office.

Sincerely,

LDB:JC
Encl:

L. D. Burnett,
Manager

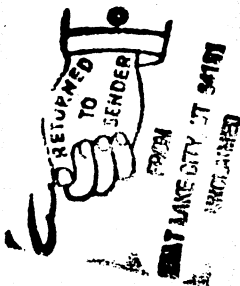
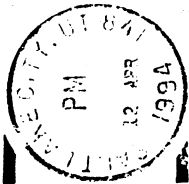
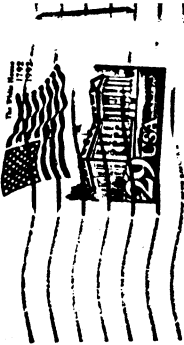
Receipt acknowledged:

Signature

Date: _____

Reminder: Have the Satisfaction of Mortgage recorded immediately as a service will be made for the preparation of a duplicate.

GEORGE K. FADEL
ATTORNEY AT LAW
ROCK-MANOR
170 WEST 400 SOUTH BOUNTIFUL, UTAH 84010



APR 29 1994

Mr. Walter R. ...
General Delivery
1760 West 1100 South
Salt Lake City, Utah 84111

Important document.

9407-2

un ml

FILED IN CLERK'S OFFICE

JUN 14 10 26 AM '94

CLERK COURT
BY D.M.
DEPUTY CLERK

940700002

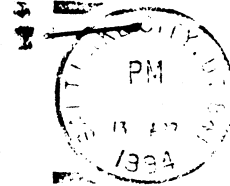
GEORGE K. FADEL

ATTORNEY AT LAW

ROCK-MANOR

170 WEST 400 SOUTH BOUNTIFUL, UTAH 84010

TURN
TO
23 JUN 1984
Forwarding Order Expired
if no such Number
by closed no order
Insufficient Address



Lunch Wagon 1890s
23 USA



Opened in error

Mr. Lester Romero
1760 West 2100 South
Salt Lake City, Utah 84111

9407-2



#940700002

BY *DM*
DEFINITION

JUN 14 10 26 AM '84

FILED IN OFFICE OF GEORGE

FILED IN CLERK'S OFFICE
DAVIS COUNTY

JUN 14 10 26 AM '94

GEORGE K. FADEL #1027
Plaintiffs
ATTORNEY FOR
170 WEST FOURTH SOUTH
BOUNTIFUL, UTAH 84010
TELEPHONE 295-2421

CLERK COURT
BY LB
DEPUTY CLERK

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

GLEN D. WARDLE and
THORA WARDLE,

Plaintiffs,

vs.

LESTER ROMERO,

Defendant.

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**MOTION FOR SERVICE
OF PROCESS BY PUBLICATION AND
ORDER**

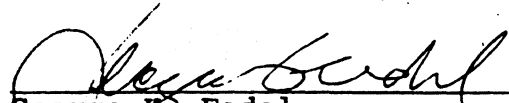
Civil No. 940700002

Judge Rodney S. Page

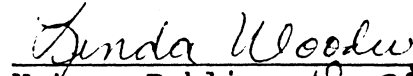
On January 3, 1994, George K. Fadel, attorney for plaintiffs, deposited a Summons and Complaint with the Civil Process Division of the Salt Lake County Sheriff's Office to be served upon Lester Romero, defendant. Having expended significant effort, the Salt Lake County Sheriff has been unable to serve process upon Romero. Since January 13, 1994, Officer Jack Hill of the Salt Lake County Sheriff's Department has attempted to serve Romero at his residence twenty-three times. Officer Hill has had prior dealings with Romero and believes that Romero recognizes Officer Hill and is intentionally avoiding service of process. Officer Hill believes that Romero has been home but has refused to answer his door. Additionally, Officer Hill has sent Officer Ron Jensen to attempt service of process.

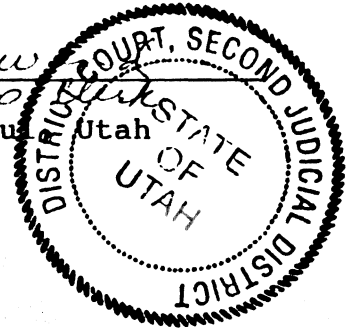
Officer Jensen's efforts were equally unproductive.

Having exhausted other service of process methods, plaintiffs pray for an order authorizing service of process upon defendant, Romero, by publication in the Davis County Clipper, a newspaper of general circulation in Davis County, Utah.


George K. Fadel
Attorney for Plaintiffs

Sworn to and subscribed before me this 12 day of April, 1994.


Notary Public
Residing at Bountiful, Utah



My Commission expires:

ORDER

Upon reading the foregoing motion and good cause appearing therefore,

IT IS HEREBY ORDERED that service of process upon Lester Romero be made by publication of summons in the Davis County Clipper, Bountiful, Utah, at least once a week for four successive weeks, and by mailing to the defendant a copy of Summons and Complaint at his last known address: 1760 West 2100 South, Salt Lake City, Utah 84111.

Dated this 12th day of April, 1994.

By the Court:


District Judge

ENVELOPE USED BY DEFENDANT IN
REPLY TO PLAINTIFFS' COUNSEL

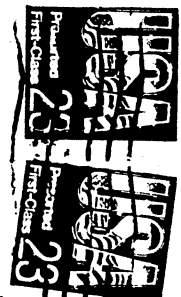
AIRPORT MOTEL
6270 S. 2005 W.
West Jordan, Utah 84084

Shore Field

1700 W 460 S

Deerfield, IL

84010



R 56

DEFENDANT'S MESSAGE TO CLERK

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

JUL 20 2 35 PM '94

CLERK, 2ND DISTRICT COURT

BY D.M.
DEPUTY CLERK

AIRPORT MOTEL

2255 WEST NORTH TEMPLE • SALT LAKE CITY, UTAH 84116 • PHONE 363-0795

940700002

MESSAGE

REPLY

TO

DATE

DATE

Dear Clerk,
I was at your court
in March and found a
case against me and
thought it would be
delivered to me but
as of today I have
never been served
as yet. I have been

told sometime a
person have been
served by publica-
tion. Please look at
case, and inform me
if it shows if it has
been served #17

Case 9400000:
Glen + Thora Ward.

VS
Lester Romero
6270 S 2005 W
West Jordan Utah
84088

SIGNED

INSTRUCTIONS TO RECEIVER:

BY

Form N-73A The Drawing Board, Inc., Box 505, Dallas, Texas

INSTRUCTIONS TO SENDER:

1. KEEP YELLOW COPY. 2. SEND WHITE AND PINK COPIES WITH CARBON INTACT.

1. WRITE REPLY. 2. DETACH STUB, KEEP PINK COPY, RETURN WHITE COPY TO SENDER

Mailed copy of docket to LESTER ROMERO
at address indicated above. Case closed,
Service by publication. D.M.