2008

# William R. Smith and Ludean A. Smith, as Trustees of the Smith Family Revocable Trust; Mack G. Smith and Carolyn Smith as Trustees of the Mack G. Carolyn Smith Revocable Trust; J. Lynn Smith, as trustee of The J. Lynn Smith Living Trust; and Cindy S. Hatch, and individual v. Security Investment LTD, a Utah limited partnership and Does 1-10 : Brief of Appellant

Utah Court of Appeals


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IN THE UTAH SUPREME COURT OF APPEALS

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| WILLIAM R. SMITH and LUDEAN A. SMITH, as Trustees of THE SMITH FAMILY REVOCABLE TRUST; MACK G. SMITH and CAROLYN SMITH, as Trustees of THE MACK G. AND CAROLYN SMITH REVOCABLE TRUST; J. LYNN SMITH, as Trustee of THE J. LYNN SMITH LIVING TRUST; and CINDY S. HATCH, an individual,<br><br>Plaintiffs and Appellees,<br><br>vs.<br><br>SECURITY INVESTMENT LTD, a Utah limited partnership, and DOES 1-10,<br><br>Defendants and Appellants. | Case No. 20080790<br><br>District Court No. 060700147 |

# BRIEF OF DEFENDANTS-APPELLANTS

Appeal From the Second District Court, Davis County, Judge Michael G. Allphin

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**ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED**

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## STATEMENT OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to Section 78-2a-3 (2) (j) Utah Code Annotated.

## STATEMENT OF THE ISSUES

A. DID THE TRIAL COURT ERR BY HOLDING THAT THERE WAS MUTUAL ACQUIESCENCE IN A FENCE AS A BOUNDARY BY ACQUIESCENCE IN FINDING THAT PLAINTIFFS BELIEVED THAT THE FENCE WAS A BOUNDARY WHICH INCLUDED TWO ACRES OF THE DEFENDANT'S DESCRIBED PROPERTY WHERE THE TRIAL COURT MADE NO FINDING THAT THE DEFENDANT SHARED THAT BELIEF?

Standard of Review: Whether a given set of facts gives rise to a determination of acquiescence is reviewable as a matter of law, however with some measure of discretion accorded the trial court. *Argyle v. Jones*, 118 P.3d 301 (Utah App. 2005).

B. DID THE TRIAL COURT ERR IN FINDING AND CONCLUDING THAT ACQUIESCENCE WAS SHOWN BY THE UNILATERAL TESTIMONY AND BELIEF OF SOME OF THE PLAINTIFFS THAT THE FENCE CONSTITUTED THE BOUNDARY WHERE LEGAL DESCRIPTIONS OF RECORD PLAINLY DISCLOSED THE TWO ACRES OF THE DEFENDANTS PROJECTING INTO THE PLAINTIFFS' LEGAL DESCRIPTION?

Standard of Review: Whether a given set of facts gives rise to a determination of acquiescence is reviewable as a matter of law, however with some measure of discretion accorded the trial court. *Argyle v. Jones*, 118 P.3d 301 (Utah App. 2005); *Wilkinson Family Farm, LLC v. Babcock*, 993 P.2d 229 (Utah App.

1999) (Both parties must have knowledge of the existence of a line as the boundary line.)

C. DID THE TRIAL COURT ERR IN REFUSING TO IMPUTE CONSTRUCTIVE NOTICE OF THE RECORD DESCRIPTIONS TO NEGATE PLAINTIFFS' ASSERTED BELIEF THAT THE FENCE WAS THE BOUNDARY?

Standard of Review: This is an issue of law reviewed for correctness in interpreting a statute. *Sachs v. Lesser*, 163 P.3d 662, 673 (Utah App. 2007); Utah Code Annotated § 57-4a-2.

D. DID THE TRIAL COURT ERR IN OMITTING FINDINGS BASED UPON RECORD TITLES SHOWN BY EXHIBITS RECEIVED IN EVIDENCE?

Standard of Review: When reviewing a trial court's findings based on written materials, the Court of Appeals is in as good a position as the trial court to examine the evidence de novo and determine the facts and conclusions. *Matter of Adoption of Infant Anonymous*, 760 P.2d 916, 918 (Utah App. 1988); *Bench v. Bechtel Civil & Minerals Inc.*, 758 P.2d 460, 461(Utah App. 1988).

E. DID THE TRIAL COURT ERR IN ITS CONCLUSIONS OF LAW WHICH ARE NOT SUPPORTED BY ITS FINDINGS OF FACT?

Standard of Review: The appellate court defers to the trial court's findings of fact, but grants no deference to the district court's conclusions of law. *Low v. City of Monticello*, 103 P.3d 130, 133 (Utah 2004); *Jeffs v. Stubbs*, 970 P.2d 1234, 1241 (Utah 1998).

F. DID THE TRIAL COURT ERR IN ITS PRETRIAL PARTIAL SUMMARY JUDGMENT ADUDICATION THAT SILENCE ALONE IS SUFFICIENT TO CONSTITUTE ACQUIESCENCE IF THE DEFENDANT ALSO TREATED THE FENCE AS A BOUNDARY INSTEAD OF A BARRIER AND LIMITING THE ISSUE FOR TRIAL AS BEING WHETHER THE DEFENDANT TREATED THE FENCE AS A BOUNDARY OR AS A BARRIER UNDER UTAH'S DOCTRINE OF BOUNDARY BY ACQUIESCENCE?

Standard of Review: Summary Judgment is a conclusion of law and no deference is given to the trial court's conclusions of law. *Park West Condominium Ass'n. Inc. v. Deppe*, 153 P.3d 821, 824 (Utah App. 2006).

## STATEMENT OF THE CASE

A. Nature of the Case.

Plaintiffs are four children of William Howard Smith, who through his created entities transferred a 104.87 acre tract of pasture land to his four children who then created four separate trusts to take title to a one-fourth interest to each trust with each child being named as Trustee of the child's trust. All of said 104.87 acres are situated in Section 22 Township 2 North Range 1 West.

The defendant has owned 65 acres of which, 63 acres are in Section 23 east of Section 22, and two acres are in Section 22 projecting into and surrounded on three sides by the plaintiffs' property. A fence along the section line between Sections 22 and 23 existed prior to 1949 and was maintained by parties on each side of the fence to contain their respective cattle. The defendants' two acres in Section 22 was not separately fenced and was used by the plaintiffs and predecessors for

ditches and grazing.

The trial court entered judgment and decree quieting title to the two acres of the defendants to the plaintiffs after finding a boundary by acquiescence.

B. Course of Proceedings.

Plaintiffs filed a complaint on March 20, 2006 alleging a recent survey revealed to them that the fence was not on the recorded boundary and that the fence became a boundary by acquiescence.

The trial court granted partial summary judgment based upon an affidavit of one of the plaintiffs, Cindy S. Hatch, that the only issue remaining for trial would be whether the defendant treated the fence as a boundary or as a barrier under Utah's doctrine of boundary by acquiescence.

A bench trial on the reserved issue was held June 5, 2008, and the court made Findings of Fact and Conclusions of Law on August 5, 2008. A judgment was entered quieting title on September 8, 2008.

## STATEMENT OF FACTS

We recite the Findings of fact of the trial court as being supported by the evidence. However there are other undisputed facts in admitted exhibits upon which the court did not make findings. The eleven paragraphs of Findings of Fact are as follows:

FINDINGS OF FACT #1-11
(R-359-362)

1. The plaintiffs and the defendants are neighbors. The plaintiffs' property is located west of the defendants' property.

2. There has been a barbed wire fence on the east side of the plaintiffs' land since at least 1964. In fact, it appears from the testimony given at trial that the fence is in the same location that it has been since 1949.

3. That fence is the boundary between the plaintiffs' property and a number of other properties owned by different individuals. The fence follows a straight, or nearly straight, course. The fence follows the record boundaries, with one exception. In one portion of the fence line, the fence line does not follow the record boundary. Instead, the fence continues in a straight line and cuts off a two-acre parcel that is recorded as belonging to the defendants. That parcel ("the Parcel") is the basis the dispute between the parties.

4. Both parties helped maintain the fence.

5. The plaintiffs' property was passed down through inheritance to the current owners. The plaintiffs took possession of the property in 1978. All of the plaintiffs and their predecessors used the Parcel for farming and grazing. The plaintiffs were never told not to use the Parcel, and the plaintiffs were never informed that the Parcel belonged to the defendants. The defendants have not used the Parcel for any purpose, and individuals who leased the defendants' property likewise did not use the Parcel for any purpose.

6. The plaintiffs have always believed that the fence is the boundary between their property and the defendants' property.

7. Both parties have grazed cattle on their respective properties.

8. There are two ditches that follow different portions of the fence. All ditches are located on the west side of the fence, and are thus on the plaintiffs' side of the fence.

9. The ditch that follows the portion of the fence that borders the Parcel is the Smith drain. There were some allegations during the litigation of the motion for summary judgment that the fence might have served as a barrier to livestock, and that the fence kept the cattle out of the drain ditch. However, the fence is only on one side of the ditch. As noted above, both parties ran cattle on their respective properties. Thus, the fence did keep the defendants' cattle out of the Smith drain, but there was no fence to keep the plaintiffs' cattle out of the Smith drain. In fact, Scott Smith testified that the plaintiffs use the Smith drain to help water their cattle. Thus, the Smith drain is not the type of ditch for which a fence was required to keep cattle from entering the ditch.

10. Mack Smith is the grandson of William R. Smith, who purchased the property that now belongs to the plaintiffs. Mack Smith testified that the Smith drain was dug after the fence was constructed, and the digging of the drain had no effect on the location of the fence.

11. Marvin George testified that in approximately 1965, he, his father, and another gentleman were working on the fence, and had a discussion with one of the plaintiffs' predecessors. Marvin George testified that the substance of the conversation was that he and his father, who were leasing the defendants' property, were actually paying to lease two acres that they were not using (the Parcel). There was no testimony given that showed that any of the plaintiffs knew of this conversation, and there is not testimony given that the plaintiffs knew after 1978 that the Parcel was actually the defendants' property. (End of court's Findings of Fact).

Additional undisputed facts are contained in the exhibits included in the addendum to this brief.

As shown on pages 108-111 of the transcript of trial, the defendants' counsel reviewed Exhibit JT17 which is a patent from the United States of America to Heber C. Wood describing the south half of the southeast quarter of Section 22 which is an 80 acre parcel which includes a four acre tract, the north two acres of which is in the defendants' recorded description and the south two acres became part of the plaintiffs recorded description.

In that same year, 1883, the said Heber C. Wood deeded the south half of the southeast quarter of Section 22 excepting the four acres lying and situated in the northeast corner of said south half of the Southeast quarter of Section 22, which

four acres later became divided into two acres on the north for the defendants and two acres on the south for the plaintiffs. The plaintiffs received their two acres as part of a seven acre tract, five of which are in Section 23 and two of which are in Section 22, in 1949 as shown by Plaintiffs Exhibits 23, 24 and 25. (R 350). The two acre tract of the defendant came in a deed in 1951, as part of a described 6.366 acre tract, 4.636 of which are in Section 23 and two acres are in Section 22.

The fence line along the section line was never changed to conform to the subsequent division of the four acre tract and later to two, two-acre tracts and as such was never a boundary for any conveyances.

## SUMMARY OF ARGUMENT

The fence which is claimed by the Smith family to be a boundary line by acquiescence was found by the court to be in the same location that is has been since 1949 (the year plaintiffs' grandfather acquired the tract along with hundreds of acres adjoining thereto). The only plaintiff to testify was Mack Smith who said that there was an old fence existing in 1949 which Smiths reconstructed in the same location along the section line.

Prior to 1883, the property on both sides of the fence was owned by Heber C. Wood, who in 1884 deeded four acres in Section 222 to Jacob Gierisch. These four acres eventually were divided into two acre parcels. The South going to Smiths in

1949 in a description of a 7.545 acre tract of which 5.545 acres were in Section 23 east of the fence line and 2.0 acres were west of the section line in Section 222, having dimensions of 231 feet east to west and 379.6 feet north to south.

The two acres of Security Investment (Stahle), defendant were acquired in 1951 from Luvena Winegar along with other acreage in Section 23. One description in the Winegar deed is that of 6.636 acres, 4.636 of which are in Section 23 and two acres are in Section 22 projecting into the Smith farm wit dimensions of 231 feet east to west and 379.6 feet north to south.

Accordingly, the fence along the section line which was old as of 1949, was not a boundary to either the two acre tract of Security, nor to the two acre tract of Smith to the south thereof.

The trial court entered partial summary judgment limiting the issue for trial stating: "Therefore, the only remaining issue for trial is whether defendant treated the fence as a boundary or as a barrier under Utah's doctrine of boundary by acquiescence." (R192). There is no finding of the trial court that the "defendant" treated the fence as a boundary, and only recited facts relating to the use of the fence as a barrier to contain cattle of both parties. The court did find that Marvin George, of the George family which leased the defendants' property form 1965 to the time of trial knew that they were paying to lease two acres of Security's property which they were not using. Marvin George was subpoenaed by the plaintiffs and testified as a

witness for the plaintiff, and he testified that the reason they did not farm the two acres was "it wasn't economically feasible for us to go fence it. Our lease wasn't enough to make it worth fencing two acres off. We didn't need the pasture." (Tr 68).

If the trial court were correct in limiting the issue for trial to whether the defendants treated the fence as a barrier or a boundary, then that issue should have been resolved in favor of the defendant that the fence was only treated as a barrier. Because Marvin George was called by the plaintiffs to testify as their witness, they are vouching for his testimony and veracity. *State v. Burke*, 129 P.2d 560, 562 (Utah 1942); *Schlatter v. McCarthy*, 196 P.2d 968, 975 (Utah 1948).

Use alone is not evidence of acquiescence. Knowledge of the true boundary defeats a claim in acquiescence. Keith Stahle, the founder of Security was an attorney and the attorney who represented the plaintiffs' grandfather in the 1949 purchase where in Stahle supplied an opinion of title.

Mack Smith was asked if he knew Keith Stahle (Staley) and testified:

Q Did you know Keith Stahle?
A I knew who he was.
Q Did you know his relationship with you father?
A Only that they all grew up in Bountiful.
Q Did you know that he ever represented you grandfather?
A Keith Stahle?
Q Yes.
A I don't recall one way or the other.

The trial court should not have accepted the affidavit of Cindy Hatch as

being sufficient for its partial summary judgment limiting the issue at trial. Her affidavit was unsubstantiated opinion, conjecture and belief.

The mere fact that a fence happens to be put up and neither party does anything about it for a long period of time will not establish it as a true boundary under the doctrine of boundary by acquiescence.

Occupation up to a fence without interference is not sufficient to establish acquiescence in the fence as a boundary.

Both parties must have knowledge of the existence of a line as a boundary and recognition and acquiescence must be mutual. Defendant knew that the line was not a boundary. None of the plaintiffs had knowledge of the fence being a boundary, and at most supposed or mistakenly believed it to be. The fence was used as a barrier for cattle and was never an ownership boundary. All references in recorded documents are descriptions tied to section monuments with no reference to any fence, until the Judgment dated September 14, 2008, described the boundary with reference to a fence along several courses and distances.

## ARGUMENT

**POINT I. THE TRIAL COURT ERRED BY HOLDING THAT THERE WAS MUTUAL ACQUIESCENCE IN A FENCE AS A BOUNDARY BY ACQUIESCENCE IN FINDING THAT PLAINTIFFS BELIEVED THAT THE FENCE WAS A BOUNDARY WHICH INCLUDED TWO ACRES OF THE DEFENDANT'S DESCRIBED PROPERTY WHERE THE TRIAL COURT MADE NO FINDING THAT THE DEFENDANT SHARED THAT BELIEF.**

The trial court's finding in Par. 6 that "the plaintiffs have always believed that the fence is the boundary between their property and the defendants' property" is supported by an affidavit of Cindy S. Hatch and the trial testimony of Mack Smith, who are two of the four plaintiffs. The other two plaintiffs did not testify, nor was there direct evidence of their beliefs. Thus if mistaken belief constitutes acquiescence, then only two of the four owners are on record as so believing.

Cindy S. Hatch's affidavit is dated September 4, 2007 and supplied in support of Plaintiffs' motion for summary judgment. After stating that she is a registered certified public accountant licensed with the state of Utah, the relevant portions of the affidavit are: (R-311)

> 2. Since 1978, I, along with my three brother, have had an interest in my family's farm located in Davis County, Utah, which is referred to as the Smith Parcel in the above-captioned lawsuit and is more particularly described as follows: [a full legal description follows which shows the exclusion of the defendants' two acre tract of 231 feet east to west and 379.60 feet north to south]
>
> 3. Since at least 1978, I have observed our family use the Smith Parcel for the raising of hay and for grazing of livestock.
>
> 4. Since 1978, I have believed that the East boundary of the Smith Parcel is located in the place of barbed wire fence that currently exists as depicted in the survey attached hereto as Exhibit 1. I know that the barbed wire fence has existed in its present location as depicted on the survey since at least 1978.
>
> 5. Just before this lawsuit was filed, I learned that the fence does not strictly follow the boundary of the Smith Parcel, but instead follows a path that leaves some property to which Security claims to have record title.

6. Before obtaining the survey attached in the Exhibit 1, I had not known that the legal description for the parcel of land owned by Security Investment Ltd. crosses the barbed wire fence along the East boundary of the Smith Parcel.

7. The fence has been treated by me and our family as the boundary between the Smith Parcel and all of the property owner to the East, including Security, since at least 1978.

8. I have never seen anyone use any of the property on our side of the fence other than our family. Specifically, I have never observed nor been told that Security or anyone affiliated with Security, has ever used any portion of the property on our side of the fence. In fact, our family has consistently, and without interruption, used all of the property on our side of the fence, including the area Security now claims belongs to it in the above-captioned lawsuit. Our family's use has included improving the soil, running livestock, planting and cutting hay and other farm related uses.

9. The barbed wire fence is the boundary between the Smith Parcel and the adjoining property owned by Security and has been since at least 1978.

Cindy's affidavit does not state what the other three plaintiffs believed, however she indicates that she and her family treated the fence as a boundary.

The only plaintiff to testify was Mack Smith whose testimony relative to his belief of the boundary is the following excerpts from the transcript:

Q Okay. What have you considered to be the boundary between your farm and the Security Investment parcel or the Staley parcel as it is often been referred to?
A This fence.

(TR 79). Regarding the fence:

Q And you're saying that that [ditch] was dug after the fence was located in its current location?

A We never, ever – the fence was always there from the time we bought the farm and we dug the drain ditch, we moved west of it and the integrity of the fence was never affected by the digging of the drain ditch.

(TR 79-80).

Q And in your recollection does the fence run relatively straight considering it had (inaudible) and everything from that point south?

A It does.

Q And who was the owner of this parcel?

A We owned that. It was part of the Smith Farm.

Q Who were the owners of it?

A At that time, at the time we bought it was W. R. Smith, my grandfather.

Q Okay. And at some point in time you became aware of the Security Investment or Staleys owning a parcel. Would you please show for us in a different color, maybe orange color where you believe the Security parcels come into your fence line?

A Well, this is going to sound very ridiculous but this is my recollection. I was at the courthouse looking up—

Q Just over here where this Security parcel is.

A This is their parcel hereon up. And I was in the courthouse doing something, I think probably looking at the right-of-way on the Gun Club Road and my memory told me there was two acres out here in our property that belonged to the Staleys.

Q And when did you become aware of that?

A. Pretty vague on that, maybe 15 years ago or something, I don't know. I couldn't imagine why John Staley as an attorney would have taken two acres out in the farm so when I learned recently with this dispute that it

attached to their property, I went over to the courthouse to see if I was crazy and it turns out I was.

Q Well, during the time period that's at issue here, did you know any other boundary other than that blue line?

A Never have ever known any other boundary.

(TR 81).

If 15 years ago he was looking at the right of way or the Gun Club Road, he knew that "there was two acres out here in our property that belonged to Staleys," that would be in 1993, when he had actual knowledge of the Staley's two acres. The alleged twenty-year period was claimed as being form 1978 to 1998. Mack's belief did not continue for twenty years, only five years.

Assuming that one's belief is synonymous with acquiescence, we consider the effect of a unilateral mistaken belief.

In *Brown v. Milliner*, 232 P.2d 202, 207 (Utah 1951), the Court held (quoting from *Holmes v. Judge*, 312 Utah 269):

> "We do not wish to be understood as holding that the parties may not claim to the true boundary, where an assumed or agreed boundary is located through mistake or inadvertence, or where it is clear that the line as located was not intended as a boundary, and where a boundary so located has not been acquiesced in for a long term of years by the parties in interest."

Cindy was mistaken as to the fence being a boundary and her mistaken belief should not deprive the defendant who was not mistaken.

The *Brown v. Mulliner* court also held that a fence erected at a time land on

both sides of the fence was owned by the same person the doctrine of boundary by acquiescence was inapplicable:

> In Home Owners' Loan Corporation v. Dudley, supra, there was evidence that a fence line, which it was contended had long been acquiesced in as the boundary, had been erected at a time when the land on both sides of the fence was owned by the same person; in Peterson v. Johnson, it was proved that the fence in question had been erected when the property on one side thereof was part of the public domain; and in Glenn v. Whitney, supra, a fence, urged to be a long-recognized boundary, was shown by the evidence to have been erected by a person who never owned the property on either side of the fence. In all three of these cases this court held that the doctrine of boundary of acquiescence was not applicable because in view of the evidence there was no room for any implication that the fence line had been erected by adjoining owners pursuant to an agreement between them as to the location of the boundary between them.

*Brown v. Milliner*, 232 P.2d 202, 207 (Utah 1951).

In *Brown v. Mulliner*, it was also stated that a person is presumed to claim title to the land called for by his deed.

> The fact that a landowner allows others to share with him the use of his land does not necessarily signify a disclaimer of ownership. And this is perhaps ever more true when, as in the instant case the location of the true boundary does not appear to have been known to he adjoining owners. A person should be presumed to claim title to all the land called for by his deed unless it clearly appears otherwise.

*Id.* at 208.

There do not appear to have been appellate decisions on the relationship between "belief" and acquiescence. Even assuming the relevance of "belief," a determination of a person's belief is not readily provable. Should the test of "belief" be a subjective one, or the objective test of a reasonable person under the

circumstances? An objective test would require a person to make substantial investigation or inquiry to support a belief.

The California District Court of Appeal case of *Rast v. Fischer*, 236 P.2d 393, 395 (1951) stated that:

> [1] Thus we have at the outset a situation in which there was no disputed boundary, but a mistake as to the true boundary by the parties concerned. As was said in Pedersen v. Reynolds, 31 Cal.App.2d 18, 28, 87 P.2d 51, quoting from 4 Thompson on Real Property, page 210, section 3115, "An agreement or acquiescence in a wrong boundary when the true boundary is known, or can be ascertained from the deed, is treated both in law and equity as a mistake, and neither party is estopped from claiming the true line."

The part of the quotation "or can be ascertained from the deed" suggests that an examination of the deed description is at least an important element of an objective test as evidence of "belief."

The Utah Court of Appeals decision in *Brown v. Jorgensen*, 136 P.3d 1252 (Utah App. 2006) precludes a determination of boundary by acquiescence where only one party recognizes a fence as a boundary in stating that:

> Although acquiescence in a boundary line may occur through a party's silence or failure to object and does not require an explicit agreement, "*recognition and acquiescence must be mutual*, and both parties must have knowledge of the existence of a line as [the] boundary line." *Argyle v. Jones*, 2005 UT App 346, ¶11, 118 P.3d 301 (emphasis added) (alteration in original) (quotations and citations omitted).
>
> [12-14] ¶16 In the instant matter, although the Browns subjectively believed that the Fence was the property line, they never actually communicated their belief to Jorgensen, either by word or action. Therefore, there was no "actual acknowledgement ... that the parties treat the [F]ence as the common boundary." Moreover, "'[t]he mere fact that a fence happens to

be put up and neither party does anything about it for a long period of time will not establish it as the true boundary.'" *Argyle*, 2005 UT App 346 at ¶13, 118 P.3d 301 (alteration in original) (quoting *Glenn v. Whitney*, 116 Utah 267, 209 P.2d 257, 260 (1949)); *see also Hales v. Frakes*, 600 P.2 556, 559 (Utah 1979) ("[P]laintiff's occupation to the fence without interference was not sufficient to establish defendant's acquiescence in the fence as a boundary.").

*Brown v. Jorgensen*, 136 P.3d at 1257.

**POINT II. THE TRIAL COURT ERRED IN FINDING AND CONCLUDING THAT ACQUIESCENCE WAS SHOWN BY THE UNILATERAL TESTIMONY AND BELIEF OF SOME OF THE PLAINTIFFS THAT THE FENCE CONSTITUTED THE BOUNDARY WHERE LEGAL DESCRIPTIONS OF RECORD PLAINLY DISCLOSED THE TWO ACRES OF THE DEFENDANTS PROJECTING INTO THE PLAINTIFFS' LEGAL DESCRIPTION.**

As quoted from *Brown v. Jorgensen*, "*recognition and acquiescence must be mutual*, and both parties must have knowledge of the existence of a line as [the] boundary line." *Brown v. Jorgensen*, 136 P.3d at 1257.

The trial court made no finding that the defendant recognized and acquiesced in the fence line as a boundary, and in fact the court in its Findings of Fact, paragraph 11, refers to the testimony of Marvin George, who with his father, was leasing the defendants' 65 acres for pasturing cattle and were actually paying for two acres that they were not using. This testimony and finding clearly negate any "mutual" recognition or acquiescence in the fence as a boundary. Marv George was subpoenaed by Plaintiffs to testify. At page 68 of the transcript, his testimony was:

Q Mr. George, you were leasing 65 acres. Why didn't you farm any of the portion of the two acres west of the fence?

A It wasn't economically feasible for us to go fence it. Our lease wasn't enough to make it worth fencing two acres off. We didn't need the pasture.

## POINT III. THE TRIAL COURT ERRED IN REFUSING TO IMPUTE CONSTRUCTIVE NOTICE OF THE RECORD DESCRIPTIONS TO NEGATE PLAINTIFFS' ASSERTED BELIEF THAT THE FENCE WAS THE BOUNDARY.

The Plaintiffs are bound by actual notice and by constructive notice by statute. Utah Code Annotated § 57-4a-2 provides:

**57-4a-2. Recorded document imparts notice of contents despite defects.**

A recorded document imparts notice of its contents regardless of any defect, irregularity, or omission in its execution, attestation, or acknowledgment. A certified copy of a recorded document is admissible as evidence to the same extent the original document would be admissible as evidence.

The plaintiffs' complaint sets forth the recorded legal description which excludes the defendants' 231 feet by 379.60 feet in Section 22. (R2) The same description is repeated in a deed by Plaintiffs' father and mother to "Alkali Limited" a partnership in which plaintiffs were partners, recorded October 20, 1978, in Book 734, page 628, in the office of the Davis County recorded as shown by JT Exhibit 11 admitted into evidence.

The same description was repeated in a Quit Claim Deed made by Alkali Limited by its partners, William R. Smith, Mack G. Smith, John Lynn Smith and

Cindy Smith Hatch to BMJC, L.L.C. recorded May 4, 1999 as shown by JT Exhibit 12.

There was a subsequent conveyance by BMJC to the four trusts of the plaintiffs with an identical description dated June 7, 2001.

The Utah Supreme Court, in the case of *Universal C.I.T. Corporation v. Courtesy Motors*, 8 Utah 2d 275 (Utah 1959), stated first that "it is not claimed that under the Colorado statutes this recordation was effective for giving constructive notice," and then held:

> As stated by this court in McGarry v. Thompson, 114 Utah 442, 201 P.2d 188, at page 293 in requoting with approval from Wood v. Carpenter, 101 U.S. 135 at page 141, 25 L.Ed. 807:
>
> "'Whatever is notice enough to excite attention and put the party on his guard and call for inquiry is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it.'"

*Id.* at 278.

Accordingly, the actual notice of content of the deeds, and constructive notice, should eliminate the plaintiffs' belief claims and should constitute knowledge which controverts the claim of boundary by acquiescence.

Failure to read the content of a contract is no defense and the came principle should apply in failure to read the deed descriptions. In the case of *Garff Realty Co. v. Better Buildings*, 234 P.2d 842 (Utah 1951), the Supreme Court quoted from 12 Am. Jur., *Contracts*, Section 137:

> The governing rule is thus stated in 12 Am. Jur., contracts, sec. 137, pp. 628-29: Ignorance of the contents of an instrument does not ordinarily affect the liability of one who signs it. * * * If a man acts negligently and in such a way as to justify others in supposing that the writing is assented to by him he will be bound both at law and in equity, even though he supposes the writing is an instrument of an entirely different character. The courts appear to be unanimous in holding that a person who, having the capacity and an opportunity to read a contract, is not misled as to its contents and who sustains no confidential relationship to the other part cannot avoid the contract on the ground of mistake if he signs it without reading it, at least in the absence of special circumstances excusing his failure to read it. If the contract is plain and unequivocal in its terms, he is ordinarily bound thereby. * * * To permit a party, when sued on a written contract, to admit that he signed it but to deny that it expresses the agreement he made or to allow him to admit that he signed it but did not read it or know its stipulations would absolutely destroy the value of all contracts. The purpose of the rule is to give stability to written agreements and to remove the temptation and possibility of perjury, which would be afforded if parol evidence were admissible.

*Garff Realty Co.*, 234 P.2d at 844. Also, Am. Jur. 2d *Contracts*, Section 225 is to the same effect.

## POINT IV. THE TRIAL COURT ERRED IN OMITTING FINDINGS BASED UPON RECORD TITLES SHOWN BY EXHIBITS RECEIVED IN EVIDENCE.

The trial court made no findings based upon record titles as contained in Exhibits admitted in evidence. These exhibits of recorded documents are attached in the addendum and can be determined by this Court to show that the fence was never erected as a boundary. The exhibits in the addendum were admitted by stipulation. (Tr. 107).

Exhibit JT 17 is a patent from the united States to Heber C. Wood in 1883,

which describes the South half of the South East Quarter of the South Section twenty-two containing 80 acres. The two acres of the defendant, Security, and the Smith property in dispute are within said 80 acres.

This patent was followed by a deed (Exhibit JT 18) in 1883 from Heber C. Wood to Jacob Gierisch, conveying the 80 acre tract "except four acres lying and situate in the Southeast corner of the said South half of the South East Quarter of Section No. 22, T 2 R 1 W." The south two acres of said four acres now are owned of record by the plaintiffs and the north two acres are owned of record by the defendant. Accordingly as of 1883, a fence along the section line between Sections 23 on the east and Section 22 on the west was no longer a boundary of the four acres.

In 1901, Heber C. Wood deeded the four acres to Jacob Gierisch as shown by Exhibit JT 19.

In 1913, Jacob Gierisch, by Warranty Deed (Exhibit JT 20) deeded in separate descriptions the four acre tract and the 76 acre tract to Ancel Hatch.

Ancel Hatch in 1945 executed a Sale Agreement (Exhibit JT 22) with William Guffy for several parcels, one of which is the two acre parcel of the four acre parcel now owned of record by Plainitiffs.

The trial court's Findings of Fact, paragraph 2 (R 360), stated: "There has been a barbed wire fence on the east side of plaintiffs' land since at least 1964. In

fact it appears from the testimony given at trial that the fence is in the same location that it has been since 1949."

Mack Smith, one of the plaintiffs and the only plaintiff to testify at trial, recalled that in 1949 or 1950, an old fence was in existence. On direct examination, Mack Smith testified as follows: (Tr 78-79).

> Q Now you've identified a fence. Is the fence that you're talking about in the same location as the fence that's there today?
>
> A It is.
>
> Q And approximately what time was this?
>
> A It would have been in '49 or '50, right after we bought it. We gathered up the old wood fence.
>
> Q And when you were gathering up the old wood fence, was there a fence already there, is that what you just said?
>
> A It was a very crude, barbed wire fence. They used tree limbs for fence posts, etc. but it was there.
>
> Q So I imagine that you observed that fence be repaired or participated; is that correct?
>
> A I have.
>
> Q And would you describe that for us? How have you participated in repairing that fence.
>
> A Just the general fence repair, you go along and check the posts and staple and if there's wire missing you replace it and...
>
> Q In connection with that have you ever seen the fence move any more than just a few – I mean, can you describe for us whether it's been moved?

A It's where it's always been.

The trial court's conclusion that the fence was to serve as a boundary and a second purpose to serve as a barrier to keep cattle on the property is not consistent with the testimony that an old fence in 1949 was reconstructed which was described as a very crude, barbed wire fence using tree limbs for fence posts, and the fence is in the same location that the one is today. That old fence was never a boundary to the four acres which were separated off from the 80 acres starting in 1893, and was never a boundary to the two acres of the defendant, nor the two acres of the plaintiff of that four acres in several conveyances after 1893 and subsequent conveyances described in JT Exhibits 11 through 27.

**POINT V. THE TRIAL COURT ERRED IN ITS CONCLUSIONS OF LAW WHICH ARE NOT SUPPORTED BY ITS FINDINGS OF FACT.**

The trial court concluded there was mutual acquiescence in the line as a boundary, however, only one plaintiff, Mack, testified concerning his belief that the fence was a boundary, although in 1993 he had seen the plat at the recorder's office and said "my memory told me there was two acres out here in our property that belonged to the Staleys." R82.

Cindy S. Hatch's affidavit stated she believed the fence was the boundary in that she had never seen anyone other than her family using the property west of the fence line. JT Exhibit 14 are photocopies of photos depicting the fence line area

which is overgrown with trees and vegetation unrelated to farming or occupation up to the fence which is obscured by the growth.

Scott Smith, a son of the plaintiff, William R. Smith, testified that he took over running the Smith Farm in 1986. (Tr 24). Scott testified that there was a drainage ditch west of the fence and an irrigation ditch about 50 feet west of the fence which was used to irrigate the pasture, although the cattle grazed the area between the fence and the irrigation ditch. (Tr 51).

Cindy Hatch could not have observed anyone occupying the land between the irrigation ditch and the fence line and her affidavit states that since 1978 she observed her family use the Smith parcel for raising of hay and for grazing of livestock (Tr 167) and that the family's use included improving the soil, running livestock, planting and cutting hay and other farm related uses (Tr 168). It appears that the 50 feet east of the irrigation ditch could only be used by cattle assuming that the cattle were attracted to the overgrown area 59 feet west of the fence and is the only evidence of "occupation up to a visible line."

There was no evidence of any acquiescence by the defendant in the fence as a boundary.

The trial court, in paragraph 11 of the findings, recognized the testimony of Marvin George in 1965 while he and his father were working on the fence there was a discussion with one of the plaintiffs' predecessors where "the substance of the

conversation was that he and his father, who were leasing the defendants' property, were actually paying to lease two acres that they were not using (the parcel)." The court also stated in that paragraph 11 that there was no testimony given that the plaintiffs knew of this conversation, and there was no testimony given that the plaintiffs knew after 1978 that the parcel was actually the defendants' property (R 362). Marvin George also testified as to why he didn't farm the two acres: (Tr 68)

> Q Mr. George, you were leasing 65 acres. Why didn't you farm any of the portion of the two acres west of the fence?
>
> A It wasn't economically feasible for us to go fence it. Our lease wasn't enough to make it worth fencing two acres off. We didn't need the pasture.

This Court has held in the case of *Argyle v. Jones*, 118 P.3d 301 (Utah App. 2005):

> The narrow issue presented is whether the failure of the Joneses to object to the forty-year occupation of the disputed property by Roger Argyle and his predecessors is sufficient to establish acquiescence. Whether a landowner's inaction alone is sufficient to establish acquiescence was discussed in *Glen v. Whiney*, 116 Utah 267, 209 P.2d 257 (1949). In *Glen*, the Utah Supreme Court specifically held that "[t]he mere fact that a fence happens to be put up and neither party does anything about it for a long period of time will not establish it as the true boundary." 209 P.2d at 260; *see also Hales v. Frakes*, 600 P.2d 556, 559 (Utah 1979) ("[P]laintiff's occupation to the fence without interference was not sufficient to establish defendant's acquiescence in the fence as a boundary.").

*Argyle*, 188 P.3d at 305 (footnote omitted). Assuming that the belief of some of the plaintiffs constituted acquiescence, there was no evidence of any acquiescence by the defendant, thus, no mutual acquiescence.

The Court in *Argyle* also footnoted:

> 4. Because this case involves a review of the district court's legal conclusions only, this court gives deference to the district court's factual findings. Accordingly, this analysis assumes that Sterling Jones neither informed Charles Argyle of the true ownership status of the disputed property nor granted the Argyles permission to use the property.

*Id.*, footnote 4. Accordingly, there was no need for the defendant to inform plaintiffs of the conversation in 1965 relative to ownership of the two acres nor as to continuing the use of the two acres by the plaintiffs.

## POINT VI. THE TRIAL COURT ERRED IN ITS PRETRIAL PARTIAL SUMMARY JUDGMENT ADJUDICATION THAT SILENCE ALONE IS SUFFICIENT TO CONSTITUTE ACQUIESCENCE IF THE DEFENDANT ALSO TREATED THE FENCE AS A BOUNDARY INSTEAD OF A BARRIER AND LIMITING THE ISSUE FOR TRIAL AS BEING WHETHER THE DEFENDANT TREATED THE FENCE AS A BOUNDARY OR AS A BARRIER UNDER UTAH'S DOCTRINE OF BOUNDARY BY ACQUIESCENCE.

This Court in *Brown v. Jorgensen*, 136 P.3d 1252 (Utah App. 2006) ruled on issues of silence, failure to object and knowledge of the existing line as a boundary:

> [11] ¶ 15 Various landowner activities may provide evidence of acquiescence in a visible line as a boundary, such as "[o]ccupation up to, but never over, the line," or "silence, or the failure of a party to object to a line as a boundary." *Id.* at ¶ 25. Although acquiescence in a boundary line may occur through a party's silence or failure to object and does not require an explicit agreement, "*recognition and acquiescence must be mutual*, and both parties must have knowledge of the existence of a line as [the] boundary line." *Argyle v. Jones*, 2005 UT App 346,-
> ¶ 11, 118 P.3d 301 (emphasis added) (alteration in original) (quotations and citations omitted).

> [12-14] ¶ 16 In the instant matter, although the Browns subjectively believed that the Fence was the property line, they never actually communicated their belief to Jorgensen, either by word or action. Therefore, there was no "actual acknowledgement ... that the parties treat the [F]ence as the common boundary." Moreover, "'[t]he mere fact that a fence happens to be put up and neither party does anything about it for a long period of time will not establish it as the true boundary.'" *Argyle*, 2005 UT App 346 at ¶ 13, 118 P.3d 301 (alteration in original) (quoting *Glenn v. Whitney*, 116 Utah 267, 209 P.2d 257, 260 (1949)); *see also Hales v. Frakes*, 600 P.2d 556, 559 (Utah 1979) ("[P]laintiff's occupation to the fence without interference was not sufficient to establish defendant's acquiescence in the fence as a boundary.").

*Id.* at 1257.

There was no evidence that the defendants recognized or treated the fence as a boundary. There was evidence that the defendant had knowledge that the fence was not the boundary. The evidence was that the defendant maintained the fence to retain cattle and horses and that the plaintiffs and predecessors maintained the fence for the same reason.

In the *Brown* case, this Court also considered the purpose of the fence:

> ¶ 17 Additionally, "[f]rom the initial recognition of boundary by acquiescence in Utah, courts have recognized the importance of the purpose of a fence.' *Id.* at ¶ 10. In this matter, the trial court found that Jorgensen's predecessors "ran livestock on the land" and that the Browns and their predecessors also "Used [their] property to graze cattle and sheep," among other uses.

*Brown*, 136 P.3d at 1257-58. The fence having been erected before conveyances separated the four acre tract (and the two acre tracts within) and was never erected as a boundary between the plaintiffs' property and the defendants' property. Nor

was it a boundary between their respective predecessors, but was erected at a time when the properties had a common ownership. The continued use and purpose of the fence was to contain livestock.

This Court in *Wilkinson Family Farm, L.L.C. v. Babcock*, 993 P.2d 229 (Utah App. 1999), after stating that courts have recognized the importance of the purpose of a fence, also held that mere acquiescence in use without more is insufficient to establish boundary by acquiescence. *See id.* at 232, footnote 3.

In the instant case, Smith's have only proved an acquiescence in use.

**POINT VII. ASSUMING THAT A DETERMINING FACTOR IN ACQUIESCENCE IS THE TREATMENT OF THE FENCE AS A BOUNDARY AND NOT AS A BARRIER, THE TRIAL COURT ERRED IN ITS CONCLUSION THAT THE FENCE WAS TREATED AS A BOUNDARY.**

The use of the fence did not change prior to 1949 until the time of trial in 2008, during which time it was maintained to contain cattle. The fence was not needed for any of the other farming operations such as raising hay.

Scott Smith, son of the plaintiff, William R. Smith, testified that he was born on the farm in 1964 and worked on the farm until age 19, then returned to the farm in 1985 to take over running the farm performing such duties as cutting hay, baling hay, moving cows and fence. (Tr 24). Scott said that a drain ditch about two feet from the fence, having dimensions of about eight feet across the top and four or five feet at the bottom was put in initially to contain run off waters so you can farm and

it also provides drinking water for the cattle. (Tr 28). Scott's recollection of farming dates from the time he was five or six years old, and the fence and drain have been in the same place since that time (1970).

Regarding repairs to the fence, Scott testified: (Tr 29)

Q Describe for us what kind of repairs you had to make.

A Well, we try to maintain fences so walk them, you staple wires where you need. When wire becomes too old, you replace it. We've never replaced any of the wire on that side of the fence but we have stapled it and we have, you know, walked it and, you know, maintained to keep our cattle on our side of the fence.

In 1978, the year which the plaintiffs contend began the acquiescence in the fence as a boundary, Scott was 14 years old. We quote from his testimony in the transcript from pages 40 to 44.

Q And in 1978, how old would you be?

A Fourteen, is that right. Fourteen? Yeah, 14.

Q At that time part of the Smith Farm extended also into Section 23, 40 acres here, didn't it?

A Yes.

Q And that went to Verl?

A Yes.

Q But before it went to Verl, it was part of the Smith Farm, wasn't it?

A Yes.

Q So that this fence that goes from the section corner on north, was

actually fenced between Smith's Farm 40 acres and the balance of the Smith Farm; is that right?

A Now state that again.

Q The fence that comes from the section corner and comes south over to the Staley property, that property that was east was all part of Smith's property, wasn't it?

A Yes.

Q And there was a fence that divided the east part of Smith's property and the west part, didn't it?

A Yes.

Q Why was this fence maintained?

A To keep the livestock in that we would put on the east side there that we pastured and so forth and back here to the back it was to keep the, so we could green shop the – when we farmed that 40 acres, so we could green shop that and the cows would have to stay behind the milk barn and so forth where we would let them out during the day to get them off of the concrete.

Q So that's why you used that fence?

A Yes.

Q And then there's a short distance of 379 feet that that fence continues past the Smith –excuse me, the Security property, isn't that true?

A Yes.

Q Security's property goes clear over to the beginning of this A-2 drain, doesn't it?

A Yes.

Q So that the only part[] of the Staley's property that is fenced that you were utilizing were the 379 feet?

A Yes.

Q Do you know who built that fence along the Staley property?

A I do not.

Q Does it look like the same fence all the way?

A No.

Q Where did it change?

A Ummm, it changes – well, the fence as been changed, you know – this fence no longer exists and I put this fence back in new a couple of years ago.

Q No, you said this fence starting from the corner –

A The corner is out here.

Q - over about 290 feet no longer exists, you say?

A Right.

Q But from (inaudible) feet on, that same fence exists?

A I replaced that fence.

Q When did you replace it?

A 19 – shoot – 1991 maybe, give or take a couple of years in there.

Q All right. Show me what portion of the fence you replaced.
A I replaced from here to here.

Q You're pointing from 290 feet from the corner over to –

A I have fence that goes east and west at that point.

Q So you replaced that in 1991?

A Roughly.

Q In the same place?

A Yes.

Q And why did you replace it?

A Why did I replace it? Because I was feeding cattle here in the winter and I needed a solid fence to keep them where they belonged.

Q Did you at any time replace the fence across the 379 feet of the Staley property?

A No, I have not.

Q Who maintained that fence?

A I've maintained it. The George's have maintained it. Last year a guy by the name of Jeremiah Kingston put new wire on that fence.

Q Why did he do that?

A Why? Because he put cattle in there and they kept getting over in my hay field.

It appears from the testimony of Scott Smith, the person who was on the premises from 1985 to the time of trial, that the purpose of the fence was to contain cattle. It would not be needed for haying or other farm purposes. The fence other than along the 379 feet boundary of Security Investment (Stahle) was repaired and maintained by Scott to contain cattle, and the 379 feet along the Stahle property was repaired by "Georges" the tenant of Security Investment to contain livestock.

There was no evidence that the fence was ever built to mark a boundary, nor

thereafter maintained to mark the boundary of property described in conveyances occurring after 1983. All of the evidence was that the fence was used as a barrier to contain cattle. There was no evidence that the Fence was evidence of ownership

## CONCLUSION

The trial court erred in finding boundary by acquiescence based upon belief of some of the plaintiffs that the fence was the boundary as claimed by an affidavit of Cindy S. Hatch. The only plaintiff to testify, Mack Smith, acknowledged that he learned of the two acre parcel of Stahle (Security) in 1993, before the expiration of the 20 year term in 1998, thus having actual knowledge of the legal boundaries. The uncontroverted evidence was that the fence was used only as a barrier to contain cattle. There was no evidence that the defendant ever recognized the fence as a boundary and in fact the plaintiffs' own witness, Marv George testified that from 1965 to date of trial he and his family leased 65 acres from the defendant, and did not fence the west two acres because they didn't need the extra pasture and it was not worth fencing.

The cause should be remanded to the trial court for entry of judgment dismissing the complaint and restoring of record the boundary description existing prior to the judgment of September 4, 2008.

Dated this 5th day of December, 2008,

Respectfully submitted,

George K. Fadel
Attorney for Defendant-Appellant

Certificate of Service

I certified I mailed two copies of Appellant's brief and a disc to Mr. Wade R. Budge, attorney for the plaintiffs-appellees, 15 West south Temple, Salt Lake City, Utah 84101-1004, this 5th day of December, 2008.

ADDENDUM TO APPELLANT'S BRIEF

1. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. JUDGMENT.

3. Portion of JT Exhibit 3 of the Davis County Recorder's Plat of all of Section 22,T 2 N R 1 W.

4. STIPULATION CONCERNING TRIAL EXHIBITS ( 4 pages).

5. JT Exhibit 11, Warranty Deed, from William Howard Smith et ux. (parents of plaintiffs) to ALKALI LIMITED, 1978, describing plaintiffs' tract as set forth in complaint.

6. JT Exhibit 12, Quit Claim deed by ALKALI LIMITED to the four plaintiffs as partners of ALKALI LIMITED to BMJC, L.L.C. wherein plaintiffs are members, 1999.

7. JT Exhibit 13, Quit Claim Deed by SECURITY INVESTMENT COMPANY, a corporation, to SECURITY INVESTMENT LTD,defendant. The second description of 14.90 acres includes defendant's two acre tract in Section 22, and 12.90 acres in Section 23.(1997)

8.JT Exhibit, photo copies picturing area of the subject fenceline. JT Exhibit 14 color copies reproduced by App.

9. JT Exhibit 16, DEED OF CONVEYANCE AND AGREEMENT, by heirs of plaintiffs' grandparents dividing the extended farm property among four children, one of whom, William Howard Smith, is the father of plaintiffs who receives the tract described in the complaint.

10. JT Exhibit 17, USA PATENT TO HEBER C. WOOD, dated 2-12-1883, which describes the South Half of the Southeast Quarter of Section 22, 80 acres which includes Plaintiffs' entire tract as well as defendant's two acre tract.

11. JT Exhibit 18, a deed by HEBER C. WOOD to JACOB GIERISCH describing the same 80 acre tract of JT Exhibit 17, dated 2-13-1883, excepting however " FOUR ACRES LYING AND SITUATE IN THE NORTH EAST CORNER OF THE SAID SOUTH HALF OF THE SOUTH EAST QUARTER OF SECTION NO. 22, T 2 N R 1 W, of which the north two acres becomes that of the defendant, and the

south two acres became the property of the plaintiffs as a part of the property described in the complaint.

12. JT Exhibit 19, a deed by HEBER C. WOOD on December 14, 1901, to JACOB GIERISCH of the four acre tract described in JT Exhibit 18.

13. JT Exhibit 20, a Warranty Deed, May 1, 1913, by JACOB GIERISCH to ANCEL HATCH which excludes the four acres from the 80 acres tract described in Exhibit 18.

14. JT Exhibit 21, a Warranty Deed by ALVIN and ELIZABETH HATCH to ANCEL HATCH in 1940, at the bottom of the page describes the south two acres belonging to the plaintiffs.

15. JT Exhibit 22, a SALE AGREEMENT dated Feb.12,1948, by ANCEL HATCH et ux. , as Sellers to WILLIAM GUFFEY, et ux., describing several parcels, one of which , the second from the bottom,of the page, describes the plaintiffs' two acres. The plaintiffs' grandfather , WILLIAM R. SMITH , received an assignment of the said SALE AGREEMENT.

IN THE SECOND DISTRICT COURT, DAVIS COUNTY
STATE OF UTAH

| | |
|---|---|
| WILLIAM R. SMITH and LUDEAN A. SMITH, as Trustees of THE SMITH FAMILY REVOCABLE TRUST; MACK G. SMITH and CAROLYN SMITH as Trustees of THE MACK G. AND CAROLYN SMITH REVOCABLE TRUST; J. LYNN SMITH, as Trustee of THE J. LYNN SMITH LIVING TRUST; and CINDY S. HATCH, an individual,<br><br>Plaintiffs,<br><br>**vs.**<br><br>SECURITY INVESTMENT LTD, a Utah limited partnership, and DOES 1-10,<br><br>Defendants. | <br><br>**FINDINGS OF FACT AND CONCLUSIONS OF LAW FROM BENCH TRIAL CONDUCTED ON JUNE 5, 2008**<br><br>Case No. 060700147<br><br>Judge Michael G. Allphin |

## PROCEDURAL HISTORY OF THE CASE

The plaintiffs filed a complaint on March 20, 2006. In that complaint, the plaintiffs alleged that they and the defendants were neighbors, and that their properties had been separated by a barbed wire fence for at least fifty years. The plaintiffs' property is west of the defendants' property, and so the fence is on the east side of the plaintiffs' property.

The plaintiffs discovered that the fence was not the actual property boundary. A portion of the defendants' property ("the Parcel"), which was approximately two acres in size, was on the west side of the fence (on the plaintiffs' side). Because the plaintiffs had used the property for a

lengthy period of time, they sought to resolve the dispute by asking the defendants to sign a boundary agreement which would show that the Parcel belonged to the plaintiffs. The defendants refused to sign the boundary agreement, and the parties commenced this litigation.

The plaintiffs filed a motion for summary judgment on September 6, 2007. The litigation of that motion lasted for almost six months. On March 21, 2008, the Court issued a ruling in which it denied the motion for summary judgment. The Court held that the second element of the test for boundary by acquiescence had not been clearly satisfied, and so summary judgment would be improper. The Court did hold that the other three elements were satisfied, and so the only remaining issue for trial was whether the second requirement was satisfied.

The Court conducted a bench trial on this matter on June 5, 2008. The Court now issues its findings of fact and conclusions of law based on the evidence presented at that trial.

## FINDINGS OF FACT

1. The plaintiffs and the defendants are neighbors. The plaintiffs' property is located west of the defendants' property.

2. There has been a barbed wire fence on the east side of the plaintiffs' land since at least 1964. In fact, it appears from the testimony given at trial that the fence is in the same location that it has been since 1949.

3. That fence is the boundary between the plaintiffs' property and a number of other properties owned by different individuals. The fence follows a straight, or nearly straight, course. The fence follows the record boundaries, with one exception. In one portion of the fence line, the fence line does not follow the record boundary. Instead, the fence continues in a straight line and cuts off a two-acre parcel that is recorded as belonging to the defendants. That parcel ("the Parcel") is the basis of

the dispute between the parties.

4. Both parties helped maintain the fence.

5. The plaintiffs' property was passed down through inheritance to the current owners. The plaintiffs took possession of the property in 1978. All of the plaintiffs and their predecessors used the Parcel for farming and grazing. The plaintiffs were never told not to use the Parcel, and the plaintiffs were never informed that the Parcel belonged to the defendants. The defendants have not used the Parcel for any purpose, and individuals who leased the defendants' property likewise did not use the Parcel for any purpose.

6. The plaintiffs have always believed that the fence is the boundary between their property and the defendants' property.

7. Both parties have grazed cattle on their respective properties.

8. There are two ditches that follow different portions of the fence. All ditches are located on the west side of the fence, and are thus on the plaintiffs' side of the fence.

9. The ditch that follows the portion of the fence that borders the Parcel is the Smith drain. There were some allegations during the litigation of the motion for summary judgment that the fence might have served as a barrier to livestock, and that the fence kept the cattle out of the drain ditch. However, the fence is only on one side of the ditch. As noted above, both parties ran cattle on their respective properties. Thus, the fence did keep the defendants' cattle out of the Smith drain, but there was no fence to keep the plaintiffs' cattle out of the Smith drain. In fact, Scott Smith testified that the plaintiffs use the Smith drain to help water their cattle. Thus, the Smith drain is not the type of ditch for which a fence was

required to keep cattle from entering the ditch.

10. Mack Smith is the grandson of William R. Smith, who purchased the property that now belongs to the plaintiffs. Mack Smith testified that the Smith drain was dug after the fence was constructed, and the digging of the drain had no effect on the location of the fence.

11. Marvin George testified that in approximately 1965, he, his father, and another gentleman were working on the fence, and had a discussion with one of the plaintiffs' predecessors. Marvin George testified that the substance of the conversation was that he and his father, who were leasing the defendants' property, were actually paying to lease two acres that they were not using (the Parcel). There was no testimony given that showed that any of the plaintiffs knew of this conversation, and there was no testimony given that the plaintiffs knew after 1978 that the Parcel was actually the defendants' property.

## CONCLUSIONS OF LAW

1. There are four requirements that must be met before this Court can establish a boundary by acquiescence. *Orton v. Carter*, 970 P.2d 1254, 1257 (Utah 1998). There must be "(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." *Id.* (internal citation omitted).

2. The Court previously denied the plaintiffs' motion for summary judgment, because it was not clear whether the fence in question had been built to serve as a barrier or whether it was intended as a boundary. Thus, the second requirement for boundary by acquiescence had not been satisfied. However, the Court did find that the first and fourth requirements had been satisfied. The Court also found that the

third element was satisfied, but only if the second element was also satisfied. Thus, the only remaining issue to be determined at trial was whether the purpose of the fence was to be a barrier instead of a boundary.

3. The plaintiffs' property was transferred to them in 1978, and this is the year that began the twenty-year period that is required in order to establish a claim for boundary by acquiescence. There has been no evidence presented to show that the plaintiffs knew that the fence was not the record boundary. In fact, all of the plaintiffs' witnesses testified that they believed that the fence was the actual boundary between their property and the defendants' property.

4. The conversation described by Marvin George occurred in 1965, and none of the plaintiffs witnessed that conversation. Therefore, the conversation is outside of the relevant time frame, and because none of the plaintiffs knew of the content of the conversation, the plaintiffs are not estopped from claiming that they believed that the fence was the proper boundary between their property and the defendants' property.

4. The issue in this case is whether the fence served as a boundary, or whether it was intended solely as a barrier. Of course, fences that serve as boundaries are also often *de facto* barriers. All fences are barriers of some type. However, the key consideration is whether the ***purpose*** of the fence was to keep cattle from moving from one location to another, or whether the primary purpose of the fence was to act as the boundary (and as a secondary purpose also keep cattle in the correct property). In the case of *Wilkinson Family Farm, LLC v. Babcock*, there was also a fence between two properties. 993 P.2d 229, 230 (Utah Ct. App. 1999). In that case, the Court of Appeals held that the fence was a barrier, rather than a

boundary. *Id.* The Court of Appeals noted in that case that it was impractical to put a fence along the true boundary, because the defendants' property contained cliffs and gullies. *Id.* There was no such impracticality in this case. It would have been very easy for the defendants' or plaintiffs' predecessors to build a fence on the record boundary, but that was not done.

5. The Court finds that the primary purpose of this fence was to serve as a boundary. That finding is supported by several facts described above. First, the fence was built before the Smith drain was constructed. Thus, the purpose of the fence was to mark the boundary (with a secondary purpose to serve as a barrier to keep cattle on the appropriate property), rather than to keep cattle out of the Smith drain. Second, the Smith drain is not the type of ditch for which a fence was necessary to keep cattle out. In fact, the plaintiffs used the ditch to help water their cattle. Third, the fence followed a straight line, and was the proper boundary between the plaintiffs' property and properties of various other individuals. The Court finds that the parties' predecessors simply continued following that straight line when constructing the fence, likely believing that the property boundaries followed that same straight line.

6. Because the Court finds that the fence served as a boundary, and not merely as a barrier, all of the elements of the test for boundary by acquiescence have been satisfied.

## CONCLUSION

The Court finds that the plaintiffs are entitled to the relief they sought in their complaint. The Court grants the plaintiffs' request for a judgment that the legal boundary between the plaintiffs' land and the defendants' land is the barbed wire fence. The Court also orders that the

defendants have no estate, right, title, lien or interest in the property described in this ruling as the Parcel.

The Court directs counsel for the plaintiffs to prepare the judgment for the Court's signature.

Date signed: 8-5-08.

DISTRICT COURT JUDGE
MICHAEL G. ALLPHIN

DISTRICT COURT, SECOND JUDICIAL DISTRICT
STATE OF UTAH

MAILING CERTIFICATE

I certify that I sent a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** postage pre-paid, to the following on this date: Aug. 5, 2008.

George K. Fadel
Fadel Associates
170 West 400 South
Bountiful, Utah 84010

Wade R. Budge
Troy L. Booher
Snell and Wilmer, LLP
15 West South Temple
Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101

Jan C. Nelson

Wade R. Budge (8482)
Troy Booher (9419)
**SNELL & WILMER L.L.P.**
15 West South Temple, Suite 1200
Beneficial Tower
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

*Attorneys for Plaintiffs*

**IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR**

**DAVIS COUNTY, STATE OF UTAH**

WILLIAM R. SMITH and LUDEAN A. SMITH, as Trustees of THE SMITH FAMILY REVOCABLE TRUST; MACK G. SMITH and CAROLYN SMITH, as Trustees of THE MACK G. AND CAROLYN SMITH REVOCABLE TRUST; J. LYNN SMITH as Trustee of THE J. LYNN SMITH LIVING TRUST; and CINDY S. HATCH, an individual,

Plaintiffs,

**vs.**

SECURITY INVESTMENT LTD, a Utah limited partnership, and DOES 1-10,

Defendants.

**FINAL ORDER, JUDGMENT AND DECREE QUIETING TITLE TO PLAINTIFFS**

Civil No. 060700147

Honorable Michael G. Allphin



Based upon the Court's Findings of Fact and Conclusions of Law from Bench Trial Conducted on June 5, 2008,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiffs' are the owners of the parcel of land described below (the "Property") and assigned parcel number 06-030-0010 by the Davis County Recorder:

> A parcel of land located in Davis County, Utah, more particularly described as:
>
> Beginning at the East Quarter Corner Section 22, Township 2 North, Range 1 West, Salt Lake Base And Meridian, and running thence South 00°05'015" West 1318.01 feet; thence East 2.08 feet to a point on an existing wire fence; thence along said wire fence the following four (4) calls: South 00°14'57" East 66.25 feet; South 01°08'27" West 147.06 feet; South 01°13'17" East 164.46 feet; South 02°49'13" West 1.90 feet; thence West 3.44 feet; thence South 00°05'15" West 617.00 feet; thence South 89°53'20" West 150.01 feet; thence South 00°05'15" West 290.40 feet; thence South 89°53'20" West 1743.53 feet; thence North 00°02'17" East 2606.98 feet; thence North 89°56'55" East 1895.79 feet to the point of beginning;
>
> Subject to the interest of the Utah Department of Transportation obtained from Plaintiffs in Case No. 010700258, Second Judicial District Court.

2. Defendant Security Investment Ltd., a Utah limited partnership, owns a parcel of land that adjoins the Property and is located to the east of the Property and has been assigned parcel number 06-030-0012 by the Davis County Recorder. The easterly boundary of the Property and the westerly boundary of the parcel of land owned by Security Investment Ltd., is on a the boundary line described as follows:

> Beginning at the East Quarter Corner Section 22, Township 2 North, Range 1 West, Salt Lake Base And Meridian, and running thence South 00°05'015" West 1318.01 feet; thence East 2.08 feet to a point on an existing wire fence; thence along said wire fence the following four (4) calls: South 00°14'57" East 66.25 feet; South 01°08'27" West 147.06 feet; South 01°13'17" East 164.46 feet; South 02°49'13" West 1.90 feet; thence West 3.44 feet; thence South 00°05'15" West 617.00 feet along the Westerly line of said section.

3/9/2008 8:46:33 AM

**3.** Plaintiffs' title to the Property is quieted against Defendant Security Investment Ltd., and all those claiming by or through Defendant Security Investment Ltd., and its predecessors, including all persons claiming any rights, title, estate, or interest in the Property adverse to Plaintiffs' ownership, or clouding its title thereto.

**4.** Each of the parties to this action must bear their own court costs and attorney fees incurred in this action.

ENTERED this 4th day of Sept, 2008.

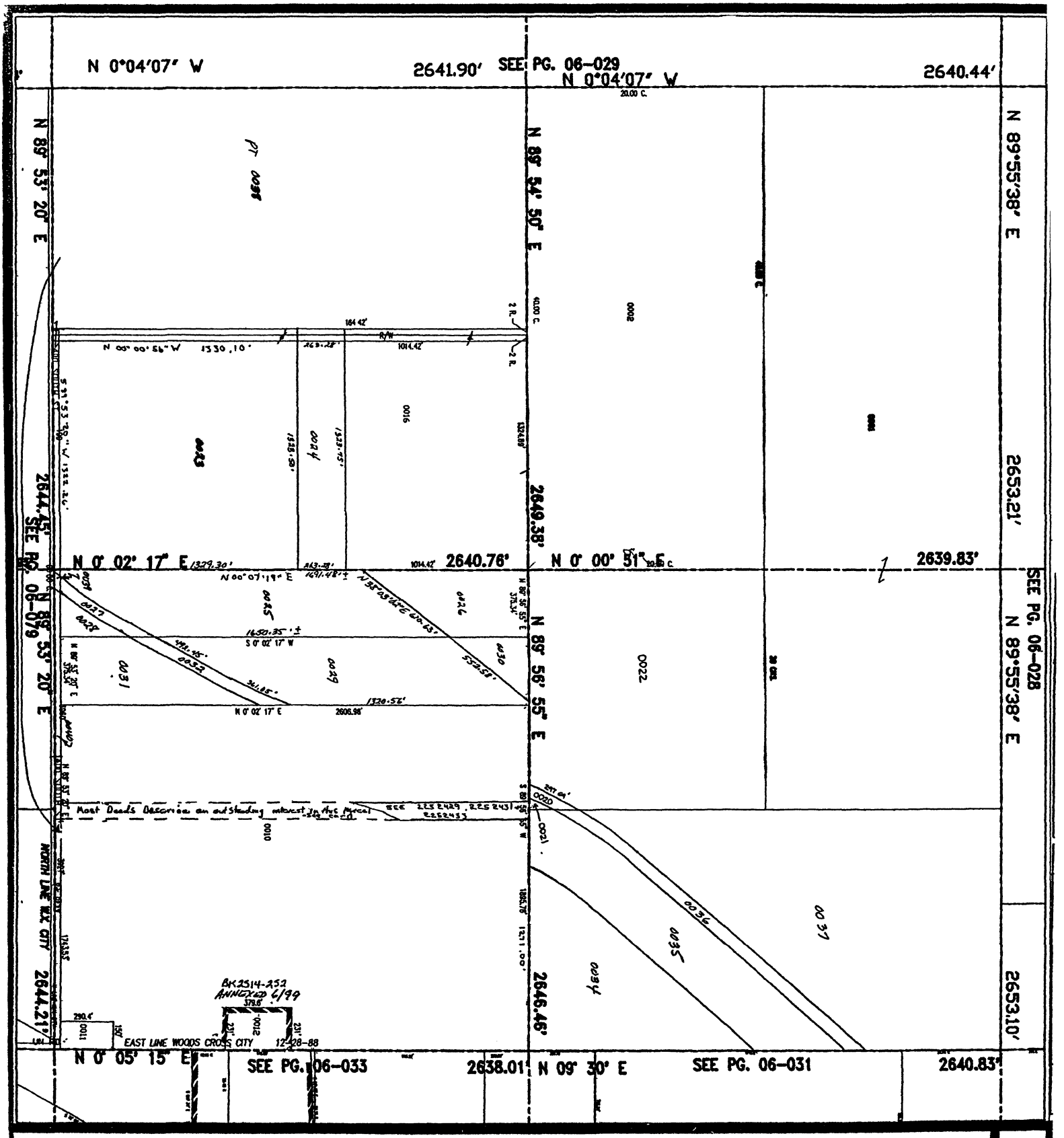
BY THE COURT:

Honorable Michael G. Allphin
Second Judicial District Court Judge

Approved as to form:

George K. Fadel

George Fadel, Esq.
*Attorney for Defendant*




# ALL SECTION 22 T 2N R 1W SALT LAKE MERIDIAN
# DAVIS COUNTY, UTAH -- RECORDERS OFFICE

SCALE: 1" = 400'

5-91

Wade R. Budge (8482)
Troy L. Booher (9419)
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Beneficial Tower
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

*Attorneys for Plaintiffs*

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

WILLIAM R. SMITH and LUDEAN A. SMITH, as Trustees of THE SMITH FAMILY REVOCABLE TRUST; MACK G. SMITH and CAROLYN SMITH, as Trustees of THE MACK G. AND CAROLYN SMITH REVOCABLE TRUST, as Trustee of THE J. LYNN SMITH LIVING TRUST; and CINDY S. HATCH, an individual,

Plaintiff,

**vs.**

SECURITY INVESTMENT LTD, a Utah limited partnership, and DOES 1-10,

Defendant.

**STIPULATION CONCERNING TRIAL EXHIBITS**

Case No. 060700147

Honorable Michael G. Allphin

Plaintiffs THE SMITH FAMILY REVOCABLE TRUST; THE MACK G. AND CAROLYN SMITH REVOCABLE TRUST; THE J. LYNN SMITH LIVING TRUST; and

Cindy S. Hatch (collectively the "Plaintiffs"), and defendant SECURITY INVESTMENT LTD, by and through their attorneys, hereby stipulate to eh admissibility and authenticity of the trial exhibits identified below (the "Exhibits"):

| Joint Number | Exhibit Description | Date |
|---|---|---|
| JT1. | Larsen & Malmquist Inc. Survey | 1/24/2006 |
| JT2. | Davis County Plat map covering Section 23, Township 2 North, Range 1 West | |
| JT3. | Davis County Plat map covering Section 22, Township 2 North,, Range 1 West | |
| JT4. | USDA Aerial Survey | 5/26/1958 |
| JT5. | USDA Aerial Survey | 5/03/1965 |
| JT6. | USDA Aerial Survey | 10/19/1971 |
| JT7. | USDA Aerial Survey | 6/20/1980 |
| JT8. | USDA Aerial Survey | 9/09/1987 |
| JT9. | USDA Aerial Survey | 10/04/1997 |
| JT10. | USDA Aerial Survey | 8/26/2003 |
| JT11. | Warranty Deed by William Howard Smith and Lois G. Smith to Alkali Limited which was recorded 10/20/78 | 10/9/1978 |
| JT12. | Quit Claim Deed by William R. Smith, Mack G. Smith, John Lynn Smith and Cindy Smith, being all partners of Alkali Limited to BMJC, LLC, recorded 5/4/99 | 4/27/1999 |
| JT13. | Quitclaim Deed, Security Investment Company, a Utah corporation to Security Investment Ltd., a Utah limited partnership recorded 12/1/97. | 11/30/97 |

| | | |
|---|---|---|
| JT14. | Photographs of the subject fence and property surrounding the subject fence | |
| JT15. | Two Davis County photo maps of the subject area in 1982. | |
| JT16. | A "Deed of Conveyance and Agreement" recorded 3-8-73 among William Howard Smith, et ux., Verl Reed Smith, et ux., Joyce Smith Goodfellow and Jean Smith Sanders, recorded in Book 511, at page 74, in the office of the Davis County Recorder | |
| JT17. | Patent from United States to Heber C Wood recorded on Book G, Page 859, Davis County Recorder. | |
| JT18. | Indenture of Heber C Wood to Jacob Gierisch, dated December 13, 1877, recorded in Book G, Page 860, Davis County Recorder | |
| JT19. | Indenture of HEBER C. WOOD to Jacob Gierisch, 1901, recorded in Book R Page 508. | |
| JT20. | Deed from Jacob Gierisch to Ancel Hatch dated_____. | |
| JT21. | Book 1-R Page 331, where Alvin Hatch conveys to Ancel Hatch. | |
| JT22. | Book O Page 428, Sale Agreement by Ancel and Amy Hatch to William Guffey et ux.. | |
| JT23. | Assignment of the Sale Agreement by Guffey to William R. Smith and Ella Howard Smith, joint tenants, recorded in Book 1, Page 343. | |
| JT24. | Decree in the estate of Ancel Hatch settling the contract sale to Smihts, Book 96 at Page 28 ff. | |
| JT25. | Administrators Deed to Smith, Book 96, Page 32. | |
| JT26. | A Decree in judgment referencing a deed from Mamie E. Winegar to John & Lena V. Winegar, recorded in Book 1-L of Deeds Page 277. | |
| JT27. | Warranty Deed by Lena V. Winegar, widow, to Security Investment Company, dated April 10, 1951, recorded April 27, 1951, in Book 25 of Records at page 204. | |

| | | |
|---|---|---|
| JT28. | Warranty Deed, by William Howard Smith and Lois G. Smith to William Howard Smith dated 5-2-73, recorded 5-3-73 in Book 515 Page 260. | |

The parties stipulate that if any of the foregoing exhibits is referred to or offered, it shall be admitted into evidence, *provided, however,* that the parties reserve the right to object at trial to any of the foregoing exhibits on the basis of Rule 402 of the Utah Rules of Evidence. Nothing in this stipulation shall prevent any party from seeking to use other exhibits at trial.

DATED this 4 day of June, 2008.

SNELL & WILMER L.L.P.

Wade R. Budge
Troy L. Booher
*Attorneys for Plaintiffs*

DATED this 4th day of June, 2008.

FADEL ASSOCIATES

George K. Fadel
*Attorneys for Defendant*

Recorded at Request of 628 William H Smith OCT 20 1978

at 2:33 P M Fee Paid $5.50 MARGUERITE S BOURNE DAVIS COUNTY RECORDER

by Grace Van Sweden Dep. Book 734 Page 628 Ref.:

Mail tax notice to Address SC 22-27-1W

# 511887 WARRANTY DEED

William Howard Smith and Lois G. Smith grantor s
of Bountiful , County of Davis , State of Utah, hereby
CONVEYS and WARRANTS to Alkali Limited

grantee
of Bountiful, Davis County, Utah, for the sum of
Ten and no/100 ($10.00)---------- DOLLARS,

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

See attached Exhibit "A"

☒ ☐ ☑

☐ Abstracted ☐ Indexed ☐ Entered

Platted On Map ☐ Compared ☐

JT EXHIBIT 11

WITNESS, the hand s of said grantor s , this 9th day of
October , A. D. 19 78.

Signed in the Presence of

William Howard Smith

Lois G Smith

STATE OF UTAH,
County of Davis } ss.

On the 9th day of October , A. D. 19 78,
personally appeared before me

the signer s of the within instrument, who duly acknowledged to me that they executed the same.

Rueland Ballard
Notary Public.

My commission expires Feb. 7, 1980 Residing in Salt Lake City, Utah

BLANK #101—WARRANTY DEED— © GEM PTG CO — 3215 SO 2600 EAST — SALT LAKE CITY

EXHIBIT "A"

Beginning at a point North 0°05'15" East 323.40 feet along the Section line from the Southeast corner of Section 22, Township 2 North, Range 1 West, Salt Lake Meridian, and running thence North 0°05'15" East 617.0 feet along the East line of said Section; thence West 231.0 feet; thence North 0°05'15" East 379.60 feet parallel to the East Section line; thence East 231.0 feet; thence North 0°05'15" East 1318.01 feet, more or less, to the East Quarter corner of said Section 22; thence South 89°56'55" West 1895.78 feet along the North line of the Southeast Quarter of said section to a point 750.68 feet North 89°56'55" East from the center of said section; thence South 0°02'17" West 2606.98 feet parallel to the West line of said Southeast Quarter to a point 33.0 feet North of the South line of said Section; thence North 89°53'20" East 1743.53 feet, parallel to and 33.0 feet North of the South line of said section to a point 150.0 feet West of the East line of said section; thence North 0°05'15" East 290.4 feet; thence North 89°53'20" East 150.0 feet to the point of beginning, containing less the following exception, 104.87 acres. EXCEPTING THEREFROM the interest of the grantors, Jean Smith Sanders and Joyce Smith Goodfellow in the following portion thereof: Beginning at a point 33.0 feet North 0°05'15" East along the Section line and South 89°53'20" West 1270.0 feet parallel to the South Section line from the Southeast corner of said Section 22, and running thence North 2607.0 feet, more or less, to the North line of the Southeast Quarter of said Section; thence South 89°56'55" West 90.0 feet along said North line; thence South 2607.0 feet to a point 33.0 feet North of the South line of said section; thence North 89°53'20" East 90.0 feet to the point of beginning.

16 DC

RETURNED

MAY - 4 1999

WHEN RECORDED, MAIL TO:

Cindy S. Hatch
958 East Oakwood Drive
Bountiful, Utah 84010

E 1510256 B 2493 P 208
SHERYL L. WHITE, DAVIS CNTY RECORDER
1999 MAY 4 9:00 AM FEE 16.00 DEP MT
REC'D FOR HATCH, CINDY

# QUIT CLAIM DEED

S&1/4-22-2N-1W)
06-030-0010

THIS QUIT CLAIM DEED, made by ALKALI LIMITED, . by WILLIAM R. SMITH, MACK G. SMITH, JOHN LYNN SMITH and CINDY SMITH HATCH, being all of the partners of Alkali Limited, Grantor, to the Grantee hereinafter named.

WHEREAS, on or about September 25, 1978, Alkali *Limited, a Utah limited partnership, was established by filing a* written certificate of limited partnership with the State of Utah; and

WHEREAS, Alkali Limited has failed to file documents required by the State of Utah to maintain the status of limited partnership; and

WHEREAS, Alkali Limited is now a general partnership.

THEREFORE, for valuable consideration received, Grantor hereby QUIT CLAIMS to BMJC, L.L.C., of 958 East Oakwood Drive, Bountiful, Utah 84010, Grantee, for the sum of Ten Dollars ($10.00) and other good and valuable consideration, all of Grantor's right, title, and interest in the following described real property located in Davis County, State

of Utah:

E 1510256 B 2493 P 209

SEE ATTACHED EXHIBIT

WITNESS the hands of the general partners of Grantor this 27 day of April, 1999.

ALKALI LIMITED

by William R Smith
WILLIAM R. SMITH, partner

by
MACK G. SMITH, partner

by
JOHN LYNN SMITH, partner

by Cindy Smith Hatch
CINDY SMITH HATCH, partner

STATE OF Utah )
(ss.
COUNTY OF Salt Lake )

On the 27 day of April, 1999, personally appeared before me WILLIAM R. SMITH, signer of the foregoing Quit Claim Deed, who acknowledged to me that he executed the same in his capacity as general partner of Alkali Limited.

Greg L Swenson
NOTARY PUBLIC
Residing at: Murray Utah

My Commission Expires:

Notary Public
Greg L. Swenson
5770 S. 250 E. #115
Murray, Utah 84107
My Commission Expires
September 1, 2002
State of Utah

E 1510256 B 2493 P 210

STATE OF Utah )
(ss.
COUNTY OF Salt Lake)

On the 27 day of April, 1999, personally appeared before me MACK G. SMITH, signer of the foregoing Quit Claim Deed, who acknowledged to me that he executed the same in his capacity as general partner of Alkali Limited.

Greg L Swenson
NOTARY PUBLIC
Residing at: Murray Utah

My Commission Expires:

Notary Public
Greg L Swenson
5770 S. 250 E. #115
Murray, Utah 84107
My Commission Expires
September 1, 2002
State of Utah

STATE OF Utah )
(ss.
COUNTY OF Salt Lake )

On the 27 day of April, 1999, personally appeared before me JOHN LYNN SMITH, signer of the foregoing Quit Claim Deed, who acknowledged to me that he executed the same in his capacity as general partner of Alkali Limited.

Greg L Swenson
NOTARY PUBLIC
Residing at: Murray Utah

My Commission Expires:

Notary Public
Greg L. Swenson
5770 S. 250 E. #115
Murray, Utah 84107
My Commission Expires
September 1, 2002
State of Utah

STATE OF Utah )
(ss.
COUNTY OF Salt Lake )

On the 27 day of April, 1999, personally appeared before me CINDY SMITH HATCH, signer of the foregoing Quit Claim Deed, who acknowledged to me that she executed the same in her capacity as general partner of Alkali Limited.

Notary Public
Greg L. Swenson
5770 S 250 E. #115
Murray Utah 84107
My Commission Expires
September 1, 2002
State of Utah

Greg L Swenson
NOTARY PUBLIC
Residing at: Murray Utah

My Commission Expires:

SMITH4/D99/W

Beginning at a point North 0°05'15" East 323.40 feet along the Section line from the Southeast corner of Section 22, Township 2 North, Range 1 West, Salt Lake Meridian, and running thence North 0°05'15" East 617.0 feet along the East line of said Section; thence West 231.0 feet; thence North 0°05'15" East 379.60 feet parallel to the East Section line; thence East 231.0 feet; thence North 0°05'15" East 1318.01 feet, more or less, to the East Quarter corner of said Section 22; thence South 89°56'55" West 1895.78 feet along the North line of the Southeast Quarter of said section to a point 750.68 feet North 89°56'55" East from the center of said section; thence South 0°02'17" West 2606.98 feet parallel to the West line of said Southeast Quarter to a point 33.0 feet North of the South line of said Section; thence North 89°53'20" East 1743.53 feet, parallel to and 33.0 feet North of the South line of said section to a point 150.0 feet West of the East line of said section; thence North 0°05'15" East 290.4 feet; thence North 89°53'20" East 150.0 feet to the point of beginning, containing less the following exception, 104.87 acres.

Jean Smith Sanders and Joyce Smith Goodfellow in the following portion thereof: Beginning at a point 33.0 feet North 0°05'15" East along the Section line and South 89°53'20" West 1270.0 feet, parallel to the South Section line from the Southeast corner of said Section 22, and running thence North 2607.0 feet, more or less, to the North line of the Southeast Quarter of said Section; thence South 89°56'55" West 90.0 feet along said North line; thence South 2607.0 feet to a point 33.0 feet North of the South line of said section; thence North 89°53'20" East 90.0 feet to the point of beginning.

13/2 SE 22-2-N-1W

06-030-0012

RETURNED

DEC - 1 1997

WHEN RECORDED MAIL TO:

84 So. Main
Bountiful, Utah. 84010

E 1364261 B 2209 P 1768
JAMES ASHAUER, DAVIS CNTY RECORDER
1997 DEC 1 4:15 PM FEE 13.00 DEP DJW
REC'D FOR STAHLE, NORA

# QUIT-CLAIM DEED

SECURITY INVESTMENT COMPANY, a Utah Corporation, Grantor, of Bountiful, County of Davis, State of Utah, hereby CONVEYS and WARRANTS to SECURITY INVESTMENT LTD., a Utah Limited Partnership, of Bountiful, County of Davis, State of Utah, for the sum of Ten Dollars and other valuable considerations, the following described tract of land in Davis County, State of Utah, to-wit:

Beginning 92.75 rods north 25.99 rods east from SW corner of SEC 23, T2N-R1W; SLM; north 2°10' east 10 rods, south 89°25' east 131.84 rods, south 5°20' east 1.82 rods, south 8.12 rods, north 89°26'; west 132.38 rods to beginning, containing 8.23 acres.

Also beginning 960.48 feet north from SW corner of SEC 23, T2N-R1W; SLM; east 412.5 feet, north 423.22 feet, east 2191.27 feet, north 164.34 feet, west 2184.27 feet, south 100 feet, west 412.5 feet, south 128.7 feet, west 231 feet, south 379.6 feet, east 231 feet, north 20.0 feet to beginning, containing 14.90 acres.

In all 23.13 acres.

WITNESS the hands of said Grantor, this 30th day of November, 1997.

SECURITY INVESTMENT COMPANY,
a Utah Corporation

By Nora A. Stahle
Nora A. Stahle,
President

E 1364261 B 2209 P 1769

STATE OF UTAH, )
: SS.
COUNTY OF DAVIS )

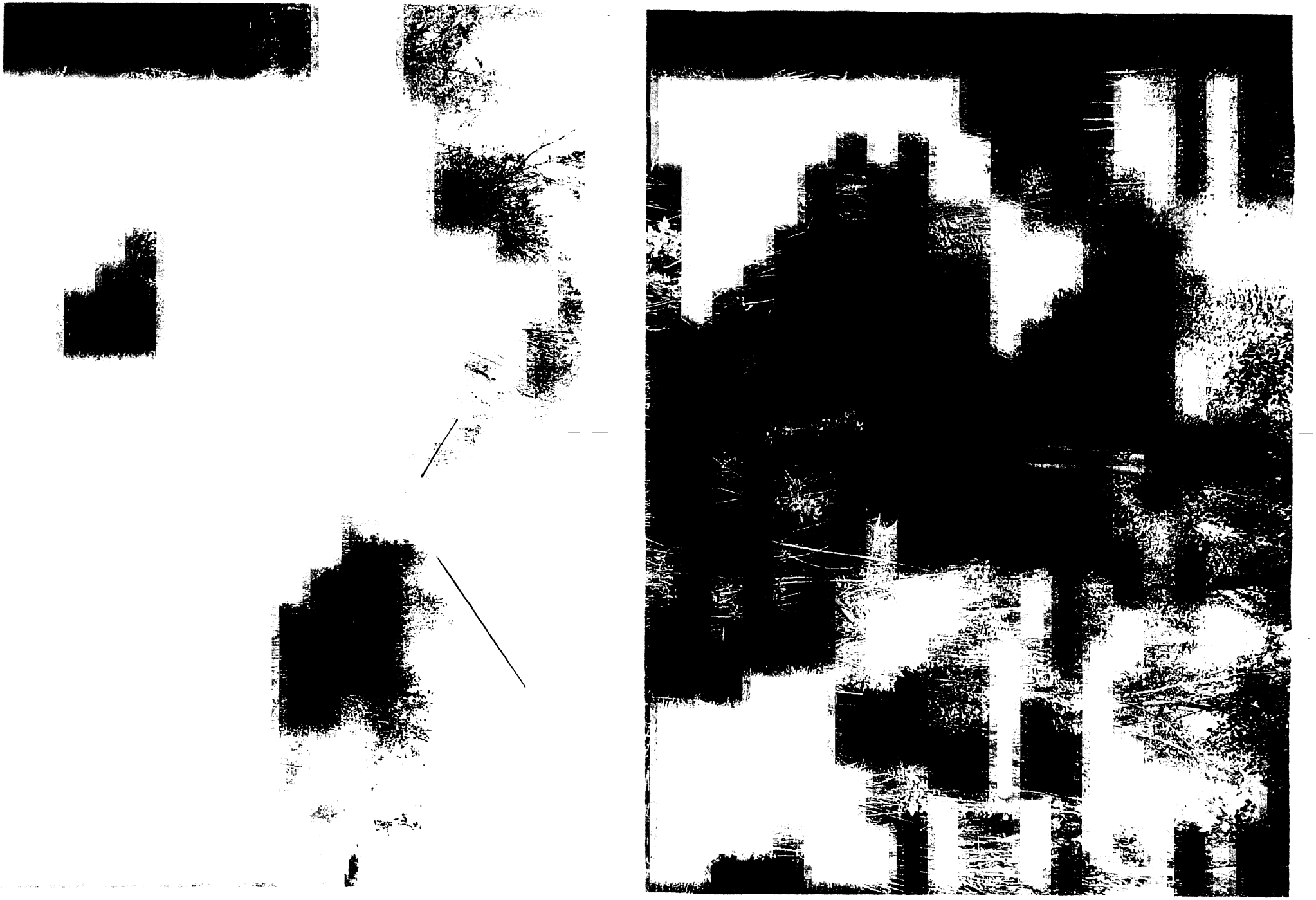
On the 30th day of November, 1997, personally appeared before me NORA A. STAHLE who, being by me duly sworn, did say that she is President of Security Investment Company, a Utah Corporation, and that the within and foregoing instrument was signed in behalf of said Corporation by authority of a Resolution of its Board of Directors, and said NORA A. STAHLE duly acknowledged to me that said Corporation executed the same.

My Commission Expires:

.. Notary Public ..

Residing at Bountiful, UT

NOTARY PUBLIC
WALTER CRAIG JOHNSON, JR.
84 South Main
Bountiful, UT 84010
My Commission Expires
April 27th, 1999
STATE OF UTAH



JT EXHIBIT 14

Recorded at request of George K. Fadel Fee Paid $10.20
Date MAR 8, 1973 at 11 31 A M MARGUERITE S BOURNE Recorder Davis County
BY Grace VanSweden Deputy Book 511 Page 74

174

377265

DEED OF CONVEYANCE AND AGREEMENT

WILLIAM HOWARD SMITH and LOIS G. SMITH, his wife; VERL REED SMITH and EVELYN SMITH, his wife; JOYCE SMITH GOODFELLOW, of Bountiful, Utah, and JEAN SMITH SANDERS of Kaysville, Utah, GRANTORS, of Davis County, State of Utah, hereby CONVEY and WARRANT as against the acts of the GRANTORS and those claiming by, through or under the GRANTORS, the following described tracts of land in Davis County, State of Utah, unto the GRANTEES of the separate tracts herein described as being conveyed to the stated, separate grantees, as follows:

UNTO WILLIAM HOWARD SMITH and LOIS G. SMITH, his wife, as joint tenants of Bountiful, Utah, the following described tract:

Beginning at a point North 0°05'15" East 323.40 feet along the Section line from the Southeast corner of Section 22, Township 2 North, Range 1 West, Salt Lake Meridian, and running thence North 0°05'15" East 617.0 feet along the East line of said Section; thence West 231.0 feet; thence North 0°05'15" East 379.60 feet parallel to the East Section line; thence East 231.0 feet; thence North 0°05'15" East 1318.01 feet, more or less, to the East Quarter corner of said Section 22; thence South 89°56'55" West 1895.78 feet along the North line of the Southeast Quarter of said section to a point 750.68 feet North 89°56'55" East from the center of said section; thence South 0°02'17" West 2606.98 feet parallel to the West line of said Southeast Quarter to a point 33.0 feet North of the South line of said Section; thence North 89°53'20" East 1743.53 feet, parallel to and 33.0 feet North of the South line of said section to a point 150.0 feet West of the East line of said section; thence North 0°05'15" East 290.4 feet; thence North 89°53'20" East 150.0 feet to the point of beginning, containing less the following exception, 104.87 acres. EXCEPTING THEREFROM the interest of the grantors, Jean Smith Sanders and Joyce Smith Goodfellow in the following portion thereof: Beginning at a point 33.0 feet North 0°05'15" East along the Section line and South 89°53'20" West 1270.0 feet parallel to the South Section line from the Southeast corner of said Section 22, and running thence North 2607.0 feet, more or less, to the North line of the Southeast Quarter of said Section; thence South 89°56'55" West 90.0 feet along said North line; thence South 2607.0 feet to a point 33.0 feet North of the South line of said section; thence North 89°53'20" East 90.0 feet to the point of beginning

UNTO VERL REED SMITH and EVELYN SMITH, his wife, as joint tenants, of Bountiful, Utah, the following described tract:

Beginning at the Southwest corner of Section 23, Township 2 North, Range 1 West, Salt Lake Meridian, and running thence North 0°05'15" East 761.31 feet along the Section line; thence South 89°34' East 1245.91 feet; thence South 1287.61 feet, more or less, to the North line of a Highway,

Compared ☐ Entered ☑

JT EXHIBIT 16

50.0 feet perpendicularly distant Northerly from the center line thereof; thence South 89°31' West 762.60 feet, more or less, along said highway; thence Westerly 65.0 feet along said highway along the arc of a 550 foot radius curve to the left; thence Westerly along the North line of 500 South street to the West line of Section 26, said Township and Range; thence North 0°19'54" East along said Section line to the point of beginning, containing 37.37 acres, more or less.

UNTO JEAN SMITH SANDERS of Kaysville, Utah, the following described tracts:

Beginning at a point 33.0 feet North 0°02'17" East along the Quarter Section line from the Southwest corner of the Southeast Quarter of Section 22, Township 2 North, Range 1 West, Salt Lake Meridian, and running thence North 0°02'17" East 2607.76 feet along the Quarter Section line to the Northwest corner of said Southeast Quarter; thence North 89°56'55" East 375.34 feet along the North line of said Quarter Section; thence South 0°02'17" West 2607.37 feet to a point 33.0 feet North of the South line of said section; thence South 89°53'20" West 375.34 feet parallel to the South line of said section to the point of beginning, containing 22.47 acres, more or less.

Beginning at a point North 0°15'15" East 761.31 feet along the Section line and South 89°34' East 1517.38 feet from the Southwest corner of Section 23, Township 2 North, Range 1 West, Salt Lake Meridian, and running thence South 89°34' East 261.90 feet to a point due North of a point 52.25 rods West along the Section line from the South Quarter corner of said Section 23; thence South 748.50 feet to said Section line; thence South 89°58'45" East 2.15 feet along said Section line; thence South 5° East 532.20 feet, more or less, along the West line of the property conveyed to Rulon C. Ashworth by Warranty Deed recorded Jan. 25, 1960, in Book 180, Page 446 of Official Records, to the North line of a highway, 50.0 feet perpendicularly distant Northerly from the center line thereof; thence South 89°31' West 310.43 feet, more or less, along said highway to a point due South of the point of beginning; thence North 1283.27 feet, more or less, to the point of beginning, containing 8.01 acres, more or less.

UNTO DON E. GOODFELLOW and JOYCE SMITH GOODFELLOW, his wife, as joint tenants, of Bountiful, Utah, the following described tracts:

Beginning at a point North 0°02'17" East 33.0 feet along the Quarter Section line and North 89°53'20" East 375.34 feet parallel to the South line of said Section from the Southwest corner of the Southeast Quarter of Section 22, Township 2 North, Range 1 West, Salt Lake Meridian, and running thence North 89°53'20" East 375.34 feet; thence North 0°02'17" East 2606.98 feet to the North line of said Quarter Section; thence South 89°56'55" West 375.34 feet along said North line; thence South 0°02'17" West 2607.37 feet to the point of beginning, containing 22.47 acres, more or less.

Beginning at a point North 0°05'15" East 761.31 feet along the Section line and South 89°34' East 1245.91 feet from the Southwest corner of Section 23, Township 2 North, Range 1 West, Salt Lake Meridian, and running thence South 89°34' East 271.47 feet; thence South 1283.27 feet, more or less, to the North line of a Highway, 50.0 feet

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perpendicularly distant Northerly from the center line thereof; thence South 89°31' West 271.47 feet along said highway; thence North 1287.61 feet, more or less, to the point of beginning, containing 8.01 acres, more or less.

Excepting and reserving unto the Grantors, other then Verl Reed Smith and Evelyn Smith, an easement for ingress and egress and eventual street purposes to the extent necessary to provide a street 50 feet in width which may be accomplished by use of the existing 33.0 foot right-of-way adjoining the South boundary of the said Southeast Quarter of Section 22, owned by Jordan Fur and Reclamation Co., or at the option of the Grantors other than Verl Reed Smith and Evelyn Smith, the easement can be relocated before dedication as a public street within an area up to 300 feet Northerly from the South boundary of said Southeast Quarter of said Section 22.

Excepting and reserving and granting to the Grantors and Grantees easements for irrigation ditches and for pipelines as the main ditches and pipelines are presently located for irrigation of the tracts conveyed to the Grantees herein, with the right of the servient owner to relocate the said ditches or pipelines or to change the same in form so long as the irrigation water is delivered to the dominant tenement in substantially the same place the easement enters the dominant tenement land unless the dominant tenement agrees otherwise.

Excepting and reserving unto the Grantors William Howard Smith and Lois G. Smith, as joint tenants, an undivided 35%; unto Verl Reed Smith and Evelyn Smith, as joint tenants, an undivided 35%; unto Don E. Goodfellow and Joyce Smith Goodfellow, as joint tenants, an undivided 15%; and unto Jean Smith Sanders, an undivided 15%, in and to the underground water rights in the property above described as being within Sections 23 and 26, Township 2 North, Range 1 West, including but not limited to the Certificate of Appropriation of Water, No. 7009, recorded October 18, 1965 in the office of the Davis County Recorder in Book 329, Page 304, and to the rights represented by Change Application No. 31-1857, A-3921 in the office of the State Engineer of the State of Utah. The parties hereto agree that the said underground water will be permitted to flow westerly for continuous use by all parties hereto in the proportions above stated and particularly for stock watering purposes.

It is agreed that the parties herein who are designated joint tenants of a particular tract are also joint tenants of the interest of the other joint tenant in the 90 feet by 2607.0 feet tract excepted from the first above-described tract.

WITNESS the hands of the parties this 28th day of February, 1973.

William Howard Smith
William Howard Smith

Lois G. Smith
Lois G. Smith

Verl Reed Smith
Verl Reed Smith

Evelyn Smith
Evelyn Smith

affixed my

C. Pearson } Notarial Seal, at my office in Wards Cove, Davis County the day and
Notary Public } year in this certificate first above written.
Seal }

Charles C. Pearson
Notary Public.

Recorded, Feb. 12, 1883 at 3.45 P.m.

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2622 U.S. of America to Heber C. Wood.

The United States of America,

To all to whom these presents shall come, Greeting:

Certificate } Whereas Heber C. Wood of Davis County Utah Territory has
No. 1758 } deposited in the General Land Office of the United States a Certificate of
the Register of the Land Office at Salt Lake City Utah Territory, whereby it appears that full payment has been made by the said Heber C. Wood according to the provisions of the Acts of Congress of the 24th of April, 1880, entitled "An Act making further provisions for the sale of the Public Lands," and the acts supplemental thereto, for the South half of the South East quarter of the South Section twenty-two, in Township five North of Range one West, in the District of Lands subject to sale at Salt Lake City Utah Territory containing eighty Acres. according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Heber C. Wood

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Heber C. Wood and to his heirs, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said Heber C. Wood and to his heirs and assigns forever; subject to any vested and accrued water right for mining, agricultural, manufacturing, or other purposes, and right to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In Testimony Whereof, I, Rutherford B. Hayes, President of the United States of America, have caused these Letters to be made Patent, and the

DEEDS
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PAGE 859

JT EXHIBIT 17

U.S.
General Land Office
Seal

Seal of the General Land Office to be affixed.

Given under my hand, at the City of Washington, the sixth day of August, in the year of our Lord one thousand eight hundred and seventy eight, and of the Independence of the United States the one hundred and third.

By the President: R. B. Hayes
By Wm. H. Cook, Secretary.

Recorded, Vol. 3, Page 381 — S.W. Clark, Recorder of the General Land Office
Recorded, Feb. 13/83.

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2629. Heber C. Wood to Jacob Kienick.

DEEDS BOOK G PAGE 860

This Indenture Made the thirteenth day of December in the year of our Lord one thousand eight hundred and seventy-seven Between Heber C. Wood of Davis County and Utah Territory party of the first part and Jacob Kienick of the same County and Territory the party of the second part: Witnesseth, that the said party of the first part, For and in consideration of the sum of Eight hundred Dollars, in Currency of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released and forever quitclaimed, and by these presents does remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns, forever all the certain lot piece or parcel of land, situate, lying and being in the Town of Bountiful, County of Davis, Territory of Utah and bounded and particularly described as follows, to wit: The South half of the South East quarter of Section number twenty-two Township two South, Range 1 West eighty Acres Except four Acres lying and situate in the South East corner of the said South half of the South East quarter of Section No. 22, T 2 S. R. 1 W.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. and also all the estate, right, title, interest, in the said property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To Have and to Hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In Witness Whereof, the said party of the first part, has hereunto set his hand and seal the day and year first first above written.

Signed, Sealed and Delivered in the presence of
James Lowe
O. G. Ringer

Heber C. Wood (Seal)

R 508

hand and offifidk seal the day and year in this certificate above written.

George A Lincoln
Notary Public.
Justice of the Peace in and for Bountiful Precinct
Davis County, Utah Territory

As proved by Jacob Gerrish as the Common Grantor:
North 2 acres to Security,
South 2 acres to Smith

Recorded Dec. 4th 1901 at 5 P M.

9077

This Indenture, made the 17th day of November in the year of our Lord one thousand eight hundred and eighty four Between Heber C Wood in the County of Oneida and Territory of Idaho, part of the first part and Jacob Gerrish of west Bountiful Davis County Utah Territory the party of the second part,

Witnesseth, That the said party of the first part for and in consideration of the sum of Ten ($10.00) Dollars, lawful money of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened remised, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land, situate, lying and being in the West Bountiful County of Davis Territory of Utah, bounded and described as follows, to wit

2 of 75.4 is 37.9.5

231
14
4 Acres
46 R

Commencing at the North East Corner of the South half of the South East Quarter of sec. twenty-two (22) Township two (2) North of Range one (1) west United States Survey Salt Lake meridian running South forty-six (46) rods; thence west fourteen (14) rods thence North forty six (46) rods, thence East fourteen (14) rods to place of beginning. Containing Four (4) acres and four (4) rods of land be the same more or less being contained within the limits of the said South half of the South East Quarter of sec. twenty two (22) Township two (2) North of Range one (1) west Salt Lake Meridian.

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Together with all and singular the tenements here-

JT EXHIBIT 19

By this deed in 1901 Jacob Gerrish received four acres -- North 2 acres is now sec Investment the south 2 acres is Smith.
In 1913 Jennie sold the land Hatch 76 acres excluding the 4 acres
In 1940 Arnel received the 5 and 2 acres from Alma Hatch
In 1944 Arnel contracted to sell 2 acres to Stubbs - Stubbs assume [illegible]

Entry No. 21724

# WARRANTY DEED.

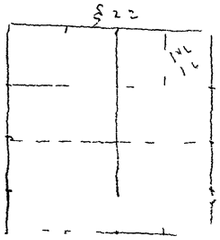
Jacob Gierisch (unmarried) grantor
of Woods Cross, County of Davis, State of Utah, hereby CONVEYS AND WARRANTS to Ancil C. Hatch grantee of Woods Cross, Davis County, Utah
for the sum of One 00/— DOLLARS,
the following described tract of land in Davis County, State of Utah

The N E ¼ of the N E ¼ of Section 22, Township 2 North, Range 1 West, Salt Lake Meridian, containing 40 acres of land

also, Beginning at the S E corner of Sec 22, Tp 2 North, Range 1 West, Salt Lake Meridian, U S Survey, running thence N 34 00 rods, thence W 80 rods, thence North 46 rods, thence W 146 rods, thence S 80 rods, thence E 160 rods to the place of beginning containing 76 acres of land

also, Beginning at the S W corner of Sec 23, Township 2 North Range 1 West Salt Lake Meridian, running thence N 376 2 ft, thence East 793.98 ft, thence South 914 1/2 ft thence West 793 98 ft, thence North 5379 ft to the place of beginning containing 16 65 acres of land more or less

Also, an undivided one sixth (1/6) interest in the estate of Otilla Gierisch




34 r = 56';
14 r = 231
46 r 75
146 r - 24 0
80 r = 1?
16 1 r - 26 0

JT EXHIBIT 20

This deed to Ancil Hatch excludes the 4.0 acres

WITNESS the hand of said grantor this Twenty day of May, A. D. 1913.
Signed in the presence of
Joel G. Parrish — Jacob Gierisch

STATE OF UTAH,
County of Davis } ss.
On this 21st day of May A. D 1913,
personally appeared before me Jacob Gierisch (unmarried)
the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.
My Commission expires July 7, 1913 — Joel R. Parrish Notary Public

Recorded at Request of Farmers State Bank April 22, 1914, at 9:25 o'clock A M
in Book "Y" of Warranty Deed Record, page 590, Records of Davis County, Utah. Abstracted B/351-352 353 B/351.4C B/318
Recording Fee paid $ 1 10 — Blanche Lewis County Recorder Davis County Utah

1-R Page 331

JT EXHIBIT 21

No. 73707 WARRANTY DEED,

John L. Hatch and Della M. Hatch, Husband and wife, and Laura L. H. Eskelson, grantors Woods Cross, County of Davis, State of Utah, hereby CONVEY AND WARRANT to Kamas, Wasatch, Security Investment Company, A Utah Corporation, grantee of for the sum of Ten Dollars and other good and valuable considerations the following tract of land in Davis County, State of Utah,

Commencing at a point 52.78 rods North and 25.48 rods East and North 2° 10' East 16.92 rods, being the point of commencement of boundary from the southwest corner of the southwest quarter of Section 23, Township 2 North, Range 1 West, Salt Lake Meridian, United States Survey, and running thence North 2° 10' East 13.08 rods; thence South 89° 28' East 132.76 rods; thence South 5° 30' East 13.03 rods; thence North 89° 31' West 133.33 rods to the place of commencement, containing 10.90 acres, more or less.

WITNESS the hands of said grantors, this 15th day of December A. D. 1939

Signed in the presence of

John L. Hatch

Della M. Hatch

Laura L. H. Eskelson

DOCUMENTARY U. S. Int. Rev. Stamp Cancelled 3-20-40 Fifty Cents

State of Utah, }
County of Davis } ss.

On the 15th day of December A. D. 1939 personally appeared before me John L. Hatch and Della M. Hatch, Husband and Wife, the signers of the within instrument, who duly acknowledged to me that they executed the same.

My Commission expires March 22, 1941.

SEAL

Henry W Stahle
Notary Public residing at Bountiful, Utah.

STATE OF UTAH, }
COUNTY OF WASATCH. } SS.

On the 29th day of February A. D., 1940, personally appeared before me Laura L. H. Eskelson, the signer of the within instrument who duly acknowledged to me that she executed the same.

Commission Expires: Oct. 30th, 1943

SEAL

DeVan Eskelson
Notary Public
Residence: Kamas, Utah.

Recorded March 20th, 1940 at 11:40 A. M.

Abstracted 2/182

Alice Hess County Recorder

No. 73708 WARRANTY DEED

Alvin W. Hatch and Elizabeth J. Hatch, his wife, grantors, of Woods Cross, County of Davis, State of Utah, hereby CONVEY AND WARRANT to Ancel Hatch, grantee, of Woods Cross, Davis County, Utah, for the sum of TEN ($10.00) DOLLARS, the following described tract of land in ---County, State of Utah:

Commencing at a point 561 feet North from the Southeast corner of Section 22, Township 2 North, Range 1 West, Salt Lake Meridian, U. S. Survey; running thence West 231 feet; thence North 379.4 feet; thence East 231 feet; thence South 379.4 feet to the place of commencement, containing 2.00 acres, more or less.

Book C O
Page 428

JT EXHIBIT 22

duly acknowledged to me that they executed the same.

My commission expires:
Feb. 12, 1948

(SEAL)

Frank Croft
Notary Public
Residing at Farmington, Utah

Recorded February 23, 1945 at 11:25 A.M.

Abstracted 1-IN-1W

Alice Hess County Recorder

No. 88811 SALE AGREEMENT

THIS AGREEMENT made at Salt Lake City, Utah this 1st day of November, 1944, between ANCEL HATCH and AMY A. HATCH, husband and wife, residents of Woods Cross, Davis County, Utah, sellers, and WILLIAM GUFFEY and JOSEPHINE A. GUFFEY, his wife, residents of Woods Cross, Davis County, Utah, buyers, WITNESSETH:

That the sellers hereby agree to sell and the buyers agree to buy upon the terms and conditions hereinafter set forth, the following described real and personal property owned by the sellers and located in Davis County, State of Utah, consisting of approximately 385.95 acres of land and the personal property hereinafter described, said real property is described as follows, to-wit:

Beginning at the Southwest corner of Section 23, Township 2 North, Range 1 West, running thence North 376.2 feet; thence East 793.93 feet; thence South 914.1 feet; thence West 793.98 feet; thence North 573.9 feet to beginning, containing 16.65 acres, more or less.

The East half of the Southwest quarter of section 22, Township 2 North, Range 1 West, containing 80 acres, more or less.

The Northeast quarter of the Northeast quarter of Section 22, Township 2 North, Range 1 West, containing 40.00 acres, more or less.

Beginning 180 rods North of the Southeast corner of Section 22, Township 2 North, Range 1 West, running thence West 160 rods; thence North 60 rods; thence East 160 rods; thence South 60 rods to beginning, containing 60 acres, more or less.

Beginning 130 rods North of the Southeast corner of Section 22, Township 2 North, Range 1 West, running thence West 160 rods; thence North 50 rods; thence East 160 rods; thence South 50 rods to beginning, containing 50 acres, more or less.

Beginning 80 rods North of the Southeast corner of Section 22, Township 2 North, Range 1 West, running thence West 160 rods; thence North 50 rods; thence East 160 rods; thence South 50 rods to beginning, containing 50 acres, more or less.

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Beginning at the Southeast corner of Section 22, Township 2 North, Range 1 West, running thence North 34 rods; thence West 14 rods; thence North 46 rods; thence West 146 rods; thence South 80 rods; thence East 160 rods to beginning, containing 76 acres, more or less.

Commencing at a point 561 feet North from the Southeast corner of Section 22, Township 2 North, Range 1 West, running thence West 231 feet; thence North 379.4 feet; thence East 231 feet; thence South 379.4 feet to beginning, containing 2.00 acres, more or less.

Commencing at a point 18.80 chains East from the Northwest corner of section 26, Township 2 North, Range 1 West, running thence South 8.15 chains, thence East 8.77 chains; thence North 5° West 8.20 chains; thence North 5.56 chains; thence North 89°37' West 8.49 chains; thence South 5.63 chains to beginning, containing

11.30 acres, more or less,

also the following personal property: All of the livestock including 37 head of cows, calves and steers and 4 head of horses and all harnesses and farm implements upon the property including tractor, mower, and all other farm equipment now located on said property above described.

The total purchase price for said property, real and personal, is the sum of $15,000.00 and said sum is payable to the sellers in the amounts and at the times as follows: $1,000.00 on the date hereof, the receipt of which is hereby acknowledged, the balance, $14,000.00 to bear interest at the rate of 4% per annum from the date hereof until paid, interest to cease on principal payments as made; $4,000.00 together with the annual interest to that date on or before 2 years from date and the balance of $10,000.00 payable $600.00 per year together with yearly interest payments until the entire purchase price is paid. The buyers shall have the right to pay any amount or all of the balance of the purchase price at any time.

The purchasers agree to sell all the male cattle of said cattle purchased and to apply the sales price and pay the same to the sellers, the amount received to be applied upon the balance of principal to be paid.

The sellers agree to furnish to the buyers abstract of title to the property above described showing an unemcumbered fee simple marketable title in the sellers satisfactory to the attorneys of the buyers and to execute, sign and acknowledge a deed to said property in favor of the buyers so that the same may be delivered to the buyers at any time hereafter that the buyers shall have made full payment of the purchase price of the property.

The sellers agree to pay the taxes on the property for the year 1944 and the buyers are to be entitled to and have taken possession of the property and agree to pay the taxes thereafter on the property on or before the date when the taxes may become delinquent.

It is agreed that if the sellers accept payments from the buyers on this contract less than according to the terms herein mentioned, then by so doing it will in no way alter the terms of the contract and all payments made by the buyers, if any, in excess of the payments herein stipulated may at the option of the buyers be applied on future payments.

The buyers agree to keep all insurable buildings and improvements on the premises insured with a company acceptable to the seller in the amount of $2500.00 and to assign said insurance to the sellers as their interest may appear.

In the event the buyers default in the payment of taxes or insurance as provided herein or in the event that the buyers fail to pay a total of $5,000.00 on said purchase price on or before two years from date and the sellers make written demand upon the buyers to remedy their default in any of said particulars and shall fail to remedy said default within 90 days after said written notice and demand, then, in that event, the sellers shall at their option be released from all obligations to convey said property and all payment which have been made thereon on this contract by the buyers shall be forfeited to the sellers as liquidated damages for the non-performance of this contract.

The sellers on receiving the full purchase price to be paid as herein provided agree to deliver to the buyers a good and sufficient warranty deed conveying the premises free and clear of all encumbrances except as may have accrued by or

through the acts or neglect of the buyers and to furnish at their expense as aforesaid an abstract or abstracts of title brought to date of the delivery of the deed; the title to be marketable and acceptable to the buyers.

The buyers and sellers each agree that should they default in any of the covenants and agreements contained herein to pay all costs and expenses that may arise from enforcing this agreement, either by suit or otherwise, including a reasonable attorneys' fees.

IN WITNESS WHEREOF, the said parties to this agreement have hereunto signed their names as of the 1st day of November, 1944.

WITNESS:

Oscar W Moyle

Ancel Hatch
Amy A Hatch
William Guffey
Josephine A. Guffey

STATE OF UTAH }
: ss
COUNTY OF SALT LAKE }

On this 1st day of November, 1944, personally appeared before me ANCEL HATCH and AMY A. HATCH, husband and wife, the signers of the above instrument, who duly acknowledged to me that they executed the same.

Commission Expires
Oct. 30, 1948

(SEAL)

Oscar W Moyle
Notary Public
Residing in Salt Lake County, Utah.

Recorded February 24, 1945 at 12:25 P.M.

Abstracted 26-2N-1W
22-2N-1W
23-2N-1W

Alice Hess County Recorder

No. 88836

UTAH POWER & LIGHT COMPANY

POLE LINE EASEMENT

1.

Benjamin Clegg and Cora Mae Clegg his wife, Grantors, of Davis County, Utah, hereby convey and warrant to UTAH POWER & LIGHT COMPANY, a corporation, its successors in interest and assigns, Grantee, for the sum of One ($1.00) Dollar and other valuable consideration, a perpetual easement and right of way for the erection and continued maintenance, repair, alteration, and replacement of the electric transmission, distribution and telephone circuits of the Grantee, and 1 guy anchor and 2 poles, with the necessary guys, stubs, crossarms and other attachments thereon, or affixed thereto, for the support of said circuits, to be erected and maintained upon and across the premises of the Grantors, in Davis County, Utah, along a line described as follows:

Beginning at existing pole on grantor's land at a point 520 feet north and 1085 feet west, more or less, from the east quarter corner of Section 27, T. 2 N., R. 1 W., S.L.B.& M., thence running N. 19°14' E. 858 feet to fence on north boundary line of said land and being in the SE¼ of NE¼ of Section 27.

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto, including the right to cut and remove timber, trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation, or enjoyment of this easement.