

Ent 457621 Bk 1237 Pg 1345 - 1361
PEGGY FOY SULSER, Recorder
WASATCH COUNTY CORPORATION
2018 Nov 01 09:52AM Fee: \$53.00 TC
For: Robinson, Seiler & Anderson, LC
ELECTRONICALLY RECORDED

The Order of Court is stated below:

Dated: July 08, 2013
08:19:45 AM

/s/ Fred D. Howard
District Court Judge



I CERTIFY THAT THIS IS AN ORIGINAL IF IN RED INK
AN ORIGINAL DOCUMENT
FOURTH JUDICIAL DISTRICT COURT
COUNTY, STATE OF UTAH
DATE: 7/8/13
DEPUTY CLERK

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Attorneys for Plaintiffs

ENT 37509:2017 PG 1 of 16
Jeffery Smith
Utah County Recorder
2017 Apr 19 12:18 PM FEE 52.00 BY SS
RECORDED FOR Robinson, Seiler & Anderson,
ELECTRONICALLY RECORDED

**FOURTH JUDICIAL DISTRICT COURT - PROVO
UTAH COUNTY, STATE OF UTAH**

NANETTE OLSON, DIANE AAGARD,
FLORENCE WORKMAN, VIRGINIA
JOHNSON, JAMES AAGARD, and
ANDREW AAGARD,

Plaintiffs,

v.

BRAD AAGARD, SCOTT AAGARD,
BETTY AAGARD; CARBON COUNTY
LUMBER COMPANY, LLC, a Utah limited
liability company; LEE DAHL, VANCE W.
AAGARD & SONS, INC., LEE DAMARIS,
BOB KAMMERS and VAL RAPPLEYE,

Defendants.

[PROPOSED] ORDER

Civil No. 030402738

Judge Fred D. Howard

This case came before the Court on December 21, 2011, for the trial of all claims asserted in this matter. The Plaintiffs, Nanette Olson, Diana Aagard, Florence Workman (deceased), Virginia Johnson (deceased), James Aagard, and Andrew Aagard, and their respective estates,

were represented by Jesse M. Oakeson and Bruce Wycoff of the firm of Jones Waldo Holbrook & McDonough PC. Brad Aagard, Scott Aagard, Betty Aagard (deceased), Vance W. Aagard & Sons, Inc., and the Estate of Betty Aagard (collectively, the "Defendants Aagard"), were represented by Thomas W. Seiler and Morgan Fife of the firm of Robinson, Seiler & Anderson, LC. Val Rappleye was represented by John C. Green of the firm of John C. Green, PC.

The Court, based on the joint motion and stipulation of the parties, and the affirmation of the stipulation by the individuals parties as to their understanding thereof and their agreement thereto, being fully advised in the premises, and for good cause appearing, does hereby ORDER, ADJUDGE, and DECREE:

1. All of the non-defaulting parties' claims against Plaintiffs, the Defendants Aagard and Val Rappleye, including without limitation claims that could have been brought based on the facts and circumstances alleged in the pleadings, are hereby dismissed with prejudice and upon the merits. Plaintiffs expressly reserve their claims against all defaulted defendants. All of the defaulting parties' claims against the non defaulting parties, including without limitation claims that could have been brought based on the facts and circumstances alleged in the pleadings, are hereby dismissed with prejudice and on the merits.

2. Plaintiffs shall release the lis pendens recorded in conjunction with this action within thirty days of entry of this Order.

3. Plaintiffs and Defendant Vance W. Aagard & Sons, Inc., shall commission a

survey for the partition of the property consistent with this Order. The survey will describe the boundary division between the property owned by the Plaintiffs and the property owned by Defendant Vance W. Aagard & Sons, Inc. The survey by which the subject property will be partitioned will follow the following requirements. Lines 1 and 2 will remain exactly where they are as to their location on the Exhibit No. 1 attached hereto and incorporated by reference. The east end of Line 2 may be moved to the east or to the west. Line 3 may be moved to the east or to the west. Line 4 may be moved to the north or to the south. Line 5 may be moved to the east or to the west. Line 5 shall be to the west of the spring that is identified on Exhibit No. 1 as being to the east of Line 5 and to the north of Line 4. Lines 2, 3, 4, and 5 shall be adjusted in a manner consistent with this Order so that Plaintiffs shall be the sole owners of 915 acres of the subject property. All five lines shall be straight.

4. Title in and to the 915 acres of property more particularly described in Schedule A attached hereto is hereby quieted in the following individuals and trust and in the following percentages: (i) 2/15 to Nanette Olson, (ii) 2/15 to Diana Aagard, (iii) 1/3 to Diana Aagard, Trustee of the Florence B. Workman Family Trust dated March 25, 2005 (as successor-in-interest to the interest of Florence B. Workman); (iv) 2/45 to Heather Johnson, 2/45 to Amberly Johnson, and 2/45 to Raquel Johnson Stoneman (as successors-in-interest to the interest of Virginia Johnson), (v) 2/15 to James Aagard and (vi) 2/15 to Andrew Aagard, as tenants in common, free and clear of any claim of right, title, or

interest of Defendants in this action or of Defendants' successors in interest except as expressly provided herein.

5. Title in and to the approximately 33.72 acres of property in Section 36, Township 10 South, Range 7 East, Salt Lake Base and Meridian more particularly described in Schedule B attached hereto is hereby quieted in Vance W. Aagard & Sons, Inc except as expressly provided herein.

6. Title in and to the balance of the approximately 2,400 acres is hereby quieted in Vance W. Aagard & Sons, Inc except as expressly provided herein.

7. Each party shall retain his or her respective water rights that are recognized by the Utah State Engineer and the Utah Division of Water Rights. Defendant Vance W. Aagard & Sons, Inc., currently own five-sixths of water rights related to Hunter Springs and two-thirds of water rights related to Eddie Springs. Plaintiffs currently own one-sixth of the water rights related to Hunter Springs and one-third of the water rights related to Eddie Springs. All other water rights will run with the property as divided as a result of this Order.

8. The survey costs will be split fifty percent to the Plaintiffs and fifty percent to the Defendants Aagard. The survey shall be completed by July 31, 2012. The Plaintiffs shall propose a surveyor to Defendants Aagard by January 30, 2012. The Defendants Aagard will not unreasonably reject the proposed surveyor.

9. Any mineral, oil, gas, and other non-surface rights related to the subject

property shall be unaffected by this Order, and ownership thereof shall be as currently constituted on the records of the respective counties.

10. The Plaintiffs and their successor(s)-in-interest may have access to their 915 acres through an access point on the western side of the Defendant Vance W. Aagard & Sons, Inc.'s or its successors-in-interests' property near Tucker upon request from the Plaintiffs or their successors-in-interests to Defendant Vance W. Aagard & Sons, Inc. or its successors-in-interest, only when weather conditions will not permit access to the Plaintiffs' or their successors-in-interests' respective property through the access gate at or near the location marked as No. 6 on Exhibit No. 1. Defendant Vance W. Aagard & Sons, Inc., will not unreasonably withhold said permission. This Order does not guarantee access to any party hereto through property not held by the parties to this action.

11. Defendant Vance W. Aagard & Sons, Inc., and its successors-in-interest, shall have a right of way for ingress and egress for the purpose of accessing the property belonging to the Defendant Vance W. Aagard & Sons, Inc. or its successors-in-interest across the Plaintiffs' property on the existing roadway marked 4WD on Exhibit 1 that starts at the access gate at or near the location marked as No. 6 on Exhibit No. 1 (the "Easement"). The access gate shall be locked by chains that have a lock on each end. One lock will belong to the Defendant Vance W. Aagard & Sons, Inc, or their successors-in-interest. The other lock will belong to the Plaintiffs or their successors-in-interest.

The Plaintiffs and the Defendant, Vance W. Aagard & Sons, Inc., or their respective successors-in-interest, will maintain their own keys to their respective locks, and no party deriving rights from or under this Order shall be obligated to provide a key to its lock to any other owner. No party deriving rights from or under this Order will intentionally destroy, lose or otherwise interfere with the other owners' lock. The access gate shall remain locked except for reasonable ingress and egress. Any party deriving rights under this Order may, at that party's sole expense, maintain the Easement in substantially similar condition that such Easement is in as of the date hereof.

12.The Plaintiffs and their successors-in-interest have the right to preserve the Easement as a nonpublic easement within the meaning of Utah Code Section 72-5-104, or as otherwise prescribed by Utah law, including the right to take all reasonable and necessary steps necessary to preserve that Easement as a non-public easement in any way that does not unreasonably interfere with Vance W. Aagard & Sons, Inc.'s, or its successors-in-interest's rights of ingress and egress over the Easement existing at the time of the entry of this Order.

13.An Order of Partition will be submitted to this Court following the completion of the survey to effectuate the actual partition of the subject property. The parties shall act reasonably to perfect the partition.

14.This Order shall encompass and be binding on the estates of Virginia Johnson and Florence Workman, which are represented by Jesse M. Oakeson and Bruce Wycoff

for the purposes of the joint motion and stipulation. It shall also encompass and be binding on the estate of Betty Aagard, which is represented by Thomas W. Seiler and Morgan Fife for the purposes of the joint motion and stipulation.

15. This Order is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party-beneficiary rights in any person(s) other than (a) Plaintiffs, (b) Vance W. Aagard & Sons, Inc., and/or (c) the successors-in-interest to any party identified in subparagraphs (a) and (b) of this paragraph 14.

DATED this ____ day of June, 2013.

BY THE COURT:

Honorable Fred D. Howard
Fourth District Court Judge

ORDER APPROVED AS TO FORM BY:

JOHN C. GREEN, PC

John C. Green
Attorney for Val Rappleye

ROBINSON, SEILER & ANDERSON, LC

Thomas W. Seiler
Morgan Fife
Attorneys for Defendants Aagard

NOTICE OF INTENT TO SUBMIT FOR SIGNATURE

Please take notice that Plaintiffs' undersigned counsel will pursuant to Utah Rule of Civil Procedure 7(f)(2) submit the foregoing **[PROPOSED] ORDER** to the Honorable Fred D. Howard for his signature upon the expiration of five (5) business days from the date of this notice unless written objection is filed with the Court and received by counsel for Plaintiffs prior to that time.

DATED: June 3, 2013.

JONES WALDO HOLBROOK & McDONOUGH, P.C.

Kenneth A. Okazaki
Bruce Wycoff
Jesse Oakeson
Attorneys for Plaintiffs

SCHEDULE A

**PORTION OF SECTION 36, T10S, R7E, SLB&M
IN UTAH COUNTY**

A portion of Section 36, Township 10 South, Range 7 East, Salt Lake Base and Meridian, described as follows:

Beginning at a point located N88°59'40"E along the Section Line 526.46 feet from the Northwest Corner of Section 36, Township 10 South, Range 7 East, Salt Lake Base and Meridian; thence N88°59'40"E along the Section Line 2102.34 feet to the North 1/4 Corner of said Section 36; thence S0°29'32"E along the Quarter Section Line 5326.09 feet to the South 1/4 Corner of said Section 36; thence N89°58'46"W along the Section Line 2594.98 feet to the Southwest Corner of said Section 36; thence N0°51'33"W along the Section Line 2494.00 feet; thence East 526.52 feet; thence N0°51'33"W 2794.66 feet to the point of beginning.

Contains: ±284.22 Acres

**PORTION OF SECTION 36, T10S, R7E, SLB&M
IN WASATCH COUNTY**

A portion of Section 36, Township 10 South, Range 7 East, Salt Lake Base and Meridian, described as follows:

Beginning at the North 1/4 Corner of Section 36, Township 10 South, Range 7 East, Salt Lake Base and Meridian; thence N89°10'21"E along the Section Line 2638.83 feet to the Northeast Corner of said Section 36; thence S0°01'04"E along the Section Line 2697.13 feet to the East 1/4 Corner of said Section 36; thence S0°00'43"E along the Section Line 2696.92 feet to the Southeast Corner of said Section 36; thence N89°20'10"W along the Section Line 2594.39 feet to the South 1/4 Corner of said Section 36; thence N0°29'32"W along the Quarter Section Line 5326.09 feet to the point of beginning.

Contains: ±321.95 Acres

**PORTION OF THE SECTION 31
IN WASATCH COUNTY**

A portion of West Half of Section 31, Township 10 South, Range 8 East Salt Lake Base and Meridian, described as follows:

Beginning at the Northwest Corner of Section 31, Township 10 South, Range 8 East, Salt Lake Base and Meridian; thence S89°16'22"E along the Section Line 2458.51 feet to the west right-of-way line of the Union Pacific Railroad; thence S20°34'00"E along said right-of-way line 555.25 feet to the Quarter Section Line; thence S0°32'02"E along the Quarter Section Line 3516.75 feet to the Northeast Corner of that real property described in Deed Book: 355, Page: 707; thence along said real property the following two (2) courses: N89°31'44"W 670.86 feet; thence S0°23'11"E 1355.66 feet to the Section Line; thence N89°19'41"W along the Section Line 2023.17 feet to the Southwest Corner of said Section 31; thence N0°00'43"W along the Section Line 2696.92 feet to the West 1/4 Corner of said Section 31; thence N0°01'04"W along the Section Line 2697.13 feet to the point of beginning.

Contains: ±308.83 Acres

SCHEDULE B

PORTION OF SECTION 36, T10S, R7E, SLB&M IN UTAH COUNTY

A portion of Section 36, Township 10 South, Range 7 East, Salt Lake Base and Meridian, described as follows:

Beginning at the Northwest Corner of Section 36, Township 10 South, Range 7 East Salt Lake Base and Meridian; thence N88°59'40"E along the Section Line 526.46 feet; thence S0°51'33"E 2794.66 feet; thence West 526.52 feet; thence N0°51'33"W along the Section Line 2785.42 feet to the point of beginning.

Contains: ±33.72 Acres

**SEILER
DEFENDANTS'
EXHIBIT 1**

CERTIFICATE OF SERVICE

I hereby certify that (i) on May 13, 2013 I personally e-mailed, and (ii) on June 3, 2013 I caused to be hand delivered a true and correct copy of the foregoing **[PROPOSED] ORDER** to the following:

Thomas W. Seiler
Morgan Fife
ROBINSON, SEILER & ANDERSON, L.C.
2500 N. University Avenue
Provo, Utah 84604;

and that on June 3, 2013 I personally e-mailed a copy to:

John C. Green
johngreenpc@gmail.com

STATE OF UTAH
COUNTY OF UTAH
I THE UNDERSIGNED RECORDER OF UTAH COUNTY, UTAH
DO HEREBY CERTIFY THAT THE AMENDED AND FOREGOING IS A
TRUE COPY OF THE ORIGINAL RECORDED DOCUMENT IN THE
OFFICE RECORD IN MY OFFICE AS THE SAME APPEARS IN
ENTRY 37509:2017 PAGES 16

BOOK — AT PAGE —

WITNESS MY HAND AND SEAL OF SAID OFFICE THIS 31

DAY OF October 20 18

JEFFERY SMITH, RECORDER

Lundy Stewart DEPUTY