

108-5504

Recorded at Request of Mr. R. Darne McCullough, Atty.
at 12:04 P. M Fee Paid \$ 24.80

NELLIE M. JACK, Recorder Salt Lake County, Utah

By [Signature] Dep. Ref.

#304 East First South, S.L.C.
-11-

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ROSE PARK INVESTMENT COMPANY,
a corporation,

Plaintiff,

v.

SHIRLEY L. HEUGLY and E. LEONA
HEUGLEY, his wife; LLOYD JACKSON
and IRMA JACKSON, his wife, REX L.
JACKSON and ELAINE G. JACKSON, his
wife; THEO I. PALMER and EVELYN O.
PALMER, his wife; W. C. CUMMINGS
and MIGNON P. CUMMINGS, his wife;
CLIFTON B. HOFHEINS otherwise known
as CLIFTON R. HOFHEINS and ADDIE P.
HOFHEINS, his wife; EDWARD DELL
HOFHEINS and ZELMA HOFHEINS, his
wife; ELMER S. BROWN and VERA HYLER
BROWN, his wife; MAX WM. POPP and
GLADYS M. POPP, his wife; EDWIN
HANSEN AAMODT and MAGNA OVIDIA
HANSEN AAMODT, his wife; A. W. OLSEN
and HENRIETTA C. OLSON, his wife;
HAROLD L. DEBENHAM and NELLIE
DEBENHAM, otherwise known as NELLIE
D. DEBENHAM, his wife; HOMER D.
CANNON and BEVERLY CANNON, other-
wise known as BEVERLY D. CANNON,
his wife; VERL G. STATEN, JR. and
JEAN D. STATEN, his wife; LEE T.
SIMPSON and LUANA D. SIMPSON, his
wife; JOHN L. VICKERS and GLORIA
JUNE VICKERS, his wife; PAUL EASTON
ROBISON and DOROTHY B. ROBISON, his
wife; JOHN J. BATES and KLOVER M.
BATES, his wife; GLENN A. BROWN and
CARMA J. BROWN, otherwise known as
CARMA J. CUSHING, his wife; LYNN
BENARD and JOYCE BENARD, his wife;
SAMUEL A. OUTSEN and VERNICE H.
OUTSEN, his wife; WILLIAM B. WHEAT
and FLORENCE WHEAT, his wife; CLARK
IVORY and ERINA N. IVORY, his wife;
UTAH POWER & LIGHT COMPANY, a corp.,
THE MOUNTAIN STATES TELEPHONE AND
TELEGRAPH COMPANY, a corp., MOUNTAIN
FUEL SUPPLY COMPANY, a corp., EAST
MILL CREEK WATER COMPANY, a corp.,
LOWER MILL CREEK IRRIGATION CO.,
its unknown successors and assigns,
if any; EDWARD B. KIRKMAN and CAROLINE
KIRKMAN, his wife; D. LAVAR HEUGLY
and DAISY ANN HEUGLEY, his wife;
LAMONT B. GUNDERSON and MADELINE
GUNDERSON, his wife, LORENZO C. HEUGLY :

J U D G M E N T

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and MARY ANN HEUGLEY, his wife; MARION :
 H. BRADY and MELVA W. BRADY, his wife; :
 LEROY J. CAPSON and CAROLINE J. CAPSON, :
 his wife, AND ALL OTHER PERSONS, UNKNOWN, :
 CLAIMING ANY RIGHT, TITLE, ESTATE OR :
 INTEREST IN OR LIEN UPON THE REAL PRO- :
 PERTY DESCRIBED IN THE PLEADINGS, ADVERSE :
 TO COMPLAINANT'S OWNERSHIP OR CLOUDING :
 ITS TITLE THERETO, :
 Defendants, :

The above entitled matter came on regularly for hearing before the above entitled Court on the 5th day of November, 1982; R. Verne McCullough appeared as counsel for the plaintiff; and it appearing to the satisfaction of the Court that the above named defendants were duly served with summons and complaint for the purpose of quieting title to the real property involved in this action.

That the following defendants have failed to answer or otherwise plead to plaintiff's complaint on file herein, and the legal time for answering has expired, and the default of said defendants has been entered, to-wit, John L. Vickers and Gloria June Vickers, his wife, Clark Ivory and Erina N. Ivory, his wife, A. W. Olson and Henrietta C. Olson, his wife, Rex L. Jackson and Elaine G. Jackson, his wife, Lloyd Jackson and Irma Jackson, his wife, Elmer S. Brown and Vera Hyler Brown, his wife, Max Wm. Popp and Gladys M. Popp, his wife, Glenn A. Brown and Carma J. Brown otherwise known as Carma J. Cushing, his wife, Samuel A. Outsen and Vernice H. Outsen, his wife, Evelyn O. Palmer, East Mill Creek Water Co., a corporation, Edwin Hansen Aamodt and Magna Ovidia Hansen Aamodt, his wife, Edward B. Kirkman and Caroline Kirkman, his wife, Lynn Benard and Joyce Benard, his wife.

Attorney William C. Quigley appeared and filed an answer for the following defendants: Harold L. Dobenham and Nellie Dobenham, otherwise known as Nellie D. Dobenham, his wife, Veri C. Staten, Jr.

and Jean D. Staten, his wife, Homer D. Cannon and Beverly D. Cannon, his wife, Lee T. Simpson and Luana D. Simpson, his wife; and William B. Wheat and Florence Wheat, his wife; that said attorney has filed herein a written Consent to Strike the answer of these defendants; and on motion of attorney for the plaintiff the default of said defendants has been duly entered.

Attorney Gordon A. Madsen appeared and filed an answer for the defendants John J. Bates and Klover M. Bates, his wife, Paul Easton Robison and Dorothy B. Robison, his wife, Clifton B. Hofheins and Addie P. Hofheins, his wife, Edward Dell Hofheins and Zelma Hofheins, his wife. That defendants John J. Bates, Klover M. Bates, Paul Easton Robison and Dorothy B. Robison, failed to appear either in person or by counsel at the pre-trial hearing of this action, and upon motion of attorney for plaintiff their answer has been stricken and their default entered. That plaintiff and the defendants, Clifton B. Hofheins and Addie P. Hofheins, his wife, Edward Dell Hofheins and Zelma Hofheins, his wife, and their respective attorneys, have entered into a written stipulation settling their respective rights, which stipulation is on file herein, marked Exhibit P-1 and incorporated herewith and made a part hereof.

Attorney Richard R. Wilkins of Strong, Watkins & Wilkins, appeared and filed an answer for defendants W. Clinton Cummings, Mignon Cummings, D. LaVar Heugly, Daisy Ann Heugly, LaMont B Gunderson, Madeline Gunderson, Lorenzo C. Heugly, Mary Ann Heugly, Marion H. Brady, Melva W. Brady, LeRoy W. Capson, Caroline S. Capson and Theo I. Palmer; that plaintiff and said defendants and their respective attorneys have entered into a written stipulation and agreement settling their respective rights, which stipulation is on file herein, marked Exhibit P-2, incorporated herewith and made a part hereof.

Attorney W. W. Kirton, Jr. of Kirton & Bettilyon appeared and filed an answer for defendants Shirley L. Heugly and Leona Heugly, his wife; plaintiff and said defendants have entered into a written stipulation and agreement settling their respective rights; that said stipulation is on file herein, marked Exhibit P-3, and incorporated herewith and made a part hereof.

Attorney Grant H. Bagley of Van Cott, Bagley, Cornwall & McCarthy appeared and answered for The Mountain States Telephone & Telegraph Co; that plaintiff and said defendant have entered into a written stipulation settling their respective rights, which stipulation is on file herein, marked Exhibit P-4, and incorporated herewith and made a part hereof.

Plaintiff and defendant Mountain Fuel Supply Co. heretofore submitted to the court a stipulation and motion for dismissal, which is on file herein, upon which this case was dismissed as to said defendant, Mountain Fuel Supply Co.

That defendant Utah Power & Light Co., by and through its attorney, Robert B. Porter, has filed a disclaimer in this action disclaiming any right, title or interest whatsoever in and to any and all of the premises described in the complaint of plaintiff.

And oral and documentary evidence having been introduced by way of stipulation as hereinabove set forth; and the court being fully apprised in the premises, and good cause appearing therefor; and the court having waived Findings of Fact and Conclusions of Law herein upon motion of plaintiff's counsel;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That plaintiff was and during all times mentioned herein has been and now is the owner in fee simple and entitled to the possession of all that certain real property situate in the County

of Salt Lake, State of Utah, referred to and set forth in plaintiff's Complaint on file herein, and more particularly described by metes and bounds as follows, to-wit:

Beginning at a point North $0^{\circ}11'27''$ West 713.0 feet from the South Quarter Corner of Section 27, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence North $0^{\circ}11'27''$ West 73.0 feet; thence North $89^{\circ}59'15''$ West 101.88 feet; thence North $0^{\circ}30'$ East 12.0 feet; thence North $89^{\circ}59'15''$ West 125.84 feet; thence North $0^{\circ}30'$ East 10.0 feet; thence North $89^{\circ}59'15''$ West 150.0 feet; thence South $0^{\circ}30'$ West 10.0 feet; thence North $89^{\circ}59'15''$ West 8.0 feet; thence North $0^{\circ}30'$ East 314.05 feet to the South line of 3300 South Street; thence North $89^{\circ}59'15''$ West 401.25 feet; thence South 112.78 feet; thence West 145.89 feet; thence South $0^{\circ}48'30''$ West 79.28 feet; thence East 138.0 feet; thence South 0.50 feet; thence East 11.41 feet; thence South 70.71 feet; thence West 151.12 feet; thence South $0^{\circ}12'27''$ East 97.79 feet; thence East 593.81 feet; thence North $0^{\circ}30'$ East 20 feet; thence East 458.25 feet to the point of beginning. (Excepting therefrom that portion thereof conveyed to Salt Lake County for 2300 East Street as shown by Plat recorded February 23, 1950, in Book "K" of Plats, page 24, being approximately the East 39 feet of said property.)

Subject to and together with a right of way over the following: Beginning at a point North $0^{\circ}11'27''$ West 793 feet and West 457.50 feet from the South Quarter Corner of Section 27, Township 1 South, Range 1 East, Salt Lake Base and Meridian, thence North $0^{\circ}30'$ East 314.05 feet, more or less, to the South property line of 3300 South Street; thence South $89^{\circ}59'15''$ East 20 feet; thence South $0^{\circ}30'$ West 314.0 feet, more or less to a point 20 feet East of Beginning; thence West 20 feet to the point of beginning.

Subject to a right of way of Clifton B. Hofheins and Addie F. Hofheins, his wife, Edward Dell Hofheins and Zelma Hofheins, his wife, over the following described property for the exclusive use of said defendants as ingress and egress to their property, which is West of and contiguous to the said property of plaintiff:

Beginning at a point on the South side of 33rd South Street which is North $0^{\circ}11'27''$ West 10.9 chains and North $89^{\circ}59'15''$ West 13.73 chains and South $0^{\circ}11'27''$ East 3.4 feet from the South Quarter Corner of Section 27, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence North $89^{\circ}59'15''$ West 6.0 feet along the South line of 33rd South Street; thence South $0^{\circ}30'$ West 321.24 feet; thence South $89^{\circ}59'15''$ East 10.50 feet; thence North $0^{\circ}30'$ East 321.24 feet; thence North $89^{\circ}59'15''$ West 2.15 feet to the place of beginning.

3. That the claims of the defendants, and all who claim title under them, in and to said real estate, are without any right whatsoever, and said defendants have no right, title, interest, claim or estate whatsoever in or upon said real property, or any part thereof, except as expressly hereinafter set forth; and said defendants and all persons claiming under them are hereby enjoined and debarred from claiming or asserting any estate, right, title, interest or claim or lien upon said real property or any part thereof, save and except the following:

(a) Defendants Clifton B. Hofheins and Addie P. Hofheins, his wife, Edward Bell Hofheins and Selma Hofheins, his wife, have an interest in an easement in a single irrigation ditch, sometimes referred to as a lateral, which runs through the property of the Plaintiff in the following approximate location:

Said ditch or lateral enters the property of the Plaintiff from adjoining property on the east owned by Shirley L. Heugly; said point of entry being approximately 249.2 feet south of the eastern boundary of Plaintiff's property on 33rd South Street and said ditch or lateral runs from that point in a generally southerly direction approximately 89.0 feet and then runs in a westerly direction through and across Plaintiff's property approximately 623.28 feet where it enters the property of W. C. and Mignon Cummings; thence continuing in a westerly direction where it serves the properties of some of the Defendants in the above entitled action for irrigation purposes only.

This easement is void as to any of said defendants who have no shares of water stock in the Brigham Young Ditch which supplies the irrigation water for said lateral.

Also, said Defendants Clifton B. Hofheins and Addie P. Hofheins, his wife, Edward Bell Hofheins and Selma Hofheins, his wife, have a right of way over the following described property, to-wit:

Beginning at a point on the South side of 33rd South Street which is North $0^{\circ}11'27''$ East 18.9 chains and North $89^{\circ}19'15''$ West 18.73 chains and South $0^{\circ}11'27''$ East 3.4 feet from the South Quarter Corner of Section 27, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence North $89^{\circ}19'15''$ East 8.9 feet along the South line of 33rd South Street; thence South $0^{\circ}30'$ East 321.24 feet; thence South $89^{\circ}19'15''$ East 18.28 feet; thence North $0^{\circ}30'$ East 321.24 feet; thence North $89^{\circ}19'15''$ East 2.28 feet to the place of beginning.

(b) Defendants W. Clinton Cummings, Mignon Cummings, D. LeVar Heugly, Daisy Ann Heugly, LeMont E. Gunderson, Madeline Gunderson, Lorenzo C. Heugly, Mary Ann Heugly, Marion H. Brady, Melva W. Brady, LeRoy W. Capson and Caroline B. Capson have an interest and easement in a single irrigation ditch, sometimes referred to as a lateral, which runs through the property of the Plaintiff in the following approximate location:

Said ditch or lateral enters the property of the Plaintiff from adjoining property on the east owned by Shirley L. Heugly; said point of entry being approximately 249.2 feet south of the eastern boundary of Plaintiff's property on 33rd South Street and said ditch or lateral runs from that point in a generally southerly direction approximately 85.0 feet and then runs in a westerly direction through and across Plaintiff's property approximately 622.25 feet where it enters the property of W. C. and Mignon Cummings; thence continuing in a westerly direction where it serves the properties of the Defendants for irrigation purposes; said ditch or lateral having been used by the Defendants for irrigation purposes for over 30 years.

Defendant Theo I. Palmer has no claim, right, title or interest of any kind whatsoever in the property of the Plaintiff, which is the subject of this quiet title action.

(c) Defendants Shirley L. Heugly and E. Leona Heugly, his wife, have an interest in an easement in a single irrigation ditch, sometimes referred to as a lateral, which runs through the property of the Plaintiff in the following approximate location:

Said ditch or lateral enters the property of the plaintiff from adjoining property on the east owned by Shirley L. Heugly; said point of entry being approximately 249.2 feet south of the eastern boundary of plaintiff's property on 33rd South Street and said ditch or lateral runs from that point in a generally southerly direction approximately 85.0 feet and then runs in a westerly direction through and across plaintiff's property approximately 622.25 feet where it enters the property of W. C. and Mignon Cummings; thence continuing in a westerly direction where it serves the properties of the defendants for irrigation purposes only; said ditch or lateral having been used by the defendants for irrigation purposes for over 30 years.

It is expressly understood that the interest of said defendants, Shirley L. Heugly and E. Leona Heugly, in said easement over plaintiff's property is limited to surface water drainage; that

the primary use of said ditch is to carry irrigation water over said plaintiff's land to the properties of any of the above named defendants who possess a share or shares of water from the Brigham Young Ditch; that said irrigation ditch cannot be used by said defendants, Shirley L. Heugly and E. Leona Heugly, for the purpose of carrying off drainage water from their property under circumstances which will increase the size of the ditch greater than necessary to carry said irrigation water, and then only upon the approval of the above named defendants or other property holders who possess a share or shares of water in the Brigham Young Ditch. Further, if the users of said irrigation water, whose properties lie south of the point of entry of said ditch onto said plaintiff's property, transfer said right to plaintiff or abandon the use of said irrigation ditch for the flow of irrigation water, then and in that event plaintiff may terminate the easement of said irrigation ditch over its land for any purpose as herein set forth.

Also, said defendants, Shirley L. Heugly and E. Leona Heugly, his wife, have a right of way over the following:

Beginning at a point North $0^{\circ}11'27''$ West 798 feet and West 457.56 feet from the South Quarter Corner of Section 27, Township 1 South, Range 1 East, Salt Lake Base and Meridian, thence North $0^{\circ}36'$ East 314.05 feet, more or less, to the South property line of 3300 South Street; thence South $89^{\circ}59'15''$ East 20 feet; thence South $0^{\circ}36'$ West 314.0 feet, more or less, to a point 20 feet East of beginning; thence West 20 feet to the point of beginning.

It is further ordered that the boundary line separating the respective properties of the plaintiff and said defendants, Shirley L. Heugly and E. Leona Heugly, is determined by the survey line as more particularly set forth in the description of said properties in the plaintiff's Complaint on file herein and not by a fence line purported to have been acquiesced in by said parties as a fence line dividing their respective properties.

It is expressly understood that the salient fee of the West 12 feet of said right of way belongs to and is the property of said

plaintiff; that the salient fee of the East 8 feet of said right of way belongs to and is the property of said defendants, Shirley L. Heugly and E. Leona Heugly, his wife; that the salient fee of said right of way is subject to the right of way privileges as set forth in the Right of Way Agreement entered into between Shirley L. Heugly and E. Leona Heugly, parties of the first part, and plaintiff's predecessors in interest, Russell F. Platt and Bernice C. Platt, parties of the second part, on the 28th day of June, 1950, and recorded in the office of the Salt Lake County Recorder in Book 777, page 552, on the said 28th day of June, 1950.

It is further ordered that the transformer station located partly on said right of way and partly on said plaintiff's property will remain as located, provided that either plaintiff or defendants, Shirley L. Heugly and E. Leona Heugly, may have said transformer removed to a location on said right of way which will not unreasonably interfere with the use of said right of way by said parties; it being expressly ordered that the removal of said transformer at the instance of either party or parties shall be done through the above defendant, Utah Power & Light Company, and the removal expense shall be charged against the party requesting the relocation of said transformer station.

It is further ordered that the location of buildings, transformer stations, roadways, utility poles, boundary lines, ditches, and rights of way, on the respective properties of the parties hereto shall be determined by adequate survey lines and not by fence lines, ditches, pole lines, or any other land mark.

(d) That defendant, The Mountain States Telephone and Telegraph Company has no right, title, claim or interest in plaintiff's property, the subject of this quiet title action, or any part thereof, except a license to maintain in their present location on the property four mainline telephone poles with the wires, fixtures and attachments thereto, also two drop poles in their

present location on said real property; provided, however, said license shall terminate and defendant shall remove its four main-line poles to the south boundary line of plaintiff's property and will remove said drop poles whenever in the future it becomes necessary to relocate said poles on account of the erection of any buildings or other property improvements on the plaintiff's property. Such relocation shall be done at the expense of the Telephone Company, after reasonable notice has been given to it by the property owner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment is binding upon all of the parties to this action, and all of their predecessors in interest, and any and all other persons, known or unknown, who may claim an adverse interest in said property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all of said defendants or any person or persons claiming under them, and all other persons, known or unknown, be, and they are hereby ordered to remove forthwith all fences, poles, walls, appurtenances of any kind or description from the above described property, except as otherwise provided herein.

DATED this 5 th day of November, 1962.

BY THE COURT:

/s/ MARCELLUS K. SNOW

District Judge

APPROVED: Alvin Keddington, Clerk
 (SEAL) by Byron Stark, Deputy
 FILED NOV 5 1962
 ENDORSED 126448

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.

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I, Alvin Keddington, Clerk in and for the County of Salt Lake and Ex-Officio Clerk of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original.....

ROSE PARK INVESTMENT COMPANY

Plaintiff

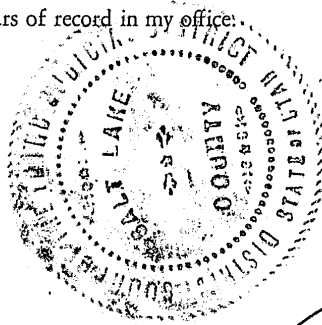
-vs-

126448

SHIRLEY L. HEUGLY ET AL

Defendants

as appears of record in my office:



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 5th day of.....

November, A.D. 19 62

ALVIN KEDDINGTON

Clerk

By *Jacob [Signature]* Deputy Clerk