

10556402  
11/05/2008 12:28 PM \$32.00  
Book - 9656 Pg - 8559-8570  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
HIRSCHI CHRISTENSEN, PLLC  
136 EAST SOUTH TEMPLE #1400  
SALT LAKE CITY UTAH 84111  
BY: SAM, DEPUTY - WI 12 P.

Prepared by:  
David P. Hirsch [USB#1502]  
HIRSCHI CHRISTENSEN, PLLC  
136 East South Temple, Suite 1400  
Salt Lake City, Utah 84111  
Attorneys for Plaintiffs

FILED DISTRICT COURT  
Third Judicial District

NOV -5 2008

SALT LAKE COUNTY  
By [Signature]  
Deputy Clerk

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

TONY VINA and SHERRY VINA, as  
Trustees of the Vina Family Trust,  
  
Plaintiffs,

vs.

A AND Z PRODUCE CO., a Utah  
corporation, A&Z PRODUCE II, L.C., a Utah  
limited liability company, JAY DEE CLARK,  
an individual, STEVEN D. CLARK, an individual,  
SCOTT D. CLARK, an individual,  
RESCUE MISSION OF SALT LAKE, a Utah  
non-profit corporation, and A AND Z  
PRODUCE COMPANY, a Utah Partnership,  
  
Defendants.

ORDER, JUDGMENT, AND DECREE

Civil No. 990906672

Judge: Kate A. Toomey

A AND Z PRODUCE CO., a Utah  
corporation, A&Z PRODUCE II, L.C., a Utah

I CERTIFY THAT THIS IS AN ORIGINAL DOCUMENT FILED IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH  
DATE: 11-5-08  
[Signature]  
DEPUTY COUNTY CLERK  
THIRD JUDICIAL DISTRICT COURT  
SALT LAKE CITY

limited liability company; JAY DEE CLARK;  
STEVEN D. CLARK; SCOTT D. CLARK;  
and A AND Z PRODUCE COMPANY,

Counterclaimants,

vs.

TONY VINA and SHERRY VINA, as  
Trustees of The Vina Family Trust,

Counter-Defendants.

---

A AND Z PRODUCE CO., a Utah  
corporation, A&Z Produce II, L.C., a Utah  
limited liability company; JAY DEE CLARK;  
STEVEN D. CLARK; and SCOTT D.  
CLARK,

Third-Party Plaintiffs,

vs.

ALAN MOSS and JANE and JOHN DOES 1-  
20,

Third-Party Defendants.

Pursuant to a *Settlement Stipulation* ("**Stipulation**") submitted (i) on behalf of the above-captioned Plaintiffs, **TONY VINA and SHERRY VINA, as Trustees of The Vina Family Trust**, by and through their counsel of record, Hirschi Christensen, PLLC, as legal counsel for **SHERRY VINA, as the sole surviving Trustee of The Vina Family Trust**, it being understood that Tony Vina is now deceased, (ii) by **RESCUE MISSION OF SALT LAKE, a/k/a The Rescue Mission of Salt Lake**, by and through their counsel of record, Hanks & Mortensen, P.C., and (iii) by **ALAN MOSS, pro se**, and good cause appearing therefor:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. As used in this Order, Judgment, and Decree, the following terms shall have the following meanings:

a. **"A & Z Defendants"** shall mean and refer collectively to Jay Dee Clark, Steven D. Clark, Scott D. Clark, A and Z Produce Co., and A & Z Produce II.

b. **"A and Z Produce Co."** shall mean and refer to A and Z Produce Co., a Utah corporation, also known as *A and Z Produce Company*, a Utah corporation, and *A & Z Produce*, a Utah corporation.

c. **"Limited Commercial Easement"** shall mean that certain Limited Commercial Easement in Gross granted by the Vina Parties to the "A & Z Easement Owners" (as that term is defined in the Limited Commercial Easement In Gross) effective April 17, 2006, and recorded on April 3, 2008, as Entry No. 10390758, in Book 9590 at Pages 3149-3158 of the official records of the Salt Lake County, Utah, Recorder, which Limited Commercial Easement in Gross is also the Limited Commercial Easement described in paragraphs 3 and 14 of the below-defined 2006 Order, Judgment, and Decree.

d. **"Mr. Moss"** shall mean and refer to **ALAN MOSS**, an individual.

e. **"Order"** shall mean and refer to this *Order, Judgment, and Decree*.

f. **"2006 Order, Judgment, and Decree"** shall mean and refer to the Order, Judgment, and Decree entered by the clerk of the court on April 17, 2006 in this Litigation and recorded on June 16, 2006 as Entry No. 9755944, in Book 9309 at Pages 4909-4928 of the official records of the Salt Lake County, Utah, Recorder.

g. **“Rescue Mission”** shall mean and refer to **RESCUE MISSION OF SALT LAKE**, a/k/a **THE RESCUE MISSION OF SALT LAKE**.

h. **“Rescue Mission Parcels”** shall mean and refer to Parcel 11 and an undivided two-thirds interest in Parcel 10, as those parcels of real property are more particularly described in paragraphs 4 and 5 below.

i. **“Settlement Agreement”** shall mean and refer to the Settlement Agreement heretofore executed and entered into by and between the Vina Parties, the Rescue Mission, and Mr. Moss settling and resolving, *inter alia*, their disputes in this Litigation regarding the Rescue Mission Parcels and the Vina Parcels.

j. **“this Litigation”** shall mean and refer to the proceedings in the above-captioned case, Civil No. 990906672, pursuant to which this Order is issued.

k. **“Vinas”** shall mean and refer collectively to TONY VINA and SHERRY VINA, both in their individual capacities and in their capacities as TRUSTEES OF THE VINA FAMILY TRUST dated August 17, 1993, it being understood, however, that Tony Vina is currently deceased and that Sherry Vina is the sole surviving Trustee of The Vina Family Trust dated August 17, 1993.

l. **“Vina Parcels”** shall mean and refer to Parcel 9 and Parcel 17, as those parcels of real property are more particularly described in paragraph 3 below, as the boundaries thereof may be established pursuant to the operation of the doctrine of *boundary by acquiescence* as described in paragraph 13 of the 2006 Order, Judgment, and Decree and paragraph 5 below.

m. “Vina Trust” shall mean and refer to THE VINA FAMILY TRUST dated August 17, 1993, including the current and future TRUSTEES thereof.

n. “Vina Parties” shall mean and refer to the Vinas and the Vina Trust.

The above-defined terms are in addition to any other terms that may be defined within the text of this Order below.

2. On or about February 27, 2004, Mr. Moss executed a *Stipulation Of Alan Moss Accepting Service Of Third-Party Complaint And Agreeing To Be Bound By Court Rulings* by which, among other things, Mr. Moss accepted service in this Litigation of a Third-Party Complaint upon him and agreed that any determination, ruling, order, or judgment made by the Court in this Litigation affecting, determining, or otherwise adjudicating the respective rights, titles, easements, obligations, rights-of-way, liens, and/or other rights and interests of the A & Z Defendants, the Vina Trust, and the Rescue Mission in and to Parcels 9, 10, 11, 17, and other properties described therein, including the “Litigation Parcels” described in subparagraph 1. g. and related paragraphs of the 2006 Judgment, Order, and Decree, are, and shall be in perpetuity, fully binding upon Mr. Moss as to whatever rights, titles, easements, rights-of-way, liens, and/or other interests he may claim in and to such Parcels and properties.

3. Subject to operation of the doctrine of *boundary by acquiescence* as described below, the Vina Trust is currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to below as **Parcel 9** in reference to the last digit of its Salt Lake County tax parcel number:

Beginning at a point 32.5 feet North of the Southwest corner of Lot 3, Block 43, Plat A, Salt Lake City Survey and running thence East 47.07 feet to a point in the

center line of a spur track; thence South 63°23'30" East 18.3 feet to a point in the center line of spur track; thence South 68°47'30" East 18.78 feet to a point in the center line of spur track; thence South 73°20'30" East 18.84 feet, more or less, to a point in the center line of spur track; thence South 12.13 feet, more or less, to South boundary line of Lot 3; thence East 231 feet to Southeast corner of said Lot 3; thence North 82.5 feet; thence West 330 feet; thence South 50 feet to the place of beginning.

Tax I.D. or Sidwell No.: 15-01-330-009

Subject to operation of the doctrine of *boundary by acquiescence* as described below, the Vina Trust is also currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to below as **Parcel 17** in reference to the last two digits of its Salt Lake County tax parcel number:

Beginning at a point 83½ feet West and 147 feet North of the Southeast corner of Lot 2, Block 43, Plat A, Salt Lake City Survey and running thence North 18 feet to the North line of Lot 2; thence East 25¾ feet; thence South 18 feet; thence West 25¾ feet to the point of beginning.

Tax I.D. or Sidwell No.: 15-01-330-017

Parcel 9 and Parcel 17 shall sometimes be referred to in this Order collectively as the **Vina Parcels**. The fee simple title to the Vina Parcels, as the boundaries thereof may be established by operation of the doctrine of *boundary by acquiescence* pursuant to the provisions of the 2006 Judgment, Order, and Decree and paragraph 5 below, shall be quieted in the Vina Trust free and clear of any liens, easements, right-of-way, encumbrances and other interests whatsoever which may exist in favor of, or which may arise by virtue of, the Rescue Mission Parcels and/or the Rescue Mission, with the exception of the Limited Commercial Easement and the *Rescue Mission Easement* ("**Rescue Mission Easement**") more particularly described in paragraph 6

below, which Limited Commercial Easement and Rescue Mission Easement shall continue in full force and effect.

4. The Rescue Mission currently owns of record a full two-thirds undivided fee simple interest in tenancy-in-common (with no rights to survivorship) with the A and Z Produce Co. in the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to as **Parcel 10** in this Order in reference to the last two digits of its Salt Lake County tax parcel number:

Beginning at the Southwest corner of Lot 3, Block 43, Plat A, Salt Lake City Survey, thence North 32.5 feet, thence East 47.07 feet to a point in the center line of a spur track; thence South 63°23'30" East 18.3 feet to a point in the center line of spur track, thence South 68°47'30" East 18.78 feet to a point in the center line of spur track, thence South 73°20'30" East 18.84 feet more or less to a point in the center line of spur track, thence South 12.13 feet, thence West 99.0 feet to point of beginning.

Tax I.D. or Sidwell No.: 15-01-330-010

The loading dock located on Parcel 10 shall sometimes be referred to below as the "**Parcel 10 Loading Dock**". A and Z Produce Co. currently owns of record the full remaining one-third undivided fee simple interest of Parcel 10 in tenancy-in-common (with no rights of survivorship) with the Rescue Mission as to the Rescue Mission's two-third's undivided fee simple interest in Parcel 10. By way of clarification of the foregoing, it is understood that the Rescue Mission, alone, owns a full two-thirds undivided fee simple interest in Parcel 10 and that A and Z Produce Co., alone, owns a full one-third undivided fee simple interest in Parcel 10, and that, although such interests are undivided fee simple interests in Parcel 10, they are tenancy-in-common interests such that neither the Rescue Mission nor A and Z Produce Co. has any right of survivorship with respect to the undivided interest in Parcel 10 owned by the other. The fee

simple ownership of Parcel 10 has previously been quieted by paragraph 4 of the 2006 Order, Judgment, and Decree, which states as follows:

“a. The one-third undivided fee simple interest of A and Z Produce Co. in Parcel 10 is hereby quieted in A and Z Produce Co. free and clear of any liens, easements, rights-of-way, encumbrances and other interests whatsoever in favor of, or by virtue of, the Vina Parcels, the Vina Parties, Mr. Moss, and/or others.

b. The two-thirds, undivided fee simple interest of the Rescue Mission in Parcel 10 is hereby quieted in the Rescue Mission free and clear of any liens, easements, rights-of-way, encumbrances, and other interests whatsoever in favor of, or by virtue of, the Vina Parcels, the Vina Parties, Mr. Moss, and/or others.”

This Order hereby acknowledges, confirms and adopts paragraph 4 of the 2006 Order, Judgment, and Decree quieting title to Parcel 10 as quoted as subparagraphs a. and b. of this paragraph 4 above. Parcel 10 has, pursuant to and since the date of the 1941 Amended Decree recorded in the official records of Salt Lake County, State of Utah, as Entry No. 912523, in Book 284 commencing on Page 55 (which 1941 amended decree shall be referred to in this Order as the “**1941 Amended Decree**”), had the non-exclusive, perpetual easement set forth in said 1941 Amended Decree with respect to the west 99 feet of Parcel 9. The Rescue Mission Easement reserved and granted in this Order to the Rescue Mission likewise relates back in time to the date of said 1941 Amended Decree, with the understanding, however, that the scope of the easement described in the 1941 Amended Decree shall henceforth be limited to the Rescue Mission Easement specifically described herein..



5. The Rescue Mission is currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to in this Order as the **Rescue Mission Property**, or **Parcel 11** in reference to the last two digits of its Salt Lake County tax parcel number:

Commencing at the Northwest corner of Lot 2, Block 43, Plat A, Salt Lake City Survey, and running thence East 99 feet; thence South 65.5 feet; thence West 99 feet; thence North 65.5 feet to the place of beginning.

Subject to a perpetual right-of-way for ingress, egress and regress for all purposes over the following strip of ground, to-wit: commencing 99 feet East of the Northwest corner of said Lot 2, running thence South 76 feet; thence West 40- $\frac{3}{4}$  feet; thence North 10- $\frac{1}{2}$  feet; thence East 30- $\frac{3}{4}$  feet; thence North 65- $\frac{1}{2}$  feet; thence East 10 feet, to the place of beginning, to be kept open for loading and unloading goods, merchandise and other commodities from the platform along the South line of Lot 3, Block 43, Plat A, Salt Lake City Survey, together with the right of maintaining a cover or roof over said platform at the north end of said right-of-way.

Tax I.D. or Sidwell No.: 15-01-330-011.

Notwithstanding the legal descriptions of Parcel 11, Parcel 10, and Parcel 9 above and of record, if any building or attached dock of a building located in whole or part upon Parcel 11 and/or Parcel 10 (including, but not limited to, the Parcel 10 Loading Dock) currently encroaches upon any portion of Parcel 9 as that parcel is described above and of record, then the outer wall of such encroaching building and/or dock, by operation of the doctrine of *boundary by acquiescence*, shall constitute the boundary at the place of encroachment between Parcel 11 and Parcel 9 and/or between Parcel 10 and Parcel 9 due to such encroachment.<sup>1</sup> All references in this Order to Parcel 11, Parcel 10, and the Vina Parcels shall mean and refer to such properties as their boundaries may be established by operation of this paragraph 5. Full fee simple title to

---

<sup>1</sup> It is understood that this order is not intended as a ruling that any such encroachment does or does not exist.

Parcel 11 is hereby quieted in the Rescue Mission. Parcel 11 has, pursuant to and since the date of said 1941 Amended Decree had the non-exclusive, perpetual easement set forth in said 1941 Amended Decree with respect to the west 99 feet of Parcel 9, and, as a result, the Rescue Mission Easement described above relates back to the date of the 1941 Amended Decree, with the understanding, however, that the scope of the easement described in the 1941 Amended Decree shall henceforth be limited to the Rescue Mission Easement specifically described herein.

6. The Rescue Mission Easement referenced in paragraph 3 above that is reserved to, granted to, and owned by the Rescue Mission is more particularly described as follows:

a. General Description. A perpetual easement appurtenant to, and running with the land of, Parcel 10 and Parcel 11 for vehicular access from 400 West Street across the west 99 feet of Parcel 9 for the purpose of accessing Parcel 10, the Parcel 10 Loading Dock, and Parcel 11 for purposes of loading and unloading to and from vehicles at Parcel 10, the Parcel 10 Loading Dock, and Parcel 11, and for no other purposes.

b. Limitations. The Rescue Mission Easement is non-exclusive, it being understood that the Trustee of the Vina Trust holds fee simple title to Parcel 9 on behalf of the Vina Trust and has the right to use the whole of Parcel 9, subject only to the Limited Commercial Easement and the Rescue Mission Easement.

c. Relation Back of Rescue Mission Easement. As stated above, Parcel 10 and Parcel 11 have, pursuant to and since the date of the 1941 Amended Decree defined in paragraph 4 above, had the non-exclusive, perpetual easement set forth in said 1941 Amended Decree with respect to the west 99 feet of Parcel 9, and the Rescue Mission Easement described above likewise relates back in time to the date of the 1941 Amended

Decree, with the understanding, however, that the scope of the easement described in the 1941 Amended Decree shall henceforth be limited to the Rescue Mission Easement specifically described herein.

7. This Order completely resolves and disposes with prejudice of all claims between the Vina parties and the Rescue Mission as set forth in the pleadings in this Litigation and in connection with Parcels 9, 10, 11, and 17, and each Party shall bear his/her/its respective attorneys fees and costs incurred in this Litigation. Subject to the provisions of the Stipulation, this Order, and the 2006 Order, Judgment, and Decree, the Litigation as between the Vina Parties and the Rescue Mission in connection with, and arising out of Parcels 9, 10, 11, and 17, including the ownership and use thereof, as well as all claims, causes of action, complaints, counterclaims and other claims that could have been asserted by the Vina Parties and the Rescue Mission in connection with Parcels 9, 10, 11, and 17, are hereby dismissed with prejudice.

8. This Order is entered for the purpose of effectuating the terms of the Settlement Agreement between the parties thereto, a copy of which has been provided to the Court, which Settlement Agreement shall survive the entry of this Order.

9. A certified copy of this Order may be recorded in the official records of Salt Lake County, State of Utah.

10. Consistent with paragraph 15 of the 2006 Order, Judgment, and Decree, nothing in this Order is intended to modify or impair the provisions of the 2006 Order, Judgment, and Decree as stated in said paragraph 15 thereof, and the 2006 Order, Judgment, and Decree shall remain in full force and effect as heretofore entered by the Court and shall control in the event of

any conflict between its language and the language of this Order with respect to the subject matter specified in said paragraph 15 of the 2006 Order, Judgment, and Decree.

DATED this 4<sup>th</sup> day of November, 2008.

BY THE COURT

  
Judge Kate A. Poomey

