

The Order of Court is stated below:

Dated: July 07, 2015
11:14:55 AM

/s/ Richard McKelvie
District Court Judge



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Attorneys for Plaintiff

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

PROGRESSIVE LENDING, LLC, a Utah
limited liability company,

Plaintiff,

vs.

TYLER GRESSMEN, an individual; **et al.**,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER,
JUDGMENT AND DECREE
QUIETING RESTRICTIVE
COVENANTS TO CERTAIN REAL
PROPERTY**

Civil No. 140908555

Honorable Judge Richard McKelvie

WHEREFORE, the Court has reviewed Plaintiff Progressive Lending, LLC's ("Plaintiff") Complaint to Quiet Title, motions, declarations, and other papers and evidence on file and enters the following findings of fact, conclusions of law, and final order, judgment and decree as set forth below. Certain defendants were served via certified mail as set forth in Plaintiff's Certificate of Service by Certified Mail dated March 4, 2015 and certain other

defendants were served by process server as set forth in Plaintiff's Certificate of Service by Process Server dated May 6, 2015 (collectively the "**Defendants**"). Certain Defendants having failed to appear or respond (the "**Defaulting Defendants**"), the Court conducted a hearing to receive evidence in connection with Plaintiff's Request to Enter Default Certificates Against Defendants (the "**Motion**") and quiet title in favor of Plaintiff. Additionally, each Defendant that filed an answer has consented to judgment, which consents are on file with this court. Based upon the foregoing and pursuant to the provisions of the Utah Code Ann. §§ 78B-6-1301, *et seq.*, and Utah R. of Civ. P. 54(c)(2) and 55(b) , the Court enters the following Findings of Fact, Conclusions of Law, and Final Order, Judgment and Decree Quieting Restrictive Covenants.

FINDINGS OF FACT

1. Plaintiff filed the Complaint to Quiet Title (the "**Complaint**") in this action on December 18, 2014.
2. Service was completed on all Defendants by May 6, 2015.
3. The Defaulting Defendants have failed and refused to appear and answer or otherwise respond to the Complaint, and the time for doing so has now expired.
4. On May 6, 2015, Plaintiff served the Motion.
5. Between May 8, 2015 and June 1, 2015, the Clerk of the Court entered Default Certificates against each of the Defaulting Defendants.
6. On June 8, 2015, Consents to Judgment of Defendants Thomas Abbott and Debra Abbott were filed.
7. On June 24, 2015, Consents to Judgment of Defendants Lynn Salisbury and Sara Salisbury were filed.
8. This action relates to a subdivision of real property located in Midvale City, Salt

Lake County, Utah, that is known on the official records of the Salt Lake County Recorder's Office as the Lots 1 through 56, inclusive, ALTA VIEW GARDENS, Subdivision No. 1. (the "**Subdivision**").

9. Plaintiff is the owner of three (3) parcels of real property located within the Subdivision, which parcels are more particularly described as follows (the "**Property**"):

PARCEL 1:

Lot 34, ALTA VIEW GARDENS SUBDIVISION NO. 1, according to the official plat thereof on file and of record in the Office of the Salt Lake County Recorder.

Tax Serial No. 21-25-480-001.

PARCEL 2:

Lot 35, ALTA VIEW GARDENS SUBDIVISION NO. 1, according to the official plat thereof on file and of record in the Office of the Salt Lake County Recorder.

Tax Serial No. 21-25-480-002.

PARCEL 3:

Beginning at the Northeast corner of Lot 35, ALTA VIEW GARDENS SUBDIVISION NO. 1, said point being South 89°45'00" West 1151.18 feet along the monument line and South 0°53'00" East 26.00 feet from the monument at State Street and 7720 South Street, said monument being shown as North 89°59'15" East 157.38 feet and North 0°27'30" East 503.06 feet from the Southeast corner of Section 25, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°45'00" East 48.67 feet; thence along the back of curb the following courses and distances: South 36°42'38" East 13.46 feet, South 14°33'54" East 18.64 feet, South 01°05'03" East 71.23 feet to a point of curvature to a 125.00 foot radius curve to the left; thence along the arc of said curve for a distance of 41.75 feet, (Central Angle = 19°08'05", chord bearing and distance = South 10°39'06" East 41.55 feet) leaving said curb line; thence South 0°53'00" East 31.88 feet to the South line of the grantor's property; thence South 89°49'29" West 68.27 feet along said line; thence North 0°53'00" West 172.78 feet to the point of beginning.

Tax Serial No. 21-25-480-027.

10. Plaintiff acquired title to the Property in 2010 pursuant to a trustee's sale and trustee's deed conveying the Property to Progressive, which trustee's deed was duly recorded on March 2, 2010, as Entry No. 10906514 in the official records of Salt Lake County, State of Utah.

11. The Subdivision, including the Property, is currently subject to those certain Reservations, Restrictions and Covenants that were recorded on or about July 5, 1946, as Entry No. 1048292 in the official records of Salt Lake County, State of Utah (the "**Restrictive Covenants**").

12. The Defendants have abandoned or otherwise failed to enforce the Restrictive Covenants.

13. Plaintiff filed this action in order to quiet the Restrictive Covenants.

14. Plaintiff's claim to quiet the Restrictive Covenants is legal and proper and Defendants have not presented any claim that the Restrictive Covenants should not be quieted.

CONCLUSIONS OF LAW

1. Jurisdiction is proper pursuant to Utah Code Ann. § 78A-5-102.

2. Venue is proper pursuant to Utah Code Ann. §§ 78B-3-301 and -307.

3. All defendants have been properly served with process as required by law and Utah R. Civ. P. 4.

4. Consents to Judgment have been executed by all defendants except the Defaulting Defendants. Under the terms of the Consents to Judgment on file with the Court, the consenting defendants have consented to entry of an order quieting the Restrictive Covenants.

5. The Utah Rules of Civil Procedure provide for the entry of a default judgment against parties that fail to plead or otherwise defend a properly filed complaint. *See* Utah R. Civ.

P. 55(a).

6. Utah law requires a defendant to file and serve a response within 20 days after service of a summons and complaint is complete within the state and within 30 days after service of the summons and complaint is complete outside the state. *See* Utah R. Civ. P. 12(a). This time has long since expired, and the Defaulting Defendants have not filed a response.

7. The Clerk of the Court properly entered a Default Certificate against each of the Defaulting Defendants and this Court has granted Plaintiff's Request for Entry of Default Certificates Against Defendants.

8. Based on the evidence submitted with the Court, including the Complaint, Plaintiff has established that the Restrictive Covenants should be quieted.

**FINAL ORDER, JUDGMENT AND DECREE QUIETING RESTRICTIVE
COVENANTS**

1. A Final Judgment shall be and hereby is entered in favor of Plaintiff and against Defendants.

2. Pursuant to Utah Code Ann. §§ 78B-6-1301, *et seq.*, the Reservations, Restrictions and Covenants recorded on or about July 5, 1946, as Entry No. 1048292 in the official records of Salt Lake County, State of Utah are hereby quieted as to the real property situated in Salt Lake County, State of Utah described as follows:

Lots 1 through 56, inclusive, ALTA VIEW GARDENS, Subdivision No. 1

3. The Court hereby issues a Decree adjudicating against and enjoining and barring all claims for enforcement of the Restrictive Covenants of any Defendants, their successors and assigns and all persons claiming under Defendants.

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

5. A copy of this judgment is to be recorded with the Salt Lake County Recorder's Office. The judgment will run with the land.

6. This is a final judgment and order of the Court and no further order is required.

DATED this ___ day of July, 2015.

BY THE COURT:

Honorable Richard McKelvie
THIRD JUDICIAL DISTRICT COURT
JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the July 6, 2015, the foregoing document was sent via U.S. Mail to the following parties:

Thomas V. Abbott
7812 South Roosevelt Street
Midvale, Utah 84047

Debrah L. Abbott
7812 South Roosevelt Street
Midvale, Utah 84047

Lynn H. Salisbury
9674 South Chavez Drive
South Jordan, Utah 84095
Sara A. Salisbury

9674 South Chavez Drive
South Jordan, Utah 84095

DATED: July 6, 2015.

SNELL & WILMER L.L.P.

/s/ Colby B. Vogt

Brian C. Cheney

Craig T. Jenson

Colby B. Vogt

Attorneys for Plaintiff