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RECORDER, SALT LAKE COUNTY, UTAH
F. MARK HANSEN
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SLC UT 84116
BY: ZIM, DEPUTY - WI 4 P.

FILED DISTRICT COURT
Third Judicial District

MAY 18 2004

SALT LAKE COUNTY

Deputy Clerk

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ENTERED IN REGISTRY
OF JUDGMENTS
DATE 05/19/04

THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

<p>STANDARD INDUSTRIES, INC., Plaintiff, vs. M.J.J. INVESTMENT COMPANY, Defendant.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT</p> <p>Civil No. 980203860CV Judge Joseph C. Fratto</p>
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This action was tried before the court on February 20 and 21, 2004. The plaintiff Standard Industries, Inc. (Standard) was represented by F. Mark Hansen. The defendant M.J.J. Investment Company (MJJ) was represented by Mark T. Ethington. The court having fully considered the evidence and the arguments of counsel, being fully informed, and good cause appearing, makes findings of fact and conclusions of law, and orders judgment as follows:

1. Standard Industries, Inc. (Standard) and M.J.J. Investment Company [MJJ] are owners of adjoining property located at about 3900 to 4000 South and West Temple, Salt Lake County, Utah. This action concerns the parties' respective rights to their properties occupied at the above location, which includes two parcels of land on the parties' property boundary lines hereafter referred to as the North Parcel and the West Parcel, further described as follows:

NORTH PARCEL:

Beginning at a point which is West 733.70 feet, N 0°04'52" E 1199.631 feet and West 13.70 feet from the Southeast corner of Section 36, Township 1 South, Range 1 West, S.L.B.M.; and running thence N 0°04'52" E 235.869 feet, thence N 58°38'38" W 23.07 feet, thence S 89°51'03" W 231.00 feet, thence S 0°08'45" W 246.016 feet, thence S 89°42'46" E 250.996 feet, thence to the point of beginning.

The West, North, and East boundaries of the above described North Parcel are marked by an existing fence line.

Findings of Fact, Conclusions of Law, and Final Judgment


WEST PARCEL:

Beginning at a point which is West 733.70 feet, N 0°04'52" E 1199.631 feet, West 13.70 feet and North 89°42'46" West 250.996 feet from the Southeast corner of Section 36, Township 1 South, Range 1 West, S.L.B.M.; and running thence N 0°08'45" E 234.61 feet, thence West 15.02 feet to a point which is 61.28 rods West and 87 rods North from said Southeast corner of Section 36; thence South 15 rods to a point 72 rods North from said Southeast corner of Section 36; thence East 14.42 feet; thence North 12.89 feet to the point of beginning.

The North, West, and South boundaries of the above described West Parcel are marked by an existing fence line.

2. Except for the North Parcel and the West Parcel, title to all property occupied by the parties is in the party who possesses it.

3. In March of 1987, Standard had title to the West Parcel and was in exclusive possession of the West Parcel.

4. In March of 1987, MJJ had title to the North Parcel and was in exclusive possession of the North Parcel.

5. Standard and MJJ entered into an enforceable agreement, evidenced by a letter dated March 23, 1987 from Allen Sims, attorney for MJJ, to Carl Kingston, attorney for Standard.

6. Although the letter spoke of moving fences, the agreement was actually for the exchanging of possession of but not title to the West Parcel and the North Parcel, with Standard to occupy the North Parcel and MJJ to occupy the West Parcel.

7. Under the agreement, Standard was to acquire possession of the North Parcel, and had the right to acquire possession by moving at Standard's expense an existing fence on the north boundary of the North parcel 12 feet to the south.

8. Under the agreement, MJJ was to acquire possession of the West Parcel, and had the right to acquire possession by moving at MJJ's expense an existing fence on the east boundary of the West parcel 15 feet to the west.

9. The agreement created tenancies at will, with MJJ to be Standard's tenant as to the West Parcel, and Standard to be MJJ's tenant as to the North Parcel.

10. Standard did not move the fence on the North Parcel and did not take possession of the North Parcel.

11. Some time after March of 1987, MJJ moved the fence on the West Parcel, and occupied the West Parcel.

12. Until January of 1992, Standard raised no objection to MJJ occupying either parcel.

13. MJJ paid taxes on both parcels.

14. In January of 1992, Joseph Kingston, as agent for Standard, sent MJJ a letter claiming MJJ was encroaching on a strip of property 45 feet wide belonging to Standard.

15. In May of 1996 Standard sent MJJ a Notice of Unlawful Detainer with respect to the same alleged 45 foot encroachment by MJJ.

16. In March of 1998 Standard filed this action.

17. As of the date this action was filed, Standard owned the West Parcel in fee, and MJJ was Standard's tenant on the West Parcel. MJJ owned the North Parcel in fee, and Standard's tenancy of the North Parcel had terminated because of Standard's non-occupancy and MJJ's continued occupancy of the North Parcel

18. The parties had the property appraised as part of a process regarding possible purchase of the property.

19. On April 18, 2001, Standard sent MJJ a Notice of Unlawful Detainer claiming a holder of alternatively the North Parcel or the West Parcel, and demanding that MJJ quit possession of and surrender one of the parcels to Standard.

20. Regarding Standard's trespass claim: MJJ cannot trespass on the North Parcel because MJJ owns it and Standard no longer had a tenancy interest in it. MJJ cannot trespass on the West Parcel because of MJJ's tenancy at will interest, and because Standard prosecuted this action as an unlawful detainer action.

21. Regarding Standard's unjust enrichment claim, Standard has not proved the elements of unjust enrichment by a preponderance of the evidence.

22. Regarding Standard's breach of contract claim, Standard has not proved the elements of breach of contract by a preponderance of the evidence.

23. Regarding Standard's unlawful detainer claim, the court finds Standard's notices of unlawful detainer were deficient. The May 1996 notice made claim not just to the North Parcel, but to a larger 45 foot parcel, including property in which Standard had no ownership interest. The April 2001 notice made a demand that Standard be given possession of either the North Parcel or

the West Parcel; it was unclear from the notice what Standard intended. The court also finds the 2001 notice was barred as a matter of law because there was a pending action dealing with title to the same property. If ownership is in dispute, the law bars an unlawful detainer action.

24. Based on the above, the court enters a judgment of no cause of action as to Standard's claims for trespass, breach of contract, unjust enrichment, and unlawful detainer.

25. The court finds both parties failed to prove the elements of all of their affirmative defenses by a preponderance of the evidence.

26. Regarding the parties' remaining cross-claims to quiet title, the court orders and grants judgment as follow:

The court quiets title in MJJ to the North Parcel as described in paragraph 1 above.

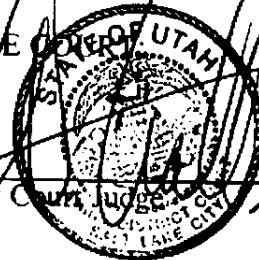
The court quiets title in Standard to the West Parcel as described in paragraph 1 above.

The court declares all tenancies in the North Parcel and West Parcel are terminated.

27. Each party is to bear its own attorney fees and costs.

DATED May 17, 2004

BY THE COURT



District Court Judge

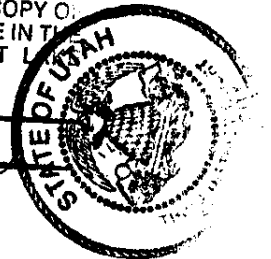
Approved as to form:


Attorney for Standard Industries, Inc.


Attorney for MJJ Investment Company

I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN THE
THIRD DISTRICT COURT, SALT LAKE
COUNTY, STATE OF UTAH
DATE: 5-10-04

DEPUTY COURT CLERK



15-36-476

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