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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, SALT LAKE CITY DEPARTMENT, STATE OF UTAH

M&R RODS/GARAGE 94 INC., a Utah
corporation,

Plaintiff,

v.

SANDY CITY, a municipal corporation; and
TAMIE N. OGDEN, an individual, and DOE
Defendants I-X.

Defendants.

COMPLAINT

(Tier 2)

Case No. 140906817

Judge Su Chon

COMES NOW Plaintiff M&R Rods/Garage 94 Inc., by and through his undersigned
counsel, and complains and alleges against defendants follows:

PARTIES, JURISDICTION, VENUE, AND TIER DESIGNATION

1. Plaintiff M&R RODS/GARAGE 94 INC. ("**M&R**") is a Utah corporation with its
principal place of business located in Salt Lake County, Utah.

2. Defendant SANDY CITY, a municipal corporation (hereinafter "**Sandy**") is a Utah corporation with its principal place of business located in Salt Lake County, Utah.
3. Defendant TAMIE N. OGDEN is an individual and, upon information and belief, is a resident of Salt Lake County, Utah.
4. INTEGRATED TITLE INSURANCE SERVICES, LLC ("**ITS**") is a Utah limited liability company, at all times relevant doing business in Salt Lake County, Utah.
5. EAST JORDAN IRRIGATION COMPANY ("**EJIC**") is a Utah non-profit corporation with its principal place of business located in Salt Lake County, Utah.
6. Does I-X are other or additional defendants which are currently unknown, but may be identified through discovery, and may claim an interest in the subject Property.
7. The real property (the "**Property**") that is the subject of this Complaint is located in Sandy City in Salt Lake County, Utah.
8. This court has jurisdiction over this action pursuant to Utah Code Ann. § 78A-5-102(1).
9. Venue properly lies in this court pursuant to Utah Code Ann. § 78B-3-301.
10. The Complaint seeks non-monetary relief, and thus this action qualifies as a "Tier 2" action under the Utah Rules of Civil Procedure.

GENERAL ALLEGATIONS

11. On or about June 26, 2007, Robert Maupin entered into an agreement with Defendants Tamie Ogden and Mike Ogden¹ for the purchase of real property located at 48 West 9400 South, Sandy, Utah (the "**M&R Property**"), more fully described as follows:

¹ Mike R. Ogden (aka Michael Robb Ogden) passed away on 12/11/2009. Tamie Ogden divorced from Mike Ogden on August 9, 2001. Under the 2001 Decree, Mike Ogden was awarded this Property. Tamie Ogden reacquired an interest in the Property when she remarried Mike Ogden in 2004 and had authority to sell the Property in 2007.

Beginning at a point on the North Right of Way line of 9400 South Street; said point being 363.00 feet and North 78.45 feet from the Southeast Corner of Section 1, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 88°25'42" West along said North Right of Way line at 9400 South Street 178.18 feet to an existing 6.0 chain link fence; thence North 03°15'30" East along said chain link fence line 105.08 feet to a fence corner located in an old wash; thence South 67°34'10" East along the remnants of an old fence line and wash 186.23 feet; then South 38.74 feet to the point of the beginning.

Parcel No. 27-01-476-025.

12. Said agreement involved the execution of a "Commercial Real Estate Purchase Contract" (hereafter the "Contract") reflecting the terms of the agreement.
13. Robert Maupin created a corporation (M&R) to take title to the Property.
14. Pursuant to the agreement, M&R entered into a Contract with Tamie Ogden and Mike Ogden to purchase the Property, dated June 26, 2007. Exhibit "A" to the contract is the agreement referred to in ¶10, above.
15. Importantly, neither the agreement referred to in ¶10, nor the Contract referred to in ¶13, exclude any portion of the Property from the transaction whereby the Ogdens retained any ownership interest in the Property. The entire Property was sold by the Ogdens.
16. M&R would not have completed the transaction if Tamie Ogden and Mike Ogden were only willing to sell a portion of the Property, less 0.039 acres of the eastern portion of the Property, located adjacent to the canal.
17. On or about September 29, 2007, the Ogdens closed at the title company they selected, ITS.
18. M&R closed its end of the transaction separately at the Title Insurance Agency (hereafter "TIA"), based on the legal description in the preliminary title report prepared by TIA, and

paid the Ogdens the amount due under the Contract.

19. After the closing, Tamie Ogden and Mike Ogden conveyed their interest in the Property to M&R by Warranty Deed on October 1, 2007, which was recorded on October 2, 2007 as Entry No. 10238037 in the office of the Salt Lake County Recorder. A copy of the Warranty Deed is attached hereto as **Exhibit 1** (the “**2007 Warranty Deed**”).
20. The legal description in the 2007 Warranty Deed is the same as the legal description of the Property when it was acquired by the Ogdens in 1995 (see **Exhibit 2**, 1995 Warranty Deed); however, an additional clause was added to the end of legal description of the 2007 Warranty Deed which reads “LESS AND EXCEPTING therefrom any portion lying within the East Jordan Canal And the East Jordan Canal Company Right of Way.”
21. This “LESS AND EXCEPT” language in the 2007 Warranty Deed was added by ITS to the existing legal description.
22. ITS did not disclose to Maupin/M&R at closing, or within three days of closing, that it was altering the existing legal description as set forth in the preliminary title report.
23. ITS has represented that it added this LESS AND EXCEPTING language to the legal description, rather than the “exceptions section” of the Warranty Deed, to provide a more conspicuous notice that a right-of-way in favor of EJIC may exist over the eastern edge of the Property.
24. Generally, the “exceptions section” of the Warranty Deed provides, in part, a basis for the title insurer to disclaim warranty of title against “easements”, “rights of way”, or other “encumbrances” which are *recorded* against the parcel.

25. **Prior to the 2007 Warranty Deed, there was no record of a right-of-way ever recorded** against the Property in favor of the EJIC, or any other party.
26. For the purpose of this “fact” only, EJIC’s “right-of-way” is based on a putative prescriptive easement for EJIC to service its canal adjoining various properties, even though EJIC failed to legally record an easement or right-of-way way decades earlier.
27. The sole purpose of any such right-of way would be limited to providing access over the eastern edge of the Property for EJIC to maintain the East Jordan Canal, and to prevent property owners adjoining the canal from making improvements on that portion of their properties which could impede EJIC’s right to maintain and inspect the Canal.
28. Upon information and belief, there was no survey, metes and bounds description, or measured description, which was recorded to specifically identify any right-of-way for EJIC prior to, or after, the closing of the Contract on September 27, 2007.
29. Upon information and belief, EJIC did not convey any right-of-way right it may claim over the Property to any third-party prior to, or after, September 27, 2007.
30. The “LESS AND EXCEPTING” language added by ITS at the end of the legal description in the 2007 Warranty Deed did not create a legal right-of-way over M&R’s property for any party.
31. Further, this added language by ITS did not create a right-of-way interest that could be conveyed to a third party.
32. The Property has never been subdivided.
33. M&R used and quietly enjoyed the entire Property, and paid all taxes assessed against the Property, including the “LESS AND EXCEPTING” area created by ITS.

34. Tamie Ogden did not pay any portion of the property taxes on the Property after conveying it to M&R in 2007.
35. M&R was not provided notice that EJIC had a recorded right-of-way, and was only aware that a “water-master” occasionally serviced the adjacent canal.
36. *Prior to Maupin/M&R closing on the transaction in 2007*, representatives from Rio Tinto Stadium and/or Real Salt Lake and Sandy City communicated about purchasing the Property in order to provide access point onto the southeast corner of the stadium property for pedestrians to enter the stadium from nearby parking areas.
37. Rio Tinto Stadium and/or Real Salt Lake and/or Sandy City’s plan to purchase this Property initially failed as a result of Maupin/M&R purchasing the Property from Ogden.
38. Notwithstanding the fact that Sandy City did not acquire any ownership interest or right to utilize the Property, it proceeded with plans to construct a pedestrian walkway over the eastern portion of M&R’s Property in 2008.
39. Sandy City even went to the point where it prepared a “Construction Agreement” to construct the pedestrian walkway to access Rio Tinto Stadium over M&R’s Property before it was directed by M&R to stop construction. *See Exhibit 3*; Oct. 17, 2008 Construction Agreement between Sandy City and Wolff Excavating, Inc.
40. In late 2011, or early 2012 representatives from Sandy City contacted Tamie Ogden about Sandy City’s plan to purchase part of the Property she sold to M&R in 2007 in order to create a walkway into the southeast corner of the stadium property.
41. Neither Sandy City, nor Tamie Ogden notified M&R of these communications.
42. In early 2012 representatives or agents of Sandy City created a new legal description

which was intended to allow Sandy City to purchase a portion of M&R's Property over which the City could continue its plans to construct a walkway into Rio Tinto Stadium.

43. No person from, or on behalf of, Sandy City communicated to Maupin that the City was creating a new legal description in which to purchase a portion of M&R's Property prior to May 14, 2012.

44. On or about May 14, 2012, representatives or agents of Sandy City requested Tamie Ogden sign a quitclaim deed for the newly created property description, and gave her a check for \$14,817.00 from Sandy City as consideration for approximately .039 acres of the eastern portion of M&R's Property. A copy of the quitclaim deed, recorded on 7/25/2012 as Entry No. 11436124, and check is attached as **Exhibit 4** (the "**2012 Quitclaim Deed**").

45. The 2012 Quitclaim Deed represented that for "many years" an old chain link fence had defined the westerly line of the East Jordan Canal right-of-way, and that Tamie Ogden conveyed her interest in the property located to the east of that fence to Sandy City.

46. The subject chain link fence identified in Sandy City's newly created legal description (the "**Disputed Portion**") was based on this unconnected 3 foot fence *located within the legal description of the M&R Property.*

47. The subject fence was installed, many years prior to 1995, to direct vehicles entering onto the adjacent property to the north of the Property.

48. No right-of-way or easement existed over the eastern portion of M&R's Property to access any adjacent property to the north of M&R's Property.

49. The subject chain link fence was not installed, or referenced in any survey, as a western

boundary for the East Jordan Canal right-of-way over M&R's Property.

50. In 1995 the title to the entire Property was quieted in favor of the owners preceding Tamie Ogden and Mike Ogden.
51. Nothing in that 1995 title (adjudicating the 1991 quiet title action, recorded as Entry No. 6065713 on April 24, 1995) referenced a chain link fence as a boundary, or of any significance, to the newly created legal description set forth in the 2012 quitclaim deed. A copy of this judgment is attached as **Exhibit 5**.
52. Neither prior, nor subsequent, to the 1995 Quiet Title Judgment, has there been any significance of the 3 foot chain link fence to the legal description of the M&R Property, or EJIC's claim to a right-of-way over the eastern portion of the M&R Property.
53. M&R removed this fence in 2006 while making improvements to the Property and never acquiesced to any fence located within its Property as a boundary at any time, for any purpose, during its occupation or ownership of the Property.
54. Sandy City did not communicate with M&R as to any details of this fence upon which it created a new legal description to purchase the Disputed Portion from Tamie Ogden.
55. Sandy City did not communicate with M&R regarding the City's plans to purchase a portion of M&R's Property when it created a new legal description.
56. The 1995 Quiet Title Judgment does not include the "LESS AND EXCEPTING" language on the legal description of the Property.
57. The title commitment letter Maupin/M&R relied on to purchase the Property was issued by Title Insurance Agency on June 22, 2007, and did not contain the "LESS AND EXCEPTING" language with the legal description. **Exhibit 6**.

58. The title commitment letter Mountain America Credit Union relied on for verification of the property collateral for its loan to Maupin to purchase the Property did not contain the “LESS AND EXCEPTION” language.
59. The first time the “LESS AND EXCEPTING” language appears with the legal description to the Property is in the Schedules to the First American Title Policy, dated October 2, 2007 (produced weeks *after* closing). **Exhibit 7.**
60. Sandy City first provided actual notice to Maupin/M&R that it was claiming ownership of .039 acres within M&R’s Property was in a letter to M&R dated March 18, 2013.
- Exhibit 8.**
61. In a letter sent at Maupin’s request on May 13, 2013, ITS, provided a notice of claim to Sandy City that the City’s claim to the Disputed Portion of M&R’s Property was invalid, regardless of whether the City paid Tamie Ogden for that conveyance. **Exhibit 9.**
62. Despite receiving notice that Maupin/M&R maintained an ownership interest in the entire Property, the City failed to convey the Disputed Portion of M&R’s Property back, and failed to otherwise mitigate this unlawful taking.
63. On August 28, 2014 M&R/Maupin provided a second notice of claim to Sandy City outlining the illegal taking of its Property and requested the City reconvey its taking of the .039 acre portion of Property to M&R.
64. Despite receiving several opportunities to remedy the illegal taking of M&R’s Property, Sandy City has refused to reconvey the .039 acre portion of the Property to M&R.
65. As a result of this taking, M&R has incurred damages due to the lack of access and enjoyment of the entire Property, and the costs to retain counsel to adjudicate these rights.

FIRST CAUSE OF ACTION
Breach of Contract, Declaratory Judgment and Quiet Title –
Tamie Ogden, Mike Ogden

66. M&R incorporates the foregoing and following paragraphs by reference.
67. M&R claims a fee simple interest in the entire Property as a result of purchasing the Property from the Ogdens via a written Contract in 2007.
68. The Ogdens had a duty to convey all interest in the Property to Maupin/M&R consistent with the Contract.
69. The Contract did not contain any terms whereby the Ogdens retained any ownership in the Property.
70. At no point after the sale of the Property in 2007 did Mike or Tamie pay any property taxes on any portion of M&R's Property.
71. Tamie Ogden assumed any interest her husband, Mike Ogden, could have had in the Property after Mike died in 2009.
72. Tamie Ogden represented to Sandy City in 2012 that she retained an interest in the .039 acre Disputed Portion of M&R's Property even after the closing in 2007.
73. Tamie Ogden's representations were false, and were a breach of the Contract, because she represented and warrantied in 2007 that she conveyed the entirety of her interest in the Property to Maupin/M&R.
74. Neither Sandy City, nor Tami Ogden, communicated to Maupin/M&R that they were discussing an agreement for the purchase of a portion of M&R's Property prior to executing the 2012 Deed.
75. Tamie Ogden's agreement to accept consideration from Sandy City for the conveyance of

the .039 acre Disputed Portion of M&R's Property in 2012 is a proximate cause of Maupin/M&R's damages.

76. Tamie Ogden retained the benefit of the payment from Sandy City for conveying property owned by Maupin/M&R for own use.

77. M&R, pursuant to Utah Code Ann. §§ 78B-6-401 et seq., Utah R.Civ.P. 527, and otherwise, are entitled to, and request, declaratory judgment as follows:

- a. That the 2012 Quitclaim Deed is invalid, null and void, and of no further effect, force or consequence whatsoever.
- b. That Sandy City be declared to have no ownership interest in and to the Disputed Portion, or any part thereof M&R's Property.
- c. That Tamie Ogden be declared to have no ownership interest in and to the Disputed Portion, or any part thereof the Property after it was conveyed to Maupin/M&R in 2007.
- d. That Mike Ogden/his putative estate be declared to have no ownership interest in and to the Disputed Portion, or any part thereof the Property after it was conveyed to Maupin/M&R in 2007.

78. Pursuant to Utah Code Ann. § 78B-6-1301 et seq., and otherwise, M&R is entitled, and requests, to have its title and interest in the entire Property quieted as against Defendants or any of their assigns.

SECOND CAUSE OF ACTION
Declaratory Judgment and Quiet Title – Sandy City

79. M&R incorporates all of the foregoing and following paragraphs by reference.

80. M&R claims a fee simple interest in the entire Property as a result of purchasing the Property from the Ogdens in 2007.
81. When M&R acquired ownership of the Property in 2007, there was not a survey, metes and bounds description, or other measured description, recorded to specifically identify any right-of-way for the EJIC over the Eastern edge of M&R's Property.
82. After Maupin/M&R purchased the Property from the Ogdens in 2007, representatives from Sandy City and Rio Tinto Stadium and/or Real Salt Lake had discussions as to how to provide, or improve, pedestrian access to/from nearby parking areas located to the South and East of the Stadium.
83. After Maupin/M&R purchased the Property from the Ogdens in 2007, representatives from Sandy City and Rio Tinto Stadium and/or Real Salt Lake had discussions concerning surface water runoff, flood control, and other water related issues from sources East of the Stadium, and how those issues could impact the Rio Tinto Stadium and/or Real Salt Lake activities.
84. As a result of, or subsequent to, these discussions, by late 2011 Sandy City individually, or in conjunction with third parties, developed a "plan" to acquire a portion of M&R's property, regardless of whether Maupin/M&R would consent to the sale.
85. As a result of this plan, Sandy City representatives decided to create a new legal description to describe a portion of M&R's Property which it sought to acquire loosely based on the prescriptive easement relied on by the EJIC to service its irrigation canal.
86. The plan was to create a new property description by referencing the area within the "LESS AND EXCEPTING" language added by ITS which modified the pre-closing (in

2007) legal description of M&R's Property.

87. Sandy City representatives created a new metes and bounds survey to describe the area it wished to acquire from within the M&R Property.
88. Representatives from Sandy City created a Quit-Claim Deed referencing the area within M&R's Property it sought to acquire without notifying Maupin/M&R.
89. On or about May 14, 2012, representatives or agents of Sandy City requested Tamie Ogden sign the quitclaim deed to acquire .039 acres of the eastern portion of M&R's Property and paid her \$14,817.00 as consideration for the acquisition.
90. Sandy City recorded the Quit-Claim Deed on July 25, 2012 as Entry No. 11436124.
91. At no point after 2007 did representatives from Sandy City, Rio Tinto Stadium, or Real Salt Lake tender an offer to Maupin/M&R to purchase a portion of M&R's Property.
92. Sandy City's first communication to Maupin/M&R that it had acquired an ownership interest in M&R's Property occurred via a letter to M&R dated March 18, 2013.
93. Due to the fact that there is no lawful survey, metes and bounds description, or measured description, recorded to specifically identify what right-of-way may exist in favor of EJIC, and the fact the 2007 Warranty Deed does not specifically describe any portion of the Property sufficient to create any conveyable or reservation interest with respect to any portion of the Property that might lie within the EJIC's prescriptive easement, M&R acted reasonably and had no reason to believe that it did not own the entirety of the Property until notified on March 18, 2013 of Sandy City's claimed interest.
94. On August 28, 2014, Maupin/M&R provided a final notice to Sandy City to rescind its purchase of, or otherwise reconvey, its acquisition of a portion of M&R's Property.

95. As a result of Sandy City's refusal to reconvey or release its interest in M&R's Property, this action was initiated.

96. M&R, pursuant to Utah Code Ann. §§ 78B-6-401 et seq., Utah R.Civ.P. 527, and otherwise, are entitled to, and request, declaratory judgment as follows:

- a. That the 2012 Quitclaim Deed is invalid, null and void, and of no further effect, force or consequence whatsoever.
- b. That Sandy City be declared to have no ownership interest in and to the Disputed Portion, or any part thereof M&R's Property.
- c. That Tamie Ogden be declared to have no ownership interest in and to the Disputed Portion, or any part thereof the Property after it was conveyed to Maupin/M&R in 2007.
- d. That Mike Ogden/his putative estate be declared to have no ownership interest in and to the Disputed Portion, or any part thereof the Property after it was conveyed to Maupin/M&R in 2007.

97. Pursuant to Utah Code Ann. § 78B-6-1301 *et seq.*, and otherwise, M&R is entitled, and requests, to have its title and interest in the entire Property quieted as against defendants or any of their assigns.

98. As a result of Sandy City's conduct, M&R has suffered direct and consequential damages, in an amount to be proven at trial, including the value of .039 acre Disputed Portion of M&R's Property, legal fees and other consequential damages.

PRAYER FOR RELIEF

WHEREFORE, M&R respectfully requests relief as follows:

- A. For declaratory judgment, pursuant to Utah Code §§ 78B-6-401 et seq., Utah R.Civ.P. 57, and otherwise, as requested hereinabove, quieting M&R's title and fee simple interest in and to the entire Property as against defendants or any of their assigns.
- B. In addition to and/or the alternative, for a judgment against Tamie Ogden for all of M&R's accruing compensatory, direct, and consequential damages proven by M&R for its first cause of action at trial.
- C. In addition to and/or the alternative, for a judgment against Sandy City for all of M&R's accruing compensatory, direct, and consequential damages proven by M&R for its second cause of action at trial.
- D. For an award of M&R's attorney's fees and costs, including costs of court.
- E. For such other and further relief as the court deems just and equitable under the circumstances.

DATED this 29th day of September, 2014.

/s/ Derek A. Coulter
Derek A. Coulter
Robert T. Tateoka
Attorneys for Plaintiff