

1 No. 6504

Dept. No. 2

2 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF WASHOE

4
5 LESTER V. SWENSON,

6 Plaintiff

7 vs.

8 E. G. HENSLEY, HAZEL B. HENSLEY,
9 DOROTHY B. SWENSON, FIRST AMERICAN
10 TITLE COMPANY OF NEVADA, a corpora-
11 tion, FRANKLIN RAHBECK, PATRICIA A.
12 RAHBECK, DOE ONE, DOE TWO, DOE
13 THREE, DOE FOUR, DOE FIVE, DOE
14 CORPORATION ONE, and DOE CORPORATION
15 TWO,

16 Defendants

NO. _____
FILED *hns* 1974
EARNHART W. THOMAS
COUNTY CLERK
BY *[Signature]*
DEPUTY

17
18 JUDGMENT BY DEFAULT AGAINST DEFENDANT DOROTHY B. SWENSON

19 The above entitled matter came on regularly to be
20 heard this date before the Court, sitting without a jury, upon the
21 application of plaintiff, Lester V. Swenson. It appeared to the
22 Court that this action was commenced on June 26, 1974, by the fil-
23 ing of a Complaint. It further appeared that on September 23,
24 1974, Additional Summons duly was issued herein and it appeared
25 by the affidavit of Don Ardisone that on the 1st day of October,
26 1974, the said Additional Summons and Amended Complaint duly were
27 served upon the defendant Dorothy B. Swenson by the said Don Ar-
28 disone by delivering to her personally in the City and County
29 of Santa Clara, California, a copy of the Additional Summons attached
30 to a copy of the Amended Complaint. It further appeared that the
31 defendant Dorothy B. Swenson had not answered or otherwise plead-
32 ed to the Amended Complaint within the time allowed by law and
that upon it so appearing from the aforesaid affidavit and from
examination of the records of this case in the office of the Clerk
of this Court, the default of the defendant Dorothy B. Swenson
was entered herein by the Clerk on the 24th day of October, 1974.

1 Plaintiff appeared personally and by his attorney, Howard L.
2 Cunningham, before the Court on November 1, 1974, and applied
3 to the Court for judgment by default against the defendant Dorothy
4 B. Swenson. Plaintiff then and there presented evidence in sup-
5 port of his said application and the matter was submitted to the
6 Court for its decision, whereupon the Court ordered that the plain-
7 tiff present an affidavit of formal application for judgment by
8 default. Said affidavit having been duly filed herein and presen-
9 ted to the Court this date, the Court rendered its decision in
10 favor of plaintiff and against defendant Dorothy B. Swenson.

11 AS FINDINGS OF FACT, the Court finds:

12 1. On the 3rd day of July, 1968, plaintiff and defendant
13 Dorothy B. Swenson were owners in fee simple as joint tenants
14 with right of survivorship of that certain real property situated
15 in the County of Douglas, State of Nevada, described in that cer-
16 tain Quitclaim Deed dated the 3rd day of July, 1968, a full, true,
17 and correct copy of which Quitclaim Deed is marked Exhibit "A",
18 attached hereto, and by this reference incorporated herein.

19 2. On or about the 3rd day of July, 1968, plaintiff was
20 on active duty with the United States Marines, being then station-
21 ed at Camp Pendleton, California, and on said date was on tempor-
22 ary leave from his duties, and was visiting Dorothy B. Swenson
23 in Douglas County, Nevada.

24 3. At all times herein mentioned and material hereto plain-
25 tiff and defendant were husband and wife.

26 4. The said Dorothy B. Swenson was experienced in matters
27 concerning real estate and plaintiff was inexperienced in said
28 matters.

29 5. On or about the 3rd day of July, 1968, the plaintiff
30 and defendant Dorothy B. Swenson were in process of procuring
31 a loan in the amount of \$35,000.00 from one Otto Heise, to be
32 secured by a deed of trust on the property described in

1 Exhibit "B", Exhibit "C", Exhibit "D", Exhibit "E", and Exhibit
2 "F" to the Complaint, and on said date plaintiff signed as co-ma-
3 ker with defendant Dorothy B. Swenson on the advice of said de-
4 fendant a promissory note in the principal amount of Thirty Five
5 Thousand and No/100 Dollars (\$35,000.00) payable to the order
6 of Otto Heise. At the same time plaintiff signed on the advice
7 of said defendant a certain deed of trust securing the said note.
8 A copy of said deed of trust is marked Exhibit "B" and attached
9 to the Complaint. Said copy is a full, true and correct copy of
10 said deed of trust, except for the fact that said deed of trust
11 in fact was signed by plaintiff on the 3rd day of July, 1968,
12 and the same was altered without the knowledge or consent of plain-
13 tiff to indicate that it had been signed by plaintiff on the 5th
14 day of July, 1968. At the time that plaintiff signed the said
15 Exhibit "B" he was not aware as to exactly what property was co-
16 vered, since he relied upon the recommendation of defendant Doro-
17 thy B. Swenson that he should sign the said promissory note and
18 the said deed of trust.

19 6. On or about July 3, 1968, Dorothy B. Swenson represented
20 to plaintiff that it would be to the mutual advantage of the parties
21 if she, Dorothy B. Swenson, had the power to deal with the real
22 property of the parties in Nevada, and that they should have a
23 document prepared which would accomplish that purpose, and that
24 she would deal with the said property under said document for
25 the mutual benefit of herself and plaintiff.

26 7. Believing the said representations of defendant Dorothy
27 B. Swenson, plaintiff signed the document of which Exhibit "A"
28 is a copy. In so doing plaintiff received no consideration for
29 signing said document, and plaintiff did so in the belief, induced
30 by the representations aforesaid of Dorothy B. Swenson that he
31 was signing a document for the sole purpose of enabling Dorothy
32 B. Swenson to deal with the property therein described for

1 their mutual benefit. Plaintiff testified and the Court finds,
2 that plaintiff did not intend to make a gift of his interest in
3 the subject property to defendant.

4 8. In making the representations aforesaid and in accepting
5 said document Dorothy B. Swenson did so either with the intention
6 of defrauding plaintiff of his interest in the said property,
7 or with the intention of carrying out her representations, in
8 which latter case she subsequently formed the intention to defraud
9 plaintiff of the said property by using said Quitclaim Deed to
10 claim it as her sole and separate property. The Court so finds
11 because of the testimony of the plaintiff that upon discovering
12 the nature of the instrument which he signed and the legal effect
13 thereof, plaintiff requested that the said Dorothy B. Swenson
14 reconvey the property described in said Quitclaim Deed to him,
15 but that the said Dorothy B. Swenson, although on one occasion
16 she promised to execute such deed, has never done so and ever
17 since has refused to do so, and that she now asserts that the
18 property described in said Quitclaim Deed, Exhibit "A", is her
19 sole and separate property, and refuses to reconvey the property
20 to plaintiff and refuses to carry out her trust of holding record
21 title to one-half of said property for the benefit of plaintiff
22 and claims said trust property as her own free of said trust.

23 9. The property described in Exhibit "A" was acquired by
24 plaintiff and defendant as joint tenants in about the year 1964
25 from the Ruhestroth Company, at which time they made a down pay-
26 ment and gave a deed of trust to the Ruhestroth Company for the
27 balance of the purchase price. All of the purchase money for said
28 property described in said Quitclaim Deed and all the payments
29 on the note secured by the deed of trust to the Ruhestroth Com-
30 pany and on the note secured by Exhibit "B" on said property were
31 paid from earnings of plaintiff, with the sole exceptions of pay-
32 ments made from sales of portions of the said property. Dorothy

1 B. Swenson never has made any payments on the notes secured by
2 either of said deeds of trust from her separate property or from
3 her earnings, and any payments which may be attributable to her
4 would be solely because of a community interest in some of the
5 earnings of plaintiff from which said payments were made.

6 10. Defendant Dorothy B. Swenson never has given to plaintiff
7 any consideration whatsoever for the said property, and she wrong-
8 fully withholds the title to the one-half undivided interest from
9 plaintiff.

10 11. The Quitclaim Deed of which Exhibit "A" is a copy con-
11 titutes a cloud upon the title of plaintiff in and to the property
12 described in said Quitclaim Deed.

13 12. On or about the 4th day of October, 1971, the plaintiff
14 commenced action number 3130 in the First Judicial District Court
15 of the State of Nevada, in and for Carson City, in which action
16 plaintiff herein is plaintiff and defendant Dorothy B. Swenson
17 is defendant. In said action plaintiff prayed for a decree of
18 divorce and for a just and equitable distribution of the property
19 of the parties, which property is withheld as aforesaid by Dorothy
20 B. Swenson from plaintiff, and in connection with said action
21 and or or about the date of commencement thereof plaintiff caused
22 to be filed in the office of the County Recorder of Douglas County,
23 Nevada, a Notice of Lis Pendens concerning said property. Said
24 action ever since has been, and still and now is, pending, and
25 said Notice of Lis Pendens ever since has been, and still and
26 now is, of record in the office of the County Recorder of Douglas
27 County, Nevada. A full, true, and correct copy of said Notice
28 of Lis Pendens certified by the County Recorder of Douglas County,
29 Nevada, was entered in evidence at the trial of this matter.

30 13. The property described in said Quitclaim Deed is situated
31 in the County of Douglas, State of Nevada.

32 14. The Quitclaim Deed, a copy of which is marked Exhibit "A",

1 attached to this judgment, and incorporated herein was procured
2 by the defendant Dorothy B. Swenson from the plaintiff by fraud
3 and deceit and without consideration, and is null and void and
4 of no force and effect, and said defendant holds the record title
5 to an undivided one-half interest in said property in trust for
6 plaintiff, which trust defendant Dorothy B. Swenson has violated,
7 and is violating.

8 15. The said Quitclaim Deed being a purported deed of real
9 property and purporting to be a conveyance of the interest of
10 plaintiff in real property, the plaintiff has no adequate remedy
11 at law and is entitled to the relief in equity hereinafter granted.

12 AS CONCLUSIONS OF LAW, the Court concludes:

13 1. That the Court has jurisdiction over the subject matter
14 of this action by reason of the fact that the property is situated
15 in the County of Douglas, State of Nevada, and has jurisdiction
16 to enter the judgment hereinafter mentioned by reason of the ser-
17 vice of process served personally upon the defendant Dorothy B.
18 Swenson as hereinbefore recited.

19 2. That plaintiff is entitled to a decree declaring that
20 the purported Quitclaim Deed dated the 3rd day of July, 1968, where-
21 in plaintiff is party of the first part and Dorothy B. Swenson,
22 a defendant herein, is party of the second part, recorded in Book
23 61, at page 240, as Document No. 41957, Official Records of Doug-
24 las County, Nevada, to be null and void and of no force and ef-
25 fect, and decreeing that the same be cancelled and held for naught.

26 3. That plaintiff is entitled to judgment herein for his
27 costs against the defendant Dorothy B. Swenson.

28 4. That there is no just cause or reason for delay in enter-
29 ing the judgment to be entered as aforesaid by reason of the fact
30 that the judgment is on a claim against the defendant Dorothy
31 B. Swenson only, and that the rights of the other defendants here-
32 in on the matters stated in the Amended Complaint will not be

1 affected by the entry of this judgment against the defendant Doro-
2 thy B. Swenson, and the Court specifically determines and concludes
3 that there is no just cause or reason for delay and expressly
4 directs entry of the judgment hereinafter made.

5 NOW, THEREFORE, IT HEREBY IS ORDERED, ADJUDGED AND DECREED
6 as follows:

7 1. That that certain purported Quitclaim Deed dated the
8 3rd day of July, 1968, wherein plaintiff Lester V. Swenson is
9 party of the first part and defendant Dorothy B. Swenson is party
10 of the second part, recorded in Book 61, at page 240, as Document
11 No. 41957, Official Records of Douglas County, Nevada, a full,
12 true and correct copy of which Quitclaim Deed is marked Exhibit
13 "A", attached hereto, and by this reference incorporated herein,
14 be, and the same hereby is, declared to be null and void and of
15 no force and effect, and the same hereby is cancelled and held
16 for naught.

17 2. That plaintiff be, and he hereby is, awarded the judgment
18 against defendant Dorothy B. Swenson for his costs of this action
19 in the amount of \$ _____.

20 DONE IN OPEN COURT this 8th day of November, 1974.

21
22
23 *15/ H. E. Monaghan*
24 DISTRICT JUDGE

R.P.T.S. 36³⁰

Quitclaim Deed

BOOK 61 PAGE 240

THIS INDENTURE, made this 3rd day of July, 1968, by and between LESTER V. SWENSON, a married man, party of the first part, and DOROTHY B. SWENSON, his wife, as her sole and separate property, whose mailing address is c/o Circle S-3 Ranch, Gardnerville, Nevada, party of the second part,

WITNESSETH:

That the said party of the first part, in consideration of the sum of TEN DOLLARS (\$10.00), lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents release and forever quitclaim unto the said party of the second part, and to her heirs and assigns forever, all that certain real property situate in the County of Douglas, State of Nevada, that is described in Exhibit "A" attached hereto and by this reference made a part hereof.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said party of the second part, ~~and to her heirs and assigns forever~~ as her sole and separate property, and to her heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has executed this conveyance the day and year first hereinabove written.

Lester V. Swenson
Lester V. Swenson

STATE OF NEVADA
County of Washoe

On this 3rd day of July, 1968, personally appeared before me, a Notary Public in and for the County of Washoe, LESTER V. SWENSON

known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal of my office in said county, the day and year in this certificate first above written.

Edward E. Male

NOTARY PUBLIC
EDWARD E. MALE
Notary Public - State of Nevada
Washoe County
My Commission Expires June 29, 1969

DOCUMENT NO. 41957
Filed for record at the request of NEVADA TITLE GUARANTEE CO.
Aug 23, 1968 at 07 minutes past 10 o'clock A.M.
Recorded in Book 61 of Official Records
Page _____, Records of Douglas County, Nevada.

Edith N. Schaefer
County Recorder

By *Jessie Gunn*, Deputy.

FEE: \$ 5.00

BOOK 61 PAGE 240

DESCRIPTION

All that certain piece or parcel of land situate in the County of Douglas, State of Nevada, that is described as follows:

Being a portion of the West Half of Section 19, Township 12 North, Range 20 East, M.D.B. & M. Commencing at the West quarter corner of Section 30, Township 12 North, Range 20 East, M.D.B. & M.; thence North 25°22'44" East 5965.17 feet to the point of beginning; said POINT OF BEGINNING also being the center of Brockless Slough, and 45 feet West of Nevada State Highway Route 88, Engineer's Station 262+11.11; thence North 38°49'17" West along the center of Brockless Slough 2,114.02 feet; thence North 55°19'44" West 533.00 feet; thence South 81°46'16" West 292.00 feet; thence leaving the centerline of Brockless Slough, thence South 50°02'53" East 1451.35 feet; thence South 0°28'12" West 2187.04 feet; thence North 39°51'31" East 1231.95 feet to a point on the Westerly side of Nevada State Highway Route 88; thence North 0°06'00" West along the West side of Nevada State Highway Route 88, 924.59 feet; thence North 0°07'45" West 500.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM that portion thereof conveyed to HANS T. JENSEN, et ux, by deed recorded September 15, 1964, in Book 26 of Official Records, at page 688, Douglas County, Nevada, records, described as follows:

All that certain piece or parcel of land situate in the County of Douglas, State of Nevada, more particularly described as follows:

A parcel of land located at the Northwest quarter of the Northwest quarter of Section 19, Township 12 North, Range 20 East, M.D.B. & M., Carson Valley Douglas County, State of Nevada, more particularly described as follows:

BEGINNING at the Western most corner of the parcel which bears North 1°51'38" East, a distance of 7034.77 feet from the West quarter corner of Section 30, Township 12 North, Range 20 East, M.D.B. & M., proceed thence North 51°03'56" East, 293.11 feet to a point on the bank of Brockless Slough; thence North 53°48'05" East, 56.40 feet to a point in the center of Brockless Slough; thence South 50°02'53" East, 124.84 feet to a point thence South 51°03'56" West, 348.93 feet to a point; thence North 50°02'53" West, 127.51 feet to the point of beginning.

continued-----

"Exhibit A"

DESCRIPTION

continued-----

ALSO EXCEPTING therefrom that portion thereof conveyed to WILLIAM W. DE WINE, et al, by deed recorded November 23, 1935, in Book 26 of Official Records, at page 98, Douglas County, Nevada, records, described as follows:

All that certain real property situate in the County of Douglas, State of Nevada, more particularly described as follows:

COMMENCING at the West quarter corner of Section 30, Township 12 North, Range 20 East, N.D.B. & M.; thence North $18^{\circ}17'07''$ East 4177.69 feet; thence North $0^{\circ}22'12''$ East 682.56 feet to the TRUE POINT OF BEGINNING; thence North $89^{\circ}51'31''$ East 1225.95 feet; thence South $0^{\circ}06'$ East along the Westerly highway right-of-way line 248.45 feet; thence South $89^{\circ}51'31''$ West 1226.43 feet; thence North $0^{\circ}28'12''$ East 248.47 feet to the TRUE POINT OF BEGINNING, being situate in the Southwest quarter of Section 19, Township 12 North, Range 20 East.

AND FURTHER EXCEPTING therefrom that portion thereof conveyed to FRED BRASSLER, by deed recorded January 5, 1968, in Book 56 of Official Records, at page 444, Douglas County, Nevada, records, described as follows:

All that certain land situate in the County of Douglas, State of Nevada, described as follows:

BEGINNING at the intersection of the West right-of-way line of State Highway 88, and the South boundary of the Northeast quarter of the Southwest quarter of Section 19, Township 12 North, Range 19 East, N.D.B. & M., thence along the said highway North $0^{\circ}08'09''$ West 30.00 feet to the North end of the gate; thence South $89^{\circ}51'31''$ West 1115.28 feet; thence North $45^{\circ}00'00''$ West 93.10 feet; thence South $89^{\circ}51'31''$ West 50.00 feet to the Easterly boundary of adjacent Brassler real property; thence South $0^{\circ}28'12''$ West along said Easterly boundary of the said adjacent Brassler real property 96.00 feet to the Southwest corner of the said Southwest quarter of the Southwest quarter of Section 19, thence along the boundary line North $29^{\circ}51'31''$ East 1231.95 feet to the POINT OF BEGINNING.

-9-
"Exhibit A"

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COPIED

Recorded at Request of Howard Cunningham
On NOV 8 1974 At 3 Min. Past 2 PM
Official Records of Douglas County, Nevada. Fee 14.00 pd

Patricia J. Stanley, Recorder. By Danella Reed
Deputy

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 7 November

EARNHART W. BROWN, Clerk of the Judicial District Court of the State of Nevada, in and for the County of Douglas

By W. Brooks Deputy

