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FILED

JAN 21 1997
DOUGLAS COUNTY
DISTRICT COURT CLERK

CASE NO. 96-CV-0285 NO. _____

DEPT. NO. 1 '97 JAN 21 P1:37

BARBARA REED
CLERK
H. CHAPPEL

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

FRED GREENSPAN and KIM
GREENSPAN,

Plaintiff,

vs.

THE ESTATE OF LUCRETIA GRACE;
WILLIAM JOSEPH PARKER GRACE,
aka WILLIAM J.P. GRACE; and the
WILLIAM J.P. GRACE CHARITABLE
REMAINDER UNITRUST dated March
22, 1995,

Defendants.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND JUDGMENT ORDERING
REFORMATION OF DEEDS

CASE PROCEEDINGS

1. On October 15, 1996 Plaintiffs Fred Greenspan and Kim Greenspan (hereinafter referred to collectively as "Greenspan") filed their "Complaint to Reform Deeds Conveying Real Property" in the Ninth Judicial District Court, Douglas County, Nevada. The action sought to reform three Deeds conveying a parcel of land situated in

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1 the Glenbrook area, Douglas County, Nevada. The property affected by the action is
2 described as Assessor's Parcel No. 01-020-02 (referred to hereinafter as the "Property").
3

4 2. On October 18, 1996 Greenspan recorded a "Notice of Pending Litigation"
5 in Douglas County in Book 1096, Pages 3249-3251 (Document No. 398997). The
6 original recorded Notice was filed with the Douglas County Clerk on October 30, 1996.
7

8 3. On October 25, 1996, the Court issued its "Order for Publication of
9 Summons" with respect to the Estate of Lucretia Grace, William Joseph Parker Grace,
10 aka William J.P. Grace, and the William J.P. Grace Charitable Remainder Unitrust dated
11 March 22, 1995. The Order was based upon the Affidavit of Greenspan's counsel that
12 the Plaintiffs had been unable to locate or serve William Grace, and that the Estate of
13 Lucretia Grace had been closed in 1972.
14

15 4. During the period November 2 through November 23, 1996, a "Summons
16 by Publication" was published in the Record Courier, a bi-weekly newspaper printed and
17 published in Gardnerville, Nevada. An Affidavit of Publication was filed with the
18 Douglas County Clerk on December 9, 1996.
19

20 5. The Defendants failed to answer the Complaint or to file any other form of
21 responsive pleading during the time allowed by law. On January 13, 1997, the Douglas
22 County Clerk entered a "Default" against the non-answering Defendants.
23

24 6. On January 21, 1997, Richard W. Harris, Esq., counsel for Greenspan,
25 appeared before the Court to present evidence, which consisted of five certified copies of
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1 Deeds in the chain of title, more specifically described as (a) the Deed from W.J. Harris
2 to Rowena Mirc, (b) the Deed from Rowena Mirc to Lucretia Grace, (c) the Deed from
3 the Executors and Trustees of the Estate of Lucretia Grace to William Joseph Parker
4 Grace, (d) the Deed from William Joseph Parker Grace to the William J.P. Grace
5 Charitable Remainder Unitrust dated March 22, 1995, and (e) the Deed from the Trustee
6 of the William J.P. Grace Remainder Unitrust to Fred Greenspan and Kim Greenspan,
7 husband and wife.
8
9

10 Based upon the pleadings, documents, and records on file in this matter, the
11 exhibits admitted into evidence at the hearing on January 17, 1997, and good cause
12 appearing therefor, the Court hereby makes the following Findings of Fact and Con-
13 clusions of Law and enters its Judgment Ordering Reformation of Deeds.
14

15 FINDINGS OF FACT
16

17 1. On July 25, 1947 W.J. Harris executed a Deed conveying the Property to
18 Rowena Mirc. The Property was described as follows:

19 Being a portion of fractional Lot 3 of Section 3, Township 14 North, Range
20 18 East, M.D.B.&M., bounded and described as follows:

21 Beginning at the quarter corner between Sections 3 and 4 of said Township
22 14 North, Range 18 East; thence running North 89°34' East 200.0 feet
23 along the East and West center line of said Section 3; thence South 0°18'
24 West 1485.17 feet parallel to the line between Sections 3 and 4 to the
25 meander line of Lake Tahoe; thence North 74° West 207.73 feet along said
26 meander line to the meander corner between Sections 3 and 4; thence North
0°18' East 1426.40 feet along the section line to the place of beginning.

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1 And also all the right, title and interest of the party of the first part in and to
2 a strip of land immediately adjoining the above-described premises and
3 lying between the meander line and the mean low water line of Lake
4 Tahoe.

5 The Deed was recorded in Douglas County on August 5, 1947, in Book Y of
6 Deeds, Pages 234-237, Document No. 5337.

7 For purposes of this Judgment, the metes and bounds description of the Property
8 which states "Beginning at the quarter corner..." and concludes with "...to the place of
9 beginning" will be referred to as **Parcel I**. The portion of the description which begins
10 with "And also all the right..." and concludes with "...the mean low water line of Lake
11 Tahoe" will be referred to as **Parcel II**.

12
13
14 2. On December 29, 1950 Rowena Mirc executed a Grant, Bargain and Sale
15 Deed conveying the Property to Lucretia Grace, a single woman. The description of the
16 Property includes Parcels 1 and 2, exactly as set forth in the Deed from W.J. Harris to
17 Rowena Mirc. The Deed was recorded in Douglas County on July 17, 1951 in Book Z
18 of Deeds, Pages 517-519, Document No. 8088.

19
20 3. On December 14, 1972 George G. Novacovich and Harold I. Boucher,
21 Executors and Trustees under the Last Will and Testament of Lucretia Grace, deceased
22 (the "Grace Estate") executed a Grant, Bargain and Sale Deed conveying a portion of the
23 Property to William Joseph Parker Grace. The Deed includes a description of Parcel I
24 (which contains a typographic error) but does not include Parcel II. The Deed was
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1 recorded in Douglas County on December 29, 1972 in Book 1272 of Official Records,
2 Pages 622-1 to 624-1.
3

4 4. On March 22, 1995 William Joseph Parker Grace, aka William J.P. Grace,
5 executed a Grant Deed conveying a portion of the Property to Michael P. Gamboa,
6 Trustee of the William J.P. Grace Charitable Remainder Unitrust dated March 22, 1995
7 (the "Grace Trust"). The Deed conveys Parcel I (which is erroneously described) but
8 does not include Parcel II. The Deed was recorded in Douglas County on April 7, 1995
9 in Book 495, Pages 1021-1023.
10

11 5. On May 24, 1995 Michael P. Gamboa, Trustee of the William J.P. Grace
12 Charitable Remainder Unitrust dated March 22, 1995, executed an "Individual Grant
13 Deed" conveying the following property to Fred Greenspan and Kim Greenspan, husband
14 and wife, as joint tenants:
15
16

17 All that certain lot, place or parcel of land situate in the County of Douglas,
18 State of Nevada, described as follows:

19 A Portion of Fractional Lot Three (3) of Section Three (3), Township 14
20 North, Range 18 East, M.D.B.&M., bounded and described as follows:
21 Beginning at the quarter corner between Sections 3 and 4 of said Township
22 14 North, Range 18 East; thence running North 39°34' East [should be
23 North 89° 34' East] 200.00 feet along the East and West center line of said
24 Section 3; thence South 0°18' West 1485.17 feet parallel to the line
25 between Sections 3 and 4 to the meander line of Lake Tahoe; thence North
26 74° West 207.73 feet along said meander line to the meander corner
between Sections 3 and 4; thence North 0°18' East 1426.40 feet along the
section line to the PLACE OF BEGINNING.

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1 **Parcel II**

2
3 **A strip of Land immediately adjoining the above described premises**
4 **and lying between said Meander Line and the mean low water line of**
5 **Lake Tahoe.**

6 **Excepting any portion of the described property in the bed of Lake**
7 **Tahoe below the adjudicated elevation of low water. (Emphasis added.)**

8 The Deed was recorded in Douglas County on June 2, 1995 in Book 695, Pages
9 367-369.

10 6. In a title report dated September 12, 1996 (the "Title Report), First Amer-
11 ican Title Company of Nevada noted the following exception to title with respect to
12 Parcel II:

13 [Parcel II is subject to] the interest of Dr. George G. Novacovich and
14 Harold I. Boucher, Executors and Trustees under the Last Will and
15 Testament of Lucretia Grace, deceased, and/or William Parker Grace in
16 and to Parcel II herein by reason of the failure to include Parcel II in the
17 conveyance from the Estate of Lucretia Grace and subsequent conveyances.

18 The Title Report disclosed that the chain of title to Parcel II was incomplete and
19 defective. Greenspan learned for the first time that reference to Parcel II had been
20 inadvertently omitted from the Deed from the Grace Estate to William Grace, and from
21 the Deed from William Grace to the Grace Trust.

22 7. Greenspan bargained in good faith for purchase of Parcel II as part of the
23 Property. It is evident from the record that the Grace Trust intended to convey Parcel II
24 to Greenspan. The Greenspans should not be deprived of their property interest and the
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1 benefit of their bargain by reason of prior errors in describing the Property.

2
3 8. The Court finds as a matter of fact that the omissions of Parcel II in the
4 Deeds from the Grace Estate to William Joseph Parker Grace, and from William Joseph
5 Parker Grace to the William J.P. Grace Charitable Remainder Unitrust, were inadvertent
6 errors which should be corrected.

7
8 9. The Court finds as a matter of fact that Parcel II is properly described as
9 follows:

10 All that land lying between the southerly boundary of the hereinabove
11 described Parcel I and the low water line of Lake Tahoe further described
12 as follows:

13 Beginning at the southwesterly corner of said Parcel I; thence south 74°
14 east, 207.73 feet along said meander line to the southeasterly corner of said
15 Parcel I; thence south 0°18' west to the low water line, being an elevation
16 of 6223.00; thence northwesterly along said low water line to a point which
17 is south 0°18' west from said southwesterly corner of said Parcel I; thence
18 north 0°18' east to the point of beginning.

19 10. The Court finds that the description of Parcel I in several deeds, as
20 described above, contains an erroneous description of the northerly line of the Property.

21 CONCLUSIONS OF LAW

22 Based upon the foregoing Findings of Fact, the Court makes the following
23 Conclusions of Law:

24 1. The Court has jurisdiction over the parties to this action and over the
25 Property which is the subject matter of this litigation.

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1 2. The Court has the equitable power to reform an instrument that is obviously
2 defective and make it conform to the intentions of the parties, Ruling v. Hackett, 1 Nev.
3 360 (1865).

4
5 3. There are no third parties whose rights or interests will be affected by
6 reformation of the Deeds. It is clear that the Grace Trust intended to convey Parcel II to
7 Greenspan, and the defective Deeds in the chain of title should be reformed to effect the
8 parties' intentions.
9

10 JUDGMENT ORDERING REFORMATION OF DEEDS

11 Based upon the foregoing Findings of Fact and Conclusions of Law, and good
12 cause appearing therefore,
13

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

15 1. The following Deeds recorded in Douglas County, Nevada are defective, in
16 that they contain an erroneous description of Parcel I, they do not include Parcel II, or
17 they contain an insufficient description of Parcel II:
18

19 a. Grant, Bargain and Sale Deed dated December 14, 1972 from
20 George G. Novacovich and Harold I. Boucher, Executors and Trustees under the Last
21 Will and Testament of Lucretia Grace, deceased, to William Joseph Parker Grace
22 (recorded in Douglas County on December 29, 1972 in Book 1272 of Official Records,
23 Pages 622-1 through 624-1).
24

25 b. Grant Deed dated March 22, 1995 from William Joseph Parker
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1 Grace, aka William J.P. Grace, to Michael P. Gamboa, Trustee of the William J.P.
2 Grace Charitable Remainder Unitrust dated March 22, 1995 (recorded in Douglas County
3 on April 17, 1995 in Book 495, Pages 1021-1023).

4
5 c. Individual Grant Deed dated May 24, 1995 between Michael P.
6 Gamboa, Trustee of the William J.P. Grace Charitable Remainder Unitrust dated March
7 22, 1995, to Fred Greenspan and Kim Greenspan, husband and wife, as joint tenants
8 (recorded in Douglas County on June 2, 1995 in Book 695, Pages 367-369).

9
10 The foregoing conveyances shall be referred to collectively as the "Deeds".

11
12 2. The foregoing Deeds are hereby amended by Order of the Court to include
13 the following descriptions of Parcel I and Parcel II:

14 DESCRIPTION

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

17 A PORTION OF FRACTIONAL LOT THREE (3) OF SECTION THREE
18 (3), TOWNSHIP 14 NORTH, RANGE 18 EAST, M.D.B.&M.,
19 BOUNDED AND DESCRIBED AS FOLLOWS:

20 PARCEL I

21 BEGINNING AT THE QUARTER CORNER BETWEEN SECTIONS 3
22 AND 4 OF SAID TOWNSHIP 14 NORTH, RANGE 18 EAST, THENCE
23 RUNNING NORTH 89° 34' EAST 200.00 FEET ALONG THE EAST
24 AND WEST CENTER LINE OF SAID SECTION 3; THENCE SOUTH
25 0° 18' WEST 1485.17 FEET PARALLEL TO THE LINE BETWEEN
26 SECTIONS 3 AND 4 TO THE MEANDER LINE OF LAKE TAHOE;
THENCE NORTH 74° WEST 207.73 FEET ALONG SAID MEANDER
LINE TO THE MEANDER CORNER BETWEEN SECTIONS 3 AND 4;
THENCE NORTH 0° 18' EAST 1426.40 FEET ALONG THE SECTION

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1 LINE TO THE PLACE OF BEGINNING.

2
3 PARCEL II

4 ALL THAT LAND LYING BETWEEN THE SOUTHERLY BOUND-
5 ARY OF THE HEREINABOVE DESCRIBED PARCEL I AND THE
6 LOW WATER LINE OF LAKE TAHOE FURTHER DESCRIBED AS
7 FOLLOWS:

8 BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID
9 PARCEL I; THENCE SOUTH 74° EAST, 207.73 FEET ALONG SAID
10 MEANDER LINE TO THE SOUTHEASTERLY CORNER OF SAID
11 PARCEL I; THENCE SOUTH 0°18' WEST TO THE LOW WATER
12 LINE, BEING AN ELEVATION OF 6223.00; THENCE NORTH-
13 WESTERLY ALONG SAID LOW WATER LINE TO A POINT WHICH
14 IS SOUTH 0°18' WEST FROM SAID SOUTHWESTERLY CORNER
15 OF SAID PARCEL I; THENCE NORTH 0°18' EAST TO THE POINT
16 OF BEGINNING.

17 The records of the Douglas County Recorder's Office and the Douglas County
18 Assessor's Office shall be suitably revised and amended to state the foregoing description
19 of Douglas County Assessor's Parcel No. 01-020-02.

20 DATED this 21 day of January, 1997.

21 *David R. Brantley*

22 DISTRICT JUDGE

23 7097\fo\12

24 **CERTIFIED COPY**

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

27 DATE: January 24, 1997
28 *B. Reed*
29 _____
30 of the State of Nevada, in and for the County of Douglas,

31 By *Michelle* Deputy

32 REQUESTED BY
Richard Harris
33 IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

34 '97 JAN 27 P12:26

35 **SEAL**

36 **405486**

LINDA SLATER
RECORDER
\$ 16⁰⁰ PAID *kt* DEPUTY

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