

1 The Law Offices of
2 CURTIS, GOODWIN, SULLIVAN,
3 UDALL & SCHWAB, P.L.C.
4 501 East Thomas Road
5 Phoenix, Arizona 85012-3205
6 Telephone (602) 393-1700
7 firm@cgsuslaw.com
8 Larry K. Udall (#009873)
9 ludall@cgsuslaw.com
10 Phyllis L. N. Smiley (#020606)
11 psmiley@cgsuslaw.com
12 Attorneys for the Town of Miami

FILED

2014 FEB -7 AM 11:24
ANITA ESCOBEDO, CLERK

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF GILA**

10 THE TOWN OF MIAMI, a municipal
11 corporation,

12 Plaintiff,

13 vs.

14 EDITH SPENCER FRITZ, a single
15 woman, and ALBERT W. FRITZ, JR, a
16 single man; MIAMI TRUST
17 COMPANY, a dissolved Arizona
18 corporation; CLEVE W. VAN DYKE
19 and IDA A. VAN DYKE, husband and
20 wife, believed deceased persons whose
21 heirs are unknown; CORPORATION
22 ABC; PARTNERSHIP XYZ; JOHN
23 DOES 1 – X and JANE DOES I – X,
24 including heirs of Cleve W. Van Dyke
25 and Ida A. Van Dyke; husbands and
wives,

Defendants.

CASE NO. CV201200257

DEFAULT JUDGMENT AS TO MIAMI
TRUST COMPANY, CLEVE W. VAN DYKE
AND IDA A. VAN DYKE, FICTITIOUS
DEFENDANTS AND UNKNOWN HEIRS
OF CLEVE W. VAN DYKE AND IDA A.
VAN DYKE

AND

SUMMARY JUDGMENT AGAINST EDITH
SPENCER FRITZ AND ALBERT W. FRITZ,
JR. FOR QUIETING TITLE TO REAL
PROPERTY

(Assigned to the Honorable Robert Duber II)

1 I. DEFAULT JUDGMENT AS TO MIAMI TRUST COMPANY, CLEVE W. VAN
2 DYKE AND IDA A. VAN DYKE, FICTITIOUS DEFENDANTS AND UNKNOWN
3 HEIRS OF CLEVE W. VAN DYKE AND IDA A. VAN DYKE

4 This matter having come before the Court; Plaintiff appearing in person and
5 represented by counsel at the Default Hearing and Hearing re: Defendants' Objection to Form
6 of Judgment,

7 THE COURT FINDS AS FOLLOWS:

8 1. Defendants Miami Trust Company, Cleve W. Van Dyke, Ida A. Van
9 Dyke, Fictitious Defendants and Unknown Heirs of Cleve W. Van Dyke and Ida A. Van Dyke
10 were properly serve with process and have failed to timely plead, appear or otherwise defend
11 this action as required by law; and the defaults of these Defendants have been entered
12 according to law;

13 2. Evidence was presented substantiating Plaintiff's claims of ownership to
14 the Maintenance Yard Property; no opposing evidence was presented. Therefore, Plaintiff's
15 ownership claim is valid and substantiated by the evidence and legal theories presented. All
16 issues of law and fact material to this Judgment are resolved in favor of Plaintiff.

17 3. Accordingly, there being no reason for delay in the entry of this
18 Judgment,

19 THE COURT ORDERS, ADJUDGES AND DECREES THAT:

20 A. The defaults of Defendants Miami Trust Company, Cleve W. Van Dyke,
21 Ida A. Van Dyke, Fictitious Defendants and Unknown Heirs of Cleve W. Van Dyke and Ida A.
22 Van Dyke are hereby ordered and entered.

23 B. Title to the Maintenance Yard Property, as legally described in Exhibit A,
24 attached hereto and incorporated herein, is hereby quieted to the Town of Miami as to
25 Defendants Miami Trust Company, Cleve W. Van Dyke, Ida A. Van Dyke, Fictitious
26 Defendants and Unknown Heirs of Cleve W. Van Dyke and Ida A. Van Dyke.

1 II. SUMMARY JUDGMENT AGAINST EDITH SPENCER FRITZ AND ALBERT W.
2 FRITZ, JR.

3 This matter came on the Court's non-appearance calendar of September 23,
4 2013 to consider pending motions. On June 25, 2013, the Court entered an order that: 1)
5 compelled Edith Spencer Fritz and Albert W. Fritz, Jr. ("Defendants Fritz") to comply with
6 discovery requests of Plaintiff; and 2) gave notice that failure to comply within 15 days of the
7 date of the Order would result in the Defendants Fritz' Answer being stricken and would
8 preclude Defendants Fritz from challenging issues of fact asserted by Plaintiff if a motion for
9 summary judgment was filed. Defendants Fritz did not comply with the Court's June 25, 2013
10 order.

11 On August 12, 2013, Defendants Fritz requested reconsideration of the order
12 which imposed sanctions and they moved to set aside the default. The Motion for
13 Reconsideration did not indicate a sufficient legal reason for failing to comply with their
14 obligations. Furthermore, Defendants Fritz were unable to assure that the evidence would ever
15 be forthcoming. Accordingly, the Motion for Reconsideration was denied on August 26,
16 2013.

17 Additionally, on August 12, 2013, Defendants Fritz filed an Answer to the
18 Amended Complaint and asserted that they were doing so because of the entry of default filed
19 by Plaintiffs. Defendants Fritz' pleading referred to correspondence from Plaintiff at about the
20 time an Amended Complaint was filed – that correspondence offered to stipulate that no new
21 Answer was due from Defendants Fritz because the Amended Complaint made only minor
22 corrections to the legal description. Plaintiff acknowledges the correspondence but points out
23 that the default was entered as to Defendants other than Defendants Fritz so the matter was
24 moot as to Defendants Fritz (see Plaintiff's August 28, 2013 Response to Motion to Set Aside
25 Default).

1 Plaintiff moved to strike Defendants Fritz' Answer to the Amended Complaint
2 on the grounds that to permit it would effectively vacate the June 25, 2013 order for sanctions.

3 Based upon the reasons cited above, the Court signed the order striking
4 Defendants Fritz' Answer to the Amended Complaint.

5 Plaintiff's Motion for Summary Judgment was submitted on August 16, 2013
6 against Edith Spencer Fritz and Albert W. Fritz, Jr. for: 1) quieting title to the Maintenance
7 Yard Property legally described in Exhibit A hereto which includes the Fritz Claim Property
8 legally described in Exhibit B hereto, in the name of the Town of Miami ("Miami") on the
9 legal theory that there had been a common law dedication of a public parcel; 2) quieting title to
10 the Maintenance Yard Property, including the Fritz Claim Property, to the Town of Miami by
11 promissory estoppel/detrimental reliance on an oral promise; and 3) quieting title to the
12 Maintenance Yard Property, including the Fritz Claim Property, based on Defendants Fritz'
13 failure to produce any evidence for claiming a superior interest in said Property. Plaintiff also
14 complied with the provisions of A. R. S. §12-1101 *et seq.*, with respect to the Fritz Claim
15 Property. A.R.S. § 12-1103 permits the award of costs and permits an award of attorney's fees
16 when proper demand has been made and a quit claim deed has been tendered for execution,
17 and not returned executed. Plaintiff specifically complied with A.R.S. § 12-1103 by sending
18 a request to Defendants Fritz along with quit claim deeds for the Fritz Claim Property and a
19 check for \$5.00 made payable to each of the Defendants Fritz. Defendants Fritz refused to
20 execute the quit claim deed thus prompting this quiet title lawsuit.

21 Defendants Fritz did not respond to Plaintiff's Motion for Summary
22 Judgment. Therefore, the Court granted Plaintiff's Motion for Summary Judgment. Plaintiff
23 requested attorney's fees pursuant to A.R.S. § 12-1103. Plaintiff has submitted its Verified
24 Statement of Costs, Affidavit of Attorney's fees, accompanied by Plaintiff's billing statements,
25 which the Court finds to be reasonable and customary.

1 Defendants Fritz did not object to the reasonableness of the expended time or the
2 amount of attorneys' fees, but did object to the propriety of the legal fees due to the legal
3 description in this lawsuit being for the Maintenance Yard Property, which included property
4 that was not included in the Fritz Claim Property. Upon clarification that the Maintenance
5 Yard Property includes the Gas Plant Property for which the Town has a valid recorded deed
6 from Arizona Public Service Company ("APS") and the Fritz Claim Property for which this
7 Court was asked to quiet title in favor of Plaintiff and as to Defendants Fritz, Defendants Fritz
8 agreed to the applicability of the attorneys' fees provisions of A.R.S. § 12-1103.

9 WHEREFORE, THIS COURT HEREBY FINDS that:

- 10 1) there was a common law dedication of the Maintenance Yard Property, which
11 Plaintiff alleged was a public parcel, and Plaintiff is entitled to have title quieted
12 in its name for said Property;
- 13 2) Plaintiff is entitled to have title in the Maintenance Yard Property quieted in
14 its name by promissory estoppel and detrimental reliance on the oral promise
15 given by the owner in 1922;
- 16 3) no party has demonstrated an interest in the Maintenance Yard Property
17 superior to Plaintiff's interest;
- 18 4) By virtue of a recorded deed as to the Gas Plant Property and this Court's
19 quieting of title in the Town of Miami as to the Fritz Claim Property, Defendants
20 Edith Spencer Fritz and Albert W. Fritz, Jr. have no legitimate, verifiable interest
21 in any portion of the Maintenance Yard Property, legally described as Amended
22 Exhibit A to the Amended Verified Complaint and attached as Exhibit A hereto
23 and incorporated herein by this reference;
- 24 5) Pursuant to Rule 54(b), *Arizona Rules of Civil Procedure*, this summary
25 judgment adjudicates the rights of Edith Spencer Fritz and Albert W. Fritz, Jr.

1 and all the claims to ownership or other real property interest they may have had
2 in the Fritz Claim Property, and; there being no just reason for delay for the entry
3 of summary judgment against Edith Spencer Fritz and Albert W. Fritz, Jr. jointly
4 and severally; and

5 6) Defendants Fritz are responsible for all of the attorneys' fees in this litigation
6 pursuant to A.R.S. § 12-1103 because had they executed the quit claim deeds for
7 the Fritz Claim Property as requested by Plaintiff, the ensuing litigation would
8 not have occurred.

9 THIS COURT HEREBY ORDERS, ADJUDGES AND DECREES AS
10 FOLLOWS:

11 1) Title in the Maintenance Yard Property, as described in Exhibit A, is
12 quieted in the name of the Town of Miami, Arizona, and ownership of the
13 Maintenance Yard Property is vested by this Judgment in the Town of Miami,
14 Arizona, as follows:

15 a. Title in the Gas Plant Property legally described in Exhibit C is
16 quieted by deed from APS to the Town of Miami, Arizona, Gila County Docket
17 316, Page 369.

18 b. Title in the Fritz Claim Property is quieted in the name of the
19 Town of Miami, Arizona, against Defendants Edith Spencer Fritz and Albert W.
20 Fritz, Jr. and all other parties, named and unnamed in this lawsuit;

21 2) The Town of Miami's fee simple interest and estate is hereby established and
22 Defendants Edith Spencer Fritz and Albert W. Fritz, Jr. are barred and forever
23 estopped from having or claiming any right or title to the Fritz Claim Property
24 adverse to the Town of Miami, Arizona; and
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3) Miami is awarded its reasonable attorneys' fees and costs based on its Affidavit for Attorney's Fees and costs in the amount of \$22,876.00 against Edith Spencer Fritz and Albert W. Fritz, Jr., jointly and severally, the principal of said amount to accrue interest at the rate of 4.5 % per annum until satisfied in full.

III. JUDGMENT DEED

Pursuant to the foregoing Default Judgment and Summary Judgment, the Court hereby finds that the interests of all parties, named and unnamed, have been fully adjudicated and extinguished,

THIS COURT HEREBY ORDERS, ADJUDGES AND DECREES that the recording of this Default Judgment and Summary Judgment shall constitute a recorded deed setting forth the Town of Miami's fee simple interest in the Maintenance Yard Property, legally described in Exhibit A, as and against all persons.

DATED February 6, 2014



Judge Robert Duber II

EXHIBIT A

LEGAL DESCRIPTION OF
TOWN OF MIAMI
MAINTENANCE YARD

AMENDED EXHIBIT A

THE SURFACE AND THE GROUND TO A DEPTH OF 40.00 FEET IMMEDIATELY BENEATH THE SURFACE OF THE FOLLOWING PARCEL OF LAND:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP, 1 NORTH, RANGE 15 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, GILA COUNTY, ARIZONA, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD WITH THE NORTHEASTERLY RIGHT OF WAY OF LATHAM BOULEVARD;

SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING;

THENCE N. 36° 23' W. ALONG THE RIGHT OF WAY LINE OF LATHAM BOULEVARD A DISTANCE OF 318.41 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE SOUTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 60;

THENCE EASTERLY ALONG SAID RIGHT OF WAY OF U.S. HIGHWAY 60 ON A CURVE WITH A RADIUS OF 512.96 FEET A DISTANCE OF 428.57 FEET, MORE OR LESS, TO THE NORTHEASTERLY INTERSECTION OF THE MIAMI TOWN LIMITS;

THENCE S. 35° 59' E. ALONG THE MIAMI TOWN LIMITS LINE, A DISTANCE OF 122.98 FEET, MORE OR LESS, TO AN INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD;

THENCE S. 51° 45' W. ALONG THE NORTHERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD, A DISTANCE OF 372.45 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM, THAT PORTION DESCRIBED IN THAT DEED TO THEODORE CLYDE HOFFMAN, RECORDED SEPTEMBER 15TH, 1998 AS FEE NO. 98-014469 OF OFFICIAL RECORDS OF GILA COUNTY, ARIZONA.

ALSO EXCEPTING THEREFROM ALL MINERALS

EXHIBIT B

FRITZ CLAIM

206-16-007-5

PT SW NE SEC30 1N 15E BEG AT PNT S 36DEG 23MIN E 124' FROM ELY COR
LATHAM BLVD & HWY R/W TH S 81DEG 23MIN E 7' TH N 53DEG 37MIN E 314' TO
HWY R/W TH ELY ALNG R/W TO PNTN 35DEG 59MIN W 122.98' FROM RR R/W TH S
35DEG 59MIN E 122.98' TO RR R/W

EXHIBIT C

Gas Plant

The surface and the ground to a depth of forty (40) feet immediately beneath the surface of that certain piece or parcel of land, situate, lying and being in the Southwest quarter (SW1/4) of the Northeast quarter (NE1/4) of Section Thirty (30), Township one (1) North, Range Fifteen (15) East, Gila and Salt River Base and Meridian, in Gila County, State of Arizona, bounded and described as follows, to wit:

BEGINNING at a point on the North boundary line of the Southern Pacific Railroad right of way through the Town of Miami, Gila County, State of Arizona, from which point the intersection of said boundary line with the Northeast and line of Venus mining claim and which line is established as the town boundary line of said Town of Miami bears North $51^{\circ} 45'$ East a distance of 135 feet; running thence South $51^{\circ} 45'$ West along said right-of-way line 135.45 feet; thence North $36^{\circ} 18'$ West a distance of 155.19 feet; thence North $51^{\circ} 45'$ West a distance of 6 feet, and thence South $38^{\circ} 15'$ East a distance of 60 feet to the place of beginning.

RECEIVED

FEB. 11 2014

CURTIS, GOODWIN, SULLIVAN,
UDALL, & SCHWAB, PLC

NOTE FILE NO. 1904-9-2
XEROX ALL PLEADINGS
COPIES TO MAC KS
MAW

STAMPED _____ DATE _____
ROUTED TO MAC KS PS MAW
DO NOT FILE UNTIL _____
ALL ITEMS CHECKED _____
AND INITIALED MAW