

S T A T E M E N T

TO: William J. Zisk
205 Thomas Street
Roseville, CA 95678

FROM: Pamela Gendreau
Court Recording Monitor

Re: William J. Zisk

Docket #CV98-86079

vs

August 31, 1998

Walkley Heights Assoc.

This is a statement in the above-entitled case:

3 pages @ \$1.75	\$ 5.25
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October 26, 1998

Remit to: Pamela Gendreau
Court Reporter's Office
One Court Street
Middletown, CT 06457

DOCKET NUMBER CV98-86079

WILLIAM J. ZISK	:	SUPERIOR COURT
VS.	:	J.D. OF MIDDLESEX
WALKLEY HEIGHTS ASSOC.	:	AUGUST 31, 1998

B E F O R E : THE HONORABLE SALVATORE F. ARENA, JUDGE

A P P E A R A N C E S :

FOR THE PLAINTIFF:

Charles Snow, Esq.
547 Main Street
Room 3
Middletown, CT 06457

FOR THE DEFENDANT:

Linda Cannata, Esq.
73 Main Street
Middletown, CT 06457

Pamela Gendreau
One Court Street
Middletown, CT

THE COURT: The Motion to Strike was marked ready and the Court passed it because it involved argument. Where is that located? All right. Let's proceed with it. Counsel, identify please.

MS. CANNATA: Attorney Linda Cannata for the Defendant, Walkley Heights Associates.

MR. SNOW: Charlie Snow for the Plaintiff, your Honor.

THE COURT: Attorney Cannata, anything you wish to add to your Motion to Strike that isn't contained in your memorandum?

MS. CANNATA: Your Honor, I would just like to highlight a few of the main points in this case as to why this --

THE COURT: Are they contained in the memorandum?

MS. CANNATA: The only part that is not contained in the memorandum, your Honor, is that in the amendment to the complaint dated July 17th, 1998, the Plaintiff makes some claims that his parents had promised to convey the subject property to him before title had vested in the Defendant. Your Honor, that is totally irrelevant to a quiet title action and does not give the Plaintiff a sufficient interest under the law to bring a quiet title action. And just for your Honor's information, that issue has already been litigated

in 1993. Judge Spallone had ruled on that in an action High Street Associates vs. William Zisk and then that matter went to the Connecticut Appellate Court. Judge Spallone was -- the decision was approved and then it went to the U.S. Supreme Court where the U.S. Supreme Court did not grant certiorari.

THE COURT: Mr. Snow, anything you wish to add to your objection?

MR. SNOW: Well, I don't know much about -- this other case she just mentioned was a petition for partition and this is a title action. So one has nothing to do with the other.

THE COURT: All right, counsellors. I'll take a look at it. I'm not going to make a decision off the top of my head.

MS. CANNATA: Your Honor, I would just like to note, I did not receive a memorandum of law in opposition to the Motion to Strike.

THE COURT: Well, there's a memorandum in support of Plaintiff's objection. You didn't receive it? If not, Mr. Snow will give --

MR. SNOW: I hand delivered it to them.

THE COURT: Do you have the objections to the Motion to Strike, Attorney Cannata?

MS. CANNATA: No. I do not.

MR. SNOW: I'm sorry. Wasn't that in the

envelope that I delivered?

THE COURT: How would I know if it was? All right, counsel. I'll take it on the papers.

MR. SNOW: Thank you, your Honor.

MS. CANNATA: Okay. Thank you, your Honor.

THE COURT: If you want a copy, Attorney Cannata, the clerk would be happy to make you one.

MS. CANNATA: He just handed me a copy.

THE COURT: Okay. Thank you.

MR. SNOW: I'm sure it was included in the objection.

(Whereupon the proceedings were concluded).

C E R T I F I C A T I O N

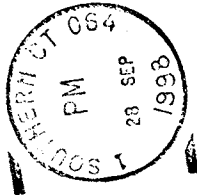
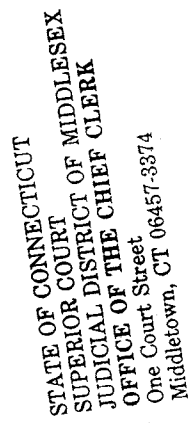
I, Pamela Gendreau, Court Recording Monitor within and for the State of Connecticut, Middlesex County, do hereby certify the foregoing transcript to be true and accurate taken in the matter of William J. Zisk vs. Walkley Heights Assoc., Docket No. CV98-86079, heard on August 31, 1998, before the Honorable Salvatore F. Arena, One Court Street, Middletown, Connecticut.

This is the 26th day of October, 1998

Pamela Gendreau

Pamela Gendreau

Court Recording Monitor



Billie
J.S
Thomson
Zisk
Reserve

262

DOCKET NO. CV98-86079	:	SUPERIOR COURT
WILLIAM ZISK	:	J.D. OF MIDDLESEX
v.	:	AT MIDDLETOWN
WALKLEY HEIGHTS ASSOCIATES	:	SEPTEMBER 25, 1998

MEMORANDUM OF DECISION RE: MOTION TO STRIKE #102

In this action to settle title, the plaintiff makes several claims as to his interest in the subject property. In paragraph two of his complaint filed on July 6, 1998, the plaintiff claims interest "by being an heir of William and Mary Zisk." In his Amendment to the Complaint (#101), filed July 21, 1998, the plaintiff states that he is the son of William W. and Mary A. Zisk. The Amendment further alleges, at paragraph six, that "William W. Zisk and Mary A. Zisk promised to convey" the subject property to the plaintiff as a wedding gift. Paragraphs seven and nine of the Amendment allege that the plaintiff made improvements to the subject property and paid taxes thereon. Paragraph eight alleges that the subject property was bequeathed to the plaintiff in Mary Zisk's will dated June 24, 1974.¹ The Order of Probate attached to the Amendment gives no information regarding the settlement of Mary's estate or the status of the subject property as a part of her estate.

¹ William W. Zisk was apparently deceased at the time the 1974 will was executed.

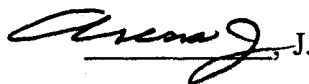
In his complaint filed on July 6, 1998, the plaintiff further alleges that Mary acquired a mortgage interest in the subject property, which was recorded in the Haddam Land Records in 1991. Since this mortgage was acquired by Mary well after both the alleged wedding gift and her 1974 will, the plaintiff's interest in the subject mortgage, according to his own allegations, is limited to an interest in mortgage payments. Nevertheless, in the event of a foreclosure, the plaintiff would have an interest in the subject property itself.

General Statutes § 47-31 provides that an action to quiet title may only be brought by "any person claiming title to, or any interest in, real . . . property. . . . Such action may be brought whether or not the plaintiff is entitled to the immediate or exclusive possession of the property." "The purpose of this requirement is to make certain that a plaintiff has, within the purview of the allegations of his complaint, not a mere groundless claim but an actual interest in the property sufficient to justify his instituting an action concerning it and asking the court to adjudicate his rights and those of the parties defendant." (Internal quotation marks omitted.) Brill v. Ulrey, 159 Conn. 371, 373-74, 269 A.2d 262 (1970).

Viewing the allegations of the complaint in their most favorable light, the plaintiff has sufficiently alleged an actual interest in the subject property. Accordingly, the motion to strike is hereby ordered denied.

It is so ordered.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Arena J.", followed by a period.

ARENA

DOCKET NO. CV98-86079	:	SUPERIOR COURT
WILLIAM ZISK	:	J.D. OF MIDDLESEX
v.	:	AT MIDDLETOWN
WALKLEY HEIGHTS ASSOCIATES	:	SEPTEMBER 25, 1998

MEMORANDUM OF DECISION RE: MOTION TO STRIKE #102

In this action to settle title, the plaintiff makes several claims as to his interest in the subject property. In paragraph two of his complaint filed on July 6, 1998, the plaintiff claims interest "by being an heir of William and Mary Zisk." In his Amendment to the Complaint (#101), filed July 21, 1998, the plaintiff states that he is the son of William W. and Mary A. Zisk. The Amendment further alleges, at paragraph six, that "William W. Zisk and Mary A. Zisk promised to convey" the subject property to the plaintiff as a wedding gift. Paragraphs seven and nine of the Amendment allege that the plaintiff made improvements to the subject property and paid taxes thereon. Paragraph eight alleges that the subject property was bequeathed to the plaintiff in Mary Zisk's will dated June 24, 1974.¹ The Order of Probate attached to the Amendment gives no information regarding the settlement of Mary's estate or the status of the subject property as a part of her estate.

¹ William W. Zisk was apparently deceased at the time the 1974 will was executed.

C. H. C. Snow
Attys. in & T
W.W. Zisk
9/25/98

SEP 25 2 00 PM '98

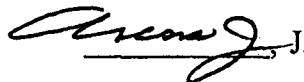
In his complaint filed on July 6, 1998, the plaintiff further alleges that Mary acquired a mortgage interest in the subject property, which was recorded in the Haddam Land Records in 1991. Since this mortgage was acquired by Mary well after both the alleged wedding gift and her 1974 will, the plaintiff's interest in the subject mortgage, according to his own allegations, is limited to an interest in mortgage payments. Nevertheless, in the event of a foreclosure, the plaintiff would have an interest in the subject property itself.

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Viewing the allegations of the complaint in their most favorable light, the plaintiff has sufficiently alleged an actual interest in the subject property. Accordingly, the motion to strike is hereby ordered denied.

It is so ordered.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Arena J.", with a horizontal line drawn underneath the signature.

ARENA

1 COURT STREET
MIDDLETOWN, CONNECTICUT 06457

DOC NO CV-98-0086079-S NOTICE ISSUED 10/29/98
PLTF ZISK, WILLIAM J VS.
DFDT WALKLEY HEIGHTS ASSO

PLEASE BE ADVISED THAT THE FOLLOWING ORDER
HAS BEEN ENTERED ON THE ABOVE CASE:

106-00 MOT FOR DEFAULT-PLEADING FILE DT 10/28/98
GRNTD - DATE 10/28/98 JUDGE BY THE CLERK

WILLIAM J ZISK
205 THOMAS STREET
ROSEVILLE, CA.

95678

DIRECT INQUIRIES TO: CLERKS OFFICE, JUD. DIST.
SUPERIOR COURT

1 COURT STREET
MIDDLETOWN, CONNECTICUT 06457