

SUMMONS**CIVIL** (except family actions)**JD-CV-1 Rev. 3-91**GEN. STAT. 51-346, 51-347, 51-349, 51-350, 52-45a,
52-48, 52-259

BK. 49, 63, 66

SUPERIOR COURT**INSTRUCTIONS**

1. Prepare on typewriter: sign original summons (top sheet) and conform copies of the summons (sheets 3 and 4).
2. If there is more than one defendant, prepare or photocopy conformed summons for each additional defendant.
3. Attach the original summons, with computer sheet attached (page 2), to the original complaint, and attach a copy of the summons to each copy of the complaint. Also, if there are more than 2 plaintiffs or 4 defendants prepare form JD-CV-2 and attach it to the original and all copies of the complaint.
4. After service has been made by officer, file original papers and officer's return with the clerk of the court.
5. The party recognized to pay costs must appear personally before the authority taking the recognizance.
6. Do not use this form for actions in which an attachment, garnishment or replevy is being sought. See Practice Book Section 49 for other exceptions.

TO: Any proper officer; BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

- "X" ONE OF THE FOLLOWING:
Amount, legal interest or property in demand, exclusive of interest and costs is
- a. ☐ less than \$2,500
 - b. ☐ \$2,500 through \$14,999.99
 - c. ☒ \$15,000 or more
 - d. ☒ Claiming other relief in addition to or in lieu of money damages.

JUDICIAL DISTRICT <input type="checkbox"/> HOUSING SESSION <input type="checkbox"/> G.A. _____	AT (Town in which writ is returnable) (Gen. Stat. 51-346, 51-349) Middletown	RETURN DATE (Mo., day, yr.) July 14, 1998
ADDRESS OF CLERK OF COURT WHERE WRIT AND OTHER PAPERS SHALL BE FILED (Gen. Stat. 51-347, 51-350) 1 Court Street Middletown, CT 06457		CASE TYPE (From Judicial Dept. code list) Major P-20 Minor _____

PARTIES	NOTE: Individual's Names: Last, First, Middle Initial	NAME AND ADDRESS OF EACH PARTY	<input type="checkbox"/> Form JD-CV-2 attached
FIRST NAMED PLAINTIFF ▶		Zisk William J. 205 Thomas Street Roseville, CA 95678	
Additional Plaintiff			
FIRST NAMED DEFENDANT ▶		Walkley Heights Associates-Steven Rocco 1783 Saybrook Rd Haddam C	
Additional Defendant			
Additional Defendant			
Additional Defendant			

NOTICE to each DEFENDANT

1. You are being sued.
2. This paper is a Summons in a lawsuit.
3. The Complaint attached to these papers states the claims that each Plaintiff is making against you in this lawsuit.
4. To respond to this summons, or to be informed of further proceedings, you or your attorney must file a form called an "Appearance" with the Clerk of the above named Court at the above Court address on or before the second day after the above Return Date.
5. If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default.
6. The "Appearance" form may be obtained at the above Court address.
7. If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately take the Summons and Complaint to your insurance representative.
8. If you have questions about the Summons and Complaint, you should consult an attorney promptly. The Clerk of Court is not permitted to give advice on legal questions.

DATE June 9, 1998	SIGNED (sign and "X" proper box) <i>Charles W. Snow</i>	<input checked="" type="checkbox"/> Commissioner of Superior Court <input type="checkbox"/> Assistant Clerk	TYPE IN NAME OF PERSON SIGNING AT LEFT Charles W. Snow, Jr
FOR THE PLAINTIFF(S) ENTER THE APPEARANCE OF: NAME AND ADDRESS OF ATTORNEY, LAW FIRM OR PLAINTIFF IF PRO SE Charles W. Snow, Jr. 547 Main St Middletown, CT		TELEPHONE NO. 8603474437	JURIS NO. (If atty. or law firm) 59800
NAME AND ADDRESS OF PERSON RECOGNIZED TO PROSECUTE IN THE AMOUNT OF \$250 Kathleen Waz 100 Shore Drive Higganum, CT		SIGNATURE OF PLAINTIFF IF PRO SE	
NO. PLFS. 1	NO. DEFS. 1	NO. CNTS. 1	SIGNED (Official taking recognizance, "X" proper box) <i>Charles W. Snow</i>
			<input checked="" type="checkbox"/> Commissioner of Superior Court <input type="checkbox"/> Assistant Clerk

IF THIS SUMMONS IS SIGNED by a CLERK:

- a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts.
- b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law.
- c. The Clerk is not permitted to give any legal advice in connection with any lawsuit.
- d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service thereof.

I hereby certify I have read	SIGNED (Pro se plaintiff)	DATE SIGNED	DOCKET NO.
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For Court Use
RECEIPT NO. <input type="checkbox"/> No Fee
FILE DATE

RETURABLE DATE: JULY 14, 1998

: SUPERIOR COURT

WILLIAM J. ZISK

: J.D. OF MIDDLESEX

VS.

: AT MIDDLETOWN

WALKLEY HEIGHTS ASSOCIATES

: JUNE 9, 1998

COMPLAINT

1. The Plaintiff in the above entitled action has an interest in a certain piece or parcel of land situated in the Town of Haddam County of Middlesex, and State of Connecticut, bounded and described as follows:

First Piece: The Homestead, so called, bounded by a line beginning on the highway at the northwest corner of said homestead property and running thence easterly by land of Frank Skrivanek, to land of Charles B. Carlson, thence southerly by lands now or formerly of Charles B. Carlson, Robert H. Carlson and Carl Anderson and Burr & Baroni, Incorporated, to land now or formerly of Carl Andeen; thence westerly by land of Carl Andeen to the highway; thence northerly by highway to land of Herbert S. Johnson; thence easterly, northerly and northwesterly by land of said Herbert S. Johnson and land of Charles B. Carlson to land of Mazie M. Carlson thence northerly and westerly by land of said Mazie M. Carlson to the highway; thence northerly by highway to the point of beginning, containing by estimation twenty-four (24) acres, more or less, with the dwelling house and all other buildings and improvements thereon together with such rights of way and rights to maintain water pipes appurtenant to the land granted so of record may approximately and especially so described in deed from Charles B. Carlson to Otto F. Carlson dated August 1, 1908 and recorded in Volume 47, pages 420, 421 and 422 of Haddam Land Records; the previous being also subject to certain rights of way and to maintain water pipes; as by record will appear and especially as described in deed from Otto F. Carlson to Gustaf B. Carlson dated September 9, 1913 and recorded in Volume 51, Page 228 of Haddam Land Records, and in agreement between Otto F. Carlson and Charles B. Carlson dated August 18, 1916 and recorded in Haddam Land Records, Volume 51, Page 393; these premises being the same as those included in Mortgage Deed from Otto F. Carlson to Gustaf B. Carlson, dated August 1, 1908, recorded in Volume 49 Page 259 of Haddam Land Records.

Second Piece: Being sprout land and containing sewer (7) acres, more or less, bounded northerly and easterly by land now or formerly of Burr & Baroni, Incorporated; southerly by lands now or formerly of Mashinda and Carl Anderson and westerly by the third piece herein described in deed from Charles B. Carlson to Otto F. Carlson, dated August 1, 1908, recorded in Volume 47, Pages 420, 421, and 422 of Haddam Land Records.

Third Piece: Being sprout land and containing one acre, more or less bounded northerly by land formerly of Cyrus A. Hubbard, easterly by land formerly of Cyrus A. Hubbard, in part and partly by land formerly of James C. Walkley; southerly by land formerly of Cyrus A. Hubbard and westerly by land formerly of Chauncey D. Skinner being the same land described as the third piece in said deed of Carlson to Carlson, recorded in Volume 47, pages 420-422 of said Haddam Land Records.

2. The Plaintiffs interest in said property comes about by being an heir of William and Mary Zisk who acquired said property described above as tenants in common by warranty deed, dated December 3, 1943, and found in Volume 67, Page 469 of the Haddam Land Records.

3. The said Mary Zisk acquired a mortgage interest in said premises described above as a result of a mortgage deed wherein she is a mortgagee with Edward Zisk and Donald Zisk as outlined in a mortgage deed from High Street Associates predecessor to the Defendant Walkley Heights Associates to the said Mary Zisk, Edward Zisk and Donald Zisk, dated May 23, 1991 and found in Volume 81, Page 238 of the Haddam Land Records.

On September 8, 1994, the said Mary Zisk died a resident of Roseville, California and on the date of her death she had a one-third (1/3) interest in the mortgage deed and note referred to above.

4. No executor has been appointed for her estate as shown in a Probate Order, dated December 6, 1994 and marked Exhibit A attached hereto.

5. Even though no executor has been appointed to her estate the said Donald Zisk signed the following documents as her purported executor:

- a. mortgage extension agreement as found in Volume 202, Page 679 of the Haddam Land Records.
- b. subordination agreement subordinating the mortgage held by Mary Zisk, et al to a mortgage given by the Farmers & Mechanics Savings Bank, dated October 17, 1996 and recorded in Volume 209, Page 605 of the Haddam Land Records.
- c. a partial release of mortgage dated June 16, 1995 and recorded in Volume 202, Page 651 of the Haddam Land Records.
- d. a subordination agreement dated October 17, 1996 and found in Volume 209, Page 674 of the Haddam Land Records.

As an heir at law of Mary Zisk, the Plaintiff, William J. Zisk, claims an interest in said premises described above.

WHEREFORE, the Plaintiff claims a judgment determining the rights of the parties in or to the land and settling the title thereto.

THE PLAINTIFF

By Charles W. Snow, Jr.
Charles W. Snow, Jr.
HIS ATTORNEY
547 Main Street
Middletown, CT 06457
(860)347-4437
JURIS NO. 59800

RETURABLE DATE: JULY 14, 1998

: SUPERIOR COURT

WILLIAM ZISK

: J.D. OF MIDDLESEX

VS.

: AT MIDDLETOWN

WALKLEY HEIGHTS ASSOCIATES

: JULY 2, 1998

AMENDMENT TO THE COMPLAINT

Paragraph four (4) of the Plaintiff's complaint is hereby amended by adding the Probate Order, dated, December 6th, 1994 and marked Exhibit A, which we are attaching, hereto.

6. The Plaintiff's complaint is further amended by adding the following as paragraph #6. The Plaintiff, William J. Zisk and Lois E. Paolini, were married in Roseville, California on July 20, 1952. As a "wedding gift" to the newlyweds, the father and mother of the Plaintiff, namely William W. Zisk and Mary A. Zisk promised to convey to the said William J. Zisk, as their son, a 4 acre parcel of land constituting a portion of the premises referred to in paragraph 1 and more particularly bounded and described as follows:

"All that certain real property situated in Middlesex County, Connecticut, fronting on the East side of Killingworth Road, being a portion of the Zisk property and having a frontage of approximately 300 feet on Killingworth Road and adjacent on the North side to the South boundary line of Professor West property; running east along the said boundary line to the east end of West property and thence in a southerly direction along the extension of the east boundary line of the Zisk property to the west boundary line of the Zisk property fronting on Killinworth Road containing approximately four (4) acres, more or less, excepting and reserving a right of way for ingress and egress to the main real property along the north side of Professor West property, said right of way to be fifty (50) feet in width extending from the Killingworth Road to the main real property"

7. The Plaintiff, William J. Zisk, materially relying upon the promise of his mother and father to convey the premises, i.e. the 4 acre parcel described above, has expended large sums of money in improving the premises in question. The Plaintiff cleared trees, built a driveway on said premises, staked out a house site and further expended monies in rebuilding a household on the 32 acre parcel belonging to William W. Zisk and Mary A. Zisk, all in reliance in obtaining title to the 4 acre parcel described in paragraph 2.

8. On June 24, 1974, the Plaintiff's mother, who on this date now held title to said premises, executed a Will which in the fourth paragraph of said Will specifically described said premises to be given by herself and her now deceased husband over to the said William J. Zisk and further describes said premises in the Will.


9. The Plaintiff, William J. Zisk, was aware of the provisions of this Will and further materially relied upon the promise of his mother and father to convey said property. He spent further sums of money in keeping up the property and paid the taxes on the property.

10. The Defendant, Steven A. Rocco, purports to have an interest in said property as a result of a Warrantee Deed from Mary A. Zisk, Donald R. Zisk and Edward J. Zisk, over to High Street Associates, a 10/12 interest dated May 8, 1991 and recorded in Volume 180, Page 230 of the Haddam Land Records.

11. The Defendant, High Street Associates, also purports to have a further added interest in said premises as a result of a Committee Deed, dated September 20, 1994 and recorded in Volume 199, Page 885 of the Haddam Land Records.

12. The entity known as High Street Associates, which purported to have an interest in said property as a result of a Warrantee Deed as referred to above, did not exist at time of said transfer, dated May 8th, 1991 and therefore all subsequent transfers from the alleged High Street Associates are null and void.

THE PLAINTIFF

By 
Charles W. Snow, Jr.
HIS ATTORNEY
547 Main Street
Middletown, CT 06457
(860)347-4437
JURIS NO. 59800

CERTIFICATION

I hereby certify that a copy was delivered to the Defendant, Steven A. Rocco 1783 Saybrook Road in Haddam CT on July 2, 1998.

Charles W. Snow, Jr. - Attorney

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): 63253

TELEPHONE NO

FOR COURT USE ONLY

LAW OFFICES OF TOSH G. YAMAMOTO
A Professional Corporation
930 Florin Road, Suite 200
Sacramento, CA 95831

(916) 421-8455

ATTORNEY FOR (Name): DONALD R. ZISK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER

STREET ADDRESS: 101 Maple Street

MAILING ADDRESS:

CITY AND ZIP CODE: Auburn, CA 95603

BRANCH NAME:

ESTATE OF (NAME): MARY A. ZISK

DECEDENT

FILED

DEC - 6 1994

CARL DePIETRO

CLERK OF THE SUPERIOR COURT

BY

DEPT.

ORDER FOR PROBATE

ORDER

☐ Executor

APPOINTING

☐ Administrator with Will Annexed☐ Administrator☒ Special Administrator

CASE NUMBER:

SPR-0567

☐ Order Authorizing Independent Administration of Estate☐ with full authority☒ with limited authority

1. Date of hearing: 11/22/94 Time: 8:30 A.M. Dept/Rm: 3

Judge: J. RICHARD COUZENS

THE COURT FINDS

2. a. All notices required by law have been given.
b. Decedent died on (date): 9/8/94
(1) ☒ a resident of the California county named above
(2) ☐ a nonresident of California and left an estate in the county named above
c. Decedent died
(1) ☐ intestate
(2) ☐ testate and decedent's will dated:
and each codicil dated:
was admitted to probate by Minute Order on (date)

THE COURT ORDERS

3. (Name): DONALD R. ZISK

is appointed **personal representative**:

- a. ☐ Executor of the decedent's will
b. ☐ Administrator with will annexed
c. ☐ Administrator

d. ☒ Special Administrator(1) ☒ with general powers(2) ☐ with special powers as specified in Attachment 3d(3) ☐ without notice of hearing

and letters shall issue on qualification

4. a. ☐ Full authority is granted to administer the estate under the Independent Administration of Estates Act.
b. ☒ Limited authority is granted to administer the estate under the Independent Administration of Estates Act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property)
5. a. ☒ Bond is not required
b. ☐ Bond is fixed at: \$ to be furnished by an authorized surety company or as otherwise provided by law.
c. ☐ Deposits of: \$ are ordered to be placed in a blocked account at (specify institution and location):
and receipts shall be filed. No withdrawals shall be made without a court order.

6. ☒ (Name)

A. E. DIERKES

P.O. Box 7003

Auburn, CA 95604

is appointed probate referee


7. ☒ Number of pages attached: 1

JUDGE OF THE SUPERIOR COURT

☒ Signature follows last attachment

1 The Petition for Probate of Lost Will or Probate of Will and
2 for Letters Testamentary and Authorization to Administer Under
3 the Independent Administration of Estates Act is continued to
4 January 24, 1995 at 8:30 a.m. in Department 3 of the Placer
5 County Superior Court.

6 Dated: DEC - 8 1994

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8 
9 JUDGE OF THE SUPERIOR COURT
10 J. RICHARD COUZENS
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WILLIAM J. ZISK

: SUPERIOR COURT

VS.

: J.D. OF MIDDLESEX
AT MIDDLETOWN

WALKLEY HEIGHTS ASSOCIATES

: JUNE 9, 1998

LIS PENDENS

TO WHOM IT MAY CONCERN, TAKE NOTICE, that an action has been brought to the SUPERIOR COURT, the case title as set forth above and returnable on July 14, 1998 in the Judicial District of Middlesex at Middletown, in which William J. Zisk of 205 Thomas Street, Roseville, California is the Plaintiff and Walkley Heights Associates of Haddam, Connecticut is the Defendant.

The purpose of this action is to quiet the title to certain property located on High Street in the Town of Haddam, Connecticut and alleged owned by the above parties.

The property affected by said partition action is more particularly described in Schedule A attached hereto and incorporated herein.

Dated at Middletown, Connecticut this 9th day of June, 1998.

THE PLAINTIFF

By

Charles W. Snow, Jr.
Charles W. Snow, Jr.
His Attorney
547 Main Street
Middletown, CT 06457
(860)347-4437
JURIS NO. 59800

First Piece: The Homestead, so called, bounded by a line beginning on the highway at the northwest corner of said homestead property and running thence easterly by land of Frank Skrivanek, to land of Charles B. Carlson, thence southerly by lands now or formerly of Charles B. Carlson, Robert H. Carlson and Carl Anderson and Burr & Baroni, Incorporated, to land now or formerly of Carl Andeen; thence westerly by land of Carl Andeen to the highway; thence northerly by highway to land of Herbert S. Johnson; thence easterly, northerly and northwesterly by land of said Herbert S. Johnson and land of Charles B. Carlson to land of Mazie M. Carlson thence northerly and westerly by land of said Mazie M. Carlson to the highway; thence northerly by highway to the point of beginning, containing by estimation twenty-four (24) acres, more or less, with the dwelling house and all other buildings and improvements thereon together with such rights of way and rights to maintain water pipes appurtenant to the land granted so of record may approximately and especially so described in deed from Charles B. Carlson to Otto F. Carlson dated August 1, 1908 and recorded in Volume 47, pages 420, 421 and 422 of Haddam Land Records; the previous being also subject to certain rights of way and to maintain water pipes; as by record will appear and especially as described in deed from Otto F. Carlson to Gustaf B. Carlson dated September 9, 1913 and recorded in Volume 51, Page 228 of Haddam Land Records, and in agreement between Otto F. Carlson and Charles B. Carlson dated August 18, 1916 and recorded in Haddam Land Records, Volume 51, Page 393; these premises being the same as those included in Mortgage Deed from Otto F. Carlson to Gustaf B. Carlson, dated August 1, 1908, recorded in Volume 49 Page 259 of Haddam Land Records.

Second Piece: Being sprout land and containing sewer (7) acres, more or less, bounded northerly and easterly by land now or formerly of Burr & Baroni, Incorporated; southerly by lands now or formerly of Mashinda and Carl Anderson and westerly by the third piece herein described in deed from Charles B. Carlson to Otto F. Carlson, dated August 1, 1908, recorded in Volume 47 Pages 420, 421, and 422 of Haddam Land Records.

Third Piece: Being sprout land and containing one acre, more or less bounded northerly by land formerly of Cyrus A. Hubbard, easterly by land formerly of Cyrus A. Hubbard, in part and partly by land formerly of James C. Walkley; southerly by land formerly of Cyrus A. Hubbard and westerly by land formerly of Chauncey D. Skinner being the same land described as the third piece in said deed of Carlson to Carlson, recorded in Volume 47, Pages 420-422 of said Haddam Land Records.

RECEIVED FOR RECORD P
7-8 19 98 at 145 M.
TOWN CLERK'S OFFICE
HADDAM, CONN.
Jan P. Huffstetter
TOWN CLERK
Vol. 215, Pg. 375

ZISK, WILLIAM J VS.
WALKLEY HEIGHTS ASSO CV-98-0086079-S

STANDARD TRACK NOTICE

THIS CASE HAS BEEN ENTERED IN THE STANDARD TRACK. COUNSEL WILL HAVE 360 DAYS FROM THE RETURN DATE TO CLOSE THE PLEADINGS. COMPLETE DISCOVERY AND CLAIM THE CASE TO THE TRIAL LIST. IT IS EXPECTED THAT THIS CASE WILL GO TO TRIAL 08/99, IF NOT DISPOSED OF SOONER. APPROXIMATELY 330 DAYS FROM THE RETURN DATE COUNSEL WILL HAVE AN OPPORTUNITY TO SEEK ADDITIONAL TIME, IF CAUSE IS SHOWN. CASES GIVEN MORE TIME WILL BE CONTINUED TO A DATE CERTAIN. THESE CASES WILL CONTINUE TO BE SUBJECT TO THE PRESENT "DORMANT PROGRAM" EXCEPT EXEMPTIONS WILL BE GRANTED ONLY TO A DATE CERTAIN. FAILURE TO COMPLY WILL RESULT IN DISMISSAL. PER ORDER OF THE COURT, HIGGINS, J. BARBRA LINK, C.C.

SUPERIOR COURT
1 COURT STREET
MIDDLETOWN, CONNECTICUT 06457

WILLIAM J ZISK
205 THOMAS STREET
ROSEVILLE, CA.

95678

DATED: AUG 07, 1998
MMX

SUPERIOR COURT
1 COURT STREET
MIDDLETOWN, CONNECTICUT 06457

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE
PAID ONE OUNCE
PERMIT NO. 3684
HARTFORD, CONN

To Open - Tear Along Perforation

WILLIAM J ZISK
205 THOMAS STREET
ROSEVILLE, CA.

95678

IMPORTANT NOTICE
ON REVERSE

AUTO



NOTICE

THE JUDICIAL BRANCH IS COMMITTED TO THE EXPANDED UTILIZATION OF ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAMS TO FACILITATE THE EXPEDITIOUS AND EQUITABLE RESOLUTION OF CASES.

UPON AGREEMENT OF THE PARTIES, ANY CIVIL OR FAMILY MATTER IS ELIGIBLE TO BE REFERRED TO AN ADR PROGRAM. WHEN A CASE IS REFERRED ALL COURT PROCEEDINGS, INCLUDING SHORT CALENDAR ASSIGNMENT AND DORMANCY DISMISSAL, WILL BE STAYED. THE COURT WILL SET A TIME LIMIT ON THE DURATION OF THE REFERRAL CONSISTENT WITH APPLICABLE RULES AND STATUTES.

A RESOURCE LIST OF COURT AND PRIVATE ADR PROVIDERS IS AVAILABLE IN EACH JUDICIAL DISTRICT CLERK'S OFFICE.

***** P L A I N T I F F *****

***** D E F E N D A N T C O N T *****

*** PRO SE PARTIES

WILLIAM J ZISK
205 THOMAS STREET
ROSEVILLE, CA.

95678

JOZUS MILARDO & THOMASSON
73 MAIN STREET

SNOW CHARLES W PC

ROOM 3

547 MAIN STREET

MIDDLETOWN CT 06457
WALKLEY HEIGHTS ASSOCIATES

06/30/98

MIDDLETOWN CT 06457

***** D E F E N D A N T *****

ZISK, WILLIAM J

VS.

WALKLEY HEIGHTS ASSD

DOCKET NUMBER CV 98 00860795

MIDDLETOWN
SUPERIOR COURT

THE ABOVE INFORMATION
REFLECTS THE STATUS OF
APPEARANCES FOR THIS
CASE AS OF 07/09/98.
PLEASE DIRECT INQUIRIES
TO CLERKS OFFICE

WILLIAM J ZISK
205 THOMAS STREET
ROSEVILLE, CA.

95678

638/1830

1 COURT STREET
MIDDLETOWN, CONNECTICUT 06457

PAGE 01 OF 01

MIDDLETOWN
SUPERIOR COURT
1 COURT STREET
MIDDLETOWN, CONNECTICUT 06457

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE
PAID ONE OUNCE
PERMIT NO. 3884
HARTFORD, CONN.

WILLIAM J ZISK
205 THOMAS STREET
ROSEVILLE, CA.

95678

IMPORTANT NOTICE
ON REVERSE

AUTOT

|||||

NOTICE

07/09/1998
CV1701
0003666

THE JUDICIAL BRANCH IS COMMITTED TO THE EXPANDED UTILIZATION OF ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAMS TO FACILITATE THE EXPEDITIOUS AND EQUITABLE RESOLUTION OF CASES.

UPON AGREEMENT OF THE PARTIES, ANY CIVIL OR FAMILY MATTER IS ELIGIBLE TO BE REFERRED TO AN ADR PROGRAM. WHEN A CASE IS REFERRED ALL COURT PROCEEDINGS, INCLUDING SHORT CALENDAR ASSIGNMENT AND DORMANCY DISMISSAL, WILL BE STAYED. THE COURT WILL SET A TIME LIMIT ON THE DURATION OF THE REFERRAL CONSISTENT WITH APPLICABLE RULES AND STATUTES.

A RESOURCE LIST OF COURT AND PRIVATE ADR PROVIDERS IS AVAILABLE IN EACH JUDICIAL DISTRICT CLERK'S OFFICE.

JOZUS, MILARDO & THOMASSON
ATTORNEYS AT LAW

70 MAIN STREET

MIDDLETOWN, CONNECTICUT 06457

William J. Zisk
205 Thomas Street
Roseville, CA 95678



RECEIVED
8-14-78

CV 98-0086079S

WILLIAM J. ZISK

: SUPERIOR COURT

V.

: JUDICIAL DISTRICT OF
: MIDDLESEX AT MIDDLETOWN

WALKLEY HEIGHTS ASSOCIATES

: AUGUST 10, 1998

MOTION TO STRIKE

Pursuant to the provisions of Connecticut Practice Book Section 10-39(a), the defendant, Walkley Heights Associates, hereby moves to strike the plaintiff's Amended Complaint dated July 17, 1998 on the ground that it fails to state a claim upon which relief may be granted. The plaintiff has instituted this action to settle title to a parcel of land located in Hamden, Connecticut. The plaintiff, however, does not have an actual interest to justify his instituting an action concerning it.

The defendant incorporates its memorandum of law which sets forth in detail the basis of this motion.

WHEREFORE, the defendant respectfully requests that this Court grant its Motion to Strike the plaintiff's Amended Complaint.

ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED

- 2 -

DEFENDANT

By Linda J. Cannata
Linda J. Cannata
Jozus, Milardo & Thomasson
Its Attorney

ORDER

The following Motion having been presented to this Court, it
is hereby Ordered: GRANTED/DENIED.

BY THE COURT

Judge/Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed,
postage prepaid, this 10th day of August, 1998 to all counsel and
pro se parties of record as follows:

Charles W. Snow, Jr., Esq.
547 Main Street
Middletown, CT 06457

William J. Zisk
205 Thomas Street
Roseville, CA 95678

Linda J. Cannata
Linda J. Cannata

CV 98-0086079S

WILLIAM J. ZISK

: SUPERIOR COURT

V.

: JUDICIAL DISTRICT OF
: MIDDLESEX AT MIDDLETOWN

WALKLEY HEIGHTS ASSOCIATES

: AUGUST 10, 1998

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STRIKE

The defendant, Walkley Heights Associates (hereinafter "Walkley Heights"), submits the following Memorandum of Law in Support of its Motion to Strike.

I. BACKGROUND

The plaintiff, William J. Zisk, instituted this action against Walkley Heights purportedly to settle title to a parcel of land located in Haddam, Connecticut and owned by Walkley Heights. The plaintiff claims to have an interest in the subject property by being an heir of Mary Zisk who had previously owned the subject property with William Zisk. (Complaint, Paragraph 2). The plaintiff further claims that said Mary Zisk acquired a mortgage interest in the subject property as a result of a mortgage deed wherein she is a mortgagee with Edward Zisk and Donald Zisk outlined in a mortgage deed form High Street Associates, predecessor to Walkley Heights. (Complaint, Paragraph 3).

The plaintiff further alleges that "on September 8, 1994, the

said Mary Zisk died a resident of Roseville, California and on the date of her death she had a one-third interest in the mortgage deed and note..." (Complaint, Paragraph 3). The plaintiff also claims that no executor has been appointed for the estate of Mary Zisk. (Complaint, Paragraph 4).

The defendant moves to strike the complaint on the basis that it fails to state a claim upon which relief may be granted.

II. ARGUMENT

PLAINTIFF'S COMPLAINT SHOULD BE STRICKEN BECAUSE HE DOES NOT HAVE AN ACTUAL INTEREST IN THE PROPERTY SUFFICIENT TO JUSTIFY HIS INSTITUTING AN ACTION CONCERNING IT.

In deciding upon a motion to strike, a trial court must take the facts to be those alleged in the complaint. Blancato v. Feldspar Corp., 203 Conn. 34, 36 (1987).

Conn. Gen. Stat. Section 47-31 entitled "Action to settle title or claim interest in real or personal property" provides that an action to quiet title may only be brought by "a person claiming title to, or any interest in, real or personal property.." The court in Brill v. Ulrey, 159 Conn. 371, 373 (1970), enunciated the purpose of this requirement as follows:

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.'

Brill at 374-75 citing Loewenberg v. Wallace, 147 Conn. 689 (1960).

In this case, the plaintiff does not have an actual interest in the subject property for many reasons. To begin with, the Complaint does not allege any more than that Mary Zisk died a resident of Roseville, California. There is no allegation as to whether or not the Estate is open, closed, or what plaintiff's interest in the Estate is.

Moreover, plaintiff does not allege that he has an interest in the subject property. The plaintiff merely alleges that he is an heir of Mary Zisk, (Complaint, Paragraph 2), and purportedly bases his complaint on the presumption or assumption that he will be a distributee of Mary Zisk's estate with respect to her interest in the mortgage without alleging any basis for it. He does not allege that there has been a distribution of the estate or that he has acquired any portion of his mother's 1/3 interest in the mortgage or that he is the fiduciary of his mother's

estate.

In furtherance of defendant's motion it asserts the plaintiff has not alleged whether an inventory of Mary Zisk's estate has been filed or whether her estate is possessed of Mary Zisk's mortgage interest at this time.

But more importantly, plaintiff makes no claim that the mortgage debt of Walkley Heights is in default. Even assuming arguendo that the plaintiff is a distributee of Mary Zisk's 1/3 interest in the subject mortgage, plaintiff would not be able to pursue a quiet title action because a mortgage deed is a conditional deed of security and it does not become effective unless or until the underlying obligation is in default. Becker v. Dramin, 6 Conn. Supp. 33, 34 (1938). At that point, the proper cause of action for plaintiff to pursue would be a suit for foreclosure of his mortgage interest.

For all the foregoing reasons, this court should strike plaintiff's complaint on the basis it is legally insufficient as a matter of law.

III. CONCLUSION

Wherefore, the defendant respectfully requests that this

Court grant her Motion to Strike.

DEFENDANT

By Linda J. Cannata
Linda J. Cannata
Jozus, Milardo & Thomasson
Its Attorney

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 10th day of August, 1998 to all counsel and pro se parties of record as follows:

Charles W. Snow, Jr., Esq.
547 Main Street
Middletown, CT 06457

William J. Zisk
205 Thomas Street
Roseville, CA 95678

Linda J. Cannata
Linda J. Cannata

memstrike.pld

CV-98-0086079S

: SUPERIOR COURT

WILLIAM J. ZISK

: J.D. AT MIDDLESEX

VS

: AT MIDDLETOWN

WALKLEY HEIGHTS ASSOCIATES

: AUGUST 28, 1998

OBJECTIONS TO MOTION TO STRIKE

The Plaintiff in the above entitled action is the heir at law of Mary Zisk, who died on December 8, 1994 owning a one third interest in a mortgage, wherein, the Defendant is the mortgagor. The said Mary Zisk's estate probated in a California Court, wherein, no inventory was filed.

The said Mary Zisk acquired the property in conjunction with her husband on December 3, 1943 and subsequent alleged owners such as the Defendant and High Street Associates were non-existing entities, all of which can only be determined at a trial of the issues of law and fact. As an heir at law of Mary Zisk, the Plaintiff has an interest in said property and therefore has an interest in said premises in question to have a standing as a Plaintiff in said action.

ORAL ARGUMENT REQUESTED

THE PLAINTIFF

BY

CHARLES W. SNOW, JR.
HIS ATTORNEY
547 MAIN STREET
MIDDLETOWN, CT 06457
(860)347-4437
JURIS NO. 59800

CERTIFICATION

I hereby certify that a copy of the foregoing was hand delivered, this 28th day of August, 1998 to all counsel of record as follows: Jozus, Milardo & Thomasson
73 Main Street
Middletown, CT 06457

Charles W. Snow, Jr.

CV-98-0086079S

: SUPERIOR COURT

WILLIAM J. ZISK

: J.D. AT MIDDLESEX

VS

: AT MIDDLETOWN

WALKLEY HEIGHTS ASSOCIATES

: AUGUST 28, 1998

MEMORANDUM IN SUPPORT OF PLAINTIFF'S OBJECTION
IN THE DEFENDANT'S MOTION TO STRIKE

The Plaintiff, William J. Zisk submits the following memorandum of law in support of it's objection to the Defendant's Motion to Strike.

1. The Plaintiff is the son of Mary Zisk and William W. Zisk, who acquired the property in question December 3, 1943 and as such has an interest in said premises, especially inasmuch as his mother, who died on December 8, 1994, held a one third interest in a mortgage on said premises as the facts will show and although she died in California, the Probate Court in California has no record of an inventory showing her interest in the property in Haddam, Connecticut, now allegedly owned by Walkley Heights Associates.

The case of Brill vs. Ulrey, 159 Conn., 371 cited by the Defendant in it's brief, specifically states that in citing the Conn. Statute, that an interest in said premises is enough to sustain an action to Quiet Title.

The Conn. Statute 47-31 states that such action may be brought whether or not the Plaintiff is entitled to the immediate or exclusive possession of the property.

The fact that the Plaintiff's mothers' estate contained no inventory showing that she in fact owns a one third mortgage interest in the premises in question allows the Plaintiff as her heir at law to maintain this action.

The fact that Donald Zisk, who conveyed his interest in said premises to the Defendant, purports to act for the estate of Mary Zisk, the evidence will show that he has no such authority and the Probate Court in California, in closing out the estate of Mary Zisk with no inventory on file gives credence to the fact that the Plaintiff has an interest in said land.

THE PLAINTIFF

BY

CHARLES W. SNOW, JR.
HIS ATTORNEY
547 MAIN STREET
MIDDLETOWN, CT 06457
(860)347-4437
JURIS NO. 59800

CERTIFICATION

I hereby certify that a copy of the foregoing was hand
delivered this 28th day of August, 1998 to all counsel of record
as follows:

Jozus, Milardo & Thomasson Attorneys At Law
73 Main Street
Middletown, CT 06457

SUPERIOR COURT
1 COURT STREET
MIDDLETOWN, CONNECTICUT 06457-3374

FIRST CLASS MAIL

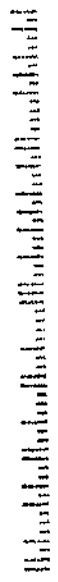


MMX/SD03/# 31
004892
WILLIAM J ZISK
205 THOMAS STREET
ROSEVILLE, CA

95678

8-31-98

95678-1838 CA



Middletown
SUPERIOR COURT

Short Calendar

Hon. Salvatore F. Arena
1 Court Street
5th Floor, Room 505
Courtroom A
9:30 A.M.

NOTICE REGARDING PROPERTY SHORT
CALENDAR PROCEDURE

Counsel and pro se parties must inform the court of those matters on this calendar that are "READY FOR ADJUDICATION" by calling the Clerk's Office at (860) 343-6400, or send a fax to (860) 343-6423. MATTERS THAT HAVE NOT BEEN MARKED "READY FOR ADJUDICATION" WILL BE DEEMED "OFF" AND WILL NOT BE REINSTATED ON THIS CALENDAR.

"READY FOR ADJUDICATION" markings may be made at any time after the receipt of the calendar, but no later than 11:00 a.m. on the last business day preceding the scheduled calendar. In the event a state holiday falls on the Friday preceding the scheduled (Notice Continued on Last Column)

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LINER P & A PC FEDERAL D I CORP
PERLSTEIN & A PC
PRO SE
MORAN S C & KNIE
SH REILLY

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H. L. SCHIFF

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SH GOLLINGER

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CHIEF CLERK

NOTICE (continued from Column 1)

calendar, the deadline for markings will be 11:00 a.m. Thursday.

Counsel and pro se parties must give timely notice to each other of any marking that has been made. Failure to do so may result in sanctions by the court. If conflicting markings are made, the last one received will control.

The only motions on this calendar that may be argued as a matter of right are:

1. Motions for Foreclosure
2. Motions to Dismiss
3. Motions to Strike
4. Motions for Summary Judgment
5. Motions for Judgment of Deficiency

Assuming the provisions of P.B. § 11-18 (a) have been met, counsel and pro se parties may mark such "as of right" motions "READY FOR ADJUDICATION."

All other matters that have been marked "READY FOR ADJUDICATION" will be reviewed by a judge to determine whether or not argument will be necessary. When marking such matters, counsel and pro se parties must indicate that argument has been requested and would be preferred. This information will be communicated to the judge, but it will be in the judge's discretion whether or not to permit argument. Those matters for which argument is deemed unnecessary will be decided on the papers. Those matters for which argument is permitted, or is required by the court, will be scheduled for hearings at a later date. The judge's clerk will notify counsel and pro se parties of the dates and times of the hearings.

"Any case which has an ATR prefix and appears on this list for judgment on report will be taken on the papers."

MMXSSSSSS

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
CT Sales Tax @ 6%	\$.32
Total Due	\$ 5.57

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.

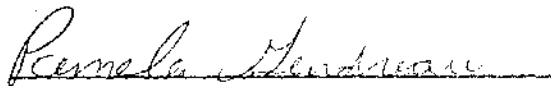
MR. SNOW: I'm sure it was included in the objection.

(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 .

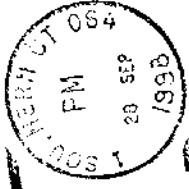


Pamela Gendreau

Court Recording Monitor



STATE OF CONNECTICUT
SUPERIOR COURT
JUDICIAL DISTRICT OF MIDDLESEX
OFFICE OF THE CHIEF CLERK
One Court Street
Middletown, CT 06457-3374



Mr William
Zisk
Thomas St
JDS
Rogerville

CA 3678
Middletown, CT 06457-3374

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

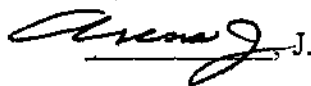
In his complaint filed on July 6, 1998, the plaintiff further alleges that Mary acquired a mortgage interest in the subject property, which was recorded in the Haddam Land Records in 1991. Since this mortgage was acquired by Mary well after both the alleged wedding gift and her 1974 will, the plaintiff's 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.", written in dark ink.

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.

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

SEP 25 2 00 PM '98

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

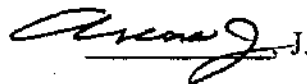
In his complaint filed on July 6, 1998, the plaintiff further alleges that Mary acquired a mortgage interest in the subject property, which was recorded in the Haddam Land Records in 1991. Since this mortgage was acquired by Mary well after both the alleged wedding gift and her 1974 will, the plaintiff's 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 dark ink, appearing to read "Arena J.", with a horizontal line drawn beneath the name.

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

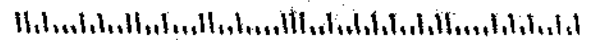
SUPERIOR COURT
1 COURT STREET
MIDDLETOWN, CONNECTICUT 06457

PRESORTED
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HARTFORD, CONN.

WILLIAM J ZISK
205 THOMAS STREET
ROSEVILLE, CA.
95678

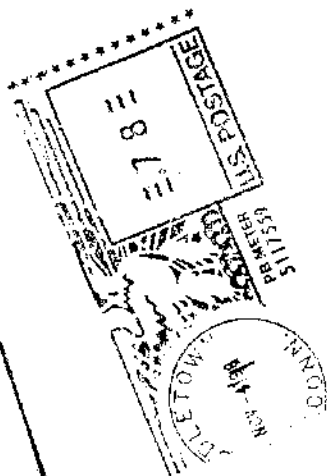
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To Open This Side - Slide Finger Under This Edge



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

JOZOS, SUZOS & THOMAS
ATTORNEYS AT LAW
77 MAIN STREET
ROSEVILLE, CONNECTICUT 06457

CV 98-0086079S

WILLIAM J. ZISK

: SUPERIOR COURT

V.

: JUDICIAL DISTRICT OD
: MIDDLESEX AT MIDDLETOWN

WALKLEY HEIGHTS ASSOCIATES

: NOVEMBER 4, 1998

ANSWER AND SPECIAL DEFENSES

BY WAY OF ANSWER:

Defendant, Walkley Heights Associates, hereby answers the Amended Complaint dated July 17, 1998, as follows:

1. Defendant denies the allegations contained in paragraphs 1 and 2.

2. Defendant admits the allegations contained in paragraph 3 but denies the alleged volume said mortgage deed is found in the Haddam Land Records.

3. Defendant denies the allegations contained in paragraph 4.

4. Defendant denies the allegations in paragraph 5 that "even though no executor has been appointed to her estate" and that Donald Zisk signed documents as "purported executor." Defendant admits the remaining allegations in paragraph 5.

5. Defendant has insufficient knowledge to respond to paragraphs 6, 7, 8, and 9, and therefore, leaves the plaintiff to

his proof.

6. Defendant denies the allegations in paragraph 10.

7. Answering paragraph 11, defendant denies the allegations "further added interest" and admits the remainder of the allegations.

8. Defendant denies the allegations in paragraph 12.

BY WAY OF SPECIAL DEFENSES:

1. Mary Zisk died a resident of Roseville, California and her will is admitted to probate in that state. Plaintiff is not a beneficiary of the estate of Mary Zisk since he was not named in her will, nor is he an heir at law. Therefore, he can have no interest in any property of Mary Zisk, including her interest in the mortgage which is the subject of this action.

2. Plaintiff is barred from bringing this action because he has no interest in the subject real estate as has been ruled on by the court in the matter known as High Street Associates v. William J. Zisk, bearing docket number 62496 and decided by State Trial Referee Judge Spallone in his Memorandum of Decision dated May 5, 1993 attached hereto as Exhibit A. In said case of partition the

court found that William Zisk failed to prove allegations in his counterclaim including his claim to quiet title. Allegations set forth in paragraphs 6, 7, 8, and 9 of plaintiff's Amended Complaint were raised and addressed by the Court in High Street Associates v. William J. Zisk. Therefore, said issues determined by Judge Spallone are res judicata in this matter, and plaintiff is estopped from having those matters retried in this case.

3. Defendant states no cause of action regarding the mortgage in question.

DEFENDANT

By Linda J. Cannata
Linda J. Cannata
Jozus, Milardo & Thomasson
Its Attorney

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 4th day of November 1998 to all counsel and pro se parties of record, as follows:

Charles W. Snow, Jr., Esq.
547 Main Street
Middletown, CT 06457

William J. Zisk
205 Thomas Street
Roseville, CA 95678


Linda J. Cannata

answer.wha

EXHIBIT A

NO. 62496

HIGH ST. ASSOCIATES

:

SUPERIOR COURT

V.

:

MIDDLESEX J.D.

WILLIAM J. ZISK

:

MAY 5, 1993

MEMORANDUM OF DECISION

By writ, summons and complaint dated June 4, 1991, the plaintiff is seeking a partition of certain real estate located at 106 High Street in the Higganum section of Haddam, Conn. as is more fully described in schedule A attached to said complaint. This action is brought pursuant to Gen. Stat. Sec. 52-495. The plaintiff is seeking partition by sale under Gen. Stat. Sec. 52-500.

The defendant has filed his answer, special defenses and a counterclaim in four counts. Count one of the defendants counterclaim seeks to quiet title, count two prays to annul a deal for fraud, count three claims unjust enrichment and count four asks relief for tortious interference with

10 21 1993
STATE OF
CONN.

property rights. The plaintiff has filed his answer to the defendant's counterclaim.

After a full trial, all parties represented by counsel, the court, based on a preponderance of the credible, relevant and legally admissible evidence, finds, concludes, rules and orders as follows.

The plaintiff is a general partnership, organized and existing pursuant to the laws of the state of Connecticut. The plaintiff is known as High St. Associates and has an office and place of business at 1783 Saybrook Road, Haddam, Connecticut. The general partners are Architects Equity, Inc., and A.F.C. Inc. The defendant is William J. Zisk, 205 Thomas Street, Roseville, California.

The property subject to this partition action, was originally acquired by the parents of the defendant. They each held an undivided one half interest as tenants in common.

The defendant claims that as a wedding gift in 1952, his parents orally gave to him a four acre parcel contained within the property subject to this action. He also claims that his mother by will acknowledged this gift in writing.

The plaintiff acquired their interest in the property by virtue of certain quit claim and warranty deeds recorded on June 3, 1991.

The court makes the following express finding of facts.

The plaintiff are owners as tenants in common of a 5/6 interest in the subject premises.

The plaintiff acquired title through deeds duly executed and duly recorded on the land records of the town of Haddam.

The defendant is the owner as tenant in common of a 1/6 interest in the subject property. He acquired his interest by virtue of a certificate of devise from his father's intestate estate of a 1/12 interest, and, a purchase from his sister of a 1/12 interest that she acquired from her father's estate.

The defendant's parents never executed or delivered a deed to the defendant conveying his claimed four acres.

The defendant's parents never executed or acknowledged in writing a conveyance of the four acres pursuant to the requirements and mandates of Gen. Stat. Sec. 47-5.

The defendant's parents, even if they orally made a gift of the real estate to the defendant, never completed the gift by delivering a conveyance to him.

Gen. Stat. Sec. 47-5 mandates that all conveyance of land be in writing, subscribed by the grantor, acknowledged and witnessed by two persons. No such conveyance is in this case. The defendant's claim of oral transfer is violative of this statute of fraud.

The defendant's claim of gift also fails because in order to effectuate a gift there must be a delivery. There is

no evidence in this case that any writing, deed or declaration of trust was ever delivered to the defendant. The burden is on the defendant to prove both the donors intent to make a gift and a delivery. Long v. Schull, 184 Conn. 252, 255 (1981). To constitute a valid gift, there must be a valid delivery accompanied by the intent of the donor that title shall pass immediately and irrevocably. Bergen v. Bergen, 177 Conn. 53, 56-57 (1979).

Assuming that the defendant's parents fully intended to make a gift to the defendant, such intent was never carried out because there was in fact no delivery. Before any delivery was made, the defendant's father died intestate and his interest in the land passed to his wife and children. When the defendant's mother declared in her will that she and her now deceased husband intended to give the four acres to the defendant, she was no longer the owner of the land as co-tenant with her husband. Her husband's interests had passed by the laws of intestacy, 1/3 to her and 2/3 to the children. The land was not hers to give. In any event such will was subsequently revoked.

The court finds the issues on the plaintiff's complaint for the plaintiff and a judgment of partition should enter.

The court finds that the defendant has failed to prove the allegations in his counterclaim and finds the issues on all four counts of same for the plaintiff. Judgment should

enter for the plaintiffs on all counts of the defendant's counterclaim.

The court having determined that a partition is appropriate now turns to whether the partition should be in kind or by sale.

We are fully aware that a partition in kind is favored over a partition by sale. Rice v. Dowling, 23 Conn. App. 460, 581 A.2d 1061 (1990). A partition by sale should be ordered only when the physical attributes of the land are such that a partition in kind is impractical and the interests of the owners would be better promoted by a sale and the divisions of the proceeds of the sale as per the respective interests. Filipetti v. Filipetti, 2 Conn. App. 456, 479 A2d 1229 (1984). The burden of proof is on the party requesting the sale to demonstrate that a sale should be ordered. Delfino v. Vealencis, 181 Conn. 533, 436 A.2d 27 (1980).

The highest and best use of the land subject to this action is a multiple lot residential subdivision. The subject property has limited frontage on the public highway and to partition in kind would severely impact on the highest and best use of the property. The potential for development would be virtually destroyed by a partition in kind. If any portion of the road frontage is set out separate from the balance of the property, access to the balance of the acreage would be severely limited and result in a detriment to all parties. Partition in kind to rear acreage would be inappropriate, spec-

ulative at best and contrary to the best interests of the parties.

Accordingly, a partition by sale should be ordered because in the opinion of the court based on a preponderance of the credible, relevant and legally admissible evidence, a sale would better promote the interests of the owners.

The court heard testimony as to the value of the premises.

Charles Burr, testifying as an expert for the plaintiff, appraised the property at \$182,000.00.

Gerry Adam, testifying as an expert for the defendant, valued the property at \$373,700.00.

In valuating property, the trial court is charged with the duty of making an independent valuation of the property involved. E & F Realty v. Commission of Transportation, 173 Conn. 247, 253, 377 A.2d 302 (1977). The trier is not limited to arbitrating the differing opinions of the witnesses but is to make determinations in the light of all the circumstances, the evidence, and his general knowledge. Pandolphe's Auto Parts, Inc. v. Manchester, 181 Conn. 217, 220, 435 A.2d 24 (1980); Birnbaum v. Ives, 163 Conn. 12, 21, 301 A.2d 262 (1972). The trier may accept or reject the testimony of an expert, offered by one party or the other, in whole or in part. Smith v. Smith, 183 Conn. 121, 123, 438 A.2d 847 (1981); Richard v. A. Waldman & Sons, Inc., 155 Conn. 343, 348, 232 A.2d 307 (1967); see also Pandolphe's Auto Parts,

Inc. v. Manchester, supra, 221. Ultimately the determination of the value of real estate is a matter of opinion, which eventually depends upon the considered judgment of the trial judge who takes into account the different opinions expressed by the various witnesses. Moss v. New Haven Redevelopment Agency, 146 Conn. 421, 425, 151 A.2d 693 (1959).

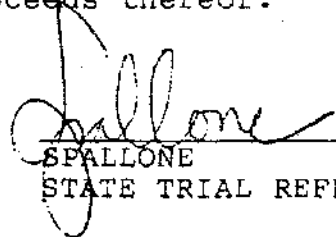
Applying the aforesaid law to the facts and circumstances of this case, the court independently finds the value of the subject premises to be in the amount of \$220,000.00.

In summation, the court having found the issues on the defendant's counterclaim for the plaintiff, judgment is entered for the plaintiff on all four counts of the defendant's counterclaim.

Further the court, having heard the parties, finds that the material allegations of the plaintiff's complaint are true; that the interests of the parties are as follows: the plaintiff, High St. Associates is the owner of a 5/6 undivided interest as a tenant in common with the defendant, William J. Zisk, who is the owner of an undivided 1/6 interest in the premises, and in the opinion of the court a sale will better promote the interests of the parties.

Wherefore, it is ordered that the property be sold and that Attorney Richard D. Carella of 955 South Main Street, Middletown, Conn. is appointed to sell the property subject to this action; that he shall sell the property as a whole, free and clear of all claims against the property, except a mort-

gage, securing a note in the amount of \$183,333.32, from High St. Associates to Mary Zisk, Edward J. Zisk and Donald R. Zisk as recorded in Vol. 180, page 238 of the land records of the town of Haddam, Conn., at public auction at 106 High Street in the Higganum section of Haddam, Conn. on Saturday, June 19, 1993 at 12 noon to the highest bidder; that he shall advertise such sale by placing a notice of same in both the Middletown Press and the Hartford Courant on two successive Saturdays, to wit June 5, 1993 and June 12, 1993 and by a sign on the premises to be placed not later than May 29, 1993; that when such sale has been made, the committee shall execute and submit for the approval of this court a conveyance of the property to the purchaser, and make a return of his doings and pay to the clerk of this court the money arising from such sale; and that the reasonable costs and expenses of the sale shall be paid out of the proceeds thereof.


SPALLONE
STATE TRIAL REFEREE

Judgment Entered in Accordance
with Foregoing Memorandum of Decision.

1st Michael Kokoszka
Michael Kokoszka, Chief Clerk

RETURN DATE: NOVEMBER 14, 1995 : SUPERIOR COURT
WILLIAM J. ZISK : J.D. OF MIDDLESEX
V. : AT MIDDLETOWN
EDWARD J. ZISK : OCTOBER 11, 1995
DONALD R. ZISK
(Individually and as Executor
of the Estate of Mary A. Zisk)
HIGH STREET ASSOCIATES
STEVEN A. ROCCO
JONATHAN GOTTLIEB
MEDALLION MORTGAGE COMPANY

LIS PENDENS

Notice is hereby given of the pendency of a civil action seeking equitable relief and money damages between the above named parties by a writ dated and made returnable to the Superior Court within and for the Judicial District of Middlesex on the 14th day of November, 1995, which action is brought seeking equitable relief and money damages in which William J. Zisk is the Plaintiff and Edward J. Zisk, Donald R. Zisk, Steven A. Rocco, Jonathan Gottlieb, High Street Associates and Medallion Mortgage Company are the Defendants and in which action the Plaintiff claims:

1. An assignment of real estate from the Defendants to the Plaintiff.

ES W. SNOW, JR., P.C.

67 MAIN STREET

2-504

MIDDLETOWN, CT 06457

(203) 347-4437

JURIS NO. 59800

2. Such other relief, in law or in equity, in which the Court may find the Plaintiff or the Defendant entitled to.

The property which the Plaintiff and the Defendant own jointly is located at 106 High Street, Town of Haddam, County of Middlesex and State of Connecticut and is bounded and described as follows:

(See attached Schedule "A")

Dated at Middletown this _____ day of October, 1995.

THE PLAINTIFF
WILLIAM J. ZISK

BY _____
CHARLES W. SNOW, JR.
HIS ATTORNEY

ES W. SNOW, JR., P.C.

63 MAIN STREET

2-504

MIDDLETOWN, CT 06457

(203) 347-4437

JURIS NO. 59900

SCHEDULE "A"

All those certain pieces or parcels of land situated in the Village of Higganum, in the Town of Haddam, County of Middlesex and State of Connecticut, bounded and described as follows:

FIRST PIECE: The Homestead, so called, bounded by a line beginning on the highway at the northwest corner of said homestead property and running thence easterly by land of Frank Skrivanek, to land of Charles B. Carlson; thence southerly by lands now or formerly of Charles B. Carlson, Robert H. Carlson and Burr & Baroni, Incorporated, to land now or formerly of Carl Andeen; thence thence westerly by land of Carl Andeen to the highway; thence northerly by highway to land of Herbert S. Johnson; thence easterly, northerly and northwesterly by land of said Herbert S. Johnson and land of Charles B. Carlson to land of Mazie M. Carlson; thence northerly and westerly by land of said Mazie M. Carlson to the highway; thence northerly by highway to the point of beginning, containing by estimation twenty-four (24) acres, more or less, with the dwelling house and all other buildings and improvements thereon, together with such rights of way and rights to maintain water pipes appurtenant to the land granted as of record may appear, and especially as described in deed from Charles B. Carlson to Otto F. Carlson dated August 1, 1908 and recorded in Volume 47, Pages 421 and 422 of the Haddam Land Records; the premises being also subject to certain rights of way and to maintain water pipes, as by record will appear and especially as described in deed from Otto F. Carlson to Gustaf B. Carlson dated September 9, 1913 and recorded in Volume 51, Page 228 of the Haddam Land Records, and in an agreement between Otto F. Carlson and Charles B. Carlson dated August 18, 1916 and recorded in the Haddam Land Records, Vol. 51, at Page 393.

SECOND PIECE: Being sprout land and containing seven (7) acres, more or less, bounded northerly and easterly by land now or formerly of Burr & Baroni, Incorporated; southerly by lands now or formerly of Mashinda and Carl Andeen and westerly by the Third Piece herein described, it being the second piece described in a deed from Charles B. Carlson to Otto F. Carlson dated August 1, 1908, recorded in Volume 47 at Pages 420, 421 and 422 of the Haddam Land Records.

THIRD PIECE: Being sprout land and containing one acre, more or less, bounded northerly by land formerly of Cyrus A. Hubbard, easterly by land formerly of Cyrus A. Hubbard, in part and partly by land formerly of James C. Walkley; southerly by land of Cyrus A. Hubbard and westerly by land formerly of Chauncey D. Skinner being the same land described as the third piece in said deed of Carlson to Carlson, recorded in Volume 47, at Pages 420-422 of said Haddam Land Records.

Said premises being a portion of the premises contained in a Warrantee Deed from Beda L. Brainard to William W. Zisk and Mary A. Zisk dated December 3, 1943 and recorded December 4, 1943 in Volume 67 at Page 469 of the Haddam Land Records. Reference is also made to a Certificate of Distribution of Real Estate wherein the interest of William W. Zisk was distributed to Mary A. Zisk, William J. Zisk, Edward J. Zisk, Marion A. Krivanec and Donald R. Zisk by instrument dated March 11, 1971 and recorded March 22, 1971 in Volume 109 at Page 206 of the Haddam Land Records.