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TIME FILED

MAY 16 2003

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE JAMES E. CHAVEZ, JUDGE
DIVISION 4
DATE: MAY 15, 2003
TIME: 9:08 A.M.

BY: VIRLYNN TINNELL, CLERK
MURIEL HARVEY, DEPUTY CLERK
KIM WORKMAN, COURT REPORTER

HEARING

UNITED EFFORT TRUST,
Plaintiff,

vs.

S -8015 - CV -0020020528

MILTON HOLM AND LENOR
HOLM, et al.,
Defendant.

COURT TRIAL

APPEARANCES: Rodney P. Parker, Attorney for and with the Plaintiff; George H. McKay, Attorney for and with the Defendants.

This is the time set for Court Trial.

Mr. Parker presents opening statements.

Mr. McKay presents opening statements.

Milton Holm is duly sworn and testifies to the Court.

Mr. Park marks and moves for the admission of Plaintiff's Exhibits #1 (Amended and Restated Declaration of Trust of the United Effort Plan Trust), #2 (agreement), #3 (to all people residing upon united effort property), and #4 (Demand for Possession of real Property) into evidence.

ORDERED admitting Plaintiff's Exhibits #1, #2, #3, and #4 into evidence.

The witness is excused.

Lercy Jeffs is duly sworn and testifies to the Court; the witness is excused.

Court recesses at 10:14 a.m.

The Court reconvenes at 10:28 a.m. All previously mentioned parties are present.

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Milton Holm, still under oath, testifies to the Court; the witness is excused.

Paul Knudson is duly sworn and testifies to the Court.

Mr. McKay marks and moves for the admission of Defense Exhibit #A (notice 1/15/00).

ORDERED admitting Defense Exhibit #A into evidence.

The witness is excused.

Court recesses at 11:45 a.m.

The Court reconvenes at 1:34 p.m.; all heretofore mentioned are present.

Lenore Holm is duly sworn and testifies to the Court.

Mr. McKay marks and moves for the admission of Defense Exhibit #B (Deposition of Warren Jeffs) and #C (Deposition of Wynn Jessop).

ORDERED admitting Defense Exhibit #B and #C into evidence.

The witness is excused.

Mr. Parker presents closing argument.

Mr. McKay presents closing argument.

Mr. Parker presents final argument.

The Court will take this matter under consideration and rule by separate written minute order.

Court recesses at 2:37 p.m.

cc:

Rodney R. Parker
SNOW CHRISTENSEN MARTINEAU
PO BOX 45000
SALT LAKE CITY AZ 84145
Attorney for Plaintiff

Honorable James E. Chavez
Division 4

George H. McKay
COMMUNITY LEGAL SERVICES
305 S SECOND AVE
PHOENIX AZ 85003-2402
Attorney for Defendants

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

MAY 22 2003

IN AND FOR THE COUNTY OF MOHAVE

VIRLYNN TINNELL
CLERK SUPERIOR COURT
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HONORABLE JAMES E. CHAVEZ
DIVISION IV

DATE: May 22, 2003

MINUTE ORDER

UNITED EFFORT PLAN TRUST,
Plaintiff,

vs.

No. CV-2000-528

MILTON and LENORE HOLM,
Defendant.

After trial on May 15, 2003 the Court took this matter under consideration. After review of the testimony and exhibits presented at trial the Court now finds as follows:

FACTS:

1. Much of the history concerning the FLDS church and the United Effort Plan (UEP) is discussed in Jesse v. Stubbs 970 P.2d 1234 (Utah 1998) and will not be repeated here.
2. In 1976 the United Effort Plan Trust gave Milton Holm permission to use a lot in Colorado City, Arizona for construction of a family residence. (Exhibit 2) Church President Johnson told Milton to build "like he was going to be there forever."
3. At great expense, Mr. Holm built a residence on the lot for his family's use. This is a two story residence containing 6

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bedrooms, 2 living rooms and 3 full bathrooms. It contains over 5000 square feet of space; 3600 square feet is finished space.

4. Mr. Holm did much of the work but he also paid others to perform labor and bought materials for the house. After Mr. Holm married Lenore Holm in 1993, she also worked on the house.
5. After the Jefferis case in 1998, the members of the church were told that they were tenants at will. (Exhibit 3) The Trust documents were also amended and restated in 1998. (Exhibit 1) In the Court's opinion the amendments did not matter because Mr. Holm's rights vested prior to 1998.
6. Mr. Holm paid some, but not all of the property taxes for the property. To pay the remainder of the taxes, Milton did volunteer work for other church members.
7. In writing on June 21, 2000 the UEP Trust notified Mr. and Mrs. Holm that they were tenants at will and that their permission to stay in their residence was revoked. (Exhibit 4)
8. In a January 15, 2000 interview with Warren Jefferis and President Rulan Jefferis, Lenore Holm agreed to allow her 16 year old daughter, Nicole to marry Wynn Jessop, a 39 year old married man. The next day, at the wedding Ms. Holm refused permission for the marriage. Within ten minutes Milton Holm received a phone call from Warren Jefferis telling him that he had lost his priesthood, that they were no longer members of the church and must leave their residence.

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9. Warren Jeffs disputes that this is the reason for the eviction. (Exhibit B)
10. Wynn Jessop married Nicole after her 18th birthday. (Exhibit C)

LEGAL ISSUES:

Plaintiff claims defendants are tenants at will and can be evicted on 30 days notice. Plaintiff claims this is a simple forcible entry and detainer issue and possession of the property is the only issue.

PUBLIC POLICY:

Defendants claim the UEP wants their house because they refused to allow Nicole to enter into a bigamist marriage at age 16. State public policy is against plural marriages and sex with minors. Defendants believe that the state cannot condone the taking of their property by the UEP to enforce policies contrary to state law. Defendants urge the Court to adopt this theory.

Defendant's "public policy" theory requires the Court to look into the religious reasons for actions taken by the church. Inquiring into the grounds for religious action in a property dispute violates the first amendment of the U. S. Constitution. Presbyterian Church v. Hull Church 393 U.S. 440 (1969). The Court rejects the "public policy" exception propounded by the defense.

COLLATERAL ESTOPPEL:

Defendants also claim defensive collateral estoppel based on the Jeffs

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case. This issue is moot since the Court has taken testimony and considered the evidence.

UNJUST ENRICHMENT:

The Court agrees with the defense that to allow UEP possession of the residence would allow the Trust to be unjustly enriched at defendants expense. The instant case cannot be distinguished from that of the Arizona residents in Jeffer.

Milton Holm expected to be able to use this UEP land as his residence for the foreseeable future. Because he expected to reside on the property, he built a residence at considerable expense. He invested in the residence with the consent of the Trust. His investment was not gratuitous or officious. To allow the UEP to obtain possession of the residence without fair compensation would be inequitable. Therefore, plaintiffs must allow Mr. Holm to retain the residence for his lifetime or pay him just compensation for his investments in the residence.

Ms. Lenore Holm did not have a direct arrangement with the Trust. She may have a community property right to the residence, but her rights are dependent entirely on Milton Holm's arrangement with the UEP. It is the Court's opinion she has no property right separate from that of Milton Holm.

In conclusion, the UEP will have a possessory right to the residence on 265 South Carling Street, Colorado City, Arizona during the life of Milton Holm only upon payment of fair compensation for the improvements on the land.

IT IS THEREFORE, ORDERED dismissing the complaint.

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cc:

Rodney R. Parker
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
PO Box 45000
Salt Lake City AZ 84145
Attorney for Plaintiff

George H. McKay
Community Legal Services
305 South Second Avenue
Phoenix AZ 85003-2402
Attorney for Defendants

Honorable James E. Chavez
Division IV