

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

JAMES F. BARNETT, JR.

PLAINTIFF

VS.

CAUSE NO. 07-12-2350ML

FOREST C. DANA, MRS. LEONA DEAN
CUESTA, MRS. ZULA BUNTIN DEAN, THOMAS
JEFFERSON DEAN, JR., DORA DEAN
PENNINGTON, TOM DEAN ELLIS, EDYTHE
LUCILLE MOONEY, SECOND PRESBYTERIAN
CHURCH OF MEMPHIS, AND ALL PERSONS HAVING
OR CLAIMING ANY INTEREST, LEGAL OR
EQUITABLE IN THE REAL PROPERTY
DESCRIBED HEREIN

DEFENDANTS

DECREE REMOVING CLOUD UPON TITLE BY CONFORMING
DEED TO COURT ORDER, QUIETING AND CONFIRMING
TITLE, FOR DECLARATORY JUDGMENT

This day this cause came on to be heard upon the Plaintiff's Complaint to Remove Cloud Upon Title by Conforming Deed to Court Order, to Quiet and Confirm Title, for Declaratory Judgment and Other Relief filed herein against Forest C. Dana, Mrs. Leona Dean Cuesta, Mrs. Zula Buntin Dean, Thomas Jefferson Dean, Jr. Dora Dean Pennington, Tom Dean Ellis, Edythe Lucille Mooney, all their heirs, beneficiaries, devisees, legatees, executors, and administrators, Second Presbyterian Church of Memphis, and all persons having or claiming any interest, legal or equitable in the real property described herein, and upon legal service of process on all of said Defendants.

And it appearing to the satisfaction of the Court that all of said Defendants were duly served with process in the manner and for the time required by law so as to require an appearance or answer by all of said Defendants prior to the entry of Default herein; and that Second Presbyterian Church of Memphis filed a Waiver of Process herein and no other

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W E DAVIS, CLERK

Smith Phillips

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appearance nor answer nor other action has been taken by any other Defendants in this cause; process is complete on all Defendants; and that the Court has jurisdiction of the parties and the subject matter and is entitled to proceed herein.

The Court hereby finds as follows:

The Plaintiff, JAMES F. BARNETT, JR. is an adult resident citizen of DeSoto County, Mississippi residing at 5765 Poplar Corner Road, Walls, Mississippi, 38680.

The Defendant, SECOND PRESBYTERIAN CHURCH OF MEMPHIS, TENNESSEE, is an unincorporated association whose address is 4055 Poplar Avenue, Memphis, TN 38111.

Pursuant to MRCP 4(c)4(D) the Plaintiffs so states and affirms that the post office and street address of Forest C. Dana, Mrs. Leona Dean Cuesta, Mrs. Zula Buntin Dean, Thomas Jefferson Dean, Jr., Dora Dean Pennington, Tom Dean Ellis, and Edythe Lucille Mooney are unknown after diligent search inquiry. Further, Plaintiff does so affirmatively state and affirm that Plaintiff does not even know if these Defendants are still living and all the heirs, beneficiaries, devisees, legatees, executors, and administrators of Forest C. Dana, Mrs. Leona Dean Cuesta, Mrs. Zula Buntin Dean, Thomas Jefferson Dean, Jr., Dora Dean Pennington, Tom Dean Ellis, and Edythe Lucille Mooney are unknown after diligent search and inquiry.

Pursuant to Section 11-17-29, Miss Code Ann. 1972, as amended, Plaintiff names as defendants herein all persons having or claiming any legal or equitable interest in and to the real property which is the subject of this suit, to-wit:

108.29 ACRES MORE OR LESS LOCATED IN THE NORTHEAST ONE QUARTER OF SECTION 36. TOWNSHIP 2 SOUTH, RANGE 9 WEST, DESOTO COUNTY, MISSISSIPPI, AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND OLD PINCHED TOP PIPE MARKING THE SOUTHEAST CORNER OF THE SAID NORTHEAST ONE QUARTER; RUN THENCE NORTH 00 DEG. 15 MIN. 04 SEC. WEST 1325.92 FEET TO A FOUND 1/2 INCH IRON PIN IN AN OLD

FENCE LINE SAID PIN IS MARKING THE NOTHEAST CORNER OF FRANK FUCHS 40 ACRE TRACT (BK. 366, PG. 245) AND IS THE TRUE POINT OF BEGINNING.

RUN THENCE SOUTH 89 DEG. 47 MIN. 19 SEC. WEST 1118.86 FEET ALONG THE NORTH LINE OF SAID FUCHS TRACT TO A FOUND 1/2 INCH IRON PIN MARKING THE MOST EASTERN CORNER OF RICHARD GOUDIE, JR. 10 ACRE TRACT (BK. 386, PG. 119); RUN THENCE ALONG THE BOUNDARY LINES OF SAID GOUDIE 10 ACRE TRACT THE FOLLOWING MEASURE COURSES AND DISTANCE. NORTH 39 DEG. 57 MIN. 23 SEC. WEST 234.61 FEET TO A FOUND OLD PIPE; SOUTH 49 DEG. 44 MIN. 43 SEC. WEST 29.26 FEET TO A FOUND OLD PIPE; NORTH 71 DEG. 18 MIN. 18 SEC. WEST 213.82 FEET TO A FOUND OLD PIPE; NORTH 89 DEG. 56 MIN. 00 SEC. WEST 59.97 FEET TO A FOUND OLD PIPE; SOUTH 82 DEG. 04 MIN. 44 SEC. WEST 236.95 FEET TO A FOUND OLD PIPE; NORTH 25 DEG. 00 MIN. 15 SEC. WEST 149.11 FEET TO A FOUND OLD PIPE; SOUTH 75 DEG. 53 MIN. 02 SEC WEST 68.09 FEET TO A FOUND OLD PIPE; SOUTH 00 DEG. 12 MIN. 13 SEC. EAST 781.17 FEET TO A SET 1/2 INCH IRON PIN; NORTH 89 DEG. 53 MIN. 24 SEC. EAST 597.40 FEET TO A SET 1/2 INCH IRON PIN AT THE SOUTH EAST CORNER OF THE SAID GOUDIE TRACT AND ON THE WEST LINE OF SAID FUCHS 40 ACRE TRACT; RUN THENCE SOUTH 00 DEG. 06 MIN. 56 SEC. EAST 849.80 FEET TO A FOUND OLD RAILROAD CROSS-TIE POST ON AN OLD FENCE LINE MARKING THE ACCEPTED SOUTHWEST CORNER OF SAID FUCHS TRACT; RUN THENCE SOUTH 89 DEG. 43 MIN. 30 SEC. WEST 1327.59 FEET TO A 1/2 INCH IRON PIN AT THE BASE OF A 18 INCH OAK TREE FENCE CORNER MARKING THE SOUTHEAST CORNER OF EVERETT HILL 30 ACRE TRACT PER BK. 265, PG. 414; RUN THENCE NORTH 00 DEG. 16 MIN. 05 SEC. WEST 2608.53 FT TO A FOUND TEE-POST AT A FENCE CORNER OF THE SOUTH LINE OF DEAN ROAD (40 FEET OF CENTER) SAID TEE-POST IS MARKING THE NORTHEAST CORNER OF SAID HILL 30 ACRE TRACT; RUN THENCE SOUTH 89 DEG. 52 MIN. 18 SEC. EAST ALONG THE SOUTH LINE OF DEAN ROAD 2650.42 FEET TO A SET 1/2 INCH IRON PIN 40 FEET SOUTH OF CENTER OF DEAN ROAD AND 10.5 FEET WEST OF THE PRESEND CENTER OF SPARKS ROAD ON THE PROJECTION OF A OLD FENCE AND TREE LINE FROM SOUTH; RUN THENCE SOUTH 00 DEG. 15 MIN. 04 SEC. EAST 1277.69 FEET ALONG BUT (NOT NECESSARILY) ON AN OLD FENCE TREE LINE TO THE POINT OF BEGINNING AND CONTAINING 108.29 ACRES MORE OF LESS.

The real property which is the subject of this Complaint is described as follows, to-wit:

108.29 ACRES MORE OR LESS LOCATED IN THE NORTHEAST ONE QUARTER OF SECTION 36. TOWNSHIP 2 SOUTH, RANGE 9 WEST, DESOTO COUNTY, MISSISSIPPI, AND BEING DESCRIBED AS FOLLOWS:

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That said land described in paragraph 5 above was granted and patented by the United States of America to Cho-Hah-Ha by patent dated November 8, 1840, recorded in Deed Book 28 at page 12 of the land deed records of DeSoto County, Mississippi.

That the subject property was a portion of the real property that was devised through the Last Will and Testament of Marguerite Taylor Dean. The estate of Marguerite Taylor Dean was probated in the DeSoto County Chancery Court Cause No. 7741.

That in said estate a Decree on Petition of Executors for Approval of Contract to Sell Lands was entered and filed on September 3, 1954 concerning the land owned by the testatrix,

Marguerite Taylor Dean, described as the Northeast Quarter of Section 36, Township 2, Range 9 West, containing about 160 acres. The Decree reserved from the sale "all oil, gas, and minerals in place in or on or beneath the surface of said lands, and all oil, gas, and minerals which may at any time be mined or removed therefrom collectively herein sometimes referred to as oil, gas, and mineral rights, all of which are reserved for the use and benefit of the residuary legatees and devisees named in the will of the testatrix." The Decree granted authority to the Co-Executors of the estate, Forest C. Dana and National Bank of Commerce in Memphis to sell the property subject to this reservation.

That on September 8, 1954, the Co-Executors of the estate Forest C. Dana and National Bank of Commerce in Memphis sold the real property to James F. Barnett and his wife Bessie W. Barnett by signing a deed recorded in Deed Book 40 at page 26 of the land deed records of DeSoto County, Mississippi, conveying the subject property subject to the reservation of mineral rights. Said deed states that the Co-Executors are executing the deed by virtue of the power vested in them as grantors of the last will of deceased and in conformity with the decree of the Chancery Court of DeSoto County, Mississippi. However, the deed also reserves to the grantees and grants to the grantors, Forest C. Dana and National Bank of Commerce, "for the use and benefit of the residuary legatees and devisees, their heirs and assigns, perpetual rights of way and easements in, over, upon, and through said lands reasonably necessary for the purpose of prospecting and exploring said lands for oil, gas, and minerals found in or on or beneath the surface of said land.

The subject property was deeded to the Plaintiff, JAMES F. BARNETT, JR. by Special Warranty Deed from Mai B. Barnett dated December 6, 1972 and recorded in Deed Book 101 at page 191 of the land deed records of DeSoto County, Mississippi.

That subject property was further devised to Plaintiff, JAMES F. BARNETT, JR. by virtue of the Last Will and Testament of James F. Barnett, Sr. probated in DeSoto County Chancery Court Cause Number 71-348 and by virtue of the Last Will and Testament of Bessie W. Barnett probated in DeSoto County Chancery Court Cause Number 10229.

That the easement granted in the Deed clearly went beyond the scope of authority of the Co-Executors granted by the Chancery Court. That the court never intended the grantors to grant and reserve the easement as stated in the Deed. That neither the grantors nor the residuary legatees and devisees have ever used the perpetual easement granted to the Co-Executors in the Deed of September 8, 1954.

That the marketability of the land has been brought into question because of the unauthorized retention of perpetual rights of way and easements on the subject property and the retention of said rights was beyond that authorized by the Chancery Court.

That the Plaintiff has sought to sell the subject property and as a result of the unauthorized retention of perpetual rights of way and easements, has been hampered in doing so and it has been alleged by the prospective purchasers that the title is not marketable.

IT IS THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED by the Court as follows:

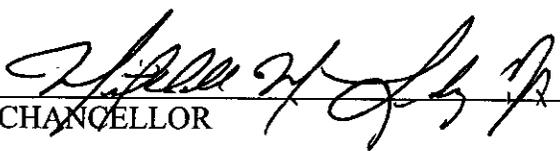
1. That the perpetual easement referenced in deed recorded in Deed Book 40 at page 26 to be a cloud upon the title to the Plaintiff;
2. That the deed recorded in Deed Book 40 at page 26 should be and is hereby reformed to conform to the decree of the Chancery Court as ordered on September 3, 1954 and the easement is hereby removed from the deed as the deed is ambiguous in that it does not conform to the Court's decree;

3. That the perpetual easement referenced in deed recorded in Deed Book 40 at page 26 should be and is hereby reformed to remove the easement from the deed as the intent was never to grant an easement on top of reserving the mineral rights;

4. That the Plaintiff is hereby declared the owner in fee simple title in and to the subject property, free and clear of any easement or any cloud upon same from the said alleged easement subject only to the reservation of the mineral rights;

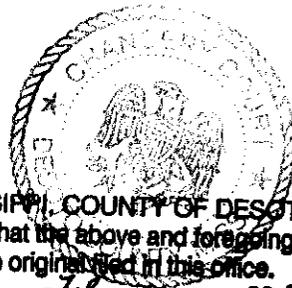
5. That a true and correct copy of this order so ruling shall be recorded in the land deed records of DeSoto County, Mississippi.

SO ORDERED, ADJUDGED AND DECREED this the 7th day of February, 2008.


CHANCELLOR

Presented by:


Rebecca S. Thompson, MSB 9765
Smith, Phillips, Mitchell, Scott & Nowak, LLP
P.O. Box 346
Hernando, MS 38632
662-429-5041



STATE OF MISSISSIPPI, COUNTY OF DESOTO
I HEREBY CERTIFY that the above and foregoing is
a true copy of the original filed in this office.
This the 7th day of February, 2008
W.E. Davis, Clerk of the chancery court
By  W.E.