

THE 2010 COLORADO LAND CASE

The following summary judgment was issued January 19, 2010, by the Colorado District Court. There are significant theological points that should be raised and addressed by this legal action that was initiated by Doug Mitchell over a seemingly meaningless land-locked rural property in Pueblo County, Colorado, well outside the town of Pueblo but fairly near the new county airport. This disputed property was originally bequeathed by a Davidian to the Davidians of Old/New Mt. Carmel under Victor Houteff and then Florence Houteff in the early 1950s.

When the Davidians abandoned New Mt. Carmel in 1962, the bequeathment and title of this property was left in the safe at New Mt. Carmel. Ben and Lois Roden took possession of this property, paying the property taxes for decades, assuming the property by default when they moved onto and took control of New Mt. Carmel in 1965. There were multiple plaintiffs named in the original 2009 complaint by Doug Mitchell, but the primary defendant was Charles Pace of Waco, Texas, now legal owner of New Mt. Carmel. Teresa Moore "and others" were so named on the original court summons as a legal shotgun approach to include all those who did not agree with Doug, including the author here. Clive Doyle was not named originally in the legal action, but ended up playing a significant informative legal role in the mediation process prior to the final court decision. Doug Mitchell found out about this long forgotten property when a title search was conducted by attorneys representing a Nevada land development company that was interested in the property prior to the economic/real estate bubble crash of 2008.

The attorneys for the developers found Doug Mitchell through an internet search for Branch Davidians, and found Doug's site, looking official, and then contacted Doug to determine if Doug had the legal right of the BDSDA to sell or otherwise transfer the property. The initial sale price offered to Doug for this rural property was approximately \$60,000.00. After the real estate crash of 2008 however, the offer to buy was withdrawn because the land value dropped to nearly worthless. This economic event ended the monetary interest of the property by Doug, but Doug decided to proceed with the case with a Pueblo attorney, with some form of compensation agreement, the details of which are not known. Doug was interested in selling the property at any price, acting as (claimed) President of the BDSDA Association (long after the death of Ben and Lois Roden). Doug well understood the implications of his claiming to be the association president, with the legal power to act in behalf of the "BDSDA" Association to sell and acquire property for the organization. However, there was at least one other long time member who claimed this title in the Branch Davidian Movement, that is, the office of "President".

Doug informed the developer attorneys that there were other claimants to this office of association president and proceeded to counsel with the attorneys who contacted him. With the significant legalities of attempting such a land sale by a factionalized religious entity/organization to transfer the property to a new owner, a court of competent jurisdiction would be necessary to determine who had the right to sell and convey the property and otherwise conduct business for the association per the Rod and Branch Leviticus. Doug and the attorneys determined it would be best to proceed in a legal manner, through court action, to clear the question of who was the association president, who would have the legal right to sell the property free and clear, without any legal cloud over the title upon the sale. Doug's interest in the property was not just in the monetary value however, since there would be a legal precedent set by the Colorado court, that is, if he was awarded the right to sell the property. Such a precedent would be useful to Doug to gain his ultimate legal interest in New Mt. Carmel, Waco, Texas. Had Doug gained the legal victory in Colorado, then he would, in his determination, have the legal authority to present the Colorado court judgment to the Waco district court to reopen his legal

action to gain ownership and control of New Mt. Carmel. Ultimately and clearly, Doug desired to evict all church members living at New Mt. Carmel since late 1996, after the government clean-up was finished. Charles Pace, his wife and three children, had moved onto New Mt. Carmel sometime not long after the clean-up operation. Doug was determined to proceed with this case even though it required him to take brethren to court, ignoring Spirit of Prophecy counsels, pushing those of us not in agreement or support of Doug's claims, relegating us outside of the Body of Christ, as apostates, unbelievers, etc., by Doug, thus clearing the way, in Doug's mind, to proceed with court action.

Doug purported to use the court case by Ben Roden in the early 1960s to justify his legal actions, but Ben Roden's joining in with other Davidians in the early 1960s was to prevent the final sell-off of the remaining 77 acres of New Mt. Carmel. This multi-claimant legal action that Ben Roden joined at that time, with many Davidians who disagreed with the DSDA legal action to sell off the headquarters (New Mt. Carmel) by Florence Houteff and her executive board, was to prevent New Mt. Carmel from being sold and the proceeds distributed to the numerous Davidian claimants who wanted their title funds returned. The Waco court at the time awarded Ben Roden the first right to re-BUY New Mt. Carmel, which he did, raising the considerable funds to do so by the early 1970s. Ben Roden, with Divine leading and help, singlehandedly preserved the Davidian headquarters, preserving a place for the Branch headquarters and providing a place for the Davidian elderly who had faithfully paid 2nd title during Victor Houteff's lifetime and ministry.

The following legal document is somewhat self-explanatory, yet it reveals a significant religious/spiritual dimension for those of us who have taken a strong interest in New Mt. Carmel for many decades, as the headquarters of the Branch Message. The main point here is, that if the Hand of Divine Providence had intended for Doug Mitchell to gain control and ownership of New Mt. Carmel, either in his initial court actions of the mid-1990s, or his final legal action in 2010, then how was it that he was NOT successful? The same is true of Doug's legal action to sell the Colorado property. Doug brought this action against brethren in 2009, surprisingly even to have service process (court summons) delivered on the Sabbath day to those living at New Mt. Carmel, two different times, since there was a legal error on the first process.

The judge in this case was very astute in his research of the Branch Davidian documents presented to him over many months, particularly in validating the Leviticus of DSDA and BDSDA. He actually got it right. In the unfortunate and undesired contravention to the Spirit of Prophecy counsels on taking brethren to court, sometimes the Hand of Providence uses court actions to clarify spiritual truths and legal necessities in the governance of church affairs.

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| DISTRICT COURT, COUNTY OF PUEBLO, STATE OF COLORADO Address: 320 W. 10 th Street Pueblo, CO 81003 | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <p>Plaintiff, BRANCH DAVIDIAN SEVENTH DAY ADVENTIST ASSOCIATION a/k/a GENERAL ASSOCIATION OF BRANCH DAVIDIAN SEVENTH DAY ADVENTISTS, AN UNINCORPORATED TEXAS ASSOCIATION</p> <p>vs.</p> <p>THE BRANCH, THE LORD (YHVH) OUR RIGHTEOUSNESS, an unincorporated Texas Association,</p> <p>Defendants.</p> | |
| ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT | |

This matter came before the court upon the Defendant's Motion for Summary Judgment. The pro se filings of Douglas Mitchell (allegedly filed on behalf of the named Plaintiffs) were stricken by the court. Therefore, no valid Response to Defendant's Motion for Summary Judgment has been filed. The court has reviewed the file herein and now enters the following FINDINGS AND CONCLUSIONS:

STANDARD OF REVIEW

Summary judgment is an appropriate, although drastic, remedy upon a clear showing that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Greenwood Trust Co. v. Conley*, 938 P.2d 1141

(Colo. 1997). The moving party has the initial burden to show that there is no genuine issue of material fact. Continental Airlines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987). Once the moving party has met its initial burden of production, the burden shifts to the non-moving party to establish that there is a triable issue of fact. Greenwood Trust Co., supra. The non-moving party is entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts. Westerman v. Rogers, 1 P.3d 228 (Colo.App. 1999). However, the opposing party may not rest upon mere allegations or denials in the pleadings, but must provide specific facts demonstrating the existence of a genuine material issue for trial. A court must consider the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, in determining whether to grant the motion. id. When neither party disputes the competence or admissibility of the evidentiary materials offered in support of and in opposition to the summary judgment motion, the Court may properly consider such evidence in its analysis. Greenwood Trust Co., supra.

ANALYSIS

1. Douglas Mitchell (“Mitchell”), allegedly on behalf of and as President of the Branch Davidian Seventh Day Adventist Association a/k/a General Association of Branch Davidian Seventh Day Adventists, an unincorporated Texas association, filed suit to quiet title to real property in the County of Pueblo, State of Colorado, described in Exhibit A of the Plaintiff’s Complaint (the “Property”) on October 15th, 2009.

2. The relevant history of title for the property is as follows: a Quit Claim Deed from Flora J. Schmohl to the General Association Davidian Seventh Day Adventists was recorded September 18, 1953, at Book 1219, Page 98, Reception Number 945247 and at Book 1219, Page 99, Reception Number 945248 in the records of the Clerk and Recorder of Pueblo County, Colorado. A Deed from the General Association Davidian Seventh Day Adventists to the Branch Davidian Seventh Day Adventist Association, was recorded on August 6th, 1985, at Book 2251, Page 942, Reception Number 778896 in the records of the Clerk and Recorder of Pueblo County, Colorado.
3. Defendant, Clive Doyle, was a member of the General Association Davidian Seventh Day Adventists, The General Association of Branch Davidian Seventh Day Adventists, the Living Waters Branch Movement as well as the Davidian Branch Davidian Movement. He is also a Trustee of the Branch Davidian Seventh Day Adventist Association. See *Exhibit H- Affidavit of Clive Doyle* and *Exhibit G- Resolutions*, filed herein.
4. Defendant, Charles J. Pace, is the President of The Branch, The Lord (YHVH), Our Righteousness, an unincorporated Texas Association, and currently resides at the historical home of the Branch Davidian organization at New Mount Carmel at Waco, Texas. See *Exhibit C- Affidavit of Charles J. Pace* filed herein.
5. The Constitution and By-Laws governing all of the above-mentioned religious entities are found in The Leviticus of the Seventh Day Adventists as well as the The Leviticus of the Seventh Day Adventists - The Branch Supplement. See *Exhibit B-* filed herein.

6. Pursuant to The Leviticus the President is chosen by divine revelation, he/she is given a message to carry to its followers and its followers accept that message. The religious organization also contains other officer positions as well as an executive council. The President through divine inspiration appoints the positions. The executive council has the power to fill all vacant positions except the President, who can only be chosen by God. Further, only the President has ownership, rights and authority to sell, convey, transfer, etc. any property held by the organization. See Exhibit B and Exhibit C.
7. Pursuant to the Constitution and By-Laws, as each new President is chosen by God a name change of the religious organization must occur. The Branch, The Lord (YHVH), Our Righteousness, is the ecclesiastical successor to the Davidian Branch Davidian Movement, who is the ecclesiastical successor to the Branch Davidian Seventh Day Adventist Association a/k/a General Association of Branch Davidian Seventh Day Adventists. The Branch Davidian Seventh Day Adventist Association a/k/a General Association of Branch Davidian Seventh Day Adventists is the ecclesiastical successor to the General Association Davidian Seventh Day Adventists. See Exhibit B and Exhibit C.
8. Douglas Mitchell was never a member of General Association Davidian Seventh Day Adventists. Mitchell has never been President of the Branch Davidian Seventh Day Adventist Association a/k/a General Association of Branch Davidian Seventh Day Adventists, nor has he held any other positions within that association. To date there are no recorded followers of Douglas Mitchell. See Exhibits C and H.

9. In Case Number 99-892-3 in the District Court of McLennan County, Texas, Douglas Mitchell filed suit against Clive Doyle, et. al. seeking injunctive relief which would prevent the Defendant(s) from using the title of Branch Davidian Seventh Day Adventist Association, claiming title to the New Mount Carmel property where Charles J. Pace currently resides, and sought an order from that court to make numerous other findings in his favor. See Exhibit A and D filed herein.
10. Within Mitchell's pleadings in 99-892-3, he acknowledges the Leviticus as containing the Constitution and By Laws of the faith and agrees with the statements contained in paragraph 6 above. See Exhibits A and D filed herein.
11. The Court in McLennan County, Texas, subsequently dismissed the action for lack of subject matter jurisdiction over the matter based on the First Amendment of the United States Constitution. The Court stated that the "substance of what he (referring to Douglas Mitchell) is seeking is no more or less than a judicial determination that he is the divinely appointed, true president and leader of the Branch Davidian Seventh Day Adventist Association. He also wants a determination that he is a faithful and true follower of the doctrines and beliefs of the Original Association." See Exhibit F filed herein.
12. The Court in McLennan County, Texas, based its ruling upon application of the neutral principals doctrine, finding that such a determination could not be done because the Constitution and By-Laws are a compilation of polices intermingled with scriptural interpretation and matters of faith and belief. See Exhibit F and Exhibit E filed herein.

13. The function of the doctrine collateral estoppel is to avoid re-litigation of the same claims or issues because of the cost imposed upon the parties by multiple lawsuits, the burden upon the judicial system, and need for finality in the judicial process. *Foley Custom Homes, Inc. v. Flater*, 888 P.2d 363 (Colo. App. 1994). In order to succeed on a claim of collateral estoppel / issue preclusion it must be shown that: (1) The issue precluded is identical to an issue actually litigated and necessarily adjudicated in the prior proceeding; (2) The party against whom estoppel is sought was a party to or was in privity with a party to the prior proceeding; (3) There was a final judgment on the merits in the prior proceeding; (4) The party against whom the doctrine is asserted had a full and fair opportunity to litigate the issues in the prior proceeding. *Rantz v. Kaufman*, 109 P.2d 132, 139 (Colo. 2005).

14. All of the above factors with regard to issue preclusion are met by the litigation in Case Number 99-892-3 in the District Court of McLennan County, Texas. There the court determined that it lacked subject matter jurisdiction to determine if Douglas Mitchell was the President of the Branch Davidian Seventh Day Adventist Association because it would necessarily require the Court to make ecclesiastical determinations with regard to faith and belief in violation of the Establishment Clause of the First Amendment of the United States Constitution. This is precisely what the Court would have to determine in the present case.

IT IS THEREFORE ORDERED that Defendants Motion for Summary Judgment is GRANTED regarding all claims asserted by Plaintiffs Branch Davidian Seventh Day

Adventist Association a/k/a General Association of Branch Davidian Seventh Day Adventists, an unincorporated Texas association, further Defendant shall file their bill of costs and fees pursuant to C.R.C.P. 121. All future court dates are hereby vacated.

Dated this 19th day of January, 2010.

BY THE COURT:

**LARRY C. SCHWARTZ,
DISTRICT COURT JUDGE**