

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION**

|                                                                                                                                                                                                       |   |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--|
| <b>CITY OF OZARK, ARKANSAS, a municipal<br/>corporation</b>                                                                                                                                           | ) |  |
|                                                                                                                                                                                                       | ) |  |
| <b>Plaintiff,</b>                                                                                                                                                                                     | ) |  |
|                                                                                                                                                                                                       | ) |  |
| <b>vs.</b>                                                                                                                                                                                            | ) |  |
|                                                                                                                                                                                                       | ) |  |
| <b>UNION PACIFIC RAILROAD COMPANY,<br/>the ARKANSAS STATE HIGHWAY<br/>&amp; TRANSPORTATION DEPARTMENT<br/>(an Agency of) The State of Arkansas,<br/>AND THE ARKANSAS STATE HIGHWAY<br/>COMMISSION</b> | ) |  |
|                                                                                                                                                                                                       | ) |  |
| <b>Defendants,</b>                                                                                                                                                                                    | ) |  |

**CIVIL ACTION NO:2:14-CV-02196-TLB**

**AFFIDAVIT OF TOMMY WATSON**

I, Tommy Watson, having first been duly sworn, state:

1. I am a resident of the State of Arkansas. I am more than 21 years of age. I have lived in Arkansas for approximately 52 years. I am making this affidavit with my own personal knowledge.

2. I work at Adams Abstract and Title Company and in this capacity, I was asked by the City of Ozark's representative, Christopher D. Brockett, to research various title issues for property that was located South of Union Pacific Railroad tracks in the City of Ozark, Arkansas Section 36-10-27, which property was flooded by the Arkansas River after the Ozark Lock and Dam was completed.

3. As part of our research, we were also asked to provide copies of any documentation showing a railroad right-of-way or easement for the railroad tracks that currently exist in the downtown area of Ozark, Arkansas. These tracks are currently owned by Union Pacific Railroad Company ("UP"), but previously operated by other

railroad companies, including the Fort Smith & Little Rock Railway. During our research, we could not find any record of a railroad easement or right-of-way in this area, but we did locate one (1) deed from 1876 where Fort Smith & Little Rock Railway purchased 5.50 acres in this proximate area.

4. We also researched to find any private ownership of the real property located South of UP's current tracks in Section 36-10-27 and Section 35-10-27. We are able to located seven (7) deeds showing private ownership of the real property located in Section 36-10-27 and Section 36-10-27, which was the area that was located South of UP's railroad tracks in the area that the City of Ozark has leased from the U.S. Army Corps of Engineers. Copies of each of these deeds are attached hereto as Exhibits A-1 through A-7.

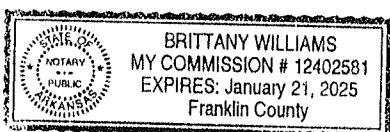
5. We have also researched the records of the Franklin County Circuit Clerk's office and our office records for any ordinances, easements, or resolutions for city streets located in the downtown area of the City of Ozark, and we could not locate any documentation that any street of the City of Ozark was ever adopted or accepted by the City of Ozark.

Further Affiant sayeth not.

Tommy Watson  
Tommy Watson, Adams Abstract and  
Title Company

STATE OF ARKANSAS    )  
                                      )  
COUNTY OF FRANKLIN    )

SUBSCRIBED AND SWORN to before me on this 26<sup>th</sup> day of May, 2015.



Brittany Williams  
NOTARY PUBLIC

EXHIBIT A-1

Copy of deed from WM Hail to William Cureton

# 83

Old RECORD 6

PAGE 144-5

|                   |                        |                   |                 |            |       |
|-------------------|------------------------|-------------------|-----------------|------------|-------|
| INST. <i>W.D.</i> | Con: \$1000 ✓          | Date 3 17 38      | Reg. <i>per</i> | Dow. In D. | N. P. |
| Lien —            | Ack. " 19 "            | Def. <i>Below</i> | Dow. " A.       | J. P. ✓    |       |
| Int. Con. All Pt. | Filed <i>Not shown</i> | All Ack.          | H'ms't'd D.     | Cl'k       |       |
| Co. Seal          | Co. Ex.                | Of. Seal          | H'ms't'd A.     | Wife Ex.   |       |

*Wm Nail*

*To*

*William Cureton*

| Subject to                                                                                                                                                                                 |             | Comp. by    |             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|-------------|
| NE                                                                                                                                                                                         | NW          | SE          | SW          |
| NE NW SE SW                                                                                                                                                                                | NE NW SE SW | NE NW SE SW | NE NW SE SW |
| <p>"all that fraction of the SW 1/4 of Sec. 36 in T. 16. R. 27 W. which is not been<br/>         located. Rat off and designated as the<br/>         tract on which Otter is situated"</p> |             |             |             |
| <p>Copy of ack. - "Signed and acknowledged<br/>         before me this 19th day of March 1838<br/>         E. B. Burland J.A."</p>                                                         |             |             |             |
| <p>* Recorded Aug. 24 1838.</p>                                                                                                                                                            |             |             |             |

## EXHIBIT A-2

Copy of deed from John Hail & Sarah to William Hail

37

| INST.             | W D             | RECORD     | Old | C | PAGE          | 70 - 2   |
|-------------------|-----------------|------------|-----|---|---------------|----------|
| Con. \$ 1- ✓      | Date 8 / 3 3 9  | Reg. —     |     |   | Dow. in D. —  | N. P.    |
| Lien /            | Ack. " / 5 "    | Def. ✓     |     |   | Dow. " A. ✓   | J. P.    |
| Int. Con. All Pt. | Filed 8 / 7 3 9 | All Ack.   |     |   | H'ms't'd D. — | Cl'k ✓   |
| Co. Seal /        | Co. Ex.         | Of. Seal ✓ |     |   | H'ms't'd A. — | Wife Ex. |

John Hale &amp; Sarah

TO

William Hale

Subject to

Comp. by

| NE                                                                                                                                                                                                                                                                                                                                                                                                        |    | NW |    | SE |    | SW |    | Sec.     | Twp. | Range. | Acres |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|----|----|----------|------|--------|-------|
| NE                                                                                                                                                                                                                                                                                                                                                                                                        | NW | SE | SW | NE | NW | SE | SW |          |      |        |       |
| Beg. at SW Cor of SW Frl 1                                                                                                                                                                                                                                                                                                                                                                                |    |    |    |    |    |    |    | 36-10-27 |      |        |       |
| Thence down Ark River with its meanderings to a Mulb. <del>near</del> near the River as a corner to sd tract so as to embrace all the land to the waters edge along said river, the whole extent of said line; Th N to the N bdy line of said Frl 1 Sec, Th W with sd N Bdy line to the NW Cor of sd frl 1 Sec; Th S with the line between Secs 35 & 36 in said Twp to beg. Cont'f 50 acres more or less. |    |    |    |    |    |    |    |          |      |        |       |

Out of John Hale not taken.

Wife also be Jas. W Pendleton. 7. ca

signed in presence of David  
Walker & A. H. Ell.

(over)

EXHIBIT A-3

Copy of deed from William Cureton to James F. Quaile

|                       |                      |                   |             |                   |  |
|-----------------------|----------------------|-------------------|-------------|-------------------|--|
| INST. <i>77-2</i>     |                      | RECORD <i>18</i>  |             | PAGE <i>567-8</i> |  |
| Con. \$ <i>500.00</i> | Date <i>11-6-55</i>  | Reg. <i>✓</i>     | Dow. in D.  | N-P.              |  |
| Lien -                | Ack. <i>11-6-55</i>  | Def.              | Dow. " A.   | J. P.             |  |
| Int. Con. All Pt.     | Filed <i>11-6-55</i> | All Ack.          | H'ms't'd D. | Cl'k <i>✓</i>     |  |
| Co. Seal              | Co. Ex.              | Of. Seal <i>✓</i> | H'ms't'd A. | Wife Ex.          |  |

William ~~the~~<sup>20</sup> Curleton  
James 7 Quails.

Subject to —

| NE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |    |  | NW |  |    |  | SE |  |    |  | SW |  |    |  | Comp. by |  |      |  |       |  |       |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----|--|----|--|----|--|----|--|----|--|----|--|----|--|----------|--|------|--|-------|--|-------|--|
| NE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | NW |  | SE |  | SW |  | NE |  | NW |  | SE |  | SW |  | Sec.     |  | Twp. |  | Range |  | Acres |  |
| NE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | NW |  | SE |  | SW |  | NE |  | NW |  | SE |  | SW |  | 36       |  | 10   |  | 27    |  | ✓     |  |
| <p>By which m. &amp; b. will stand on it<br/>Lark Ark R. (which is mentioned as a<br/>covey in a deed made from William<br/>Hall &amp; Susanata his wife to David<br/>Walker &amp; Archie bald for the land<br/>on which the town of Orest is in the<br/>Co. &amp; State aforesaid is situated <sup>which is</sup> known<br/>&amp; designated on the plat of the survey<br/>of public lands as the<br/>S. 17. 1/4. 36 10 27)<br/>The N. to S. boundary line of<br/>S. 14. sec. 17. E. with S. 14. northern<br/>boundary line to N. 6. cor. S. 14. 1/4<br/>Sec. 17. S. with the line between the<br/>S. 14. &amp; S. 17. 1/4 - 36 - to Ark. River<br/>The W. with the mean S. d. Ark. R.<br/>to beg. So as to include all the<br/>land to the water edge.<br/>Contg. 43 75 2<br/>700<br/>m. or l.</p> <p>By a. L. Perry et al</p> |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |          |  |      |  |       |  |       |  |

EXHIBIT A-4

Copy of deed from J.V. Bourland & Bonnie J. to Samuel Church

J. V. Boulevard & Bonnie J.  
To  
Samuel Church

Comp. by

An und

EXHIBIT A-5

Deed from Samuel Church to Jinnie to J.V. Bourland

|                      |                      |            |               |                     |  |
|----------------------|----------------------|------------|---------------|---------------------|--|
| INST. <i>M.H.</i>    |                      | 229        |               | PAGE <i>316-317</i> |  |
| RECORD <i>J.</i>     |                      |            |               |                     |  |
| Con. \$ <i>50.</i> ✓ | Date <i>9 20 94</i>  | Reg. ✓     | Dow. in D. ✓  | N. P. ✓             |  |
| Lien —               | Ack. " " "           | Def.       | Dow. " A. ✓   | J. P.               |  |
| Int. Con. All Pt.    | Filed <i>9 20 94</i> | All Ack. ✓ | H'ms't'd D. ✓ | Cl'k                |  |
| Co. Seal             | Co. Ex.              | Of. Seal ✓ | H'ms't'd A. ✓ | Wife Ex. ✓          |  |

*Samuel Church & Jinnie*  
*To*  
*J. V. Bourland*

|              |          |          |          |          |      |       |       |
|--------------|----------|----------|----------|----------|------|-------|-------|
| Subject to — |          |          |          | Comp. by |      |       |       |
| NE           | NW       | SE       | SW       | Sec.     | Twp. | Range | Acres |
| NENWSESW     | NENWSESW | NENWSESW | NENWSESW |          |      |       |       |

*S. of the Ry. at the mouth of Gar Creek*  
*and being all the land where I now live, and all the land I own in the incorporated town of Ozark Ark, and south of the Ry. at the mouth of Gar Creek, and rather between the mouth of said creek and the Ark. River*

*Husband also release H mustead in ack.*

*B. M. S. Sutherland, F. Co.*

## EXHIBIT A-6

Deed from J.V. Bourland and Bonnie J. to Redmond R. Walting

127

RECORD

PAGE 166. - 7

|                   |         |         |                  |               |          |
|-------------------|---------|---------|------------------|---------------|----------|
| Con. \$/75.00     | * Date  | 2 28 96 | Reg. ✓           | Dow. in D. *  | N. P.    |
| Lien -            | Ack. "  | " "     | Def.             | Dow. " A. *   | J. P.    |
| Int. Con. All Pt. | Filed   | 2 28 96 | All Ack. *       | H'ms't'd D. * | Cl'k*    |
| Co. Seal          | Co. Ex. |         | Of. Seal * - - - | H'ms't'd A. * | Wife Ex. |

J. V. Bourland & Bonnie J.  
Redmond R. Walting

Subject to -

Comp. by

[illegible]

EXHIBIT A-7

Copy of deed from Julia Walting to Martin Oliver

INST.

WD

RECORD

"V"

PAGE 139

|                    |       |   |    |    |          |             |           |
|--------------------|-------|---|----|----|----------|-------------|-----------|
| Con. \$1.00 ovc    | Date  | 6 | 29 | 00 | Reg. *   | Dow. in D.  | N. P.     |
| Lien               | Ack.  | " | "  | "  | Def.     | Dow. in A.  | J. P.     |
| Int. Con. All. Pt. | Filed | " | 30 | "  | All Ack. | H'ms't'd D. | Cl'k. *   |
| Co. Seal           | Time  |   |    |    | Of. Seal | H'ms't'd A. | Wife, Ex. |

JULIA WALTING

TO

MARTIN OLIVER

Grant, Bargain, Sell and Convey and Confirm; Release and Forever Quit Claim.  
 Subject to See Deed "V", page 166

| NE                                                                                                                                                                                                                                                                                                                                                                                                |    |    |    | NW |    |    |    | SE |    |    |    | SW |    |    |    | Franklin County, Ark. |      |       |       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----------------------|------|-------|-------|
| NE                                                                                                                                                                                                                                                                                                                                                                                                | NW | SE | SW | NE | NW | SE | SW | NE | NW | SE | SW | NE | NW | SE | SW | SEC.                  | TWP. | RANGE | ACRES |
| Lot No. 2. Beginning at a corner on the South side of Main Street in Ozark, Ark., on the West side of the Little Rock & Ft. Smith Railway lands, thence from said corner, South 120 feet; thence West 60 feet; thence North 120 feet; thence East 60 feet to the place of beginning, same being a part of the Southwest Fractional Quarter of 36 10 27 the lands formerly owned by Sarah C. Cole. |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |                       |      |       |       |

ALSO

Part of the SW/4 of the SE/4 of 36 10 27 31 in Ozark, Ark; South of the Little Rock & Ft. Smith Railway at the mouth of Car Creek and between the railway & the Arkansas River, being lands formerly owned by Samuel Church being lands conveyed by R. R. Walting by will to me and Janice Cunningham. I hereby intend to convey my undivided one-half interest in all said lands.

OVER