

File No21878.
IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF EUREKA.

ROBERTS MINING AND MILLING COMPANY,
a corporation,

Plaintiff,

-vs-

M.J. HOUGH, JOHN DOE, RICHARD ROE, AND MARY POE,
Defendants.

No.2329

) Filed: December 15 1936.

Ed Delaney

) Clerk

FINAL JUDGMENT AND DECREE

The above entitled action came regularly on to be and was finally tried to and by the above entitled court, Hon. J.M.Lockhart, District Judge, presiding, a jury having been duly waived by the parties, on April 7th and succeeding days to and including April 20, 1936, upon the issues joined in and by plaintiff's complaint, filed April 2, 1934, and the answer and counterclaim of defendant, M.J. Hough, filed May 14, 1934, and the "Amended Reply of Plaintiff to the Further, Separate Defense and Counterclaim of Defendant, M.J. Hough", filed October 26, 1935.

The plaintiff appeared by its attorneys, Prince A. Hawkins, of Hawkins, Mayotte & Hawkins, and C.M. Hawkins, and the defendant, M.J. Hough, appeared by his attorney, James T. Boyd. Evidence, oral and documentary was offered on behalf of the plaintiff and on behalf of the defendant, M.J.Hough, concerning the issues joined in and by said pleadings, above mentioned. Oral argument was made by the attorneys for the respective parties in said action, and said action and the entire matter therein was submitted to the court for decision on April 20, 1936.

The Court - having duly considered the entire record, the evidence offered and received, and the arguments of counsel for the respective parties-being fully advised in the premises, on June 25, 1936, duly made and rendered judgment, in favor of plaintiff and against the defendant, M.J. Hough, and on June 27, 1936, filed in the above entitled court and action its written "Decision on the Merits" and directed that the plaintiff prepare and serve Findings of Fact and Conclusions of Law herein. The plaintiff prepared, served and filed its proposed "Findings of Fact and Conclusions of Law", and the defendant, M.J. Hough, prepared, served and filed his "Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law" and "Defendant's Proposed Findings of Fact". After due consideration of said proposed "Findings of Fact and Conclusions of Law" and the said objections to plaintiff's proposed Findings of Fact and Conclusions of Law and defendant's Proposed Findings of Fact, the court, on October 24, 1936, signed, and on October 27, 1936, filed, in the above entitled court and action, its "Findings of Fact and Conclusions of Law".

NOW, THEREFORE, by reason of the law and the Findings of Fact aforesaid, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1st. That during the year 1931, and prior and subsequent to said year 1931, the plaintiff herein was the owner and in possession of certain mining properties, situated in Mill Canyon, Cortez Mining District, Eureka County, Nevada, and was the owner of, and in possession of, that certain building over mill, mill machinery, mining machinery, mining equipment, tools, and other buildings, located and situated on said mining properties, in said Mill Canyon, Cortez Mining District, Eureka County, Nevada.

2d. That all proceedings by the officials of Eureka County, Nevada, in connection with the tax sale, or purported tax sale, on July 18, 1932, of property of the plaintiff herein, and the purported Tax Deed, of date July 18, 1933, purporting to convey the property therein mentioned, and based upon said tax proceedings, were and are, and each was and is, illegal and void.

3d. That said M.J. Hough, defendant herein, did not acquire or secure any interest in, or right to, any of said property, so purported to have been sold at said tax sale on July 18, 1932, by virtue of said tax sale, or by virtue of said Tax Deed, of date July 18, 1933, and the said M.J. Hough, defendant herein, has no claim, interest, right or title in or to said property, or any thereof, or to the possession thereof, or any thereof, described or mentioned in the pleadings, and in the Findings of Fact herein, or in the Tax Deed, of date July 18, 1933, and herein described.

4th. That that certain purported assessment of property, namely, "buildings at mine, machinery, tools," assessed to plaintiff corporation in the name "Roberts Mill and Mining Company" for the year 1931 by the Assessor of the County of Eureka; and that certain "County Treasurer's Certificate of Sale of Real Estate for Delinquent Taxes," signed and executed by Ed Delaney, County Treasurer and Ex-Officio Tax Receiver, dated July 18, 1932, and purporting to show the tax sale of "Building over mill, machinery, Tools", and that certain so-called "Tax Deed", purporting to convey to defendant, M.J. Hough, "Building at mine, machinery, tools", situate in Cortez Mining District, Eureka County, Nevada, by Ed Delaney, County Treasurer and Ex-Officio Tax Receiver of Eureka County, of date July 18, 1933, and each of said records, writings and instruments, be, and each thereof hereby is, set aside, vacated, annulled and removed, and the said referred to property and premises, so owned and possessed by the plaintiff herein, is hereby decreed to be and is freed of the cloud and encumbrance cast upon the legal title of said property by the said instruments, and each thereof, herein mentioned as aforesaid.

5th. That at all times subsequent to the organization of plaintiff corporation, in February, 1930, and to approximately the middle of February, 1934, the said M.J. Hough, defendant herein, was the trustee, agent, employee, superintendent and confidential adviser of plaintiff corporation in all of its matters, in connection with plaintiff's mines, mining claims, and mining operations in Eureka County, Nevada, and during all of said period of time the said M.J. Hough, defendant herein, occupied a confidential and fiduciary relationship to and with the plaintiff herein, in connection with and in reference to plaintiff's said business and property; and that it was and is contrary to equity that said M.J. Hough, defendant herein, should or could during said period of time, acquire any interest in, or right or title to, the, or any of the, property, described or mentioned herein, owned and/or possessed by the plaintiff herein, situated in Mill Canyon, Cortez Mining District, Eureka County, Nevada, adverse and/or antagonistic to plaintiff herein.

6th. That any interest, right or title whatsoever, legal or equitable, which defendant, M.J. Hough, acquired, has or holds in or to any of the following described and/or mentioned property, viz., building or buildings over mill, buildings at mine, machinery, tools, located and situated in Mill Canyon, Cortez Mining District, Eureka County, Nevada, mentioned in the pleadings herein, and in the Findings of Fact herein, or in the said Tax Deed, was so acquired and is so held by said M.J. Hough, defendant herein, as trustee of, and in trust for, Roberts Mining and Milling Co., a corporation, the plaintiff herein.

7th. That said defendant, M.J. Hough, and all persons and/or corporations claiming through or under said defendant, M.J. Hough (other than said Roberts Mining and Milling Co., a corporation) be, and they hereby are, forever and perpetually debarred, restrained and enjoined from asserting any right, title or interest in or to any of the above described and/or mentioned property, to-wit: building over mill, buildings at mine, machinery and tools, or any part thereof, situated and being in Mill Canyon, Cortez Mining District, Eureka County, Nevada.

8th. That the defendant, M.J. Hough - concurrently with the payment to said defendant, M.J. Hough, or upon the payment into the office of the clerk of the above entitled court, for the use and benefit of said M.J. Hough, of the sum of \$93.46, with interest thereon at 7% per

