Don't Be Stupid or Mean: Be Aware of Slander of Title in Kansas

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I. Introduction

This article is about the tort of slander of title in Kansas.[1] A possible cause of action can arise in a variety of contexts and can cause problems for owners of property interests and their lawyers.

The descriptors we use in our title, "stupid" and "mean," are two of the three ways the West Virginia Supreme Court described some defendants assessed with punitive damages. The court upheld substantial punitive damages awarded by the trial court in that slander of title case.[2] We describe the case in Section III.A. below.

Real estate professionals file documents in the register of deeds office to give notice of ownership interests and of claims against the title.[3] Persons and entities interested in ascertaining the status of title to particular land consult these records to draw conclusions and make business decisions.

Most documents filed in the public records are valid and likely contain correct information. Most land titles, however, are not entirely clean and totally without blemish. Legitimate interests such as mortgages, liens, easements, court records, leases, and other interests may show that a particular title is encumbered. A prospective purchaser might require some or all of these legitimate encumbrances to be removed before the purchaser will close a sale. But occasionally a cloud appears that is false and illegitimate. Consider the following four fact situations:

1. A law student disgruntled with his grade in a class files a document in the register of deeds office falsely claiming an interest in the farm owned by the law professor of that class.
2. An unfriendly homeowner next to neighbors whose house is on the market puts up a sign in her own yard claiming falsely that any purchaser of his neighbors' house and lot would be buying a lawsuit because the neighbors' land title is clouded.
3. An employee of a bank that holds a mortgage on a piece of property falsely claims orally during a meeting with the owner and prospective buyer that the bank owns the property outright.
4. A member of a sovereign citizens group files a "commercial lien" against a home owned by a local judge.

The first situation is hypothetical, the second happened in Malibu, California, and the third happened in Kansas. The fourth is an example of tactics used by various splinter groups to gum up title to land owned by public officials and others.

All four situations suggest the possibility of a lawsuit for slander of title.

Section II provides background about this tort. In Section III we describe a few Kansas cases that illustrate both successful and unsuccessful results. We briefly note in Section IV some related Kansas statutes. In Section V, we examine the first hypothetical situation posed above as well as another situation. Section VI is a brief conclusion.

II. Background

The Restatement 2d of Torts and AmJur 2d are useful starting points to provide general rules and principles. To put slander of title in context, we can begin with Section 558 of the Restatement under the general heading of Defamation, which provides the elements of an action for "defamation" — these include in part "a false and defamatory statement concerning another,"[4] with the fault amounting "at least to negligence."[5] The communication must "harm the reputation of another"[6] and may consist of statements of opinion.[7] The Restatement distinguishes between libel as written or printed words,[8] and slander as words other than written or printed.[9] Section 623A covers liability for publishing "injurious falsehoods":

> One who publishes a false statement … is … [liable] if (a) he intends for publication … to result in harm … or either recognizes or should recognize that it is likely to do so … and (b) … knows the statement is false or acts in reckless disregard of its truth or falsity.[10]

Section 624 then covers "Disparagement of Property — Slander of Title," clarifying that the rule in Section 623A applies to false statements disparaging another's property.[11]

Thus, slander of title differs from regular slander in several respects, especially in the fact that "slander of title does not involve a defamation of another's character or injury to personal reputation" but instead "injury to real property rights … ."[12]

Generally speaking, according to AmJur2d, the following are elements of a slander of title action:

> (1) a statement concerning the ownership of property that is derogatory to … the owner's title, that is false; (2) malice in the making of the statement; (3) communication or publication of the statement to others …; and (4) direct pecuniary loss or special damages resulting to the owner of the property from the publication of such false and malicious statement.[13]

AmJur 2d's overview of slander of title clarifies that this tort is not a subcategory of slander.[14] It is different in another way other than the injury's being to property rather than to personal reputation: slander of title generally requires special harm and proof of a greater amount of fault than negligence.[15] But like defamation cases, slander of title cases may be predicated on either written or oral statements. Furthermore, the tort of "disparagement of property" is different in another way because it focuses on the quality of the property and not the title.[16]

To claim injury from a slander of title, a claimant must have some interest in the property[17] and must prove to have held that interest at the very time of the alleged wrongful act.[18] Real estate interests include, *inter alia*, fee simple, leaseholds,[19] oil and gas and other mineral interests,[20] water rights,[21] options,[22] and easements.[23] Slander of title can result from filing documents that make false claims of ownership of property interests,[24] refusing to release claims and interests in the property,[25] and doing other such acts.

The tort is not limited to actions concerning real estate, although most cases do involve real estate. The Restatement 2d,[26] AmJur,[27] and a 1927 Kansas case[28] show that slander of title might involve personal property, intangibles, and chattels.

In addition to the requirement that the act be intentional, it must be done with malice, at least in Kansas.[29] Yet other states may be less doctrinaire.[30] Whether the malice in the tort of slander of title cases is comparable to the conduct required in the tort of "outrage" is not clear.[31]

Just as in regular slander and libel cases, truth is a defense in a slander of title claim. As stated in dicta in a Kansas lawyer disciplinary case, *In re Huffman (or Matter of Huffman)*[32]: "[R.B. and S.B.'s] slander of title claim rests on the recording of [the] Caveat but that document could not slander their title for the simple reason that it was true."[33]

III. Case Examples

A. Introduction and Overview

American state courts have decided numerous cases in which slander of title has been alleged. Kansas has had at least 34 published appellate court cases that mention the concept, but only a few of these cases reached the merits of the slander of title claim. The rest are discussed briefly in Section III.E. Of the cases decided on the merits, the number of unsuccessful cases outnumber the successful ones.

As expected, most U.S. slander of title cases involve filings of various kinds in the public records, typically in the office of the register of deeds. These cases have involved public record filings of false documents including mechanics' lien statements,[34] second mortgages,[35] affidavits,[36] caveats,[37] deeds,[38] notices,[39] sales of oil and gas leases,[40] and options.[41]

Lawsuit filings have themselves fostered slander of title claims:[42] premature attempts to foreclose mortgages,[43] executions on land,[44] enforcements of real estate contracts with specific performance,[45] and quiet title claims.[46] The types of lawsuits just mentioned are ones focused on the land itself. But other lawsuits, especially those seeking money damages and not dealing directly with land, can affect land titles by creating judgment liens under K.S.A. 60-2202 and -2203a, a subject discussed below in Section V.B.

Several Kansas cases illustrate rules and requirements for malice: "Malice, that is, absence of good faith, is an essential condition of liability. * * * It is essential also that it should be malicious — not malicious in the worst sense, but with intent to injure the plaintiff. * * * Such an action cannot be maintained without showing malice and want of probable cause."[47] In a recent case, the court stated that "in this context, maliciousness means doing a harmful act without an [*sic*] reasonable justification or excuse."[48] If a claimant acted "in pursuance of a bone fide claim which he is asserting honestly and especially if he was acting under the advice of counsel, though without right, he will not be liable."[49]

While most slander of title cases involve false documents, the California case of the unfriendly neighbor mentioned in Section I and described in more detail below[50] involved a false statement made on a yard sign. And one case involved no document or written statement filing at all — it was the oral statement of the defendant that amounted to a slander of title.[51]

The facts creating potential slander of title lawsuits vary widely. Some are seemingly unduly complicated, making it difficult to get to the heart of the matter and find the peanut. For example, the Kansas Supreme Court in a 1903 case began the opinion by stating that "[i]t is difficult to determine the exact nature and scope of this action."[52] In a 1967 case, Justice Alfred G. Schroeder stated, "This melee is studded with unconventional financial transactions confounded and intertwined with loans, interest, service fees, commissions, alleged usury, attorney fees, conveyances, mortgages (both first and second), creditors, wives, escrow agent, sister, minor daughter, guardian, real estate men and mistakes by both court and counsel."[53]

Some cases from both Kansas and other states can best be described by a neutral observer as being almost absurd, bizarre, and even comical. In the unfriendly neighbor case mentioned in Section I, *Phillips v. Glazer*,[54] the plaintiffs owned a house on a lot lying adjacent to and east of the defendant's lot and house. The original developer had constructed the house on the plaintiffs' lot such that it encroached onto the defendant's lot by five inches, a fact that had been litigated by the plaintiffs against the defendant previously. In that earlier case, the court awarded the defendant all the encroaching improvements. Having prevailed in that original encumbrance lawsuit, the defendant then took it upon herself to hire contractors to remove the encroaching five inches of the plaintiffs' house. This action left the plaintiffs' house open to the elements and to transient thieves. The plaintiffs put the house on the market. Still upset by the original encroachment, the defendant constructed a sign on top of her garage falsely warning potential buyers that the title to the plaintiffs' property was clouded. This action caused the plaintiffs to lose potential buyers. The plaintiffs sued the defendant for slander of title. The trial court held for the plaintiffs, finding that statements on the sign were false because the prior lawsuit had established the encroachment, and thus the plaintiffs' property had no cloud on the title. The appeals court upheld the slander of title judgment for the plaintiffs.[55]

A case from West Virginia reached the U.S. Supreme Court, which upheld a punitive damages award of $10 million for slander of title in a case involving a worthless quitclaim deed filed of record in an oil and gas dispute.[56] It's the characterizations of defendants in punitive damages cases made by the West Virginia Supreme Court that were interesting.[57] The court divided defendants in such cases into three categories, the "really stupid," the "really mean," and the "really stupid defendants who could have caused a great deal of harm … but who actually caused minimal harm." The "stupid" ones "have not harmed victims intentionally but have harmed them as a result of extreme carelessness * * * ."[58] The "mean ones" on the other hand intentionally commit acts they know to be harmful.[59] The losing party in the California case noted above might have been dubbed both stupid and mean.

Those two cases as well as the ones summarized below certainly warn people that egregious actions can cloud property titles and lead to lawsuits claiming slander of

title. Most of the Kansas cases below seem to be more of a run-of-the-mill character. The reader can judge whether or how to categorize the alleged title slanderers in the Kansas cases as either stupid or mean, just careless, or something else. Most of the cases below are factually more complex than our summaries would suggest as we attempt to extract the essence of the slander of title claim.

B. Cases Involving Mechanics' Lien Filings

1. The Mechanic's Lien Statute

K.S.A. 60-1101 provides lien relief to various entities in the construction process: general contractors, sub- and sub-sub-contractors, and material providers. The statute provides that one who has furnished labor and materials to improve real estate may claim a mechanic's lien by filing a verified statement after completing the work. The resulting lien is effective from the date of commencing the work, which means that the lien will predate the filing of the statement. The lien is prior to all other filings after the commencement of the work. The statement must show a description of the property and a "reasonably itemized statement and the amount of the claim." The contractor must file the statement with the clerk of the district court within four months of the date the work was completed. It is this statement and the amount of the claim that have created slander of title problems.

A slander of title case may be based on the filing of a mechanic's lien statement containing false information or a statement filed out of time. Some relevant Kansas cases have facts that would tie mechanic's lien filings to slander of title, but these cases have then been disposed of on unrelated procedural grounds.[60] Westlaw and Lexis list several unreported cases in Kansas involving mechanic's liens.[61] The following reported case illustrates well how these disputes can arise.

2. *Saddlewood Downs, L.L.C. v. Holland Corporation, Inc.*[62]

In this 2004 case, the contractor Holland's successful bid for public street improvements in Saddlewood's development did not contain a line for fly ash stabilization. But after Holland completed the grading, the city required additional stabilization of the subgrade material with fly ash. The parties agreed to changes in the contract but failed to agree on who would pay for the fly ash treatment.

Company representatives met to work out their differences, without success, yet the work continued — Holland applied the fly ash and sent invoices, some of which contained specific items for the fly ash work, and Saddlewood didn't object. When Saddlewood later fell behind on its payments to Holland, Holland filed a mechanic's lien against Saddlewood's property. Saddlewood countered with a claim of slander of title. The trial court upheld the mechanic's lien even though there was no written evidence of agreement on the extra charges; this holding was based on both Saddlewood's actions and inactions, which constituted authorization, and on Holland's reasonable reliance. Furthermore, the court held that Holland had not filed the mechanic's lien maliciously. For these reasons, the trial court rejected Saddlewood's slander of title claim.

The Kansas Court of Appeals agreed. In the lengthy opinion, the court discussed various aspects of the actions of the parties, expectations of owners and contractors in such projects, risk bearing on potential additional work required by the city, modification of contracts, etc. Ultimately, the Court upheld the trial court's holding that Holland had not filed the mechanic's lien statement maliciously. While there were problems with the "technical validity" (the person signing had no personal knowledge of the project), "the insufficiencies did not amount to malicious intentions."[63] Saddlewood claimed that Holland had intended to harm Saddlewood because Holland knew the lien would encumber the property. But, importantly, the court said that "[t]hat … is why one files a mechanic's lien" and that filing is not "tantamount to acting with malice."[64] For these reasons, the slander of title claim failed.

C. False Document Filings

1. Register of Deeds Filings

K.S.A. 58-2221 provides that "[e]very instrument in writing that conveys … real estate … or … whereby any real estate may be affected … may be recorded in the office of the register of deeds." The statute is very broad in the types of documents allowed, but if the document is invalid, the filing may create a possible slander of title claim. Many types of false instruments have led to slander of title claims: deeds, mortgages, affidavits, etc. The following three cases illustrate both valid and invalid filings.

a. *Safety Federal Savings and Loan Assoc. v. Thurston and Lenexa State Bank and Trust*[65]

The borrowers obtained a loan from the bank to finance a lawn service business and gave security interests in the equipment. When the

borrowers failed to pay at the end of the note periods, they and the bank agreed during a meeting that the borrowers would give the bank a second mortgage on their home, which the bank would hold for two weeks to enable the borrowers to collect accounts receivable and to pay off the notes. If not paid in two weeks, that bank would file the mortgage. The borrowers failed to pay in the period as agreed, and the bank filed the second mortgage. The following year, the plaintiff, the savings and loan holding the first mortgage, sued to foreclose, and the bank then cross petitioned to foreclose its second mortgage. The borrowers cross-claimed against the bank for slander of title.

The trial court struck the second mortgage because of lack of consideration and ruled for the borrowers on the slander of title claim. The Court of Appeals disagreed and reversed. It held that forbearance to assert a claim is a valid consideration for a contract unless it is obviously invalid. The bank's holding the second mortgage and not filing it for two weeks was valid consideration, and thus the mortgage was valid. Because the second mortgage was valid, filing the mortgage could not constitute slander of title.

b. *Dwelle v. Home Realty & Investment Co.*[66]
The plaintiff purchased two lots from the defendant corporation, with the deed being signed by the defendant's president. A few months later, the defendant's corporate secretary, with legal advice, filed an affidavit with the register of deeds stating that the deed was spurious and based on fraud. A few months after that, the plaintiff sold one lot, but the purchaser's title examination revealed the affidavit, and the purchaser rescinded the sale, causing the plaintiff monetary damages. The plaintiff sued the defendant for slander of title and for a judgment quieting title. The defendant answered that its president had fraudulently inserted the plaintiff's name as the deed grantee and had used a false corporate seal, but that the plaintiff had known all about this, both at the time of the plaintiff's purchase of the two lots and the plaintiff's subsequent sale of the one lot.

The jury held for the plaintiff. It found that the defendant's corporate secretary did not have a good faith belief that the defendant had an interest in the property and had filed the

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affidavit maliciously and in bad faith. On appeal, the court upheld the jury's finding that the defendant had filed the affidavit with malicious intent. In addition, it approved the jury instruction that the defendant had the burden of proving the averments in the affidavit and that the defendant's corporate secretary "honestly believed that defendant had a claim on the real estate."[67] In short, the Kansas Supreme Court upheld the plaintiff's claim of slander of title.

c. *Dennis v. Smith*[68]
The plaintiffs had purchased the defendants' redemption rights after a foreclosure, had paid the taxes, and had obtained a warranty deed from the defendants. The plaintiffs had also given the defendants the right to harvest some of the crops. Later, the defendants filed "an affidavit and notice of interest in real estate." The plaintiffs sued to quiet title and for slander of title. The trial court ruled in favor of the plaintiffs on the quiet title action, but not on the slander of title claim, a ruling affirmed on appeal. The appellate opinion is not clear, but it appears that the plaintiffs had presented no evidence of malice, so the slander of title claim was unsuccessful.

2. Filings Not in the Register of Deeds
While most documents affecting the title to real estate are filed in the register of deeds office, some documents are filed in other places. These include filings of documents or information in the county treasurer's office, filing petitions in cases in the district court, and filing motions during case adjudications. The following cases illustrate some of these.

a. *LaBarge v. City of Concordia and Cloud County Commissioners*[69]

This case involved disputed ownership of a tract of land, annexation by the city, and the resulting county tax assessment. The facts of the case are complicated because of disparities in legal descriptions of original warranty deeds to the owners, a plat containing the tract, and a quitclaim deed from the county to the city, as well as two lawsuits preceding the present one. In one of the prior cases the district court had ruled that the owners held title to the tract, and that the tract had not been included in the annexation. But in a tax assessment record, the county showed the tract to be owned by the city. The owners filed the present case to quiet title and to claim damages for slander of title against both the county and the city. The trial court ruled against the owner on both counts.

The Court of Appeals reversed on the quiet title issue because there had yet to be a judicial determination on the merits of the owners' claim to the tract. However, it upheld the trial court's summary judgment in favor of the city and county on the slander of title question. The county could not be held liable because a government entity, which includes a county, is not "liable for damages resulting from ... the assessment or collection of taxes."[70] The city had nothing to do with the preparation of the tax assessment rolls, and the "immunity provided to the county by 75-6102(b) extends to the city." Because slander of title requires a malicious statement causing injury, a statement not filed here by the city, the Court denied the slander of title claim. The Court also held the owners to the one-year statute of limitations as required in regular slander cases[71] under K.S.A. 60-514(a), as have other courts in the country.

b. *Heyen v. Hartnett, et al.*[72]

This case involved judicial construction of a mineral deed because of ambiguities in language dealing with mineral interests and royalty interests. The plaintiff held a fraction of the mineral interests, and the defendants and plaintiff held fractions of the royalty interests. The plaintiff sought a declaratory judgment to construe the mineral deed. The defendants countered with a claim of slander of title based on the plaintiff's act of bringing the action. The court denied the defendants' counterclaim because the deed was ambiguous and therefore the court couldn't conclude that the plaintiff had filed the case with "malice, without probable cause, and not in good faith."[73] Thus, there could be no slander of title.

c. *Davis v. Union State Bank*[74]

During a pending lawsuit involving foreclosure of a real estate mortgage and matters pertaining to oil and gas interests, the defendant had filed a motion seeking an order requiring the sheriff to execute a sheriff's deed. The plaintiff later amended the petition to include a claim for slander of title. Quoting an earlier case, the court held that "defamatory matter published in due course of judicial proceeding pertinent to the inquiry is absolutely privileged and will not sustain an action for slander of title."[75]

D. Slander Based on an Oral Statement: *Bourn v. Beck*[76]

Just as a yard sign placed on one lot can malign the title of the adjoining lot, oral statements can do so as well. The complex facts in the *Bourn* case may be simplified by stating that the husband and wife plaintiffs were negotiating to sell their mill property to one Burton. The plaintiffs' title was subject to various liens held by a bank, which was one of the defendants. The other defendants were some of the bank's officers. During a meeting with the prospective purchaser, Burton, the bank officer defendants orally claimed that they owned the mill property outright and that the plaintiffs did not own it. Based on those claims, Burton refused to purchase the property. These statements were the basis of the claim by the plaintiffs that they had suffered a slander of title. The trial court held that the plaintiffs had proved the elements of slander of title, and the Supreme Court agreed, holding both the bank and the officers liable.

E. Kansas Reported Cases Decided on Procedural Reasons or Otherwise Not Reaching the Merits of the Slander of Title Claim

We mention these cases only to complete the picture on the reported Kansas cases dealing with or mentioning slander of title. Some cases were disposed of for procedural reasons and thus did not reach the merits of the slander of title claim. For example, some cases have involved matters such as joinder of claims,[77] demurs to evidence,[78] choice of cause of action between tort and contract,[79] failure to plead damages,[80] reservation of the decision on slander of title in a case involving an alleged equitable mortgage,[81] and delay in moving to vacate a judgment.[82]

Other cases mentioned the tort but failed to decide the merits of that claim. One case treated the relief sought as ▶

a slander of title case even though the petitioner hadn't expressly alleged slander of title.[83] Another case was an attorney discipline matter in which the disciplinary administrator claimed that the respondent had filed "multiple lawsuits containing frivolous claims," one being that of slander of title.[84]

Still another case[85] mentioned slander of title as one cause of action on a claim that an oil and gas lease had been signed only by a husband. The trial court awarded damages to the plaintiff on other causes of action. The Court of Appeals affirmed in part and reversed in part, but didn't expressly consider slander of title. The term "slander of title" is mentioned in one case merely to cite an earlier case dealing with slander of title.[86] A 2012 case mentioned slander of title only to suggest in dicta that the facts "likely created liability for slander of title."[87] Finally, a Kansas Supreme Court case mentioned slander of title as having been asserted in a third-party claim, but didn't mention it again.[88]

F. Statute of Limitations for Slander of Title Cases (K.S.A. 60-501, *et seq.*)

Kansas statutes do not state clearly which section should apply to slander of title actions.[89] K.S.A. 60-514 (a) states that actions for regular libel or slander must be brought in one year. And Kansas courts in *LaBarge v. Concordia,*[90] described above, and *White v. Security State Bank*[91] have chosen to apply this section's one-year limitations, opting to subsume slander of title under the regular tort of libel and slander.

Slander of title in one context was described as a "continuing" or "continuous" tort.[92] Thus, Kansas cases support the rule that it is the date of the slander injury, i.e., when it is discovered by the injured party, and not necessarily the date of first publication, that is the triggering date for statute of limitations purposes.[93]

IV. Kansas Statutes Related to Slander of Title

In general, slander of title is a common law action, but one Kansas statute expressly mentions the concept of slandering title, and other statutes hint at similar remedies. With a few exceptions, the Kansas cases summarized in Section III do not refer to these statutes. We summarize them only to place the tort in context.

A. The Marketable Record Title Act (K.S.A. 58-3401, et seq.)

This act is an aid to title examiners such as attorneys, title companies, and title insurance companies. Its purpose is to help the examiner ascertain whether a landowner has "marketable record title." Prior to enactment of this act, examiners based their conclusions on the entire record from the original land patent from the U.S. to the current owner. The Act shortens the length of time that title defects are deemed to affect title adversely. Under the Act, that time is measured backward from "the time the marketability is being determined"[94] (typically the day of the exam, the title insurance commitment, or the opinion letter). In Kansas, the title examiner goes back 25 years from the date marketability is to be determined and finds the next conveyance before that date,[95] called the "root of title."[96]

The act preserves some "interests and defects"; to keep such an interest alive, the purported interest holder must file within 25 years of the root of title a written notice describing the nature of the claim, e.g., being in possession or having some other type of claim.[97] The register of deeds is supposed to accept for filing and to index these notices in a "book set apart for that purpose, to be known as the 'notice index.'"[98] (In my years of studying titles and writing title opinions on land and water rights, I have yet to see such a notice or learn of a register of deeds office that has such an index. — John Peck) The act extinguishes most clouds on the title that pre-date the root of title.[99] But, importantly, the Act lists several exceptions to extinguishment, such as mineral interests and rights in leases and mortgages.[100] It is for this reason the title examiner cannot stop looking back to just the date of the root of title; the search must go back to the filing of the U.S. patent. Finally, the Act provides that "[n]o person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land."[101] The section allows the court to assess the filer of a false claim the costs of the litigation, attorneys, and all damages."[102]

B. The Fraudulent Lien Act (K.S.A. 2022 Supp. 58-4301)

This statute was enacted in 1998 to aid in cleaning up title following the filing of a "fraudulent lien."[103] The Act doesn't expressly mention slander of title, but according to the interim committee report recommending passage of the Act, the purpose is related: to enable the release of "bogus liens" filed by the likes of "militia or common law-type groups such as the Freeman, the Christian Court, and other similar groups whose members have engaged in certain activities such as ... filing spurious liens against the property of others ... ."[104] The Act provides for both a civil action against the filer that can result in the court's setting aside the fraudulent claim and an order awarding costs, attorney fees, and "actual and liquidated damages up to $10,000, or if actual damages exceed $10,000, all actual damages" to the plaintiff for each violation.[105]

C. Duty To Release Oil, Gas, or Other Mineral Leases or Interests (K.S.A. 55-201 to -202)

Section 55-201 requires a lessee after the forfeiture of a lease to surrender the lease and file a release in the register of deeds office. Section 55-202 states that if the owner of the lease neglects or refuses to execute the release when required, the landowner may recover damages, all costs, and attorney's fees and "may also recover any additional damages that the evidence in the case will warrant."[106] Slander of title is not specifically mentioned in these statutory sections, but the intent appears to be the protection of the title to the property.

D. Duty To Release Mortgages (K.S.A. 2022 Supp. 58-2309a)

After a mortgagor has paid a mortgage debt in full, the mortgagee is required by this statute to file a satisfaction of mortgage within 20 days after receiving a request to do so. Failure to do so will subject the mortgagee to damages of $500, a reasonable attorney's fee, and "additional damages as the evidence in the case warrants."[107] Like the statute on releases of oil and gas and mineral interests, this section does not mention slander of title.

An interesting twist is the question of whether a slander of title action might be feasible by a mortgagee against a mortgagor who files a false mortgage release.[108] It would seem doubtful in Kansas. Kansas subscribes to the "lien theory" of mortgages, not the "title theory," so under Kansas law "a mortgage is not a conveyance of an interest in land ... but [the mortgagee] acquires only a lien securing the indebtedness described in the instrument."[109] But if the mortgage is considered to be just a lien, and this lien and the underlying note were considered intangible property, the question is whether this property could be protected by a slander of title action. There's some authority that it might be.[110]

V. Situations to Analyze

Section I laid out four circumstances of possible slander of title: two fictional, the others real. The first case discussed below gives more detail regarding that fictional first case. Section III described the other two real cases. Section IV.B. covered the Fraudulent Lien Act, which deals with the fourth case. Here we offer superficial analyses of that first case, and we discuss another situation as well. We leave it to the interested reader to pursue more detailed research and deeper analyses.

A. Law Student and Law Professor

A third-year law student stood high in his class rankings and was an editor on the law review. He was disgruntled after receiving a C in a course in land transactions in the fall semester. He hadn't studied much and had learned little. But he did remember hearing something about "affidavits of equitable interest." What he hadn't learned, however, was that an affidavit is a statement of facts sworn to be true by the affiant. To get back at his professor, he filled out a blank affidavit form, signed it in front of a notary public, and filed it, claiming to own a half interest in the professor's farmland. "I'll show her," was his thought and was his statement to a classmate at lunch. Several months after he graduated in the spring and was named to Order of the Coif, he was surprised to be served in a lawsuit, his former professor claiming that the student had slandered the title to her farm, which had resulted in damages. Specifically, she claimed that the student's affidavit had clouded the title to her farm, resulting in loss of a sale to a prospective buyer.

The professor could likely make a good case for slander of title. Applying the elements for this tort gleaned from the case law and treatises, she could argue that the filing contained a derogatory and false statement about her property, was made with malice, and was communicated to others. In addition, she suffered pecuniary loss from the false affidavit. The student did not have an interest in the property, and the professor owned the farm when the student filed the affidavit. The student's acts were clearly intentional and seemed to show a greater fault than negligence — he filled out the form himself and signed it in front of a notary, filed it of record, and commented to his friend, "I'll show her."

Arguably, the student's actions were malicious, shown by his reasons (low grade for an otherwise top law student) buttressed by his oral statement to his classmate and the background facts of his bad grade in the course. How the professor would learn about the oral statement to the classmate would pose difficulties, as would providing details of her final exam, his grade, and his class standing, which would likely be deemed private by university privacy rules regarding divulging grade and class rank information. But his membership on the law review and his having been named to Order of the Coif would be public information.

Another difficulty might lie for the professor in producing evidence that the cloud on the title actually caused the loss of a sale. The plaintiff in *Phillips v. Glazer*[111] (the Malibu encroachment/yard-sign case) used a broker's testimony to establish the loss of a sale. The professor could attempt to find the same kind of evidence.

The student might attempt to defend in part by showing ignorance about the tort and the potential harm it might cause — after all, he didn't learn much in the course. He ▶

might also cite an illustration from the Restatement 2d of Torts in his defense:

> A, in the presence of a circle of his friends, casually says that Blackacre is owned by B. A knows his statement is false and that Blackacre is owned by C. As a result of the statement one of A's friends who had intended to buy Blackacre from C does not do so. Unless A knew that a prospective purchaser was present or that the statement was likely to reach him, A is not liable to C.[112]

His reliance on this illustration seems weak, however, because he didn't prepare and file the affidavit casually or make it orally. Furthermore, he surely knew the professor and prospective purchasers would eventually learn of the filed affidavit — otherwise, why file it? If nothing else, he should have learned in the class that the reason for filing documents in the public record is to notify the public. While the outcome of this hypothetical case is unclear, the professor could make a fairly strong case.

B. New Associate and Rescission of Waiver of Judgment Lien

A partner in a small firm handed over to a new associate, a recent law school graduate, a stack of files to cover. One case concerned a lawsuit the partner had filed against a builder-developer a few months earlier on behalf of a homeowner client. The case sought money damages resulting from a quality issue in the construction of the client's new house. In the file, the associate found a "Waiver of Judgment Lien"[113] the partner had prepared. It had been signed by the client and filed of record by his partner. Asked to explain the waiver, the partner said that he had just acceded to the request of the developer's attorney in hopes of accelerating settlement negotiations.

The potential judgment lien[114] in this case had created title issues for numerous other lots owned by the developer, who was developing and hoping to sell them.[115] These lots were not related to the lot containing the construction issue, the very lot the developer had sold to the client. But settlement negotiations hadn't progressed well, and the case was still pending.

After reading up on judgment liens, a subject new to the associate, he suggested to the partner that they have the client simply sign a document dubbed "Rescission of Waiver of Judgment Lien." The plan was to resuscitate the lien such that the lien would cover all the defendant developer's land in the county again. The associate's rationale was that because the developer apparently hadn't given any consideration for the waiver, there was no contract. Thus, the client could simply take back what the client had given for free. The partner gave his approval. The associate drafted the rescission, had the client sign it, filed it in the register of deeds office, and sent a copy to the developer's lawyer.

Two days later, the associate received a very nasty phone call from the developer's irate lawyer: "If you don't remove that damned rescission document, we'll sue you and your client for slander of title!" boomed the voice out of the phone. "You don't have a case," retorted the associate with feigned confidence, trying to bluff his way out of the situation. He wished he had AmJur handy to see what slander of title even was. The associate thought that he may have heard the term in law school, but really couldn't remember. Even if so, he had since forgotten and needed to see what the term meant.

The question is whether the filing of such a rescission created a colorable slander of title claim that would enable the developer to be successful in the court case threatened by his lawyer.

The required elements of property ownership and the rescission document's affecting title to property are obvious. But this case is more troublesome than the irate student case. The filing of the lawsuit itself legitimately created a cloud on the title of all the developer's land in the county, something anticipated by the statute. But by agreement between the developer's lawyer and the partner, the partner had filed a waiver of that lien. Whether or not there was consideration given for that waiver (discussed below), it did serve to give notice that other lots could be sold without the cloud on the title created by the judgment lien statute.

The client could first defend against the slander of title claim by asserting that the statement (the rescission document) was not false. It may have been filed recklessly, but it contained no false statements. Furthermore, the client, if not the partner and associate, might argue that the rescission was filed on the advice of counsel and that this fact might be a valid excuse under *Stark v. Chitwood.*[116]

Developer's counsel might argue that there is no such thing as a unilateral rescission — that the term "rescission" implies that there was a contract that would have to have been terminated or rescinded by mutual agreement only.[117] To permit a contracting party to "rescind" a contract requires that the contract be voidable for reasons such as fraud or mutual mistake.[118] Thus, a purported "unilateral rescission" is nothing but a breach of a contract. Moreover, if there was a contract, one with

no time limit prescribed for keeping the waiver open, it would have to remain open for a reasonable period.[119] But the client would respond that "we received nothing from you for this waiver, so we are free to take it back" — no consideration, no contract. It was just a freebie, gratuitously given to accommodate either the developer or the developer's lawyer. The developer's lawyer could have created a contract originally that would have permitted the filing of the waiver, in return for the developer's either agreeing to negotiate in good faith for that waiver or paying money. Proving a contract would likely depend on existence of evidence, if any, of the actual discussions the partner had with the developer's lawyer — did they agree to exchange anything, a *quid pro quo*, either expressly or impliedly?

If they had not expressly agreed to a consideration, the developer's lawyer might respond with a promissory estoppel argument:[120] "Yes, we didn't pay you anything or give any other consideration, but you made a promise, and we relied on it, to our detriment." How the developer's lawyer might prove that reliance, however, is hard to see: Did the developer continue to market the other lots with provable expenses? But wouldn't the developer have continued to market those lots anyway as a prudent business practice? Were lot sales or house construction contracts lost, or were some potential contracts not executed because of the rescission?

It seems clear that the rescission document filing was intentional, although drafted and filed with ignorance by the associate of its consequences. Moreover, as stated above, the rescission document contained no false statements. Malice would likely be difficult to prove. Just because someone files a document knowing it will adversely affect the title doesn't necessarily mean that it is maliciously filed. The mechanic's lien case of *Saddlewood Downs* described[121] above illustrated that that's the very reason such documents are filed, to create an encumbrance on the title, which the judgment lien statute not only permits, but encourages. This is one of the handy tools in a plaintiff's bag. A rescission of a waiver of such a lien is filed for the same legitimate purpose.

All in all, we think the developer's lawyer has the weaker case on the slander of title issue. And, if so, the reckless action on the part of the associate might very well have been the very thing that might have led to a speedier resolution and settlement of the case.

We leave it to the reader to do a more in-depth analysis of these two cases and to opine to the authors where their superficial analyses are wrong.

VI. Conclusion

Slander of title is not a common tort. When one considers the literally thousands of land title documents filed daily in the register of deeds offices in Kansas and the entire country, one might assume that there would be more slander of title cases filed. But the elements required to make a case are fairly rigid and difficult to meet, especially the malice element. Yet the slander of title claims described in the cases in this article, whether successful or not, illustrate that one must be careful about saying, writing, or filing anything that might slander another person's title to property. One must guard against stupidity and meanness, and even just the possibility of being sued, whether the ultimate claim proves to be valid or not. ◆

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References

1. For an analysis of the tort in Texas, *see* Karen McConnell, *Slander of Title: Onward Through the Fog*, 24 S.Tex.L.J. 171 (1983); and in West Virginia, *see* J. Zak Ritchie, *A Fresh Look at an Old Tort: Litigating Slander of Title in Mineral Disputes*, 115 W.Va.L.Rev. 1097 (2013).
2. TXO Production Corp. v. Alliance Resources Corp. et al, 187 W.Va. 457, 474–75, 419 S.E.2d 870, 887–88 (1992). We describe the case in the text at notes 56–59 below. Judge Rinder on the British reality TV program "Judge Rinder" also frequently refers to both the parties appearing before him and their claims as stupid. *See, e.g., Judge Rinder Stupid Compilation*, YouTube (June 16, 2016), https://www.youtube.com/watch?v=Wbb2_mHpdEk. Thanks to Phil Bowman for bringing this program to our attention. Phil is retired from the Adams Jones law firm in Wichita.
3. Recording acts such as K.S.A. §§ 58-2221 to -2223 provide for "(1) centralized filing of documents creating or transferring land interests, (2) maintenance of systems of public records ... ▶

primarily of copies of the filed documents, and (3) priorities for those interests appearing in the public records against those that do not." C. BERGER ET AL., LAND TRANSFER AND FINANCE, CASES AND MATERIALS 713–14 (6th ed. 2011). Some countries and an ever-decreasing number of states use a different system–a "title registration" system, known as the Torrens System, to determine the status of land titles. A public official maintains a registration certificate, which gives the owner's name and the claims against the land. In his 2011 casebook, Berger listed ten American states that provided for Torrens System registration, but he stated that no state requires it. It is now losing favor. *Id.* At least one state, Washington, has recently repealed its statute. *Certificate of Enrollment HB 1376*, WA Leg. (Mar. 17, 2022), https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1376.SL.pdf. *See also,* PATTON AND PALOMAR ON LAND TITLES § 41, 681-700 (Thomson West 3d ed. 2003).

4. RESTATEMENT 2D OF TORTS, Defamation, § 558(a).
5. *Id.*, § 558(c).
6. *Id.*, § 559.
7. *Id.*, § 566 ("but only if it implies the allegations of undisclosed facts as the basis for the opinion").
8. Id., § 568 Libel and Slander Distinguished; see also 50 AM.JUR.2D Libel and Slander § 4.
9. *Id.* ("... publication of defamatory matter by spoken words, transitory gestures or by any form of communication other than thóse [constituting libel] ... ."; *see also* 50 AM. JUR. 2D *Libel and Slander* § 5 ("any form of communication other than those constituting libel").
10. *Id.*, § 623A.
11. *Id.*, § 624 ("The rules for liability for the publication of an injurious falsehood stated in § 623A apply to the publication of a false statement disparaging another's property rights in land, chattels or intangible things that the publisher should recognize as likely to result in pecuniary harm to the other through the conduct of third persons in respect to the other's interests in the property.").
12. AM.JUR.2D *Libel and Slander* § 515.
13. *Id.*, § 522.
14. *Id.*, § 515.
15. *Id.* While libel and slander are typically categorized as intentional torts — that's the way we were taught in law school — the Restatement 2d of Torts and some states recognize negligent slander. RESTATEMENT 2D OF TORTS, § 558 ("To create liability for defamation there must be: ... (c) fault amounting at least to negligence ... ."); *see e.g. Boswell v. Phoenix Newspapers, Inc.*, 152 Ariz. 1, 730 P. 2d 178, 189 (1985). This seems not to be the case with slander of title. Comment A, RESTATEMENT 2D OF TORTS, §624: "... there must be proof of a greater amount of fault than negligence on the part of the defendant regarding the falsity of the statement ... ." *Id.*, note 11 above.
16. AM. JUR. 2D *Libel & Slander* § 516.
17. *Id.*, § 519 (including a lessee in possession and a person holding title by adverse possession).
18. Stark v. Chitwood, 5 Kan. 141, 145 (1869) (plaintiff's claim that defendants had slandered his title was dismissed because plaintiff did not allege in the petition that "at the date of the levy complained of the plaintiff was the owner of the real estate levied upon, or had any interest therein."; Rogler v. Bocook, 148 Kan. 858, 84 P.2d 893, 895 (1938) (plaintiffs sought unsuccessfully to prove equitable title based on a constructive trust, but "[p]laintiffs' having no title which could be slandered, they, of course, were not damaged.").
19. AM. JUR. 2D *Libel & Slander* § 519.
20. *See, e.g.,* O'Neill, et al, v. Herrington, et al., 49 Kan App.2d 896, 317 P.3d 139 (2014), *and* Glimac Oil Co. v. Weiner et al., 150 Kan. 430, 94 P. 2d 309 (1939).
21. The Kansas Water Appropriation Act states that a water right is a "real property right, appurtenant to and severable from the land on or in connection with which the water is used ... ." K.S.A. 82a-701(g). We found no reported cases directly involving slander of title of water rights. But in a 2013 KBA Annual Survey of the Law chapter on water law, Peck suggests the possibility of a slander of title action by the water right holder against the Division of Water Resources (DWR) in the case of DWR's filing a document that could be construed as a slandering the title of a water right holder. Cited in the survey was the February 7, 2013, issue of *DWR Currents* in which DWR had listed a new penalty schedule ranging from fines to reductions of authorized quantities of water to revocation of water rights. In addition, for "flagrant" overpumping, DWR might record a sanction document in the office of the local register of deeds "to ensure individuals who purchase land are aware of any water pumping violations." Of course, to make the claim of slander of title, the water right holder would have to overcome any possible sovereign immunity defenses and prove that the document was false, that it adversely affected title, and that the filing was malicious. *See* JOHN C. PECK, KANSAS ANNUAL SURVEY OF THE LAW, Cpt. 30 Water Law, Section V.B.2.e. at 393–94 (June 2013). In 2017, DWR amended K.A.R. § 5-14-10 to add subsection (n), which provides that any civil penalty, reduction, or suspension of a quantity of water authorized under a water right may be "enforced against the owner ... of the water right and shall attach to and transfer with the water right to any subsequent heir, assignee, purchaser or other subsequent holder of the water right." Some might question whether DWR, without express statutory authority, had the authority to create such an encumbrance or lien in a regulation.
22. Hubbard v. Scott, 85 Ore. 1, 166 P. 33 (1917) (plaintiff optionees' option was a property interest subject to being protected against slander of title, but plaintiffs were unsuccessful in the claim for slander of title).
23. *See, e.g.,* Rose v. Parsons, 76 A.3d 343 (2013); Schwab v. City of Seattle, 64 Wash.App. 742, 826 P.2d 1089 (1992); Dethlefs v. Beau Maison Dev. Co., 511 So.2d 112 (Miss. 1987); Louis v. Blalock, 543 S.W.2d 715 (Ct.Civ.App.Tx. 1976); Tyler v. Price, 821 So.2d 1121 (Fla.Dist.Ct.App. 2002).
24. *See, e.g.,* Dennis v. Smith, 186 Kan. 539, 352 P.2d 405 (1960), described below in Section III.C.1.c.
25. Mollohan v. Patton, et al., 110 Kan. 663, 205 P. 643 (1922) (regards Gen. Stat. 1915, §§ 4992, 4994, 4995, the precursors of K.S.A. 55-201, -202, & -206; *see* Section IV.C. below).
26. RESTATEMENT 2D OF TORTS § 624 Disparagement of Property — Slander of Title: "property rights in land, chattels or intangible things."
27. AM. JUR. 2D *Libel & Slander* § 519. Interest of plaintiff in property: "Any kind of legally protected interest in land, chattels, or intangible things may be disparaged ... ."
28. Allis-Chalmers Mfg. Co. v. Lowry, 124 Kan. 566 (1927) (case

involved a claim that title to personal property had been slandered, viz., wheat, encumbered by a chattel mortgage; lender holding the mortgage had filed a notice warning potential buyers against buying the wheat; while the court recognized the tort to be applicable to personal property, the owner was nonetheless unsuccessful in the suit for slander of title).

29. *See, e.g.*, Saddlewood Downs, L.L.C., v. Holland Corporation, Inc., 33 Kan.App.2d 185 (2004), described in Section III.B. 2., below.
30. A California case stated that "[i]n order to commit the tort actual malice or ill will is unnecessary." Phillips v. Glazer, 94 Cal.App.2d 673 (Cal. Ct. App. 1949), 211 P.2d 37 (1949) *citing* Gudger v. Manton, 21 Cal.2d 537, 134 P.2d 217 (1943).
31. In an unpublished opinion by the Kansas Court of Appeals, in which a roofer sued for, *inter alia*, the tort of outrage (intentional infliction of mental distress), the court compared that tort with slander of title, stating in dicta: "We mention this tort [slander of title] to illustrate our doubts concerning the outrageousness of [plaintiff roofer's] conduct here rising to the level necessary for the tort of outrage. [Plaintiff] filed a false affidavit in a vain attempt to claim a mechanic's lien. We have no doubt that such an action is reprehensible conduct, even actionable, but it is not so extreme as to 'intolerable in a civilized society.'" It's not clear to us whether the court is saying that the requirements of the two torts are the same, or whether the court is ranking the relative degrees of bad behavior, and even if then, which tort requires worse conduct. Kape Roofing & Gutters, Inc. v. Chebultz, 2016 WL 3655893 (unpublished disposition).
32. 315 Kan. 641, 509 P.3d 1253 (2022).
33. *Id.*, at 649 and 1262 (bracketed material in original). This quote was from the findings of fact of the final disciplinary administrator's report, finding 80, which although the supreme court does not specifically endorse, the court did agree with the administrator's conclusion that a disciplinary violation had occurred.
34. *See, e.g.*, Saddlewood Downs, L.L.C. v. Holland Corporation, Inc., 33 Kan. App.2d 185, 99 P.3d 640 (2004), discussed below in Section III.B.2.
35. *See, e.g.*, Safety Fed. Savings & Loan Assoc. v. Thurston, 8 Kan. App.2d 10, 648 P.2d 267 (1982), discussed below in Section III.C.1.a.
36. *See, e.g.*, Dennis v. Smith, 186 Kan. 539, 352 P.2d 405 (1960), discussed below in Section III.C.1.c.; Barnhart v. McKinney, 235 Kan. 511, 682 P.2d 112 (1984) (cause of action based on defendant's filing an "affidavit of equitable interest"; trial court's granting of summary judgment to plaintiff on slander of title claim reversed on appeal because the trial court had not ruled on the slander of title claim, but "from what has been said herein, it would appear obvious that upon remand the district court should make appropriate disposition of the claim," likely meaning that that the slander of title claim would not stand because defendant had a valid right of first refusal to purchase the land).
37. In re Huffman, note 22, above.
38. TXO Production Corp. v. Alliance Resources Corp., et al., 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993), discussed below in text at notes 56-59.
39. Allis Chalmers MFG. Co. v. Lowry, 124 Kan. 566, 261 P. 828 (1927), mentioned above in note 28.
40. Nelson v. Hedges, et al., 5 Kan.App.2d 547, 619 P.2d 1174 (1980).
41. Hubbard v. Scott, 85 Ore. 1, 166 P. 33 (1917), (plaintiffs sued optionor for slander of title for false statement that plaintiffs' option was invalid, but were unsuccessful due to being unable to prove damages).
42. Besides the types of cases listed, one author suggested that a cause of action might arise in an eminent domain filing if, for example, the petition alleges "the existence of a mortgage when one does not exist, or which may have been discharged but not released of record." Blatchford Downing, *Revision of Eminent Domain Statutes in Kansas*, 13(2) J. Kan. Bar Assoc. 140, 145 (Nov. 1944).
43. Carbondale Inv. Co. v. Burdick, 67 Kan. 329, 335 72 P.781, 783 (1903) (in a seller take-back contract, the buyer-mortgagor claimed slander of title, but the court said that in light of the fact that the mortgagee "conceded the absolute title and right to possession of the property in question to be in the [mortgagor], no question of title or the defamation of plaintiffs' title is alleged against defendant").
44. Stark v. Chitwood, 5 Kan. 141 (1869), cited at note 18, above.
45. O'Neill, et al, v. Herrington, et al., 49 Kan.App.2d 896, 317 P.3d 139 (2014). The facts are not clear, but it seems that a contract buyer sued the seller for specific performance. After the trial court dismissed the case, the seller sued the buyer for slander of title. But the main issue in this case was whether a settlement agreement was enforceable. The slander of title claim itself was not addressed.
46. *Cf.* Moore et al. v. Bayless, 215 Kan. 297, 524 P.2d 721 (1974) (opinion is unclear whether it was the quiet title action itself that defendants claimed amounted to a slander of title, or the facts occurring prior to plaintiffs' filing the suit).
47. Watkins v. Conway, 124 Kan. 79, 257 P. 937 (1927) (case cited omitted).
48. In re Huffman, 315 Kan, 761, 509 P.3d 1253 (2022); *see* notes 32–33 & 37, above.
49. Stark v. Chitwood, 5 Kan. 141 (1869); *see* note 18, above.
50. Phillips v. Glazer, 94 Cal.App.2d 673 (Cal. Ct. App. 1949), 211 P.2d 37 (1949).
51. Bourn v. Beck, 116 Kan. 231, 226 P. 769 (1924). *See* discussion below at Section III.D.
52. Carbondale Inv. Co. v. Burdick et al., 67 Kan. 329, 72 P.781 (1903).
53. Forney v. Gerling, 198 Kan. 613, 426 P.2d 106, 108 (1967). The term "slander of title" is mentioned but 3 times — in the synopsis, syllabus, and opening paragraph. At the end, the case finally alludes to the slander of title without using the term: "By reason of the foregoing instructions which were clearly erroneous and prejudicial, and the failure of the trial court to give any instruction on the second cause of action, the appellant was denied a fair trial." *Forney*, at 622 & 113.
54. Phillps v. Glazer, 94 Cal.App.2d 673 (Cal. Ct. App. 1949), 211 P.2d 37 (1949).
55. The sign read: "Notice. Anyone buying [Plaintiffs' lot] ... is buying lawsuit... . Title clouded rt. Sides wall, foundation mine. Sign remover will be prosecuted. S.LG." The sign on Defendant's garage caused prospective buyers of Plaintiffs' house to shun the property and brokers to refuse to list it. Regarding the slander of title claim, the appeals court held that the sign had contained

"untrue and disparaging statements," in that the title to Plaintiffs' lot was not clouded: "the prior judgment had awarded … [Defendant] … all property east of the lot line free and clear of any interest therein in the part of … [Plaintiffs]." *Id.*, at 674 & 38. There was no dispute as to the ownership of the five inches on which Plaintiffs' house encroached onto Defendant's land, and Plaintiffs freely admitted that the parts of the house and garage that Defendant claimed belonged to Defendant. But Defendant had no claim to any of Plaintiffs' property east of the line. Thus, the language on the sign indicating that Plaintiffs' title was clouded was false.

56. TXO Production Corp. v. Alliance Resources Corp., et al., 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993). The case involved testing the size of a punitive damage award based on slander of title. It was filed in a West Virginia district court, and it involved parties that were corporate developers of oil and gas interests. The counterclaim of slander of title itself rested on an allegation that the plaintiff's quiet title claim of ownership was based on a worthless quitclaim deed filed of record. The allegation was that the deed had been filed in bad faith in order to enhance the party's negotiating position in a royalty arrangement between the two parties. The TXO jury found that the plaintiff had slandered defendant's title and awarded $19,000 in compensatory damages and $10 million in punitive damages. The U.S. Supreme Court held that the punitive damages were not so excessive as to violate due process.
57. TXO Production Corp. v. Alliance Resources Corp. et al., 187 W.Va. 457, 419 S.E.2d 870 (1992).
58. *Id.* At 475 & 888.
59. In such cases, "we find that … where the defendant has intentionally committed mean-spirited and harmful acts (especially when the provable compensatory damages are small, but the potential of harm is great), even punitive damages of 500 times compensatory damages are not per se unconstitutional … ." *Id.*, at 479 & 889.
60. *See, e.g.* Comley-Neff Lumber Company v. Ross, et al., 190 Kan. 734, 378 P.2d 178 (1963), cited in Section III.E. below.
61. *See, e.g.*, Kape Roofing & Gutters, Inc. v. Chebultz, 2016 WL 3655893 (unpublished disposition) (slander of title not alleged but court in dicta discusses the actions of the roofer and whether they might have been egregious enough to amount to this tort); Associated Grocers' Co. v. Mahlandt, No. 57,180, 1985 Kan. App. LEXIS 1077 (Ct. App. Dec. 5, 1985).
62. 33 Kan.App.2d 185, 99 P.3d 640 (2004).
63. *Id.*, at 197 & 648.
64. *Id.*
65. 8 Kan. App. 2d 10, 648 P.2d 267 (1982).
66. 134 Kan. 520, 7 P.2d 522 (1932).
67. *Id.*, at 526–28.
68. 186 Kan. 539, 352 P.2d 405 (1960).
69. 23 Kan. App.2d 8, 927 P.2d 487 (1996).
70. *Id.* at 17–18 & 493, *citing* K.S.A. 1995 Supp. 75-6104. *See also* Terry Savely Bezek, *The Kansas Tort Claims Act: The Evolving Parameters of Governmental Tort Liability*, 66(8) J. KAN. BAR ASSOC. 30, 40–41 (Oct. 1997).
71. K.S.A. 60-514(a). *See* Section III.F. below.
72. 235 Kan. 117, 679 P.2d. 1152 (1984).
73. *Id.* at 126 & 1159.
74. 137 Kan. 264, 20 P.2d 508 (1933).
75. *Id.* at 268 & 510 (citing 37 C. J. 132).
76. 116 Kan. 231, 226 P. 769 (1924).
77. Comley-Neff Lumber Co. v. Ross, et al., 190 Kan. 734, 378 P.2d 178 (1963) (the main question dealt with joinder of claims, the supreme court holding merely that a cross-petition for slander of title could be joined with plaintiff's foreclosure action, and not reaching the merits of the slander of title claim itself).
78. Bell v. Bell, 60 Kan. 857, 56 P.271 (1899) (trial court sustained defendant's demurrer to the evidence, affirmed by the supreme court, but no facts were provided in the reported case).
79. Scherger v. Union Nat. Bank, 138 Kan. 239 (1933) (case dealt with cause of action choice between tort and contract; slander of title mentioned only in citing another case on the choice of cause of action).
80. Mollohan v. Patton et al., note 5 above (defendants' assertion on appeal that plaintiff had failed to plead special damages was rejected by the supreme court because defendant had not raised it at trial).
81. Berger v. Bierschbach, 201 Kan. 740, 443 P.2d 186 (1968) (plaintiff's petition alleged two causes of action, one seeking a court ruling to declare a deed an equitable mortgage, the other for slander of title; the court ruled that the deed was an equitable mortgage, but the court reserved jurisdiction to determine the second).
82. Harder v. Johnson, 147 Kan. 440 (1938) (after defendant was served, defendant filed a motion to require the petition to be more definite, but the petition was never amended, and the defendant didn't appear; judgment taken against defendant, and defendant waited too long to move to vacate the judgment).
83. Stark v. Chitwood, 5 Kan. 141 (1869): "Referring to the pleadings and record, it will appear that this suit was in the nature of an action for slander of title and would seem to have been so regarded by all the parties thereto." *Id.* at 144. *See also* Carbondale Inv. Co. v. Burdick, 67 Kan. 329, 72 P.781 (1903): "The theory of counsel … at least in this court, is that the allegations in relation to the premature attempt to foreclose the mortgage … must be regarded as an action for 'slander of title.'" This is the only time the case mentions slander of title.
84. In re Huffman 315 Kan. 641, 509 P.3d 1253 (2022). *See* note 32 above.
85. Nelson v. Hedges, et al., 5 Kan.App.2d 547, 619 P.2d 1174 (1980). The case mentions slander of title only once and decides the damages issue based on K.S.A. 55-202, which deals with failure of lease owners to execute releases.
86. Yount v. Hoover, 95 Kan. 752, 149 P. 408 L.R.A. 1915F, 1120 (1915) (citing *Stark*, note 18 above).
87. RMMA Operating Co., Inc. v. Barker, 47 Kan.App.2d 1020 286 P.3d 1139 (2012)
88. Northern Nat. Gas Co., v. ONEOK Field Services Co., 296 Kan. 906, 913, 296 P.3d 1106, 1112 (2013).
89. Section 513 (a)(4) provides for a two-year period for "[a]n action for injury to the rights of another, not arising on contract and not herein enumerated." For "unspecified real property actions", Section 60-507 makes the period 15 years in cases for "the determination of any adverse claim or interest therein, not provided for in this article" The relevant statute for slander of title could be Section 60-511, which provides a 5-year period to file "[a]n action for relief, other than the recovery of real property not provided for in this article."
90. 23 Kan. App. 2d 8 (1996); *see* Section III.C.2.a., above.
91. 2017 WL 5507943 (unpublished opinion of the Kansas Court of Appeals).

92. Dwell v. Home Realty & Inv. Co., 134 Kan. 520, 7 P.2d 522 (1932) ("[T]he slander was a continuing one and necessarily was being made at the time of the negotiations … .", at p. 526; the case is described above in Section III.C.1.b).
93. LaBarge v. City of Concordia, 23 Kan.App.2d 8, 927 P.2d 487 (1996) ("In our view, the statute of limitations began to run on the date the plaintiffs discovered that their title had been slandered." at p.19 & p. 494 (citing *Dwelle*), case described above in Section III.C.2.a.). In a 1985 unpublished court of appeals decision, the court cited *Dwelle* in stating that "an action based on a slanderously recorded document is a continuing slander of title, not barred by the passage of one year following recording." *See* Branine, Inc. v. McCoy, 1985 Kan. App. LEXIS 1142, 702 P.2d 946 (1985) (unpublished).
94. K.S.A. 58-3402(f).
95. K.S.A. 58-3403.
96. K.S.A. 58-3402(f). The original act set the time at 40 years, but the 1984 legislature shortened the time to 25 years (Ch. 206, Sec. 2, Ks. Session Laws 1984).
97. K.S.A. 58-3404(b), -3406 & -3407.
98. K.S.A. 58-3407.
99. K.S.A. 58-3405.
100. K.S.A. 58-3408 (b), (c), & (d).
101. K.S.A. 58-3410.
102. Id.
103. K.S.A. 2022 Supp. 58-4301 and -4302. *See also*, Mandi R. Hunter & Stephanie L. Hammann, *Narrowing the Scope of the Kansas Fraudulent Lien Statute*, 90(5) J. Kan. Bar Assoc. 48 (Oct. 2021).
104. Reports of the Special Committee on Judiciary to the 1998 Kansas Legislature, Interim Special Committees, Defining New Crimes Regarding Certain 'Common Law' Activities, and Examining the Activities of Militia or Common Law-Type Groups Such as the Freeman and the Christian Court, at 8-3 to 8-4. Bogus filings of this type are often referred to as "paper terrorism," defined in Black's Law Dictionary (11th ed. 2019) as the "fraudulent use of Uniform Commercial Code filings to harass public officials and government employees…"
105. K.S.A. 2022 Supp. 58-4302(e)(2).
106. K.S.A. 55-202.
107. K.S.A 2022 Supp. 58-2309a.
108. Thanks to our editor Diana Stanley for raising this point.
109. Hall v. Goldsworthy, 136 Kan. 247, 249, 14 P.2d 659, 660 (1932).
110. *See* notes 26 & 27, above, citing authority for listing "intangible things" as property rights subject to protection against slander of title: "*c. Legally protected interests susceptible of disparagement.* Any kind of legally protected interest in land, chattels or intangible things may be disparaged if the interest is transferable and therefore salable or otherwise capable of profitable disposal. It may be real or personal, corporeal or incorporeal, in possession or reversion. It may be protected either by legal or equitable proceedings and may be vested or inchoate. It may be a mortgage, lease, easement, reversion or remainder, whether vested or contingent, in land or chattels, a trust or other equitable interest. It may be a patent right, a copyright or the right to use a trademark or trade name. It may be intangible property, whether represented and embodied in a document, negotiable or otherwise, or consisting of a simple debt or other cause of action. This does not purport to be a complete catalogue of legally protected interests in land, chattels and intangible things capable of disparagement. There may be other interests recognized by the law of property that are salable or otherwise capable of profitable disposal and to which the rule stated in this Section is therefore applicable." Restatement (Second) of Torts § 624, Comment c (1977).
111. 94 Cal.App.2d 673 (Cal. Ct. App. 1949), discussed in Section III.A.
112. Restatement 2d of Torts § 623A, illustration 6.
113. K.S.A. 60-2202: "Any judgment rendered in this state by a court … shall be a lien on the real estate of the judgment debtor within the county in which judgment is rendered … ." This section applies to any final money judgment, regardless of the type of case.
114. *Id.* The section continues: "… The lien shall be effective from the time … [of filing the petition] … not to exceed four months prior to the entry of judgment." We say "potential lien" in the text because one could describe the judgment lien at any given time as inchoate until the final judgment is rendered. But the inchoate lien would still be a cloud on the title.
115. *Id.* The section says, "shall be lien on *the* real estate," [emphasis added] implying that it covers all real estate owned by the judgment debtor.
116. Stark v. Chitwood, 5 Kan. 141 (1869), *see* note 18, above: "If what the defendant did was in pursuance of a *bona fide* claim which he was asserting honestly, and especially if he was acting under the advice of counsel, though without right, he will not be liable." *Id.*, at 144.
117. Am.Jur.2d *Contracts* §524: "Rescission … is the unmaking of a contract … ." Thus, to be valid and effective, a rescission must be agreed to by both parties, and a mutual agreement requires the same elements as a legal contract. *See also* Restatement 2d of Contracts, § 283(1) Agreement of Rescission: "(1) An agreement of rescission is an agreement under which each party agrees to discharge all of the other party's remaining duties of performance under an existing contract. * * * Comment: *a. Nature of agreement of rescission.* * * * "The term 'agreement of rescission' is used in this Restatement to avoid confusion with the word 'rescission,' which courts sometimes use to refer to the exercise by one party of a power of avoidance (§7)." Section 7 states that "[a] voidable contract is one … part[y] ha[s] the power … to avoid the legal relations created by the contract … ."
118. Am.Jur.2d *Equity* § 36. Contracts as subjects of equitable jurisdiction, generally. "* * * [While] equitable considerations generally cannot intervene in a pure breach-of-contract action … [t]here are … matters that arise under contracts that are cognizable in equity … [such as] mutual mistake, inequitable conduct, misrepresentation, impossibility, [or] fraud … ."
119. *Id.*, §520: If a contract has no definite duration, "the law implies a reasonable time."
120. Restatement 2d of Contracts §90: "(1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. ***"
121. Section III.B.2.