

Exam:

Exam Form:

C2502

Response

1. Did Carlos take title to the house subject to Lender's mortgage?**Allison's Mortgage Loan****Mrtgage**

Mortgage is a financial tool to have a loan. A lender has lien of the title of the property and the title would pass to the borrower upon the completion of the payment.

Here, Allison boutht a house and proceeds of a mortgage loan made by Lender. Allison's mortgage is valid and she owns the house; however, the loan is not recorded by the Lender, which might be an issue as proceed.

Lender's Recording

Recording is the action that a person or an entity file for deeds, titles, contracts, or any official contract to the state, so that it makes accessible for other people and enforceble.

Here, the lender recorded the mortgage (two weeks before Barry's recording). Therefore, the lender properly recorded the mortgage.

Allison to Barry

A new owner can record the title to the state. A subsequent buyer is responsible for the existing mortgage only if the deed indicate "assumed the mortgage." "Subject to the mortgage" is not sufficient for the subsequent buyer to be responsible.

Here, he recorded his deed, which does not contain any language about the Allison's mortgage on the property. Thus, he may not liable for the mortgage under this theory.

Bona Fide Purchaser

If a subsequent purchaser is bona fide purchaser, the person may not be liable for the mortgage. Bona fide purchaser means a person who bought a property without notice with value. Race-Notice refers to a bona fide purchaser, who recorded before other parties will win.

Notice refers to three types: actual (express words), implied (observed), or record (recorded).

Here, Barry is not a bona fide purchaser, because he had a record notice. The Lender recorded the deeds with mortgage two weeks before Barry record the deed.

Although Barry may argue Barry and Allison discussed earlier than the Lender, which may result Barry has a priority; however, this argument is not persuasive. The facts show the Lender recorded the deeds before Barry completed the recording.

Thus, Barry had notice and not a bona fide purchaser.

However, he is not responsible for the mortgage because under the theory of Covenant (discussed below), they must have intent to pass the uncubrance to the subseuent purchaser. It is missing here.

Barry to Carols

Bona fide purchaser see rule above

Norice see rule above

Recording see rule above

Here, Carol is not a bona fide purchaser because she also had a recording notice. The Lender has already recorded the

deed.

Although Carol may argue she bought the house from Barry and Carol may put into his shoes, however, this argument is not persuasive because Barry is not a bona fide purchaser.

Responsibility of the Mortgage

Implied Covenant for burden

Implied covenant for burden, such as mortgage, required, writing, intent, touch and concern, horizontal and vertical privity to pass burdens to the subsequent purchaser.

Here, Carol does not have a writing to show the mortgage is passed, Carol and Barry (Barry and Allison also) do not have the intent to pass the mortgage, Carol has no benefits from the land, Carol may have Horizontal privity but without the knowledge of the mortgage.

Therefore, Carol is not liable for the mortgage.

2.What claim(s), if any, does Carlos have against Barry under the general warranty deed?

General Warranty Deed

A person has a general warranty deed when the deed contains current warranty of seisin (the owner of the property), right to transfer (the owner has proper right to transfer the property), and free from encumbrance, and future warranty of void warranty, quiet enjoyment (the owner or others do not interfere the property), protect the ownership, and future assistance if there is any issue with the deed.

Here, the warranty is defected because: Barry has seisin because he was an owner of the land. Barry had right to transfer because he was an owner and no facts describe he cannot to transfer). However, the deed is NOT free from encumbrance. The deed has unpaid mortgage, which Barry could be able to find out at the state office to search the recorded deed by the Lender. Barry did not have a valid warranty because of the mortgage. However, Barry does not interfere Carol's property, and Barry is obligated to defend Carol's property.

Therefore, the warranty deed from Barry to Carol is defected and she may have claim against Barry to fix the defected deeds.

3.Is Barry liable to Carlos for the value of the air conditioning unit?

The issue is whether the air conditioning unit is fixture.

Fixture

A fixture in private property (not commercial property) refers to the things attached to the property and the subsequent owner may not remove. For a court to determine whether it is a fixture or a item, a next owner can remove, a court analyze the following: how to attached to the property, what damages may occur if it is removed, what intent the original person who attached the item, had, and common usages in the community.

Here, the airconditioning unit seems like part of the property because Allison used the screws to a bracket mounted through an exterior wall. This seems like a major remodeling not, just a simple work. Also, if it removed, it will cause damages because it is attached the cabinet from outside. It may be common for the community to have an airconditioning unit attached to the house because Allison installed an airconditioning unit to improve ventilation in the kitchen. Usually kitchen needs a ventilation to avoid excessive smoke and air circulation.

Although Barry may argue he bought the property and the unit is part of house; thus, he could remove his property from the house; this argument is not strong. He, of course, remove his personal property, but he could not take the part of house itself.

Therefore, Barry is liable to Carols for the value of the air conditioning unit.

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3. Is Barry liable to Carlos for the value of the air conditioning unit? The issue is whether the air conditioning unit is a fixture. A fixture in private property (not commercial property) refers to the things attached to the property and the subsequent owner may not remove. For a court to determine whether it is a fixture or a thing a next owner can remove, a court analyzes the following: how it is attached to the property, what damages may occur if it is removed, what intent the original person who attached the item had, and common usages in the community. Here, the air conditioning unit seems like part of the property because Allison used the screws to a bracket mounted through an exterior wall. This seems like a major remodeling job, not just a simple job. Also, if it is removed, it will cause damages because it is attached to the cabinet from outside. It may be common for the community to have an air conditioning unit attached to the house because Allison installed an air conditioning unit to improve ventilation in the kitchen. Usually a kitchen needs ventilation to avoid excessive smoke and air circulation. Although Barry may argue he bought the property and the unit is part of the house; thus, he could remove his property from the house; this argument is not strong. He, of course, can remove his personal property, but he cannot take the part of the house itself. Therefore, Barry is liable to Carlos for the value of the air conditioning unit.