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1) Darla's Property Interests in Lot B

Fee Simple Subject to Condition

A fee simple is an interest in land that is conveyed by the grantor to a grantee. A condition may be placed on the transfer of a fee simple where a violation may cause the interest to vest to a third party. Such conveyances may be permissible when they do not violate the Rules Against Perpetuities (RAP) which hold that a right to a land must be capable of vesting within 21 years of the conveyance. When a condition violates RAP, the fee simple may revert back to the grantor as opposed to vesting in the third party.

Here, Olivia owned Greenacre in a fee simple. The parcel consisted of two lots that were next to each other as Lot A and Lot B. Olivia conveyed Lot B to Barry as a gift 60 years ago subject to a condition. Olivia gifted Barry Lot B with the condition that Barry's use be restricted to his heirs, successors, and assignments. Olivia restricted the Lot B use to residential use only. If Barry fails to use the land for residential use only, the Lot B parcel will vest in a fee simple to Zach or his descendants. Although Darla gifted the land to Barry, this conveyance will be deemed to be a fee simple because the absence of any other specification in her gift will not be able to rebut this presumption. The condition is the only additional clause in this conveyance and will not change the nature of the conveyance, but rather impose a restriction only. Thus Barry owns the land in a fee simple subject to violation of the covenant described by Olivia.

Therefore, Barry has an interest in Lot B and owns it as a fee simple subject to condition.

Death of Zach - Violation of RAP

Here, Zach died after the conveyance of the property. However, Zach did not have any children at the time of the conveyance. Because it may not have been possible for Zach to have children within 21 years of the conveyance to Barry, the condition may violate RAP. Darla may not have any interest in the land because Zach's death would have extinguished her rights in the land since his death would have extinguished the rights.

Therefore, Darla would not have any rights in the land.

Sale to Developer

Here, Barry sold his interest in the fee simple to developer four months ago. Thus, Barry or his heirs lived on the land for decades and did not personally violate the condition placed on the land by Olivia when she granted him the parcel. Barry is permitted to sell the land because there is no restriction on this and any restriction would not be permissible under public policy. Barry validly sold his interest to Developer.

Disclosure of Encumbrances

As a seller, Barry has a duty to disclose of encumbrances on the land that the seller is reasonable aware of.

Here, Barry was aware of the restrictive covenant in place and thus would likely have been required to disclose of this at the time time before closing. Harry's failure to disclose may make him liable for any encumbrances because this would be a breach of the warrant of marketability.

Restrictive Covenant

A covenant expresses the ability or inability to do something. A restrictive covenant prohibits a grantee and their heirs from engaging in specific activity. For any covenant to be valid, it must touch and concern the land, and there must be horizontal and vertical privity.

Here, Barry received Lot B subject to a condition. This condition is a restrictive covenant because it restricts Barry's use of the land to residential use only. This restriction is described in the conveyance clause that Olivia presented to Barry. Thus, this restriction is on Lot B only and this specific lot will be restricted to residential use only pursuant to Olivia's valid conveyance. However, Darla's rights would not be enforceable as mentioned above. Developer would have had reasonable inquiry notice of this restriction since it was validly recorded.

Therefore, there is a restrictive covenant on Lot B.

Touch and Concern

A restrictive covenant touches and concerns the land when the covenant is directly regarding the parcel of land.

Here, Olivia's restriction on land use touches and concerns the land because the restriction specifically pertains to lot B. As mentioned above, Greenacre consists of Lot A and Lot B, however the restriction will only be placed on Lot B because of the conveyance. This touches and concerns the land because the restriction is directly on Lot B and prohibits use of the land to any other purpose.

Therefore, the restriction touches and concerns the land.

Vertical Privity

Vertical privity exists when there is privity of contract to the original agreement that created the restrictive covenant. The party must be in privity with the restrictive covenant in order to be enforceable.

Here, there is vertical privity because the restriction was discoverable through inquire notice since the document was recorded. Thus, developer in in privity with the original greater and the creation of the commercial building will be void.

Horizontal Privity

Horizontal privity exists when the restrictive covenant is present between the party and the original grantor. Generally, neighboring parcels do not have horizontal privity because they are separate parcels and would not be in privity with each other absent an agreement.

Here, there is horizontal privity because it involves the land.

Therefore, the Developer may not create a commercial building on Lot B.

Therefore, the restrictive covenant runs with the land and Developer would be reasonably aware of this.

2) Simon's Claims

Easement Appurtenant

An easement provides a person with the right of entry on to another's land. Easements may be made orally as there is no Statute of Frauds requirement holding that an easement may only be valid in writing. Thus easements may be created orally or conveyed through a deed, land sale contract, or written agreement.

Here, an easement exists because Lot A is separate from Lot B and requires an easement to run through the land. Lot A does not have access to any public highway so the easement runs with the land. Simon regularly uses the dirt road and may enforce the easement because it runs with the land and sale of Lot B does not extinguish the right.

Therefore, Simon has a valid easement and should be able to use the land.

Easement by Necessity

An easement by necessity is created when a parcel is landlocked from a public highway or access point. An easement by necessity may be extinguished when the force creating the need for the easement is destroyed such as the creation of other public access roads.

Here, Simon's easement is prescribed by necessity. He needs to use the land to access a public road. Thus, this type of easement may only be destroyed when the need to the easement no longer exists. Simon still needs the easement despite the sale of the land. He may enforce the easement and continue to use it pursuant to his original agreement with Barry.

Therefore, Barry is entitled to use the easement and it the right would not be extinguished.

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