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**1. What claims and remedies, if any, may Reed reasonably pursue against Linda?**

**Fee Simple**

A fee simple vests complete ownership to a grantee which in turn affords them a life estate. Life estates are devisable and descendible.

Here, Linda received received a life estate from Oliva because Oliva bequeathed her entire house in Havenwood to her. Due to the fact that Linda has a life estate she is permitted to devise her interest to a different party that would cut off Reed's interest. However, that is not applicable in this matter because Linda remains in possession of the property and it is still subject to remainder for Reed.

Thus, Linda owns a life estate in the house in Havenwood.

**Fee Simple Subject to Remainder**

A fee simple subject to remainder indicates that a grantee has an interest in property that is not subject to any conditions or the possibility of reverter, they're guaranteed this interest unless an the previous grantee devises their life estate.

Here, Reed has property rights in the house in Havenwood because he has a remainder that has not been devised by Linda as of yet. Additionally, Reed's interest will remain intact and will not be subject to any conditions in order for him to access to the home because Linda did not place any conditions such as Reed finishing college, getting married, or anything else.

Thus, Reed has an interest in Havenwood.

**Remainder Interest Holder's Rights**

A grantee that holds a remainder interest may pursue legal right against the current grantee if they are not following the grantor's conveyance wishes, they are not paying taxes on the property, making mortgage payments, committing waste, or causing the property to drop in fair market value.

Here, Reed may pursue legal rights against Linda because he has a remainder interest and will have a life estate once it passes to him. Reed will argue that Linda is currently committing waste because she cute down valuable mature trees and privacy hedges to make room for parking. Additionally, Linda is committing waste by reducing the square footage of the house from 5,000 square feet to 2,000 square feet which is a significant reduction of land use. Linda might argue that she was permitted to make these changes and they do not constitute waste because she received a construction permit to renovate the house and a license to operate her florist shop. However, this argument will not suffice because she did not inform Reed that she was making these changes and whether she received a proper legal permit and license she still committed waste on the property which entitles Reed to pursue remedies against Linda.

Thus, Reed may pursue a claim against Linda due to her committing waste on the property.

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### **Specific Performance**

The remedy of specific performance is applicable when there land is at issue because land is unique. In order to pursue a remedy for specific performance the plaintiff must show: 1) the contract has clear and certain terms, 2) there is no adequate legal remedy, 3) mutuality of performance, 4) enforcement from the bench, and 5) no defenses.

Here, Reed may pursue the remedy of specific performance against Linda in order for her to halt her florist shop operations because the issue is pertaining to land, the house in Havenwood. The contract has clear and certain terms because Oliva's recorded conveyance to Linda and Reed clearly stated that the house is to be used for "residential purposes." There is no adequate legal remedy because Reed cannot sue Linda for expectation damages or compensatory damages as he did not pay for the house it was conveyed to him. There is mutuality of performance because Reed holds a remainder interest in the property and is entitled to pursue his rights and Linda is entitled to a life estate that is subject to terms stating that it must be used for residential purposes. Enforcement is achievable because a judge may oversee that Linda has halted her florist shop operations and is no longer committing waste on the property. Finally, there are no defenses because Linda may operate a florist shop out of the home when it clearly states that it must be used for residential purposes.

Thus, Reed may pursue the remedy of specific performance.

### **Laches**

Laches is an applicable defense for a defendant when the plaintiff waited an unreasonable time to pursue an equitable remedy.

Here, Linda will not be able to bring the defense of laches because no facts indicate that Reed waited an unreasonable time to pursue the remedy of specific performance.

Thus, Linda may not use the defense of laches.

### **Unclean Hands**

Unclean hands is an applicable defense for a defendant when the plaintiff has committed any form of fraud themselves.

Here, Linda will not be able to bring the defense of unclean hands because no facts indicate that Reed committed any form of fraud pertaining to his remainder interest.

Thus, Linda may not use the defense of unclean hands.

### **Temporary Restraining Order**

A plaintiff may file a motion for a temporary restraining order (TRO) if: 1) they have a likelihood of success on the merits, 2) they will suffer an immediate irreparable harm, 3) a showing of balancing the hardships, and 4) enforcement is feasible. A TRO is valid for 14 days and no hearing or notice is required.

Here, Reed may file a motion for a TRO because he has a likelihood of success on the merits as Linda is clearly violating a clear and certain term of the deed that it was only to be used for

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residential purposes and she is using it for a business. Reed may have difficulty proving that he will suffer an immediate irreparable harm because he is a remainder interest holder and does not have full access to the estate as of yet, however, Reed will argue that because Linda continues to commit waste on the property and has already made significant changes she must be halted before she commits further waste. Reed will show a balancing of the hardships because Linda does not need to operate a business out of the house in Havenwood as she can easily rent out a space in a different place in town. Additionally, Linda does not need the house in Havenwood to live in because she already owns a home. Finally, enforcement is feasible because a judge may easily oversee if Linda has halted her business operations.

Thus, Reed may pursue a TRO.

### **Preliminary Injunction**

A preliminary injunction is filed after a TRO which requires a hearing and notice. A plaintiff may file a motion for a preliminary injunction if: 1) they have a likelihood of success on the merits, 2) they will suffer an immediate irreparable harm, 3) a showing of balancing the hardships, and 4) enforcement is feasible.

Here, Reed may pursue a preliminary injunction after the TRO expires and before the court can fully hear the case because as analyzed above he has met every requirement pertaining to a preliminary injunction. However, Reed must ensure that Linda receives a notice and there is a hearing on this matter because that is required to have a successful preliminary injunction.

Thus, Reed may pursue a preliminary injunction.

### **Permanent Injunction**

A plaintiff may file a motion for a permanent injunction after a TRO and preliminary injunction if the harm continues and they can show that it is necessary in order to prevent the defendant from starting operations again.

Here, Reed may file a motion for a permanent injunction after the TRO and preliminary injunction if Linda does not stop committing waste on the property because there is a possibility that after both equitable remedies expire she will want to continue building her florist shop. Reed will also be able to show that a permanent injunction is necessary because Linda might use the fact that she has a permit and license from the city to renovate the house and to operate her business.

Thus, Reed may pursue a permanent injunction.

### **Constructive Trust**

Property may be placed in a constructive trust if a defendant is in wrongful possession of the property and the property will grow in the trust. The court may order the property to then be sold and the proceeds be given to the plaintiff.

Here, Reed will attempt to argue that the house in Havenwood should be placed in a constructive trust because Linda is committing waste and not following the condition placed on the conveyance. However, this argument will not stand because Linda was not in wrongful possession of the property because it was legally conveyed to her by Oliva.

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Thus, Reed may not pursue the equitable remedy of a constructive trust.

### **Equitable Lien**

An equitable lien may be placed on a property if the defendant came in wrongful possession of the property and it must be sold to give the proceeds to the plaintiff. If after the sale of the property there is a deficiency then the defendant will be personally liable to fulfill the deficiency.

Here, Reed may not pursue a equitable lien on the property because Linda did not come in wrongful possession of the property through fraud, misrepresentation, or a unilateral mistake.

Thus, Reed may not pursue the equitable remedy of a constructive trust.

### **Overall Conclusion**

For these reasons, Reed has a claim against Linda because he is a remainder interest holder and she is committing waste on the property as well as not following the condition placed on conveyance. Reed may reasonably these equitable remedies: specific performance, TRO, preliminary injunction, and permanent injunction.

## **2. Were the developer's residential deed restrictions valid?**

### **Restraint on Alienation**

When a grantor is conveying property they must not put a restraint on alienation that it must be used for specific reason or to refrain from making the property more profitable and marketable. A restraint of alienation is never a valid restriction on property.

Here, the developer placed a restraint on alienation because they stated that the house may only be used for "residential purposes." This is a restraint on alienation because the developer is not letting Linda or Reed use the property as they see fit or allowing the property to grow as the community is changing where the house is located is changing around. Furthermore, this restriction is not valid because a grantor must never put a restraint of alienation as makes the property unmarketable and depreciates in value.

Thus, the developer's residential deed restrictions are not valid.

## **3. Will Nancy succeed in her claim against Linda?**

### **Variance**

A variance may be granted to a lot owner that removes a restraint on alienation and permits the property to operate for a different purpose than what is stated in the recorded deed.

Here, Linda will argue that she was granted a variance and may continue to operate her business as she sees fit because a restraint on alienation was removed from her residential covenant. Nancy may attempt to argue that this variance is not equitable because her and other lot owners still operate their homes within the wooded lots for residential purposes. However, this argument will likely not stand because Linda will be able to prove that other lot owner has been granted variances as well because five other business have been changed from residential properties to coffee shops, clothing stores, and a dry cleaner. Additionally, Linda will

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argue that because they are 15 lots on the property and now only 10 of them are being used for residential purposes the nature of the community is changing. Finally, Linda will argue that these changes have took place over the span of 10 years which indicates that Nancy has not complained about the other business and she has not right to complain about this new one now.

Thus, Nancy will not succeed in her claim against Linda.

Question #1 Final Word Count = 1980

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