Exam:	[redacted]
Exam Form:	C2502

Response

1. Did Carlos take title to the house subject to Lender's mortgage? Discuss.

Mortgage subject to

A mortgage subject to is when the buyer takes the home, but is not subject to the original mortgage.

Here, there is nothing that shows carlos took the house subject to the mortgage.

Thus Carlos did not take the house subject to the mortgage.

Mortgage assumed

A mortgage that is assumed is when a buyer takes the home, and it the mortgage is assumed meaning they also have to pay the mortgage.

Here, Carlos did not assume the mortgage either, nothing tells us he assumed responsibility after his purchase from Barry.

Original Sale between Barry and Alison

Purchase money mortgage

A purchase money mortgage is a loan taken out to pay off the home, normally it is top priorty and has to be paid off first.

Here, we have a purchase money mortgage between Alison and the original lender because she borrowed money through a loan from lender to pay off the home she bought.

Thus, Lender has a PMM and has to be paid off fully first.

Issue with Lender not recording its mortgage.

Race Notice jurisidiction

A race notice jurisdiction means that whoever records first, is the one who normally wins title. Also known as "first in time first in line."

Here although Alison sold to Barry, lender failed to record its mortgage and as such the proceeds were not enough to satisfy the mortgage. However Barry is going to argue that Lender's failure to record is because of their own negligence and as such, he should have full title to the home from Alison regardless because he recorded first.

Lender is going to argue that Barry took that home subject to the mortgage, and by not allowing them to foreclose the home he breached.

Thus, this argument would likely fail since we are in a race notice jurisidiction since Barry recorded first, he is able to keep full title. The lender could try to come after alison, but he cannot come after Barry.

Carlos's argument

Bonafide Purchaser

A purchaser who is a bonafide purchaser is a purchaser who is unaware there is a mortgage or a conveyance that makes his title invalid. They can argue that it should not be invalid because they were unaware of the conveyance, had they known they would not have bought the home. Bonafide purchases are protected from the lenders coming after them or from having to give up their title if they did not know of the issue.

Here Carlos is going to argue that regardless if Barry is at fault for the loan to Lender, he should not be held liable for the mortgage because he is a bonafide purchaser. Carlos took this home without knowing that the lender's mortgage existed when the sale was finalized.

The lender is going to argue that Barry and Carlos both had constructive notice of their mortgage since the mortgage had been recorded weeks earlier.

Thus the court would likely find that Carlos is a bonafide purchaser and he is not subject to the original mortgage taken out by Alison.

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

General warranty deed

Normally when a purchaser takes title to a property it comes with a general warranty deed which states that the original seller will defend the purchaser against other encumbrances or against legal actions for the title.

Breach of contract

A contract is when their is an agreement between two people that has consideration and acceptance. A breach is when one party does not uphold their end of the bargain. It could be material or minor, material is if the other party did not substantially perform where as in minor if the other party did substantially perform.

Here Carlos can bring a claim for breach of contract against Barry under the general warranty deed because Barry left Carlos to protect himself against lender even though Barry is the one who gave him the title. Carlos had already paid Barry and completed his end of the bargain and Barry gave him a general warranty without knowing if it was a good title given Lender's interest in it.

Thus, Carlos can bring a claim for breach of contract since he substantially performed and Barry refuses to help him litigate against the Lender.

<u>Recission</u>

Recission is when the court finds the contract was made with mutual mistake meaning both parties were mistaken to the terms, the court can rescind the contract.

Here, Carlos is going to try and rescind his contract and his purchase with Barry because Barry gave him a general warranty deed without making sure if it was valid. Although Carlos is a bonafide purchaser against lender, he is also a bonafide purchaser against Barry since he did not know the home he bought was subject to a mortgage.

Thus, the court would likefy find that the contract can be rescinded.

<u>Constructive trust</u>

When a property is wrongfully obtained by the defendant by fraud or deceit the plaintiff can ask the court to put it in a constructive trust. Normally used when the property goes up in value.

Here Carlos can ask the court to put the property in a constructive trust because the home had already gone up in value and Barry sold it at a profit.

Thus, the court would likely find that they should put the home in a constructive trust.

<u>Equitable lien</u>

An equitable lien is a remedy used for the plaintiff to obtain a lien on the property unwrongfully obtained by the defendant. Normally courts use this to prevent unjust enrichment.

Here, Barry sold the home to Carlos and made a signficant profit off of it. By doing so he was unjustly enriched if he knew the property was not fully paid off to the lender. However a constructive trust seems better as the property has increased in value.

Thus, the court would likely allow Carlos to bring a claim for an equitable lien but would probably award a constructive trust instead.

Defenses by Barry

Latches

When a party delays in bringing lawsuit latches can be used by defendant meaning they waited to long to bring lawsuit.

Here, Barry could argue that latches apply because Carlos did not bring suit immediately.

However, the court would likely find that Carlos brought this suit with sufficient enough time. After Lender went after Carlos, Carlos went after Barry, thus latches would not apply.

Unclean hands

When Plaintiff also acted in bad faith defendant can raise unclean hands defense.

Here Barry could argue Carlos acted in bad faith. However as previously stated this argument would likely fail given the fact that Carlos was a bonafide purchaser and is only asking Barry to uphold his end of the bargain.

Thus, there is no unclean hands.

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

Fixtures

A fixture is consider anything that can be removed from the property and is normally can be considered personal property and can be removed.

Here, Carlos is going to argue that this is not a fixture and that Barry owes him the value of the air conditioning because it is a part of the house. Carlos would emphasize that Alison installed this air conditioner and it is screwed to a bracket mounted through the exterior wall. Barry is going to argue that this is a fixture since it can be removed.

Thus, the court would likely find that this is not. a fixture and Barry owes Carlos the reasonable value for the AC.

Barry Defense of Parole Evidence Rule allows him to remove fixture

Barry could argue that since the contract of sale is silent as to the fixture he can just remove it.

Parole Evidence Rule in regard to court.

Parole evidence rule states that the contract is fully integrated and prior oral statements cannot come in, unless there is ambiguity.

The court would use the parole evidence rule to see if they meant to ommit the terms regarding the fixture or the A/C. The court would likely find that there is some ambiguity and would look at whether the original purchaser Alison meant for the home to come with the AC.

Here since Alison did not remove the AC when selling to barry it is likely that the AC was meant to be sold with the home.

Conclusion

Thus, the court would conclude that the contract is ambiguous and the AC should be left behind for Carlos and if not Barry must pay him the reasonable market value for it.

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Response
alison buys house and lot with mortgage loan from new lending corp.improves ventilation air conditioning fixture?barry offers to buy house @ market pricealison and barry agree on sale, lender doesnt record mortgage until after barry records deed, then the proceeds of sale do not satisfy the mortgage. lenders mortgage not satisfied.   BFP?barry sales to carlos, didnt know of lenders mortgage, BFP?mortgage had been recorded weeks earlier notice?fixture?for air conditioning unit?