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QUESTION NO 1

What Claims and Remedies, if any, may R reasonably Pursue Against L?

Life Estate

A life estate is a grant of property that will remain to that designated person for their life time; and during such time, the life tenant must only use the property for how it is intended to be used and cannot commit waste; but must pay the property taxes and keep the property fairly maintained for the future remainder interest.

Here, the interest transferred to L is for the remainder of her life and upon her death, the land then transfers to R. There are certain responsibilities that L must adhere to as a life estate holder and cannot use the property in such a way that destroys the intended use of the property.

Here, when O deeded the H house to L, it included a restrictive covenant by the Developer that transferred to O and will now transfer to future title holders; that included a deed that stated "residential purposes," this term indicated that during L's lifetime at H, she cannot commit any type of waste; and even if not implied in the deed; a life tenant must not as L did here, cut down valuable mature trees and privacy hedges to make more room for parking for her florist shop. This is not the intent of the property, but to use for residential only; which has now created a problem for R, as this is his future home and L is destroying it.

Thus, upon L's death, the home is intended to transfer to R and he should not receive a flower shop, but a home, Havenwood as it was relatively intact at the time of conveyance.

There is a valid life estate to L.

Waste Committed on Life Estate Property

Waste, whether it is used to make improvements on a property, or where the use destroys the property, or even alters it in a way that is not compatible with the original use, there is waste committed by the life tenant.

Here, when L cut down the valuable mature trees and privacy hedges for a parking lot to make room for florist guests; this is an act of waste on H and will not be allowed unless there was some kind of permission given to allow the change. Moreover, reducing the 5,000 square foot area home to 2,000 is a great reduction of the living space and will cause L to be liable for the damages she created to R.

L will argue that she made improvements and that other businesses in the area are also doing the same; however, as a life tenant, and unless H was already being used as a florist shop, L may not take it upon herself to change the character of H.

L has committed waste on Havenwood.

Consequential Damages

Those damages which are certain to have flowed naturally from the alleged action and will be plead specifically where it can be directly traced to the harm; as here, the laches defense will apply, but the court may allow some recovery as for loss of value to her home because of the breach of restriction; or other types of damage that can be traced to N's complaint for relief.

Here, L will owe for all of the losses that she created by her destruction of the H. The value of the old trees, the privacy hedges, and the breach of the life estate agreement will all allow for R to recover for those damages. Also, it is likely that L will lose her ability to occupy H for her lifetime due to her actions. Thus, any past, present, and future acts that continue by L by her misuse of H will be calculated by the court and paid to R.

Special Damages

These damages are foreseeable and reasonably calculated to a money amount.

Here, if L is liable for special damages, R will need to specially plead for these and prove the damages caused by L's waste of the life estate.

Question No. 2

Were the Developer's Residential Deed Restrictions Valid?

Restrictive Covenant

A restrictive covenant is one that limits the use of the property and when transferred to a new landholder, that new person promises to adhere to the deed restrictions. At the time of the conveyance, it will depend on who transfers the property and how the relationship exists between the original deed holder and subsequent title holders.

Here, it appears that the developer transferred to each buyer, including O's that there a use of residential purposes only and when this deed was transferred to R, this restriction is binding since there is privity of estate between the developer and O, in addition to the other's who received title from the developer, the language will be deemed the same and all present and future owners must abide by it and the covenant will be thought to run with the land to future grantees, including L, a life estate holder.

Thus, the deed is a restrictive covenant.

Equitable Servitude

An equitable servitude requires that each be bound by the deed restrictions and if breached, a court of law may address a proper remedy. Since L has breached the covenant, there is a relief for damages.

The deed includes an equitable servitude.

Transformed Use

Where the use of the neighborhood has changed, the restrictive covenants on the land may be grandfathered into use, or changed by local ordinance.

Here, the five residential businesses that operate out of the homes, clearly not residential, are in breach of the developer's covenant; however, over time, this has naturally taken place and no other home owners have complained, it is likely that the changes in the subdivision are changing; however, when O transferred her deed; her language is binding on L, who cannot claim this defense of transformed use.

L will not succeed for the argument of transformed use of the neighborhood.

Question No. 3

Will N Succeed in her Claim Against L?

Violations of Restrictive Covenants

Here, R will make a claim that L is committing waste and that her waste of H has destroyed the property. R will need to seek a restraining order, or in the alternative seek relief for damages.

Permanent Restraining Order

In case of an emergency, the party will place a deposit in case the other side prevails, and the ask for a temporary stop on the action by placing a deposit and notice to the other party of the action. The court will stay the action to hear the case on its merits

Here, N will want to claim that L quit her actions and stop the florist business and N will need to request a temporary restraining order to do so.

Here, the adequacy of remedy is valid that N can stop L from running the florist and the court can maintain the action.

The court may also enforce the action as it is subject of law the courts can address.

Here, L will argue that she immediately has cut down the trees, cut down the privacy hedges and made room for the lot and made other improvements; however, L has breached the

covenant and will be estopped from further waste.

Moreover, L has another house she can use for her business; and R, now has no House but a florist shop, so the hardship favors R more than L who breached and now is liable toR.

L has not hardship other than what she created on her own by immediately ignoring the covenant of waste to the life estate and will not prevail. SHe will be liable to R for any damages for the reduction in square footage, the valuable trees, and the privacy hedges.

If R is succesfull in staying the order, the court will hear that matter and issue a permananent injunction to prevent L from operating the business, which is likely.

Defenses

Laches

Laches will be a valid defense against the plaintiff where the claim has taken an unreasonable amount of time before bringing forth the suit. As here, N pointed out that five other business were already operating out of five homes for over 10 years; and if N wanted to stop this before, she should have taken action several years prior to stop this claim by her of non-conforming use. Moreover, no other lot owners complained previously.

Although, N may argue that she either recently moved into the neighborhood, did not have notice of the restriction on the lots, and was unaware of any variance ordinances; however, so long as the chain of title kept in place as the transfer from the original developer of H for "residential purposes," N will have have notice, especially given the fact that these other businesses have developed within the subdivision.

N does not have a valid claim for laches.

Consequential Damages

Those damages which are certain to have flowed naturally from the alleged action and will be plead specifically where it can be directly traced to the harm; as here, the laches defense will apply, but the court may allow some recovery as for loss of value to her home because of the breach of restriction; or other types of damage that can be traced to N's complaint for relief.

L will argue that since it is way too late for the Court to order that all of these businesses cease; absent a 10th amendment intervention for conformity of the subdivision, it is likely that N will not receive much in damages, yet the court will evaluate this and determine, if anything what N may be entitled to.

However, the life estate restriction by O to L stated for "residential purposes" and L owed a duty to R to refrain from committing waste on the property as well as abiding by the restriction on the deed as it pertained to her neighbor, N as the restriction also benefits her. Even if the land use has changed to accommodate the needs of the neighborhood, the restriction by O to L is still valid and will apply to N.

Thus, L can seek damages for past, present and future harm caused by L's obtuse acts of

destroying H.

It is likely N will succeed in her claim.

Specific Performance

Here, H is unique and based on L's behavior, R may have a claim to end the life estate, have title to H in his name and claim for money damages since L has already transformed H.

Question #1 Final Word Count = 1761

END OF EXAM