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The court held that a prudent person purchasing a home would read the instruments by which he obtained title, or, if he could not read them himself, would ask a trusted colleague to read them to him.

Presumed Notice of Title Conditions**THIS ISSUE**

The Sixth Appellate District Court recently held that a home purchaser's receipt of his deed constitutes "actual notice" of the conditions of title to the property even if the buyer does not read the deed. That actual notice starts the statute of limitations for any claims based upon title to the property.

BACKGROUND

The owners of 22 single-family homes sued various defendants alleging fraud in the purchase of their homes. The plaintiffs had purchased through a low income housing program in Monterey County, and upon discovering later that their homes were subject to certain restrictions on their later sale, sued the County and various agencies involved in the sale of the properties. The plaintiffs alleged that they were misled regarding the resale potential of the homes they were purchasing, and that they did not receive adequate notice that there would be resale restrictions on title to their properties.

During development of the homes, the Monterey County Board of Supervisors approved development permits subject to 103 conditions. Among those conditions was Condition 99: "That all the units ... be affordable to very low, low and moderate income households" There was some litigation involving the approvals, resulting in a settlement affirming that Condition 99 "shall be a permanent deed restriction on the project parcels, and shall not be subordinated to any financing, encumbrance, loan, development agreement, contract, lease or other document." The county board of supervisors decided, among other things, that Condition 99 would be implemented by a deed restriction that would be recorded along with the final map.

The property owner then recorded a deed restriction with the Monterey County Recorder. The restriction quoted Condition 99 as the owner's covenant with the County.

All of the plaintiffs participated in the low-income housing program to obtain their properties and fully performed their obligations under their contracts, including the investment of their own time and labor in helping to build the properties. But the defendants did not disclose the existence of the deed restriction to plaintiffs before they invested their time and labor. The plaintiffs were not informed before purchasing their properties that they are required to sell them to "persons meeting unspecified income limits" for prices "well under their current fair market values"

The preliminary title reports given to all plaintiffs "at the time they purchased their property referred to Covenants, Conditions, and Restrictions, and Deed Restrictions of record, but the references did not describe any limits on the sale value of their properties, or the ability of Plaintiffs to encumber their properties for financing."

At the time the properties were sold, some of the deeds referred to the deed restrictions, incorporating those restrictions by reference. Other deeds did not mention the previously-recorded restrictions at all.

The plaintiffs sued, claiming that the sellers had a duty to disclose the conditions of title, including the deed restrictions. They alleged that they did not discover the deed restrictions until many years after their purchase of the properties because it was not until they sought to sell the properties that these restrictions became relevant. Thus, they said, having not read their deeds upon receiving them, and not having any other form of notice about these restrictions, the plaintiffs argued that they had a good reason for not bringing their lawsuit for fraud in a timely fashion.

THE APPELLATE DECISION

The court of appeal divided the plaintiffs into two categories: those who received "notice" in their deeds that there were restrictions on title, and those whose deeds did not make any mention of the restrictions on title. Having thus divided the plaintiffs, the court of appeal held that as to those who did not receive notice in their deeds – i.e. those deeds that did not incorporate the previously-recorded restrictions by reference – the plaintiffs might be able to show that they did not have any reason to investigate the conditions of title to their property and their lawsuits could go forward. They acted reasonably, according to the court of appeal, in not further investigating the conditions of title. The court further held that the general rule that a previously-recorded instrument provides notice to all subsequent purchasers did not apply in a case of fraud, so their fraud claims could go forward.

But as to those plaintiffs whose deeds *did* contain a reference to the previously-recorded restrictions on title, the court found that the deeds themselves provided "actual notice" to the plaintiffs of the restrictions on title, and, regardless of whether the plaintiffs read their deeds upon receipt, they were found to have actual knowledge of the contents of the deed. Their lawsuits, thus, were untimely because they had actual knowledge of the deed restrictions more than 3 years before filing their lawsuits.

Ironically, the court held that even as to those plaintiffs who could neither read nor speak English, the deeds gave them actual notice of their contents. The court held that a prudent person purchasing a home would read the instruments by which he obtained title, or, if he could not read them himself, would ask a trusted colleague to read them to him.

WHY IS THIS IMPORTANT?

It appears from this ruling that the court of appeal feels that a prudent home buyer would read his deed upon receipt. Not only would he read it, but he would ensure that he understood it. In the case

discussed here, the deeds did not by any means contain clear language informing the buyers that there were restrictions on title to their properties that would prevent them from reselling them in the future. Rather, the notice came only in the form of a reference to a previously recorded set of CC&Rs that themselves referred to a previously recorded instrument that affected title rights.

But the results were the same. Even though it is arguable that even a real estate lawyer or real estate agent might not have been able to decipher from the deeds that there were previous restrictions affecting title, the mostly-poor, non-English-speaking plaintiffs were nevertheless charged with knowledge of the contents of their deeds.

The lesson here is that since homebuyers will be charged with knowledge of the contents of their deeds, a wise homebuyer would, as the court of appeal held, read and understand the deed. And, of course, if there is any issue raised in it that might support a claim in litigation, that claim should be timely brought. In the case here, there was a three-year statute of limitations that began to run when the purchasers received the deeds that referenced the previously-recorded restrictions. Since more than three years passed before they discovered the restrictions and filed their suit, they were barred from recovery by the statute of limitations.

CONCLUSION

In light of this ruling, it would be prudent for real estate agents to recommend – in writing – that home purchasers review their deeds and seek professional legal advice if they have any questions about their contents.

NEXT ISSUE

Interpreting some terms in common forms used in residential purchase agreements in California.

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