

Business Law - Property

NAME

Institution

a. Joint Tenancy with Right of Survivorship**i. Issue**

Does Martin's interest in the Mountain property qualify as joint tenancy with right of survivorship?

ii. Legal position and application

Joint tenancy with the right of survivorship is created when the owners of such property intended it to be so. Thereupon, the right of survivorship can only be invoked by the deed creating the ownership. That means the courts may opt not to enforce the survivorship if the deed does not expressly or impliedly provide for it. According to Burke and Snoe (2008) ascertaining as to whether the ownership qualifies as joint tenancy and not tenancy in common is crucial when one of the owners opts to sever or change his/her interest. Further, if one of the owners no longer own his/her share in the land, then the other owners will equally share his/her property. Correspondingly as expounded by Reilly (2000) in the absence of such terms such as 'survivorship' each purchaser's share clearly indicate can be construed that they intended to create a joint tenancy.

Initially, the mountain property in which Martin has ownership was bought jointly by Peter, John, and Thomas. Unfortunately, those three are now deceased and depending on their deed joint tenancy with the right of survivorship can only be invoked if the deed that was used to purchase the property clearly indicates that the joint owners intended to create a joint tenancy.

b. Adverse Possession**i. Issue**

Is Otis claim under adverse possession valid?

ii. Legal position and application

Statutorily, for one to claim ownership of land through adverse possession in North Carolina, he/she must be in continuous ownership for a period of twenty years. Likewise, the claimant can assume ownership after seven years through the doctrine of ‘color of title’ (Galaty, Allaway, Kyle & Taylor, 2003). Nonetheless, other circumstances must be fulfilled for one to claim property through adverse possession (Galaty et al., 2003). Firstly, for those twenty or seven years, the claimant must have used the land openly and notoriously (Galaty et al., 2003). Secondly, the claimant must have used the property continuously for that period of time (Galaty et al., 2003). Thirdly, the claimant must have used the land without owner’s consent (Galaty et al., 2003). Fourthly, the purported use was exclusive and inconsistent from that of the owner (Galaty et al., 2003).

Otis has been in occupation of the Mountain property for twenty years Martin had abandoned the property. During this period Otis has used the land notoriously and openly. Identically, he has been in continuous use or occupation for those twenty years. Uniquely, Otis’ use of the property was not consented by Martin. Equally, during the twenty years of occupation otis used the land exclusively. Unfortunate for Martin, Otis has fulfilled all the statutory requirements for adverse possession, and thus his claim is valid.

c. Equitable priorities**i. Issue**

What is the fate of Andrew’s interests in regard to the impending foreclosure?

ii. Legal position and application

According to the principle of *nemo dat quod non habet*, one can only transfer the kind of title he owns (Moore, 2005). Markedly, if the transferor has a legal title that is what he/she

can transfer to the transferee. This position is critical when it comes to acquiring mortgages that have an equitable interest in them. Notably, mortgages do not transfer title *per se*, and they are only acted upon when the mortgagor defaults on the mortgage. Therefore, the mortgagor retains the equitable ownership of the property together with the right to redeem after settling the debt. Where there is equitable interest separate from the legal one, the equitable interest holder can acquire both the legal and retain the equitable title following the settlement of the debt under the doctrine of the equity of redemption (Turner, 2013).

Initially, Martin through his will had bequeathed Andrew the mountain property. Through this bequeath Martin surrendered his equitable ownership to Andrew and only retained the legal title. Later on, he took a loan in the form of a mortgage on the property of which he has defaulted triggering foreclosure. Nonetheless, Andrew as the equitable title holder has the right of redemption under equity if he desires to retain the property.

d. Eminent domain

i. Issue

Is the City Authority right to invoke the doctrine of eminent domain?

ii. Legal position and application

Notably, the doctrine of eminent domain is articulated in the Fifth Amendment of the constitution (Merriam & Ross, 2006). Remarkably, it states that public land must not be converted to public use without a justifiable compensation. The term justifiable compensation also acquires a broad interpretation as the value of land must be ascertained before eminent domain can be invoked. Similarly, the owner has a right to be reimbursed the costs incurred in the land such as taxes paid, and any other development costs incurred subject to tendering of documentation. Moreover, the property being appropriated must be for public use.

Conversely, the courts have assumed a broad interpretation in determining what public use entails as depicted in *Berman v. Parker* 348 U.S. 26, 32 -33 (1954) . As reasoned in the case of *Kelo v. New London*, 545 U.S. 469 (2005) the deployment of the word ‘public use’ must not be interpreted narrowly and literally.

Consequently, the invoking of the eminent domain by the City Authorities is only valid after justifiable compensation. Martin should be compensated at full market value. Likewise, the City Authorities should reimburse Martin for the costs incurred such as taxes and other development costs. As analyzed in *Berman* and *Kelo* the City authorities are right to invoke the doctrine of eminent domain.

e. Bona fide purchaser for value without notice

i. Issue

Does the buyer of Martin’s stolen car qualify as a *bona fide* buyer for value without notice?

ii. Legal position and application

Reiterating the *nemo dat* principle, a thief or a fraud cannot convey a better title to the transferee than that of the rightful owner. However, for a *bona fide* transferee to claim a better title his/, her conduct must be deliberated. Generally, it is difficult to determine actual notice if the transferor is a thief or a fraud. Thereupon, the transferee must satisfy the court that he/she undertook sufficient and reasonable inspection to establish that the property he/she was purchasing was not being fraudulently transferred (Bray, 2016).

Following the recovery of Martin’s car that was previously stolen by Benjamin, a dispute has ensued due to the fact that whoever is in possession claims that he legally bought the car. However, this claim may not be genuine unless the buyer confirms that he undertook

sufficient and reasonable inspection to determine that Benjamin was indeed the rightful owner.

Conclusion

By and large, Martin has the full ownership of the Mountain property despite buying it with his friends due to joint tenancy with the right of survivorship. Similarly, Andrew has the equitable redemption of the property following the defaulting of Martin as a mortgagor. However, the abandonment of the property led to a valid adverse possession invoked by Otis. Correspondingly, the City Authorities are within their legal parameters in invoking the doctrine of eminent domain. Finally, the purchaser of the stolen Martin's car has the burden of proving that he is a bona fide purchaser of value through sufficient and reasonable inspection to determine authentic ownership.

References

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