Jackson & Campbell, P.C.
2300 N Street, N.W.
Suite 300
Washington, D.C. 20037-1194
202.457.1600 (p)

July Real Estate Update | Margaret Williams v. James Kennedy | Jane Robinson, Trustee v. Nels Nordquist

29 Jul 2019

Christopher A. Glaser

The District of Columbia Court of Appeals and the Supreme Court of Virginia have recently issued decisions which are significant for those in the real estate industry.

WASHINGTON, D.C.

On July 11, 2019, the District of Columbia Court of Appeals issued its decision in *Margaret Williams v. James Kennedy* regarding intra-owner transfers within the context of the Tenant Opportunity to Purchase Act (TOPA). In *Williams*, the subject rental accommodation was initially owned 40% by Mr. and Mrs. Kennedy as tenants by the entirety, 40% by Mr. and Mrs. Martin as tenants by the entirety, and 20% by Mr. Robinson. In 2004, following the passing of Mr. Martin, Ms. Martin quitclaimed her interest to Mr. and Mrs. Kennedy. In 2015, Mr. and Mrs. Kennedy conveyed a portion of their interest to Mr. Robinson such that Mr. Robinson owned an 85% interest leaving Mr. and Mrs. Kennedy with a 15% interest as tenants by the entirety. In 2016, Mr. and Mrs. Kennedy transferred their remaining interest to Mr. Robinson leaving Mr. Robinson as the sole owner of the rental accommodation. A tenant suit was filed alleging that both the 2015 and 2016 transfers constituted a "sale" pursuant to TOPA, thus triggering the tenant's right to purchase.

The Court of Appeals began its analysis with the oft-repeated directive from the District of Columbia Council that any ambiguity in the Act is to be decided in favor of the tenant "to the maximum extent permissible under law" as the purpose of TOPA is to "strengthen the bargaining position of tenants…." Despite the directive for such a liberal interpretation, the *Williams* Court held that intra-owner transfers were not "sales" within the act. The Court of Appeals noted that the "sale" definition does not address a situation in which individual owners reallocate their interests, but does not bring in a new owner. Indeed, other TOPA provisions are explicitly tied to the involvement of a third party (e.g,. the right of a third party being conditioned on a tenant's exercise of purchase rights and the owner's obligation to offer sale to a tenant on terms at least as favorable as those offered to a third party). The Court of Appeals, in holding such intra-owner transfers were outside the scope of TOPA, concluded that it "would be odd for TOPA to consider transactions as sales for purposes of TOPA if those transactions do not give rise to substantive rights under TOPA."

VIRGINIA

Across the Potomac River, the Virginia Supreme Court issued a decision in *Jane Robinson, Trustee v. Nels Nordquist* on July 18, 2019 construing a "light and air" easement and its subsequent enlargement encumbering valuable property in Old Town Alexandria.

In 1960, the servient estate granted a perpetual easement "for the purposes of admitting light and air" to the dominant estate, but did not provide any dimension for the easement. In 1969, the servient estate "affirmed and enlarged" the easement by providing that a three foot strip of land "shall forever be and remain open and free of all buildings and structures .. and shall be and remain open yard.…" Within the space between the two properties, the servient estate expanded an existing brick wall, constructed an arbor, planted bushes and trees and placed various objects such as "ladders and toys." Suit was then brought by the dominant estate alleging violations of the 1960 and 1969 easements.

The servient estate challenged the 1960 easement term of "light and air" asserting that it was too vague, ambiguous

and without dimension, thus rendering it unenforceable. The Virginia Supreme Court resolved the dispute holding that an easement lacking in dimension is not unenforceable if the scope can be determined "by reference to the intention of the parties to the grant ascertained from the circumstances pertaining to the parties and the land at the time of the grant." As the 1960 easement described its purpose—to admit light and air—the case was remanded to determine the dimensions as contemplated by the original parties at the time of the grant.

The servient estate also challenged the 1969 easement and sought an interpretation that the "open yard" requirement was merely limited to "open and free of all buildings and structures." The Virginia Supreme Court disagreed and held that the 1969 easement explicitly required that the space between the properties remain both "open and free of all buildings and structures" and "open yard" as such terms were separately required under the easement. The case was remanded to determine what the original parties intended by such language and, presumably, whether the presence of a bush or the occasional placement of toys violated the easement.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no cost in-house updates of the nation's most noteworthy cases and national trends following the spring and fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in Maryland, Virginia, and Washington, D.C., feel free to contact us. Our Real Estate Litigation and Transactions Practice Group *is ready to assist.*

July Real Estate Update | Margaret Williams v. James Kennedy | Jane Robinson, Trustee v. Nels Nordquist

29 Jul 2019
Christopher A. Glaser

The District of Columbia Court of Appeals and the Supreme Court of Virginia have recently issued decisions which are significant for those in the real estate industry.

WASHINGTON, D.C.

On July 11, 2019, the District of Columbia Court of Appeals issued its decision in *Margaret Williams v. James Kennedy* regarding intra-owner transfers within the context of the Tenant Opportunity to Purchase Act (TOPA). In *Williams*, the subject rental accommodation was initially owned 40% by Mr. and Mrs. Kennedy as tenants by the entirety, 40% by Mr. and Mrs. Martin as tenants by the entirety, and 20% by Mr. Robinson. In 2004, following the passing of Mr. Martin, Ms. Martin quitclaimed her interest to Mr. and Mrs. Kennedy. In 2015, Mr. and Mrs. Kennedy conveyed a portion of their interest to Mr. Robinson such that Mr. Robinson owned an 85% interest leaving Mr. and Mrs. Kennedy with a 15% interest as tenants by the entirety. In 2016, Mr. and Mrs. Kennedy transferred their remaining interest to Mr. Robinson leaving Mr. Robinson as the sole owner of the rental accommodation. A tenant suit was filed alleging that both the 2015 and 2016 transfers constituted a "sale" pursuant to TOPA, thus triggering the tenant's right to purchase.

The Court of Appeals began its analysis with the oft-repeated directive from the District of Columbia Council that any ambiguity in the Act is to be decided in favor of the tenant "to the maximum extent permissible under law" as the purpose of TOPA is to "strengthen the bargaining position of tenants…." Despite the directive for such a liberal interpretation, the *Williams* Court held that intra-owner transfers were not "sales" within the act. The Court of Appeals noted that the "sale" definition does not address a situation in which individual owners reallocate their interests, but does not bring in a new owner. Indeed, other TOPA provisions are explicitly tied to the involvement of a third party (e.g,. the right of a third party being conditioned on a tenant's exercise of purchase rights and the owner's obligation to offer sale to a tenant on terms at least as favorable as those offered to a third party). The Court of Appeals, in holding such intra-owner transfers were outside the scope of TOPA, concluded that it "would be odd for TOPA to consider transactions as sales for purposes of TOPA if those transactions do not give rise to substantive rights under TOPA."

VIRGINIA

Across the Potomac River, the Virginia Supreme Court issued a decision in *Jane Robinson, Trustee v. Nels Nordquist* on July 18, 2019 construing a "light and air" easement and its subsequent enlargement encumbering valuable property in Old Town Alexandria.

In 1960, the servient estate granted a perpetual easement "for the purposes of admitting light and air" to the dominant estate, but did not provide any dimension for the easement. In 1969, the servient estate "affirmed and enlarged" the easement by providing that a three foot strip of land "shall forever be and remain open and free of all buildings and structures .. and shall be and remain open yard…." Within the space between the two properties, the servient estate expanded an existing brick wall, constructed an arbor, planted bushes and trees and placed various objects such as "ladders and toys." Suit was then brought by the dominant estate alleging violations of the 1960 and 1969 easements.

The servient estate challenged the 1960 easement term of "light and air" asserting that it was too vague, ambiguous and without dimension, thus rendering it unenforceable. The Virginia Supreme Court resolved the dispute holding that an easement lacking in dimension is not unenforceable if the scope can be determined "by reference to the intention of the parties to the grant ascertained from the circumstances pertaining to the parties and the land at the time of the grant." As the 1960 easement described its purpose—to admit light and air—the case was remanded to determine the dimensions as contemplated by the original parties at the time of the grant.

The servient estate also challenged the 1969 easement and sought an interpretation that the "open yard" requirement was merely limited to "open and free of all buildings and structures." The Virginia Supreme Court disagreed and held that the 1969 easement explicitly required that the space between the properties remain both "open and free of all buildings and structures" and "open yard" as such terms were separately required under the easement. The case was remanded to determine what the original parties intended by such language and, presumably, whether the presence of a bush or the occasional placement of toys violated the easement.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no cost in-house updates of the nation's most noteworthy cases and national trends following the spring and fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in Maryland, Virginia, and Washington, D.C., feel free to contact us. Our Real Estate Litigation and Transactions Practice Group *is ready to assist.*

TAGGED: TOPA, District of Columbia Court of Appeals, Supreme Court of Virginia, Margaret Williams v. James

Kennedy, Tenant Opportunity to Purchase Act, Jane Robinson Trustee v. Nels Nordquist, servient estate