

Restricted covenants - the problem of implied annexation.

Sweet & Maxwell - Restrictive Covenants

Freehold covenants

Problem Overview

With regard to Sam, as the covenantor, service is by express the benefits, he can sue Grime the beneficiary which subject to the burden for breach of covenant. As Sam and Grime weren't original contracting parties to the covenant, the only way for him to enforce the covenant is through the court. This is where the problem of implied annexation arises. As both Underhill and Overdale have changed hands, will consider the equitable rules for both beneficiaries.

Has the benefit been passed to Sam's successors?

The first issue is whether the benefit of the covenant has passed to Sam using the equitable rules of annexation. It is clear that the covenant was intended to benefit the land itself and not passed to the parties by using the term "Sam's successors". Therefore, the covenant does not pass to Sam's successors. As such, the covenant Overdale to Sam, who was no longer benefiting from it. Rather, it is clear that the conditions made were intended to only concern the land itself as the will and hedge rights were not mentioned. Therefore, the covenant did not pass to Sam's successors.

Secondly, Sam must have a legal or equitable interest at the time the covenant was made. If the covenant was made before the date when Sam had any legal or equitable interest in the land however, his legal status did not exist at the time the covenant was granted which was 5 years before Overdale was sold to him. Therefore, he fails to satisfy the second criterion.

Lastly, for the benefit to pass in equity it must be proven that the benefit was intended to include the new owner. This is where the problem of implied annexation arises.

Historically, there was a rule of law in 1822 which made all covenants made after 1822 annex to the land as a result of the decision in *Federated Homes v Mill Lodge*. However, for this to apply the covenant must 'concern' and 'touch' the land which it have already passed to the new owner. In this case, the covenant does not concern the new owner and presents annexation of the benefit of the land as per *Moore v Chapple*. The land in question can only be said to be concerned if the covenant is specifically referred to and no limitations apply. So can prove the benefit has passed through annexation.

Conclusion: Implied annexation does not apply here as the covenant was not an assignment whereby the benefit can be expressly or implicitly 'assigned' or transferred to another person. However, this does not apply as the facts show no evidence that Billie

Description: -

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Notes: Photocopy of The Conveyancer, vol. 36, (1972), pp.20-37.

This edition was published in 1972



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Enforcing Covenants, Conditions and Restrictions

A and B entered into an agreement to divide the maintenance of the fence: A would remove brush and keep the northern half in good repair and B would similarly maintain the southern half.

Common development issues: restrictive covenants

Careful advice will be necessary on the choice of remedy, between discharge or modification and the new terms to be offered if modification is to be sought.

Land Law

In Indiana, a general plan or general scheme of improvement by a grantor is often considered a negative equitable easement on each parcel. Seeking a declaration from the Tribunal that there has been a binding agreement from all covenant owners is useful in case any owner is being evasive as to giving their consent or there is an argument for waiver from long acquiescence to the breach. How do you do it? Or if the company ceased to exist or even operate under a different name at this current time would the covenant be unenforceable? Chain of indemnity covenant 8.

Restrictive covenants; do they mean I can't redevelop my property?

This proportion has to be reasonable in the circumstances.

Challenging & enforcing Restrictive Covenants

The facts A developer does not want to establish a building scheme where the covenants will be mutually enforceable by plot owners but does want to contain control of the development until the estate is finally completed. Either the parties to the agreement or successors in interest if the limitations run with the land, can present evidence attempting to show that the grounds exist for termination or unenforceability of the limitation. This jurisdiction was considered by the Court of Appeal in *Lawntown Limited v*.

Texas Restrictive Covenants

Therefore condition 1 was not satisfied. .

Property Law Outline

This is not always easy as the conveyance creating the covenant may not have a clear description or plan showing the land to be benefited. Most residents keep the estate as it was build and id like to do the same.

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