

EXAMINER'S ANALYSIS OF QUESTION NO. 2

This question involves analysis and application of Michigan's race-notice recording statute and the application of such title to a scenario involving after-acquired title.

Race-Notice Recording Statute:

As a threshold matter, Michigan is a race-notice statute with respect to determining disputes regarding multiple conveyances of the same parcel of property. MCL 565.29. Michigan's race-notice recording statute MCL 565.29, provides in relevant part that:

Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

Accordingly, a person holding an interest in real estate and who first records his or her interest generally has priority over subsequent purchasers. *Richards v Tibaldi*, 272 Mich App 522, 539 (2006). However, in the event a valid real estate interest holder does not record his or her interest, a later interest holder may take priority over the same property if such later real estate interest holder takes the property in "good faith." *Coventry Parkhomes Condo Ass'n v Fed Nat Mortg Ass'n*, 298 Mich App 252, 256 (2012).

"A good-faith purchaser is one who purchases without notice of a defect in the vendor's title." *Mich Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410 (1992). Notice can be actual or constructive. *Richards*, 272 Mich App at 539. Constructive notice "is notice that is imputed to a person concerning all matters properly of record, whether there is actual knowledge of such matters or not." *Id* at 540 (citation and quotation marks omitted). "A person having notice of a possible defect in title who fails to make further inquiry into the potential rights of a third party does not constitute a good-faith purchaser." *Wells Fargo Bank, NA v SBC IV REO, LLC*, 318 Mich App 72, 110 (2016); *Penrose v McCullough*, 308 Mich App 145, 152-53 (2014).

In the instant case, Peter failed to promptly record his interest, so that interest will be void against Laura's later conveyed interest if Laura acted in good faith and without notice of Peter's interest. Laura will likely be found to have acted in

good faith and without notice of the earlier sale to Peter. Laura only knew that Olivia "may be selling" the property and that Olivia was "in talks with someone," but not that Olivia had actually sold the property to someone. Additionally, the facts show that Laura was trying to do her due diligence on whether the property was still available by researching online and calling local real estate agents to inquire into the status of the property. Further, Laura asked Olivia if the property was still available and Olivia never informed her of the prior sale.

One could argue that there is some question as to whether Laura had notice of another claim to the property because she was aware that Olivia "was in talks with someone" and therefore might have been put on inquiry notice to investigate even further. This is, however, a weak claim because Laura in fact investigated the status of the property before the conveyance.

Accordingly, under Michigan's race-notice recording statute, Laura should prevail over Peter.

After-Acquired Title:

Even though Laura's interest will most likely prevail under Michigan's race-notice recording statute, examinees should also consider whether Laura even holds a valid interest in the real property because, at the time of the conveyance to Laura, Olivia was not the legal titleholder of the property.

"Under the doctrine of after-acquired title, if a grantor by warranty deed conveys an estate that the grantor does not own and subsequently acquires title to that estate, that title inures to the benefit of his or her grantee." *Donohue v Vosper*, 189 Mich 78 (1915); *Richards*, 272 Mich App at 541. "This is a form of estoppel, and the grantor is estopped to deny the title the grantor subsequently acquired." *Id.* A quitclaim deed, however, cannot convey after-acquired title because the grantor in the quitclaim deed warrants no title and conveys only what the grantor owned at the time of the conveyance. *Olmstead v Tracy*, 145 Mich 299 (1906); *Richards*, 272 Mich App at 541.

Because Olivia executed a warranty deed, and not a quitclaim deed, conveying the cottage and land to Laura and then subsequently acquired title to the same property, Laura holds a valid interest in the property. Accordingly, Laura would likely prevail in a quiet title action.