

A seller who owned land entered into a valid written agreement to sell the land to a buyer by installment purchase. The contract stipulated that the seller would deliver to the buyer, upon payment of the last installment due, "a warranty deed sufficient to convey a fee simple title." The contract contained no other provision that could be construed as referring to title.

The buyer entered into possession of the land. After making 10 of the 300 installment payments obligated under the contract, the buyer discovered that there was outstanding a valid and enforceable mortgage on the land, securing the payment of a debt in the amount of 25 percent of the purchase price that the buyer had agreed to pay. There was no evidence that the seller had ever been late in payments due under the mortgage, and there was no evidence of any danger of insolvency of the seller. The value of the land was then four times the amount due on the debt secured by the mortgage.

The buyer quit possession of the land, stopped making payments on the contract, and demanded that the seller repay the amounts that the buyer had paid under the contract. After the seller refused the demand, the buyer sued the seller to recover damages for the seller's alleged breach of the contract.

Should damages be awarded to the buyer?

- A. No, because an installment purchase contract is treated as a security device.
- B. No, because the time for the seller to deliver marketable title has not arrived.
- C. Yes, because an installment purchase contract is treated as a mortgage, and the outstanding mortgage impairs the buyer's equity of redemption.
- D. Yes, because in the absence of a contrary express agreement, an obligation to convey marketable title is implied.

## Explanation:

### "Red flags" for marketable title

Covenants

Easements

Leases

Liens

Gaps in chain of title

Boundary disputes

Existing zoning violations

Adverse possession

All land-sale contracts have an **implied warranty** that the seller will convey **marketable title** to the buyer **upon closing** unless otherwise stated. Title does not have to be perfect to be marketable. However, it must be reasonably free from doubt and under no threat of litigation, such that a reasonable person would accept and pay for it. In the case of an **installment land contract**—ie, one in which the buyer takes possession of the property and pays the purchase price over time—the seller need not deliver marketable title until the **price is fully paid**.

Here, after making 10 of the 300 installment payments, the buyer discovered that there was an outstanding mortgage on the land. Although an existing mortgage can render title unmarketable, the seller does not need to deliver marketable title until the buyer has made *all* installment payments. Therefore, damages should not be awarded to the buyer because the time for the seller to deliver marketable title has not arrived **(Choice D)**.

**(Choice A)** The fact that an installment land contract is treated as a security device (namely, a mortgage) does not prevent the buyer from recovering damages if the seller is unable to deliver marketable title when it is due (not seen here).

**(Choice C)** An installment land contract is often treated as a mortgage, so the seller can bring a foreclosure action to regain possession of the property if the buyer defaults on payments. Although the buyer stopped making payments here, the seller has not yet attempted to enforce the contract. As a result, the buyer's equity of redemption (ie, pre-foreclosure right to cure the default by paying the entire past-due amount) is not at issue.

### Educational objective:

Under an installment land contract, the seller does not need to deliver marketable title until the purchase price is fully paid.

### References

Restatement (Third) of Property: Mortgages § 3.4 (Am. Law Inst. 1997) (installment land contracts).

77 Am. Jur. 2d Vendor and Purchaser § 93 (2020) (marketable title).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.