

A mother subdivided a vacant land that she owned into three lots. She kept one lot for herself, conveyed another to her daughter, and conveyed the remaining lot to her son. Each conveyance was by a deed of gift containing a covenant specifying that only one single-story home could be constructed on the conveyed lot in order to preserve views of a nearby lake from the mother's lot. The deeds were promptly recorded. The mother then constructed a large three-story house on her lot.

Several years later, the son conveyed his vacant lot to a purchaser using a warranty deed that made no mention of the covenant in the previous deed from the mother. The purchaser promptly recorded her deed.

When the purchaser later began constructing a three-story house similar to the mother's, the mother sued to enjoin the construction.

Should the court grant the injunction?

- A. No, because the mother is estopped from enforcing the covenant, since she herself constructed a three-story house. (12%)
- B. No, because there was no consideration given for the covenants in the deeds of gift. (6%)
- C. Yes, because the burden of the covenant runs with the land even if the purchaser had no actual notice of the covenant. (75%)
- D. Yes, because the mother is in privity of contract with the purchaser. (5%)

Correct

75% Answered correctly

01 min, 33 secs Time Spent

2023 Version

Explanation:

Elements of real covenants & equitable servitudes

Real covenants

(enforceable by money damages)

For *burden* to run

Writing

Intent to run

Touch & concern

Horizontal & vertical

privity

Notice

For *benefit* to run

Writing

Intent to run

Touch & concern

Limited vertical

privity

No notice required

Equitable servitudes

(enforceable by equitable relief)

Express

Writing

Intent to run

Touch &

concern

Notice

Implied

Intent to create common scheme

Restrictive servitude

Notice

A **covenant**—ie, a promise between parties to do or not do something on land—is called an **equitable servitude** when, as here, it is **enforced by an injunction**. The equitable servitude will **run to** the promising parties' **successors in interest** if the following requirements are met:

The covenant is **in writing** (eg, the mother's deeds to her children).

The promising parties **intended** for the restriction to be **enforceable by and against successors** (eg, the covenant is intended to preserve the mother's lake views).

The covenant **touches and concerns** the land (ie, relates to the use, enjoyment, or occupation of the **dominant and servient** estates).

If the person against whom the covenant is to be enforced is a **purchaser**, that person **has notice** of the covenant (eg, notice from a recorded deed).

Here, the son conveyed his lot to a purchaser by a **warranty deed** that made no mention of the covenant. But even though the purchaser may have lacked actual knowledge of the covenant, she had *record* notice because the mother's deed to the son was previously recorded. And since the other above-listed elements are satisfied, the court should grant the injunction to enforce the covenant against the purchaser.

(Choice A) The burden (to build a one-story house) was on the son's lot, and the benefit (to view the lake) was on the mother's retained lot. The benefit does not limit the mother to building a one-story house, so the fact that she built a three-story house does not estop (ie, prevent) her from enforcing the covenant.

(Choice B) Consideration is not required for a covenant to run with the land.

(Choice D) Privity is not required to enforce an equitable servitude against a successor in interest. And though **privity** is required for a real covenant, it is irrelevant whether the mother has privity of contract with the purchaser. She has privity of contract with the son, who conveyed his lot to the purchaser.

Educational objective:

If an equitable servitude is to be enforced against a purchaser, then the purchaser must have notice (actual, record, or inquiry) of the servitude.

References

Restatement (First) of Property § 539 (Am. Law Inst. 1944) (defining equitable servitudes).

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