

A niece inherited vacant land from her uncle. She lived in a distant state and decided to sell the land to a colleague who was interested in purchasing the land as an investment. They orally agreed upon a price, and, at the colleague's insistence, the niece agreed to provide him with a warranty deed without any exceptions. The price was paid, the warranty deed was delivered, and the deed was promptly recorded. Neither the niece nor the colleague had, at that point, ever seen the land.

After recording the deed, the colleague visited the land for the first time and discovered that it had no access to any public right-of-way and that none of the surrounding lands had ever been held in common ownership with any previous owner of the land. The colleague sued the niece for damages.

For whom will the court find?

- A. The colleague, because lack of access makes title unmarketable.
- B. The colleague, because the covenants of warranty and quiet enjoyment in the deed were breached.
- C. The niece, because no title covenants were breached.
- D. The niece, because the agreement to sell was oral.

Explanation:

Covenants of title

(warranty & special warranty deeds)

Present covenants	Seisin	Grantor owns interest being conveyed
(breached at time of conveyance)	Right to convey	Grantor has legal right to convey interest
	Against encumbrances	No encumbrances (eg, easements, mortgages) against interest conveyed
Future covenants (breached upon interference with possession)	Warranty	Grantor will defend & compensate grantee for lawful claims made against grantee's title
	Quiet enjoyment	Grantee's possession & enjoyment will not be disturbed by another's lawful claim of title
	Further assurances	Grantor will take any actions reasonably necessary to perfect grantee's title

Unless otherwise stated, contracts for the sale of land impliedly warrant that the seller will convey marketable title to the buyer upon closing. To be marketable, title must be reasonably free from doubt and under no threat of litigation, such that a reasonable person would accept and pay for it. Lack of access to a public road may render title unmarketable.* However, the time for the buyer to object to marketability of title is *prior* to delivery and acceptance of the deed—which have already occurred here **(Choice A)**.

Once a deed is delivered to and accepted by the buyer, the sales **contract merges with the deed** and the seller is no longer liable on the implied warranty of marketable title. If a problem arises with title thereafter, the **buyer's remedy**, if any, would be under an express provision or a **covenant of title in the deed** (listed above).

Lack of access to a public road is *not* a breach of warranty, quiet enjoyment, or any other title covenant. The reason is that the colleague's lack of access does not detract from his ownership rights in the land or create a superior claim to the land by a third party **(Choice B)**. As a result, the court will find in favor of the niece.

*Courts are split as to whether lack of access to a public road is an encumbrance that makes title to property unmarketable.

(Choice D) The [statute of frauds](#) requires that land-sale contracts be in writing to be enforceable. But since the oral land-sale contract has been executed and the colleague has accepted the deed, he can seek relief only under the deed.

Educational objective:

Under the merger doctrine, a contract for the sale of land merges with the deed once the deed has been delivered to and accepted by the buyer. If any problems with title arise thereafter, the buyer must rely on the covenants of title or other provisions contained within the deed.

References

77 Am. Jur. 2d Vendor and Purchaser § 227 (2020) (merger doctrine).

77 Am. Jur. 2d Vendor and Purchaser § 143 (2020) (lack of access to land).

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