CONSTRUCTION LAWLETTER

For Industry Professionals, Directors, Officers, Managers, Agents, Trades and Suppliers

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REAL PROPERTY TAX LIABILITY – SELLER OR BUYER? DEED CONTROLS.

n an important case before the Court of Appeals,

option to purchase the real property from HI, Inc., the Seller, for $100,000. Significantly, **no standard purchase agreement was ever prepared or executed between these parties once the option was exercised.** The parties, through their respective legal counsel, each transmitted written closing instructions to the title company which acted as the closing "agent." When the actual closing took place, neither party was present and no formal "closing statement" was prepared or provided. The warranty deed was accepted by Buyer, at closing, and the transfer was recorded.

The "Option Agreement" specifically provided for the proration of **property taxes** to the date of closing. While the **real property taxes** for the second half (year) were not paid at the closing, the **taxes** were prorated by the closing agent from January 1, to the closing date. Neither party brought any litigation against the title company closing agent, believing the agent closed this transaction according to the parties' own written instructions.

The warranty deed, accepted by Buyer, expressly provided that the premises were conveyed "[s]ubject to **taxes** and assessments, if any, now a lien, and subject to easements, conditions, reservations and restrictions, if any, of record" (emphasis added).

Robinwood, Buyer, sued to recover the **real property taxes** with interest, plus any assessed penalty. In awarding judgment for (Robinwood) the Buyer, the trial court apparently premised its decision upon the "custom and practice" in Franklin County, i.e., a proration of all **taxes** then a lien to closing date, while acknowledging that "* * * once that deed is transferred, the tax bill goes to the plaintiff [purchaser] * * *."

The Court of Appeals of Franklin County, in its opinion, held: "We agree with the trial court that normally in negotiating a contract for the sale of **real property**, **taxes** and assessments constituting liens on the premises are paid by the seller and are prorated to the date of closing. *** Such a contract provision is probably the accepted "custom and practice" statewide. As noted, the parties never entered into an independent purchase contract per se for this sale, but rather entered into an option agreement. However, once the option was exercised by Buyer, a binding contract existed for the sale and purchase of Seller's **real property** on the conditions therein stated. *** Therefore, contractually, the parties had agreed to a proration of all **taxes** constituting liens as of the closing date.

As a general principle of construction, a deed is to be construed most strongly against the grantor in the resolution of any ambiguities contained in the instrument; however, a deed's language is conclusively presumed to express the parties' intention absent "uncertainty" in the language employed. *** If a grantee accepts a deed, the knowledge of its provisions is legally imputed to him; and, by its acceptance, he is bound by all of its provisions and is estopped to deny their legal effect.

Seller, HI, Inc. argued that, notwithstanding the "custom and practice" of tax prorations or the provisions of the "Option Agreement," under the doctrines of "merger by deed" and/or "estoppel by deed," it cannot be held liable for the **taxes** at issue." The Court of Appeals agreed. ***However…**

(Continued and concluded in the next issue.)

Those are my principles; if you don't like them, I have others.

Groucho Marx

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