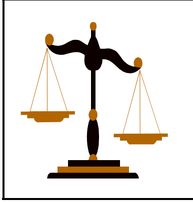

CONSTRUCTION LAWLETTER

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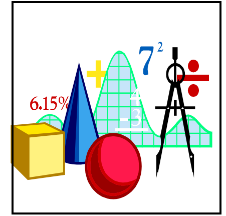

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REAL PROPERTY TAX LIABILITY – SELLER OR BUYER? DEED CONTROLS.

(Continued from Previous Issue)

Synopsis: The parties entered into an option for the sale and purchase of real estate. While the option provided for the proration of real property taxes, no standard purchase agreement was ever prepared or executed. No formal closing instructions or statement was prepared by the parties or their attorneys, none of whom attended the closing. The Agent followed what it believed was standard practice. Buyer filed suit to recover the taxes for which it had been charged. The trial Court held for the Buyer and the Seller appealed. The Court of Appeals of Franklin County, Ohio reversed, and its reasoned opinion continues and concludes:

"The doctrine of "merger by deed" holds that whenever a deed is delivered and accepted "without qualification" pursuant to a sales contract for **real property**, the contract becomes merged into the deed and no cause of action upon said prior agreement exists. The purchaser is limited to the express covenants of the deed only. ***The doctrine has been applied to disputes over the allocation of **real** estate **taxes** as a result of a purchase and sale. ***

Here, while the option agreement clearly required a proration of relevant **property taxes**, the warranty deed, delivered to and accepted by (Robinwood, Buyer) appellee without qualification, conveyed the **property** "[s]ubject to **taxes** * * * now a lien * * *." The language in both the contract and deed is clear and unambiguous, and does not require judicial "construction." Appellee (Buyer – Robinwod) accepted the deed in this form and became liable for the **taxes** in question. Appellee (Robinwood) had it within its power to rectify the obvious conflict between the contract and the deed through a simple pre-closing inspection of the deed and a delay of the closing until the deed language conformed to the contract. It chose, at its own peril, not to do so. Once accepted, (Robinwood) appellee became bound by the terms of the deed, and no cause of action existed on the prior contract against appellant. The "exceptions" to the application of the doctrine of merger by deed cited by (Robinwood) appellee are not applicable to these facts. See Reid v. Sycks (1875), 27 Ohio St. 285, and McGovern Builders, Inc. v. Davis (1983), 12 Ohio App.3d 153, 12 OBR 477, 468 N.E.2d 90.

A similar result is reached by applying the equitable doctrine of "estoppel by deed." This doctrine precludes a party from denying a certain fact recited in a deed executed by or accepted by him in an action brought upon the instrument. ***. A grantee, such as the appellee (Robinwood), who receives and accepts a conveyance, is bound by all its provisions and is estopped to deny their legal effect. ***"

The Court of Appeals reversed the decision of the trial court, denying Buyer Robinwood's complaint for recovery of property taxes applicable to this purchase and sale.

37 Robinwood Associates v. Health Industries, Inc. (1988), 47 Ohio App.3d 156.

This case and decision illustrates the need for experienced real property counsel and carefully written instructions and documents to support the rights and best interests of the parties in the important matters of real property offers, purchases and sales.* * *

And this, upon the plainest principles of justice; for, as between innocent parties, if a damage must be sustained, he that caused the injury should bear its consequences.

SMITH v. THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY
23 Ohio St. 10; 1872 Ohio LEXIS 97

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