

BUYER BEWARE

ALWAYS CHECK VESTING DEEDS



COUNSEL'S CORNER

In February 2006 Summit Electric Supply Co., Inc. agreed to sell a five-acre parcel of property located at Manana Drive and IH-35 in Dallas to Saeed Mahboubi. Those of us who live or work in Dallas might guess the highest and best use for that property just by the location. Nonetheless, the Contract of Purchase and Sale prohibited use of the property as a sexually oriented business.

Mahboubi assigned the Contract to Semira Rezaie. Rezaie then entered into a Contract to flip the parcel to Jerry Spencer, LP.

The first closing was on August 4, 2006. Summit signed a Deed conveying the property to Rezaie. The Deed contained a clause restricting use of the property as a SOB. You can see the Deed and the SOB restriction here: <https://dallas.landrecordsonline.com/LoadImage.aspx?sk=200600315602&format=PDF&ref=&pos>. Because the first Deed failed to contain a proper legal description, the corrected Deed was not recorded until August 25, 2006, three weeks after closing.

The second closing was also on August 4. At that closing, Rezaie conveyed the property to Spencer, without exceptions or restrictions: <https://dallas.landrecordsonline.com/LoadImage.aspx?sk=200600288301&format=PDF&ref=&pos>. The second Deed was recorded on August 7, 2006 – 18 days before the first Deed.

Spencer leased the property to 2327 Manana, LLC, who posted a notice on the front door announcing its intent to operate a SOB. Then the litigation started.

Spencer and Manana argued in trial court that they could not be held responsible for compliance with the SOB restriction, because the Deed containing that restriction was not recorded in Dallas County until weeks after they had completed their purchase and lease. Since the Deed from Rezaie did not contain the restriction, they argued, then surely Texas law would not / could not stop them from operating a SOB at the site.

Spencer and Manana lost. They appealed.

On June 25, 2010, the Dallas Court of Appeals affirmed the trial court's judgment. The Court of Appeals had little trouble concluding that a real estate purchaser is bound by every matter contained in or disclosed by any instrument which forms an essential link in the chain of title, even though Spencer and Manana had never read the documents. Essentially, if Spencer and Manana closed their transaction without reviewing the immediately preceding deed in the chain – the 'vesting deed' – then Spencer and Manana did so at their own peril.

Not addressed in the case due to procedural matters were the claims against the broker who represented all of the buyers, and possibly failed to disclose the inclusion of the restrictive clause in the first deed. Also not addressed were possible claims against the title company, who may have insured the secondary transaction without reference to the restrictive covenant contained in the Summit / Rezaie deed.

Bottom line:

1. Demand to see the Vesting Deed. Check it for restrictions. Particularly in flip transactions where closings are occurring quickly.
2. If possible, get representations and indemnities in Contracts and Leases, obligating the Seller / Landlord to certify that the property can be used as the Purchaser / Tenant requires.
3. If you have actual knowledge about a latent defect or material condition, immediately disclose it to your principal in writing.

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