

YOUNG WILLIAMSTODAY

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UNPROBATED ESTATE MAKES TITLE TO REAL ESTATE UNMARKETABLE

Christopher A. Ferrara, a real estate venture capitalist, sought to purchase a large tract of land in Biloxi, Mississippi, for a substantial commercial project. On December 4, 2001, Nancy S. Waters and Dennis R. Strong (the Sellers) entered into a contract with Ferrara to sell a lot needed to provide access to the project in Harrison County. The subject property previously belonged to the Sellers' parents, Mr. & Mrs. J.W. Strong. Ferrara and the Sellers agreed to a purchase price of \$37,500.00, with the closing date set for 45 days after acceptance by the Sellers. Pursuant to the contract, Ferrara deposited \$3,000.00 with the Sellers' broker as earnest money. The contract also provided that the Sellers were to furnish a warranty deed to Ferrara and that a reasonable time would be permitted for an examination of the title.

After conducting a title search, Ferrara discovered that the subject property was previously owned by Cole R. Budd, who conveyed it by a warranty deed to Mr. & Mrs. Strong in 1950. The Budd-Strong conveyance made no reference to rights of survivorship. Therefore, Ferrara concluded the property was jointly owned by Mr. & Mrs. Strong as tenants in common.

On January 6, 2002, Ferrara's attorney, David Crane, contacted the Sellers' realtor and discovered that a quitclaim deed had been filed on December 1, 2000, purportedly conveying the subject property to the Sellers. This deed stated that the grantors were Mrs. Strong and all heirs of Mr. Strong.

Upon review, Crane determined there was no record of any adjudication of the heirs of Mr. Strong, and no evidence of whether or not he died intestate. Therefore, after learning of the quitclaim deed from Strong's heirs, Crane advised Ferrara that he believed the title was defective. Ferrara could either accept the defective title or require the Sellers to cure the defects. Ferrara then requested an updated title abstract on the subject property, which was not received until January 17, 2002. On January 25, 2002, after the time to close the transaction had expired, the Sellers advised Ferrara that they were moving forward with a subsequent closing with an unrelated buyer. Crane requested an additional three weeks to close but the Sellers denied the request.

Ferrara filed a lawsuit requesting specific performance of the contract and damages. The Sellers counterclaimed for slander of title, intentional interference with a contract, and abuse of power. The Sellers claimed that the quitclaim deed was executed to the Sellers and was signed by all heirs of Mr. Strong, as well as his wife, Mrs. Strong, which is sufficient proof of title. Ferrara claimed that there was nothing on record to establish heirship. Accordingly, Ferrara maintained that the Sellers breached their agreement to provide a merchantable title. Although the trial court ruled that the Sellers were excused from performance under the contract, the judgment has been reversed by the Mississippi Supreme Court requiring the Sellers to specifically perform under contract.

If you have any questions concerning this case or any other real estate issue, contact:

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