

SUPREME COURT OF KANSAS

Jeremiah 29:11, Inc. v. Seifert, 284 Kan. 468

161 P.3d 750 (2007) · No. No. 94,224 · Decided July 13, 2007

SUMMARY

The Kansas Supreme Court considered whether a subsequent purchaser was bound by restrictive covenants in a recorded 1978 warranty deed that the original grantees never signed. The court held that the missing grantee signatures made the deed insufficient to provide constructive notice of the covenant to the subsequent purchaser, reversing the Court of Appeals and affirming the district court.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Beier, J.; Lockett, J., retired, assigned; Johnson, J., not participating
JURISDICTION	Kansas
DECIDED	July 13, 2007
DOCKET	No. 94,224
DISPOSITION	reversed
PROCEDURAL POSTURE	Jeremiah 29:11, Inc. appealed a Court of Appeals decision that reversed the district court's determination that a restrictive covenant was unenforceable against Jeremiah. The Kansas Supreme Court granted review.
STANDARD OF REVIEW	De novo review applies because the enforceability of a restrictive covenant contained in a written deed presents a question of law and there were no factual disputes.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.
PARTIES	Earnest Douglas (Doug) Seifert, Leslie Seifert v. Jeremiah 29:11, Inc.

TOPICS

covenants and restrictions

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PRACTICE AREAS

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property covenants

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QUESTIONS PRESENTED

1. Whether a restrictive covenant in a recorded deed containing intended but absent grantee signatures provides constructive notice to a subsequent purchaser.
2. Whether the 2002 release executed by the original grantors could release the restrictive covenant after the grantors no longer owned an interest in the property.

HOLDINGS

1. The absence of the Dallingas' signatures on the 1978 deed made the recorded instrument insufficient to provide constructive notice of the restrictive covenant to Jeremiah. A subsequent purchaser without actual or constructive notice is not bound by the covenant.
2. The Jordans could not release an interest they no longer held when they executed the 2002 release.

KEY QUOTATIONS

“We hold that the absence of the Dallingas' signatures on the 1978 deed made it insufficient to provide the necessary constructive notice to subsequent purchaser Jeremiah.” (at 475)

“Persons who take real property without actual or constructive notice of restrictive covenants will not be bound by them.” (at 475)

“Under our statutory scheme, any constructive notice must of necessity be drawn from the recorded document itself or from other recorded documents it references.” (at 474)

FACTUAL BACKGROUND

In 1978, G. Weaver Jordan and J.E. Jordan executed and recorded a warranty deed conveying approximately 50 acres to Daniel and Pearline Dallinga. The deed contained a restrictive covenant prohibiting manufacturing, commercial enterprises, and nonresidential use, but the Dallingas never signed the deed despite signature lines for both grantors and grantees. The property later passed through several conveyances, and Jeremiah 29:11, Inc. acquired it in 1999 without actual notice from its title company. The Seiferts, who owned adjacent property, sought to enforce the covenant after learning that Jeremiah intended to use or was using the property for nonresidential purposes.

PROCEDURAL HISTORY

The action began as a boundary dispute over a fence. The Seiferts counterclaimed to enforce a restrictive covenant in a 1978 recorded deed that barred commercial use of the property. The district court held the covenant void and unenforceable against Jeremiah because the deed was an unsigned indenture, failed to satisfy the statute of frauds, and did not provide Jeremiah constructive notice. The Court of Appeals reversed, concluding that the deed was valid and that the recorded instrument supplied constructive notice. The Kansas Supreme Court reversed the Court of Appeals and affirmed the district court.

DISPOSITION

reversed

CASES CITED

- City of Roeland Park v. Jasan Trust, 281 Kan. 668, 132 P.3d 943 (2006)
- McColm v. Stegman, 3 Kan. App. 2d 416, 596 P.2d 167 (1979)
- Schlup v. Bourdon, 33 Kan. App. 2d 564, 105 P.3d 720 (2005)
- Hecht v. Stephens, 204 Kan. 559, 464 P.2d 258 (1970)
- Kennedy v. Classic Designs, Inc., 239 Kan. 540, 722 P.2d 504 (1986)
- Luthi v. Evans, 223 Kan. 622, 576 P.2d 1064 (1978)
- Sporn v. Overholt, 175 Kan. 197, 262 P.2d 828 (1953)
- Johnson v. Allen, 178 Kan. 348, 285 P.2d 764 (1955)

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