

SUPREME COURT OF VIRGINIA

Fairfax County Redevelopment and Housing Authority v. Riekse

707 S.E.2d 826 (Va. 2011) · No. Record No. 092486 · Decided March 4, 2011

SUMMARY

The Supreme Court of Virginia held that a deed conveying property acquired through foreclosure was not void ab initio merely because the property was subject to a right of first refusal. The court further held that specific performance could not be ordered against prior owners who no longer held title to the property. The court affirmed dismissal of the Fairfax County Redevelopment and Housing Authority's action.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                        |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Virginia                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Justice William C. Mims; Chief Justice Kinser; Justice Lemons; Justice Goodwyn; Justice Millette; Justice Mims; Senior Justice Koontz                                                                                                                                  |
| JURISDICTION          | Virginia                                                                                                                                                                                                                                                               |
| DECIDED               | March 4, 2011                                                                                                                                                                                                                                                          |
| DOCKET                | Record No. 092486                                                                                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Fairfax appealed after the circuit court granted Riekse's motion to strike at the conclusion of Fairfax's evidence and dismissed the action. The Supreme Court of Virginia reviewed the circuit court's interpretation of the deed and the requested remedies de novo. |
| STANDARD OF REVIEW    | De novo review of the circuit court's interpretation of the deed.                                                                                                                                                                                                      |
| PRECEDENTIAL VALUE    | Published opinion of the Supreme Court of Virginia; binding precedent in Virginia.                                                                                                                                                                                     |
| PARTIES               | Fairfax County Redevelopment and Housing Authority v. James C. Riekse, Rajinder Kapani, Rajesh Kapani, Trustees under Riekse's deed of trust                                                                                                                           |

TOPICS

- real estate
- specific performance remedy
- remedies
- appellate procedure
- standard of review

## PRACTICE AREAS

real estate

specific performance

property remedies

appellate procedure

## QUESTIONS PRESENTED

1. Whether the deed conveying the property from the Kapanis to Riekse was void ab initio because the conveyance allegedly violated Fairfax's right of first refusal.
2. Whether Fairfax could obtain specific performance of the right of first refusal from the Kapanis after they had conveyed the property and no longer held title.
3. Whether Fairfax's right of first refusal could be enforced only as a condition subsequent through an action of ejectment.

## HOLDINGS

1. The deed was not void ab initio. A conveyance to a subsequent purchaser who lacked actual knowledge of the right of first refusal, without collusion to defeat the prior contractual obligation, does not warrant the extraordinary remedy of declaring the executed deed void ab initio.
2. Specific performance could not be ordered against the Kapanis because they no longer held title and therefore could not convey the property to Fairfax.
3. On the posture of this case, Fairfax's remedy was enforcement of the right of first refusal as a condition subsequent through an action of ejectment, rather than specific performance by the Kapanis.

## KEY QUOTATIONS

*“Accordingly, the circuit court’s determination that it could not order the Kapanis to perform because it was impossible for them to offer the parcel to Fairfax was correct.”* (829)

*“For the reasons set forth above, we will affirm the judgment of the circuit court.”* (830)

## FACTUAL BACKGROUND

In 1989, Fairfax conveyed real property to Peter and Christine Tovar subject to a right of first refusal allowing Fairfax to repurchase the property upon the death of the grantee or the grantee's determination to sell within thirty years. After Peter conveyed his interest to Christine, the debt secured by a deed of trust was defaulted, and substitute trustees sold the property at foreclosure to Rajinder and Rajesh Kapani in 2002. The Kapanis conveyed the property to James Riekse in 2003; Fairfax later sued to enforce the right of first refusal, although Riekse had no actual knowledge of it and the Kapanis no longer held title.

## PROCEDURAL HISTORY

Fairfax filed a circuit-court complaint seeking to enforce a right of first refusal, declare Riekse's deed void ab initio, remove the deed of trust, and compel the Kapanis to convey the property to Fairfax. The circuit court overruled the defendants' demurrers, but after Fairfax presented its evidence, it granted Riekse's motion to strike, ruling that the deed was not void ab initio and that Fairfax's remedy was an action of ejectment to enforce the right as a condition subsequent. The court denied reconsideration, and the Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Beeren & Barry Investments, LLC v. AHC, Inc., 277 Va. 32, 671 S.E.2d 147 (2009)
- Bond v. Crawford, 193 Va. 437, 69 S.E.2d 470 (1952)
- Thompson v. Thompson, 171 Va. 361, 198 S.E. 897 (1938)
- Schmidt & Wilson, Inc. v. Carneal, 164 Va. 412, 180 S.E. 325 (1935)
- Landa v. Century 21 Simmons & Co., Inc., 237 Va. 374, 377 S.E.2d 416 (1989)
- Commonwealth Transportation Commissioner v. Windsor Industries, Inc., 272 Va. 64, 630 S.E.2d 514 (2006)
- Cangiano v. LSH Building Co., 271 Va. 171, 623 S.E.2d 889 (2006)
- Shepherd v. Colton, 237 Va. 537, 378 S.E.2d 828 (1989)
- Fishburne v. Furguson, 85 Va. 321, 7 S.E. 361 (1888)
- Preston v. Johnson, 105 Va. 238, 53 S.E. 1 (1906)
- Smith v. Woodward, 122 Va. 356, 94 S.E. 916 (1918)
- Tabet v. Goodman, 136 Va. 526, 118 S.E. 230 (1923)
- Dickerson v. McNulty, 142 Va. 559, 129 S.E. 242 (1925)
- Everette v. Woodward, 162 Va. 419, 174 S.E. 864 (1934)
- Wills v. Chesapeake Western Railway Co., 178 Va. 314, 16 S.E.2d 649 (1941)
- Turk v. Clark, 193 Va. 744, 71 S.E.2d 172 (1952)
- First Funding Corp. v. Birge, 220 Va. 326, 257 S.E.2d 861 (1979)
- Business Bank v. Beavers, 247 Va. 413, 442 S.E.2d 644 (1994)

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