

SUPREME COURT OF NEBRASKA

Morello v. Land Reutilization Commission of the County of Douglas,  
Nebraska, 265 Neb. 735

659 N.W.2d 310 (2003) · No. No. S-02-478 · Decided April 11, 2003

SUMMARY

The Nebraska Supreme Court considered whether a special warranty deed issued by the Douglas County Land Reutilization Commission obligated it to defend the purchaser against title defects arising before the Commission acquired the property. The court held that a special warranty deed warrants only against defects caused by the grantor or those claiming through it, not defects originating with prior titleholders. Because the title defect predated the Commission's ownership, the court affirmed summary judgment for the Commission.

CASE DETAILS

|                       |                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nebraska                                                                                                                 |
| WRITING FOR THE COURT | Per Curiam; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.                            |
| JURISDICTION          | Nebraska                                                                                                                                  |
| DECIDED               | April 11, 2003                                                                                                                            |
| DOCKET                | No. S-02-478                                                                                                                              |
| DISPOSITION           | affirmed                                                                                                                                  |
| PROCEDURAL POSTURE    | Morello appealed from the district court's grant of summary judgment in favor of the Land Reutilization Commission.                       |
| STANDARD OF REVIEW    | Questions of law are reviewed independently of the trial court's conclusion.                                                              |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                            |
| PARTIES               | Bernard J. Morello v. Land Reutilization Commission of the County of Douglas, Nebraska, Douglas County, Nebraska, a Political Subdivision |

TOPICS

- deeds
- real estate
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether a special warranty deed issued by the Land Reutilization Commission under Neb. Rev. Stat. § 77-3205(2) warrants against title defects arising before the Commission obtained title through a foreclosure sale.
2. Whether the Commission was obligated under its special warranty deed to defend Morello in condemnation litigation when the title defect resulted from events occurring before the Commission acquired the property.

## HOLDINGS

1. A special warranty deed warrants only against title defects arising from the acts or omissions of the grantor or persons claiming by, through, or under the grantor; it does not warrant against defects that existed before the grantor acquired the property.
2. The Land Reutilization Commission was not required to defend Morello against title defects that arose before the Commission obtained title to the property.
3. A special warranty deed is distinct from a quitclaim deed and is not converted into a quitclaim deed merely because it does not warrant against defects predating the grantor's ownership.

## KEY QUOTATIONS

*“Said Grantor hereby specially covenants that said premises are free and clear of all liens and encumbrances ... and it does hereby covenant to SPECIALLY WARRANT AND DEFEND the said premises against the lawful claims and demands of all persons claiming by, through, or under it, and against no other claims or demand.”*  
(313)

*“A deed in which covenants are limited to defects which arise by, through, or under the actions of the grantor is known as a special warranty deed.”* (314)

*“It only warranted that no title defects had arisen or would arise due to the acts or omissions of the LRC.”*  
(315)

## FACTUAL BACKGROUND

Douglas County acquired the disputed tracts through a tax foreclosure process even though the property had previously been conveyed to the County by quitclaim deed and was erroneously included in the foreclosure proceeding. The Land Reutilization Commission acquired the property at the foreclosure sale and later conveyed it to Bernard J. Morello by special warranty deed. After the City of Omaha condemned the property, it was determined that Douglas County, not Morello, owned the tracts. Morello sought damages and a defense from the Commission, but the title defect had arisen before the Commission obtained title.

## PROCEDURAL HISTORY

After the City of Omaha's condemnation proceedings and a prior determination that Douglas County, rather than Morello, held title to the property, Morello sued the Land Reutilization Commission for damages and other relief based on the Commission's special warranty deed. The district court granted the Commission summary judgment, concluding that the deed did not obligate the Commission to defend against a title defect arising from a prior owner. The Nebraska Supreme Court affirmed.

#### DISPOSITION

affirmed

#### CASES CITED

- Nauenburg v. Lewis, 265 Neb. 89, 655 N.W.2d 19 (2003)
- City of Omaha v. Morello, 257 Neb. 869, 602 N.W.2d 1 (1999)
- Henderson v. Henderson, 264 Neb. 916, 653 N.W.2d 226 (2002)
- Rosenblum v. Eisenhower, 29 Conn. Supp. 216, 280 A.2d 537 (1971)
- Gustafson v. Gustafson, 239 Neb. 448, 476 N.W.2d 819 (1991)

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