

1. Owens v. Lois - Did Lois violate the “no assignment” provision in the lease to owner when she subleased her store and parking space to Fast Food? (Try to make headings simple issue statements for time’s sake)

Assignments and Subleases

(Rule for assignment? Rule for lease and sublease? Do analysis of the type of lease before discussing nonassignment clause below)

Non-Assignment Clause & Waiver

A tenant is may freely assign or sublease his/her lease to a premise unless specifically barred by the terms of the lease. A “no assignment” clause is enforceable unless the landlord waives such clause by accepting rent from the assignee or subleased tenant.

Here, Lois entered into a written 30-year lease to rent out a store in the mall owned by Owner and parking spaces 1 through 20. The lease agreement provided that Lois is not to assign the lease without Owner’s prior written permission. Lois, however, subleased her store and parking space to Fast Food for ten years, prior without first having obtained O’s to receiving written permission. So, Owner may argue that Lois violated the terms of the lease by subleasing to FF. However, Lois may respond by arguing that Owner accepted rent from Fast Food and therefore has waived the “no assignment” provision of the lease.

DEFENSE OF ESTOPPEL?

(Note: First discuss whether it is an assignment vs. lease. If lease/sublease, then L will argue that she did not violate the non assignment provision because it only applies to assignments and doesn’t apply to leases/subleases. Then discuss non assignment clause and waiver thereof. Lastly, take the analysis further by stating that if O waived, then he is estopped from bringing suit against L.)

Conclusion

Lois did not violate the “no assignment” provision in her lease with Owner.

2. Fast Food v. Builder GOOD

Trespass

An individual who physically intrudes onto another’s property without permission is liable for trespassing.

Here, Fast food subleased the store; including parking spaces 1-20 from Lois therefore he has possessory right over the premises. Builder however set up his memorabilia and sandwich stand in parking spaces 15-20, physically intruding upon such premises without permission from Fast Food. -Therefore, FF will argue that Builder has trespassed onto Fast Food’s property. Yet, Builder may argue that he had legal right to be present on lots 15-20 ~~(discussed further below)~~. based on the theory of easements, discussed below.

Easement in Gross

An easement is a non-possessory right that the holder has to use the land of another for a specified purpose. ~~There are two types of easements, an appurtenant and an in gross.~~ *(only state applicable rules for time's sake)* An easement in gross is one where the holder has a mere personal interest in the property of another. An easement in gross is not transferable unless it is an economic or commercial interest.

Here, Builder may argue that his ~~agreement deed~~ with Owner provided that he may use lots 15-20 to set up his stand to sell sports memorabilia and ~~sueh~~sandwiches, therefore he had a personal interest in the lots. Therefore, he had an easement in gross. *(Use the exact facts)*

(Generally easement in gross is not transferable as it is tied to the person not the property. However, it is transferable for economic or commercial interests and therefore valid against subsequent holders or interest holders such as FF.)

Express easement

An express easement may occur by grant or reservation. An easement by reservation occurs when the owner to a land conveys (little to another??) but reserves the right to use the land for a specified purpose. An express easement must: (1) be in writing (2) identify the party's and affect the land (3) signed by the grantor and (4) indicate intent on the party of the grantor.

Here, Builder ~~may argue that He~~ was the original owner of the mall and he conveyed title to the mall along with parking spaces 1-100 to owner when he sold it. However, Builder reserved the exclusive right to use parking spaces 15-20. Therefore he reserved the right to continue using the parking lots. Additionally, builder sought to use the parking spaces to set up a stand and sell sports memorabilia on Sundays. Therefore, the reservation was for a specified purpose. Therefore, Builder had an easement by reservation.

Additionally, the deed was (1) in writing that included the property being effected by the agreement (i.e parking spaces 15-20) and it was recorded. Lastly, the builder who is the grantor, since he reserved the right to use the lots, intended to reserve such right and ~~Lois O~~ by agreeing shared the same intent. *(Where is the analysis for (2), (3), and (4) of your rule statement above? Discuss whether it was signed - here the deed is recorded so make it clear. Further discuss SOF. You may also combine the analysis for both paragraphs as the preceding paragraph holds the same facts you can use to satisfy the reqs of (1), (2) (3) and (4) in your rule statement above.)*

Therefore, Builder had a valid express easement in gross and a legal right to be on the premises.

NOTICE - Discuss

(Prior deal with covenant (easement) is in guarantee's chain of title and thus, runs with the land. In short, FF is on notice of B's easement since deed was recorded.)

Termination of easements? Discuss

(State there's no evidence indicating a termination of the easement here.)

Conclusion

Fast Food will not prevail because builder had a legal right to be on the premise. *(FF cannot sue for trespass because B has a right to be there through his easements. Make this clear in your analysis)*

3. Did Owner have the right to change the locks on Fast Food?

Tenant's duties – Duty to pay rent (Be specific with your legal issue headings)

A tenant has the duty to pay rent. A subleased tenant has an agreement with the tenant and not the landlord to pay rent. Therefore the tenant and not the subleased tenant owe such duty to the landlord.

Here, Fast Food subleased the shop with lots 1-20 from Lois and therefore is in a contract with Lois and not Owner. Lois owes the Owner the duty to pay rent and not Fast Food to Owner. Owner may argue that he didn't receive rent from Lois or Fast Food and therefore he had the right to evict Lois; Thereby, evicting Fast Food. However, Fast Food may argue that Owner did not have the right to change the locks as a way to evict Fast Food from the premise, as discussed below.

Constructive Eviction (Implied covenant of quiet enjoyment)? Discuss

(Discuss the importance of the following facts: FF "informed O that it would cease paying rent" and "insisted that it would not pay further rent" and whether they are just saying it or they actually failed to pay rent. "O said there was nothing he could do about it.")

Actual Eviction

When a tenant fails to pay rent and continues to possess the premises the landlord may (1) evict the tenant through the courts or (2) continue the relationship and sue for damages. A landlord must not engage in self-help.

Here, after Fast Food insisted that it would not pay rent until Owner stopped Builder from setting up his stand, Owner hired a locksmith to change the locks on the space occupied by Fast Food. The owner did not attempt to evict utilizing the courts nor did he wait and sue for damages. Rather, the Owner engaged in self-help by changing the locks. Therefore, Owner did not have the right to change the locks on Fast Food's premises.

Conclusion

Owner did not have the right to change the locks.

4. Can the homeowners establish a claim for nuisance against Fast Food?

Nuisance (Public or private? Discuss both)

In order to present a prima facie case of Nuisance, the plaintiff must show a substantial and unreasonably interference with the use and enjoyment of his/her land by the defendant.

Here, the neighbors may argue that there is an unpleasant odors that come from Fast Food's premises. The magnitude of the order is substantial in that it causes them great discomfort. However, Fast Food may argue that it runs its restaurant in compliance with the health and safety code of the jurisdiction and therefore the order is not a substantial interference because it is limited by the state of the arm equipment it uses. Additionally, since they live near the restaurant it is not unreasonably to encounter cooking odors from the restaurant. *(Use the facts that on warm days when its particularly busy, "unpleasant" cooking orders were emitted from FF's kitchen. Marshal the facts and make the inferences)*

Conclusion

It is likely the neighbors will fail to present a prima facie case of nuisance against Fast Food.

HOMEWORK

- *Same exercises as last assignment*

FEEDBACK

- *This is a good answer but has potential to be great.*
- *Need to draw inferences from existing facts to strengthen your analysis*
- *Try to use the exact facts within your analysis. Many facts were not mentioned.*
- *If there is a non-assignment clause, then first discuss assignment vs. lease vs. sublease so as to identify the type of agreement. Then do analysis of nonassignment clause and waiver thereafter.*
- *Headings and subheadings need to be very specific*
- *Good conclusion statements*
- *Good command over the law*
- *Good simple and direct rule statements*
- *Good analysis and counterarguments*
- *Good job spotting major issues (need improvement on spotting minor issues)*
- *Good writing style: clear, concise and direct*