



The Docket: If It Ain't Broke, Don't Fix It

June 17, 2014

The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee, which reviews significant court rulings and other legal developments, and explains the relevance to the title insurance industry.

Today's review of a ruling by the New Mexico Supreme Court concerning the risk of "updating" a deed chain was provided by Lance Pomertantz, a New York sole practitioner who focuses exclusively on land title issues. He can be reached at Lance@LandTitleLaw.com

Citation: *Amethyst Land Company, Inc. vs. Terhune*, Docket No. 34,083 (New Mexico Sup. Ct., May 12 2014)

Facts: Keith's lot enjoyed an access easement over Terhune's lot. Terhune asked Keith to enter into an agreement extinguishing the easement. Keith complied and then sold his lot to Desert Sunrise, a *bona fide* purchaser who was unaware of the agreement. A few days before the agreement was recorded, Desert Sunrise recorded its deed.

Two years later, Desert Sunrise sold its lot to Amethyst. Amethyst was controlled by an attorney. Following Amethyst's acquisition of the lot, the attorney searched the land records himself. He then prepared "correction deeds" that explicitly referred to the original easement and the agreement. At the insistence of Amethyst, both Keith and Desert Sunrise executed their respective "correction deed."

Terhune obstructed the easement, asserting it was extinguished by the agreement. Amethyst sued, claiming that the agreement was ineffective due to its late recording.

Holding: The court explained that while the agreement was valid on its face, the late recording made it unenforceable against Desert Sunrise, a BFP. In addition, it was initially unenforceable against Amethyst pursuant to the "shelter rule," whereby a purchaser who takes from a BFP has the same rights as its grantor. The correction deeds, however, incorporated the agreement in its entirety by referring to it in the deeds. This incorporation by reference showed that the original intent of the parties was to extinguish the easement. Amethyst, through its own actions, "forfeited its right to the easement!"

Relevance to the Title Industry: In addition to proving the old saw questioning the wisdom of an attorney representing himself, this case illustrates how well-intentioned attempts to "update," "clarify," "simplify," "summarize" or "consolidate" information in the land records can backfire. Sometimes these efforts are initiated by title companies, a practice that should be avoided. In addition, such documents in the recorded chain of title can pose challenges for insureds and underwriters downstream of the original transaction, especially when access rights are involved, or a marketable title act is in effect.

Read the full opinion [here](#).

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