In The

Supreme Court of Virginia

RECORD NO. 121728

COREY NEJATI and ROBABEH NEJATI,

Appellants,

v.

STEPHEN P. STAGEBERG, *et al.*,

Appellees.

REPLY BRIEF OF APPELLANTS

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REPLY BRIEF OF THE APPELLANT

Stageberg errs in arguing and the Trial Court erred in finding that Section 15.2-2254 of the Code of Virginia requires "some further action" for the boundary line to become definite. Both Stageberg and the Trial Court attempt to add words to the statute that are not present. Section 15.2-2254 provides

> 3. No person shall sell or transfer any land of a subdivision, before a plat has been duly approved and recorded as provided herein, unless the subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto. **However, nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.**

(Emphasis added). The plain reading of the statute is that nothing will prevent the recordation of a deed of transfer or the passage of title. Nothing further is required as to the title to the property so defined.

Stageberg attempts to assert that the Section 15.2-2254(4) requires the "approval of the City", however, Stageberg ignores the plain reading of the statute again. Specifically, Section 15.2-2254(4) merely states

> 4. Any person violating the foregoing provisions of this section shall be subject to a fine of not more than $500 for each lot or parcel of land so subdivided, transferred or sold and shall be required to comply with all provisions of

> this article and the subdivision ordinance. The description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties or remedies herein provided.

Again, as noted in Section 15.2-2254(3), parties may record instruments and pass title. Section 15.2-2254(4) merely states that the property is still subject to the limitations placed upon it by the Planning, Zoning and Subdivision Chapter.

The Nejatis does not dispute that the development of the property is limited by what is required in Chapter 15.2 of the Code. In fact, the Nejatis understands that the title passage is subject to the limitation of the Planning, Zoning, and Subdivision Chapter. That being said, Section 15.2-2254(3) does not require and additional action for the transfer to be valid—Stageberg is simply adding words that just are not present.

Stageberg goes on to argue that the deeds of transfer are ineffective because the Statute speaks to “parties” to the transaction. Stageberg and the Nejatis were not parties to each other’s deeds. However, Stageberg then argues that “[t]he plain meaning of the statute is that the Nejatis and Stageberg now stand in the shoes of Properties by Us….” Therefore, when it benefits his arguments,

Stageberg argues that there are separate parties to the instruments, but when the antithesis position benefits him, Stageberg argues that the parties stand in the shoes of their predecessor. Stageberg cannot have it both ways. In fact, the only logical argument is that the Stageberg and the Nejatis do stand in the shoes of their predecessor—meaning that the deeds were effective transfer of distinct interests as intended by the parties.

In reviewing the facts and the statutes, both Stageberg and the Nejatis agree that the deeds executed by Properties By Us transferred a specific interest in real property to Stageberg and The Nejatis. Both Stageberg and the Nejatis accepted deeds with clearly defined tracts of land on them. Both Stageberg and the Nejatis were prepared to accept those tracts. Neither Stageberg nor the Nejatis have argued that they are unclear as to the property that they each purchased. There is no ambiguity in the deeds of transfer as to the metes and bounds of their purchased properties—neither has even suggested that there is.

Therefore, based upon the statutes relied upon by the Stageberg and the Nejatis, the separate transfers of identified

property from Properties By Us to the Stageberg and the Nejatis were effective to pass title.

RELIEF REQUESTED

WHEREFORE, the Nejatis respectfully request that this Court:

1. Determine that the transfer from Properties By Us conveyed a fee simple interest in the described property to the Nejatis; and

2. Determine that a zoning decision cannot prevent "the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument"; specifically, determine that the zoning decision does not affect the transfer of fee simple title from Properties By Us to the Nejatis; and

3. Determine that the deed descriptions in the Nejatis' deed and in the Long Survey plat are sufficiently definite for an individual to transfer title to a property; and

4. Determine that the Nejatis own their physical boundaries as described in the Long Survey plat, including the apartment building, and Stageberg owns only his raw land, and that the percentage interest designation made by the trial court is incorrect and contrary to law; and

5. Remand the Nejatis' cause for further proceedings consistent with the direction of this Court.

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CERTIFICATE

Pursuant to Rule 5:26(h), Rules of the Supreme Court of Virginia, this is to certify that Counsel for Appellant has been privately retained and, on the 15th day of May, 2013, fifteen bound copies of the Reply Brief of the Appellant with one electronic copy on CD of the same, were hand-filed with the Clerk of this Court and three copies of the Reply Brief of Appellant with one electronic copy on CD were served, via U.S. Mail, postage prepaid to:

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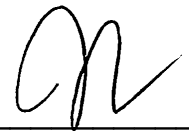
2) Counsel for Appellant respectfully requests oral argument.



Jason E. Hickman, Esquire