IN THE SUPREME COURT OF GUAM

KISHORE HEMLANI and GURVINDER SINGH SOBTI

Plaintiffs-Appellants

VS.

THEODORE S. NELSON, GLORIA B.L. NELSON, GLENN R. NELSON, RHONDA T. NELSON, GWENDOLYN M. TAIMANGLO and THEODORE D. NELSON

Defendants-Appellees

OPINION

Filed: June 9, 2000

Supreme Court Case No. CVA99-032 Superior Court Case No. CV1721-94

Cite as: 2000 Guam 20

Appeal from the Superior Court of Guam Argued and submitted on March 8, 2000 Hagåtña, Guam

Appearing for the Plaintiffs-Appellants: Wilfred R. Mann, Esq.
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Appearing for the Defendants-Appellees: Cesar C. Cabot, Esq. Law Offices of Cesar C. Cabot, P.C. BankPacific Bldg., 2nd Flr. 825 S. Marine Drive Tamuning, Guam 96911

BEFORE: BENJAMIN J.F. CRUZ, BEFORE: BENJAMIN J.F. CRUZ, Chief Justice, PETER C. SIGU and JUNE S. MAIR, Justice Pro Tempore

MAIR, J.:

[3]

[1] Plaintiffs-AppellantsPlaintiffs-Appellants Kishore Hemlani and Gurvinder Singh Sobti appeal the trPlain judgmentjudgment in favor of Defendants-Appellees Theodore S. Nelson, Gloria B.L. Nelsojudgment in favor Nelson, Rhonda T. Nelson, Gwendolyn M. Taimanglo and Theodore D. Nelson. For reasons which follow, the trial court s judgment is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

- [2] InIn thisIn this case we decide whether lessors of real propertyIn this case we decide whether lessors of real priorprior to signing the lease, one ofprior to signing the lease, one of the lessors acquires the undivided fee simpler did not join in the lease.
- PlaiPlaintiffs-APlaintiffs-AppellantsPlaintiffs-Appellants (collectively Hemlani) desired to incorporate Hagåtña, Hagåtña, Guam into a development they had been contemplating. Hagåtña, Guam into a development they had been contemplating. Hagåtña, Guam into a development they had been contemplating. Appellees Appellees (hereinafter Nelsons), and on or about August 31, 1992, the parties signed a ninety-nine yearyear lease, which Hemlani drafted, foryear lease, which Hemlani drafted, for Lot 1419, Hagåtña. The Nelsons month, month, with the first sixty months, ormonth, with the first sixty months, or \$72,000, paid inmonth, with the

Title. Lessor warrants that it is lawfully seized of Lessor warrants that it is lawfully seized of the above L inin feein fee simple; that the same is free and clear ofin fee simple; that the same is free and clear of all er record; and that it has good right to lease said property.

HemlaniHemlani included a reference to CertiHemlani included a reference to CertifHemlani included a refe property. This Certificate of Titleproperty. This Certificate of Title indicated that property. This Certificate of T Hill held undivided interests in the property.

- Ms.Ms. Hill was noMs. Hill was not a Ms. Hill was not a signatory on the lease. She had passed away 1991.1991. S1991. She die1991. She died intestate, leaving four heirs, James D. Hill, Sr., William Peter McNeely, McNeely, and Elena Florence Thomley. The heirs quitclaimed theirMcNeely, and Elena Florence (Ted)(Ted) Nelson, who recorded the quitclaim dee(Ted) Nelson, who recorded the quitclaim deeds. To probate probate of Ms. Hill s interest atprobate of Ms. Hill s interest at the Superior Court on October 19 yearsyears after Hemlani and the Nelsonsyears after Hemlani and the Nelsons signed the lease for Lot 1419, Ms. Hill solelysolely to Ted. Hemlani did not include the heirs in the leas agreement, and they were not party to it.
- [5] HemlaniHemlani was unable to develop theHemlani was unable to develop the property, allegedly because when when they discovered Ms. Hill s interest on the when they causedcaused Hemlani to file a complaint for breach of contract and breach of warrantycaused Hemlani to file a composed NovemNovember November 23, 1994. Bench trial yielded judgment for the Nelsons on both causes of NovemNovember Volume 1994. Super. Ct. Guam Feb. 22, 1999).
- Hemlani appeals the judgment, asserting that Hemlani appeals the judgment, asserting that it was example was a now as no breach of the lease agreement s warranty provisions. Hemlani argues that Ms undivided interest was a not a undivided interest was a not a mere undivided interest was a not a mere encexception to the exception to the lessor s warranty against encumbrances. Instead, Hemlani contends that interestinterest was a defect ininterest was a defect in record title causing a breach of covenant of *seisin*. We agree that Ms. Hill s undivided interest in Lot 1419 is not a dodo not agree that do not agree that Ms. Hill s interest constituted a breach of the covering judgment of the trial court is affirmed.

II. ANALYSIS

- [7] WeWe have We have jurisdiction over the appeal of a final judgment of the Superior CourtWe have jurisd 7 GCA, §§ 3107 and 3108.
- [8] AA trial court sA trial court s application of law is reviewed *de novo. Coffey v. Gov't of Guam*, 1997, 1997 14,14, \P 6. A trial court s findings of fact shall not be set14, \P 6. A trial court s findings of fact shall not erroneous. *Yang v. Hong*, 1998 Guam 9, \P 4.

A. Ms. Hill s undivided interest in Lot 1419 was not an encumbrance of record

- UnderUnder its application of law, the trial courtUnder its application of law, the trial court concluded that designated designated on the Certificate of Title, designated on the Certificate of Title, was an encumbrance of recolledled to the court's finding that Ms. Hill s interest did not constitute a breach of the lease agreement.

 We disagree.
- [10] The parties failed to provide the court with a copy of the Certificate of The parties failed to provide the convertheless, Nevertheless, it is undisputed that Ms. Nevertheless, it is undisputed that Ms. Hill had an interest design our analysis by analyzing that interest.
- [11] UnderUnder Guam law, ownership of realUnder Guam law, ownership of real propertyUnder Guam law, common, common, partnership common, partnership interest, or community property interest. Title 21 GCA § 1214 Guam s Land Title Registration Law, [i]nGuam s Land Title Registration Law, [i]n all casesGuam s Land Title tenants in common to an estate in registered land, such persons may receive onetenants in common to an estate in

¹ The Plaintiffs-Appellants so ught our review of the trial court's findings of fact concerning whether Ms. Hill's interest may have been subject to other nutstanding claims at probate. However, as the record's aa copy of Certificate copy of Certificate of Title No. 9058 8, and as neither partya copy of Certificate of Title No. 9058 8, and as neither LotLot 1419, we take the facts as Lot 1419, we take the facts as they have been Lot 1419, we take the facts as they have been adjudicated or Feb. 22, 1999) and *In the Matter of the Estate of Margaret Hill*, PR0175-94 (Super. Ct. Guam July 5, 1996).

entirety, entirety, or each may receive a separate certificate for his undividedentirety, or each may receive a separate (1994).(1994). As Ms. Hill s interest was designated with the other owners(1994). As Ms. Hill s interest was designated for Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest was an undivided interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of Title, we can conclude that her interest was an undivided interest of

[12] HavingHaving concludeHaving concluded that MsHaving concluded that Ms. Hill held an undivided in next determine the estate she possessed. The Land Title Registration Law provides:

NoNo mortgage, lien, charge, No mortgage, lien, charge, or lesser estate than fee simpleNo mortgage, lien, thethe fee simple to the same land is first registered. It shall not be an othe fee simple to the same land bringingbringing land under this Law, that the estate or interest ofbringing land under this Law, that the estangent outstanding lesser estate, mortgage, lien, any outstanding lesser estate, mortgage, lien, or charge; but mortgage, lien, or charge shall be noted upon the certificate of titlemortgage, lien, or charge shall thereof, thereof, and the title or interest thereof, and the title or interest certified thereof, and the title mortgages, liens, and charges as are so noted, except as herein provided

TitleTitle 21 GCA § 29107, (1994). As Title 21 GCA § 29107, (1994). As there were no outstanding lesser estates 1419,1419, all interests noted on the 1419, all interests noted on the Certificat1419, all interests noted on the C. Ms. Hill s undivided interest as tenant in common, therefore, was in a fee simple estate.

[13] ByBy contrast, By contrast, Guam law provides that an encumbrance includes taxes, assessments, By contribution liensliens upon real property. Itilians upon real property. Title 21 GCA § 4211, (19 sectionsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in this case California Civsection 4211 was adopted from California; in

statutestatute is inclusive. 1119 Delaware v. Continental Land Title Co., 16 Cal. App. 4th, 16 Cal. App. 4th 992

Cal.Cal. Rptr. 2d 438, 443 n. 4 (Cal. Ct. App. 1993). Thus, courts have found covenants restricting the useuse of property, restrictions on construction, reservations of right of way, eause of property, restrictions on construction leases, leases, deeds leases, deeds of trust, and pendency of condemnation proceedings to be encumbrances. *Evans* Cal.Cal. App. 2d at 706, 42 Cal. Rptr. at 137 (citCal. App. 2d at 706, 42 Cal. Rptr. at 137 (citCal. App. inheritanceinheritance taxes on land conveyed to Native Americans have also been founheritance taxes encumbrance. *Kirkwood v. Kirkwood v. Arenas*, 243 F.2d 863, 869 (9th Cir. 1957), 243 F.2d 8

[14] ItIt is apparent that Ms. Hill s undivided interest in feIt is apparent that Ms. Hill s undivided interest interests found in California case law. Her interest is the largest interests found in California case law subsissubsistsubsist in another estate to the diminution of the value of the other estate as d (encu(encumbering(encumbering the mortgagor s interest), a covenant (encumbering the covenantor s interest) easementeasement (encumbering the subservient estate), or the like. Her undivided in clearly not an encumbrance. Therefore, the trialclearly not an encumbrance was error.

B. The Nelsons neither breached the covenant of *seisin* or covenant of right to convey

- [15] Although Although we find the Although we find the trial court's conclusion of law to be error, we hold that not breach the warranty provisions contained in the lease agreement with Hemlani.
- [16] When When a grantor makes a covenant When a grantor makes a covenant of *seisin*, she warrants that,, she was lawfully seized of a good, absolute and indefeasible esta hadhad power to convey the same. *Maxwell v. Redd*, 496 P.2d 1320, 496 P.2d 1320 (Kan. 19, 496 P.2d 1320 (F.

defending his possession.

Additionally, Additionally, when a grantor makes a covenant of *seisin*, she promises that she is, she promises that she sheshe purports to convey. *SeeSee, generalSee, generally*, RICHARD R. POWELL, POWELL ON REAL PROPER 81A.06[2][ii], at 81A-06[2][ii], at 81A-115 (Matthew Bender & Co. ed. 1999). Similarly, a grantor covenants the sheshe has goodshe has good right to convey a particular estate inshe has good right to convey a particular estate convey. *See, generally, id.* § 81A § 81A.06[2][b], at § 81A.06[2][b], at 81A-116. It follows, then, that warrant that she is *seised* in fee simple unless that is the estate she purports to convey.

- [17] As holders of fee simple interests, As holders of fee simple interests, the Nelsons can holders of fee simple and lessera lesser estate. See, e.g., See, e.g., Nicholson Corp. v. Ferguson, 243 P. 195 (Okla. 1925), Sun Exploration and Production and Production Co. v. Benton, 728 S.W.2d 35 (Tex. 1987), Walker & Withrow, Inc. Walker & P.2dP.2d 191 (Okla. 1982), P.2d 191 (Okla. 1982), Siniard v. Davis, 678 P.2d 1197 (Okla. Court. App. 1984)., 679 what, exactly, what, exactly, is warranted when a covenant or makes the covenant here.
- InIn *Nicholson Corp.*, 243 P. 195, an assignor of oil rights covenanted that it was the law, 243 P. 195, are ownerowner of a lease of oil rights and interests and that it had good rightowner of a lease of oil rights and interests thethe lease and rights and interests under it. *Id.* at 197.. at 197. The oil field and well referred to in the lease werewere in fact on another s land. *Id.* at 196. The question was at 196. The question was whether the at 196 *seisin* and of good right to convey were enforceable given that oil and gas leases were assigned. *Id.* at 197. In Oklahoma,

[t]he[t]he detriment c[t]he detriment caused[t]he detriment caused by a breach of a covenant of seising warranty, or of quiet enjoyment, in a grant of an estate in a grant of an estate in real property to be: First. The price be: First. The price paid to the grantor; or, if the breach is par proportion proportion of the price as the proportion of the price as the value of the property affected by the primetime of the grant, to the value of the whole property. Second. Interest thereon for the time during which the grantee derivthe time during exceeding six years. Third. exceeding six years. Third. Any exexceeding six years. Third.

Id.Id. at 198 citing § at 198 citing § 5980 C. O. S. (1921) (emphasis added).² The Nicholson Corp. court held that constant the concerns not title to real estate, but where title to an estate tatute concerns not title to real estate, but that the covenants applied to assignments applied to assignments of gas leaseholds. that the covenants applied to assignments of gas leaseholds. The Covenants applied to assignments of gas leaseholds.

[19] Here, Here, the estate that the Nelsons purported to convey was a ninety-nine-yHere, the estate that the UnderUnder such conveyance, Hemlani becomes vestedUnder NelsonsNelsons have a reversion. Hemlani argues that there was a breach of Nelsons have a reversion. Hemlani argues that there was a breach of Nelsons have a reversion. Hemlani argues that there was a breach of Nelsons have a reversion. Hemlani argues that there was a breach of Nelsons have a reversion. Hemlani argument is incorrect.

[20] In Guam,

[u]pon [u]pon a [u]pon a person s death, the title to such person s property, real and [u]pon a person s death immediatelyimmediately to the person or persons to whom it is devised or bequeathed by sto the person sperson s last will, or, in the absence of such person s last will, or, in the absence of such succeed to such person s estate as provided in Division 2 of this Title.

TitleTitle 15Title 15 GCA § 1401, (1994) (emphasis added). Thus,Title 15 GCA § 1401, (1994) (emphasis added). and legatees by will or in accordance with intestate succession.

[21] InIn *Lathrop v. Kellogg*,, 158 Cal.App.2d 220, 322 P.2d 572, (Cal. Ct., 158 Cal.App.2d 220, 322 P.2d 572 claimants to a piece of property brought suit to quiet taimants to a piece of property brought suit to quiet taimants.

Detriment: Detriment: breach of covenant of healthin detriment The detriment caused by a The detriment caused by a be an acovenant of seisin, , of r, of right to convey, of warranty, or of quiet enjoyment, in a grantgrant of an estate in real propergrant of an estate in real property, is grant of an estate in real property, is grantor; or, grantor; or, if the breach is partial only, such proportion of grantor; or, if the breach is partial only, such proportion of grantor; or, if the breach is partial only, such property affected by the breach bore at the time of the grantthe property whole whole property; whole property; (2) Interest thereon whole property; (2) Interest thereon for the time during whin nono benefit from the property, not exceed inno benefit from the property incurred by the covenantee in defending his possession.

² The Oklahoma statute concerning the covenant of seisin tracks, verbatim, Guam s statute:

waswas vested in 1916 in one Ettiewas vested in 1916 in one Ettie A. Sprague. *Id.* at 222, 322 P.2d at at 222, 322 onon July 2, 1937, a tax deed to the state of California was recorded on July from the state to Warren and Frank Kellogg wfrom the state to Warren and F deeddeed to the Kelloggs was a quitclaim deed from Ettie L. Sprague, Marian L. Sprague, John H. SpSprague, Sprague, and George P. Low to Wilbert Lee Lathrop and Mable Lathrop, husband an Sprague, and G eventually came into possession. eventually came into possession. *Id.* There was no record that Ettie A of of her interest. *Id.* However, t However, the s However, the same Ettie A. Sprague died in 1936 (before th statestate was recorded), leaving her husband John H. Spraguestate was recorded), leaving her husband John H. Sprague s estate was never probated. Ettie A. Sprague s e

- The The issue was whether a plaintiff in possession makes a *prima facie* case of case of ownercase of sufficients ufficient to withstand judgment of nonsuit. In California, once the plaintiff establishes ufficient to with the the burden shifts to the defendant to establish that the burden shifts to the defendant to establish that title *Kellogg* court held that the Lathrops, the successors in interest to Ettie A. Sprague s heirs, made a *primaprima facie* case when they were in possession and derived title case when they were in possession and derived to at 223, 322 at 223, 322 P.2d at 574. The at 223, 322 P.2d at 574. The appellate court s rationale was that at dear inin the heirs, subject only in the heirs, subject only to administration; that the right extends to a grantee of an heir. *Id.* at 225, 322 P.2d at 576.
- [23] AnotherAnother quiet title action was brought in *Jordan v. Fay*, 98 Cal. 264, 33 P. 95 (1893). , 98 Cal. *JordanJordan v. Fay*, Edward P. Fay, owner o, Edward P. Fay, owner of , Edward P. Fay, owner of 3/4 undivided interestinterest was community property vestinterest was community property vested in Wiinterest was community was

1872,1872, Bridget Fay died intestate,1872, Bridget Fay died intestate, leaving four1872, Bridget Fay died intestate including the defendant, Thomas J. Fay. *Id.* In 1880, Bridget s husband William and one of their sons,sons, Jeremiah G. Fay, conveyed their interests to Mariasons, Jeremiah G. Fay, conveyed their interests to MariaMaria Kate Fay conveyed the Whole Maria Kate Fay conveyed the whole transaction, conveyed this interest to the plaintiff, Jordan. *Id.* at 266, 33 P. at 95.

- Jordan Jordan brought suit claiming ownership of Jordan brought suit claiming ownership of the property in TheThe court agreed, The court agreed, holding that, as to the 3/4 undivided interest that Maria KateThe court agreeher her husband, her husband, she had taken the entire interest notwithstanding the fact that the estate was setsettled, settled, nor property distributed. *Id.* at 266, 33 P. at 96. As to the 1/4 undivided interest, under California law of theCalifornia law of the time, theCalifornia law of the time, the rule in intestate succe communitycommunity property without administration. *Id.* at 267, 33 P. at 96. The court held that William FayFay was vested in all of Bridget Fay s 1/4 undivided interest in the propeFay was vested in all of Bridget Fay subsequesubsequentsubsequent conveyance to Maria Kate Fay was of the entire 1/4 undivided interest. *Id.* at 26 P. at 97. Jordan was, therefore, vested of the entire parcel in fee simple absolute. *Id.*
- [25] ApplyingApplying *LathropLathrop v. Kellogg* and *Jordan v. Fay* to the facts of this case, at Ms. to the fact herher heirs became immediately vested of her 1/7 undividedher heirs between the statutory scheme for intestate succession. Upon quitting their interest in favor of Ted, he became vestedvested of their estate. Ted s estatevested of their estate. Ted s estatevested of their estate vested of their estate. Ted s estatevested of their estate that the quitclaimsimple. As the record indicates that the quitclaim deeds toto the signing of the lease, Ted s undivided 2/7 interest combined with the remaining interests to vest the Lessors in all 7/7 undivided interests in fee simple in Lot 1419.

- SuchSuch a conclusion is not in contraventionSuch a conclusion is not in contravention of theSuch a conclusion. No. No. 86-0027A, SC Civ. No. No. 1069-84 (D. Guam App. Div. Jan. 29, No. 86-0027A, SC PangilinanPangilinan contracted for the sale of a lot in Tamuning with Rosalia C. PaltingPangilinan contracted for the Sale of a lot in Tamuning with Rosalia C. PaltingPangilinan contracted for the C.C. Palting on September 10, 1975. It was C. Palting on September 10, 1975. It was understood by the parties the waswas subject to probate proceedings in the estate of Paul D. Palting settledsettled until April 11, 1980, oversettled until April 11, 1980, over four years later settled until April 11, 1980 titletitle to the lot in Rosalia Palting Guerrero or Marilyn Palting but in other heirs, title to the lot in Rosalia Palting Guerrero and Seeking to compel Rosalia Palting Guerrero and Marilyn Paccontract and a declaration that the other heirs had no interest in the property. *Id.*
- The The Pangilinan v. Palting court held that, while under sectiocourt held that, while under section 1prpropertyproperty passes immediately to heirs either by will or by statute, under subsection (b), property property passes immediately to heirs either by will or by statute, under subsection (b), property property passes immediately to heirs either by will or by statute, under subsection (b), property property passes immediately to heirs either by will or by statute, under subsection (b), property property passes immediately to heirs either by will or by statute, under subsection (b), property property passes immediately to heirs either by will or by statute, under subsection (b), property property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately to heirs either by will or by statute, under subsection (b), property passes immediately passes
- [28] ForFor Pangilinan, operation of sectionFor Pangilinan, operation of section 1401 meant that equitable title do of sale purporting of sale purporting to convey Rosalia Palting Guerrero s and Marilyn Palting's of sale purporting to to the probate proceeding. However, as the final decree of the probate to the probate proceeding. However, at the lot in them, they had no interest to convey to Pangilinan. It that Pangilinan had no interest in the lot that was purportedly conveyed to him. *Id*.

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heirs.

- LikeLike *PanPangilinan*, title vests immediately in Ms. Hill s heirs subject to probate of th, title vest interests. In *Pangilinan*, after probate, after probate Rosalia Palting, after probate Rosalia Palting Guerrer toto take any interest into take any interest in the estate of Paul D. Palting. to take any interest in the estate of Paul application of the law of wills and intestacy, Rosalia Palting Guerrero and Marilynapplication of the law devisees devisees or intestate takers who succeeded to Paul D. Palting s estate devisees or intestate takers who succeeded to Paul D. Palting s estate devisees or intestate takers who succeeded to Paul D. Palting s estate devisees or intestate takers who succeeded to their shill s intestate heirs were apparently vested of her 1/7 interest; otherwise, Ted Nelson would Hill havehave succeeded to their 1/7 undivided interest in the lease property. Thhave succeeded to their 1/7 undivided Rosalia Palting Guerrero and Rosalia Palting Guerrero and Marilyn Palting desuccession and were not vested, Ms. Hill s heirs were takers under intestate succession.
- [30] UnderUnder the Under the same rationale, the *Lathrop v. Kellogg* successors in interest successors in interest established ownership sufficient to challenge established ownership sufficient to challen
- [31] The The conclusion that the Nelsons The conclusion that the Nelsons were vested The conclusion that the Nelsons The Conclusion that the Nelsons were vested The conclusion that the Nelsons The Conclusion that the N

SinceSince the covenant guarantees that the grantor is Since the covenant guarantees that the grantor is seize of of the land conveyed, if that of the land conveyed, if that estate shoof the land conveyed, if that est physicalphysical prephysical premises, a breach will have occurred. The same is true if owners lackinglacking in any appurtenancelacking in any appurtenance to the basic estate conveyed. lacking in any estateestate is subject to an encumbrance or servitude is not a breach of the covenestate is subject to SuSuchSuch interests do not affect the basic seisin of the grantor. In effect, this princi of the grantor. I recognizes recognizes that arecognizes that a personrecognizes that a person may be seised of an estate r it may be. &

POWELL, POWELL ON REAL PROPERTY § 81A.06[2][a][iii], at 81A-116.

[32] HemlaniHemlani argues that, at conveyance, the Lessors didHemlani argues that, at conveyance, the Lessor because there was a *possibility* that a competing claimant would bring athat a competing claimant vargueargue that his possession was disturbed. Therefore, to proveargue that his possession was disturbed were not seised of a ninety-nine-year tenancy of years because Ms. Hill s estate in thewere not seised of a ninety-nine still subject to divestment through probate, and such state of title left the propertial subject to divestment appurtenance to the estate of years.

[33] AnalysisAnalysis here begins by discussing Ms. Hill s interestAnalysis here begins by discussing Ms. Hill s toto Ted Nelson. By statute Ted Nelson. By statute, to Ted Nelson. By statute, Ms. Hill s heirs took her 1/simplesimple immediately uponsimple immediately upon her death, subject to competingsimple immediately upon hiddenhidden heirs, mortgagees, prior transferees, and other thirdhidden heirs, mor 1/71/7 undivided interest in the property. In the case 1/7 undivided interest in the property. In the case of a hidden heirsheirs would have would be fee simple subject to open wouldwould have fee simple subject to an encumbrance. In the case of prior trwould have fee simple subject to the the type of grant, the known heirs would take, if at all, either casecase of other third party claimants, the known heirs would take fee simple subject to thirdcase of other third claims. Claims. Thus, the heirs interests were either some future claims. Thus, the heirs interests were either some

feefee simple subject to open, or fee simple subject to an encumbrance unless Ms. Hill hMs. Hill had

conveyance taking the property out of what would be, at her death, her intestate estate.

- ItIt follows that, It follows that, upon quitting their interests, Ted Nelson took title to the heirs. It follows that, toto possible competing claims. However, to possible competing claims. However, as there were no competing claims have found that, upon application of the rules of interest entire 1/7 undivided interest. Therefore, afterentire 1/7 undivided interest. The succeeded in interest to the intestate heirs.
- ItIt is of no consequence that the Lessors did not conclusivelyIt is of no consequence that the Lessors did whether or not they were vested whether or not they were vested in fee simple or not vested at all. The dispositive tooktook the heirs itook the heirs inttook the heirs interest prior to conveyance of the tenancy at years to be probate probate court sprobate court sjudgment that the 1/7 undivided probate court sjudgment that the 1/7 undivided probate court sjudgment that the 1/7 undivided probate court sprobate that the 1/7 undivided probate court sjudgment that the 1/7 undivided probate court sprobate court sprobate
- existenceexistence of Ms. Hill's undivided interest. The ability to incorporate the property into his place development and mortgage development and mortgage it must be the approperty. However, again, Ms. Hill in fact had no interest in the property. Ms. Hill's heirs took title by intestacy; intestacy; Ted Nelson acquired their interests prior to lease execution; and, uintestacy; Ted Nelson acquiring acquiring 7/7 undivided interests acquiring 7/7 undivided interests in the ninety-allall appurtenances to the all appurtenances to the leasehold. all appurtenances to the leasehold. Under Hemlani s in ofof an estate of an estate until either recordation of an interest or entry of probate judgment. However, of an estate u wouldwould mean that no conveyance of would mean that no conveyance of an estate could bewould mean that no rulerule is patently erroneous and would have transferors relyrule is patently erroneous and would have transferors relyrule is patently erroneous.

issuanceissuance of a certificate oissuance of a certificate of tiissuance of a certificate of title to effect a transfer

is to give evidence of chain of title.

III. CONCLUSION

[37] The The Nelsons had fee simple title to the estate of years they purported to conThe Nelsons had fee simple, they did not breach the simple, they did not breach the simple, they did not breach of right to convey. Of right to convey. Not breaching any of right to convey. Not breaching any of these coven with Hemlani. Accordingly, the judgment of the trial court is **AFFIRMED**.

PETER C. SIGUENZA Associate Justice JUNE S. MAIR Justice Pro Tempore

BENJAMIN J. F. CRUZ Chief Justice