

1/23/66

First Supplement to Memorandum 66-8

Subject: Study 42 - Good Faith Improvers

Attached as Exhibit I (pink sheets) is a statute designed to carry out the decisions made at the July 1965 meeting. The pertinent portion of the Minutes of the July 1965 Meeting is attached as Exhibit II (green sheets). Attached to Memorandum 66-8 (previously distributed) is a tentative recommendation that the staff believes is a better approach to this problem than the statute attached to this supplement.

We suggest that we go through the attached statute section by section. (Obviously, if this statutory scheme is adopted by the Commission, much work will be required to perfect the statute.) The following is a listing of the section headings:

CHAPTER 1.5. GOOD FAITH IMPROVERS OF LAND OWNED BY ANOTHER

Article 1. Definitions and General Provisions

- 1020. Application of definitions and general provisions
- 1020.1. "Improver" defined [Based on CC Section 1013.5]
- 1020.2. "Improvement" defined [Includes taxes and special assessments]
- 1020.3. "Land" defined
- 1020.4. "Owner" defined
- 1020.5. "Person" defined [Makes statute applicable to public entities]
- 1020.6. When removal of improvement will cause irreparable injury to land
- 1020.7. "Fair value of an improvement" defined
- 1020.8. "Fair value of the land" defined

Article 2. Application of Chapter

- 1021. Chapter applies only where conceded or determined improver is not owner of land
- 1021.1. Rules relating to removal of encroachment, doctrine of laches and doctrine of estoppel not affected

Article 3. Rights of Land Owner

- 1022. Right to purchase improvement
- 1022.1. Right to require removal of improvement
- 1022.2. Right to require improver to purchase land
- 1022.3. Right to require improver to elect to remove improvement or purchase land
- 1022.4. Rights if improver fails to remove improvement when required
- 1022.5. Right to recover value of use and occupancy of land
- 1022.6. Right to recover expenses of bringing or defending actions

Article 4. Rights of Good Faith Improver

- 1023. Right to remove improvement
- 1023.1. Right to compel owner to make election [Subdivision (b) does not reflect the decisions made at the July 1965 meeting. To effectuate those decisions would require giving the improver a right to remove where he has no such right now, i.e., where lien holders will not consent. Suggested provision seems to reflect sounder policy.]

AMENDMENT OF CIVIL CODE SECTION 1013

AMENDMENT OF CIVIL CODE SECTION 1013.5

ACT APPLIES ONLY TO IMPROVEMENTS CONSTRUCTED AFTER ITS EFFECTIVE DATE

A major problem that is not dealt with in the attached statute is what provisions should be added in order to protect the rights of various lien holders on the land and the improvement. If this scheme is adopted by the Commission, the staff would appreciate receiving any suggestions concerning this problem.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

An act to add Chapter 1.5 (commencing with Section 1020) to Title 3 of Part 4 of Division 2 of, and to amend Sections 1013 and 1013.5 of, the Civil Code, relating to good faith improvements on property owned by another.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 1020) is added to Title 3 of Part 4 of Division 2 of the Civil Code, to read:

CHAPTER 1.5. GOOD FAITH IMPROVER OF LAND OWNED BY ANOTHER

Article 1. Definitions and General Provisions

1020. The definitions and general provisions in this article govern the construction of this chapter.

1020.1. "Improver" means:

(a) A person who, acting in good faith and erroneously believing because of a mistake either of law or fact that he is the owner of the land, affixes an improvement to land owned by another person; and

(b) A successor in interest of the person described in subdivision (a).

1020.2. "Improvement" means any property that is so affixed to land as to become a part of the realty to which it is affixed. "Improvement" includes the taxes which were paid on the land (as distinguished from the improvement), and the special assessments which were paid for an improvement benefiting such land financed by a special assessment, by an improver and were not paid by the owner or his predecessors in interest.

1020.3. "Land" does not include an improvement affixed to the realty by an improver.

1020.4. "Owner" means a person, or the successor in interest of a person, whose land is improved by an improver.

1020.5. "Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, the United States, a state, county, county and city, city, district, public authority, public agency, or any other political subdivision or public corporation.

1020.6. The removal of an improvement will cause irreparable injury to the land when the land cannot be restored to the condition that existed prior to the affixing of the improvement and the value of the land after the improvement is removed will be substantially less than its value would have been had the land remained in the condition that existed prior to the affixing of the improvement.

1020.7. The fair value of an improvement is to be determined as of the time of the computation of such value and is the amount by which the improvement enhances the value of the owner's land.

1020.8. The fair value of the land is to be determined as of the time of the computation of such value and is the market value the land would have had at such time if the improvement had not been affixed to the land.

Article 2. Application of Chapter

1021. This chapter applies only where the improver concedes or it has been judicially determined that the improver is not the owner of the land to which the improvement is affixed.

1021.1. This chapter does not affect or qualify the law with regard to:

(a) The circumstances under which a court of equity will refuse to compel removal of an encroachment or will apply the doctrine of laches.

(b) The circumstances under which the doctrine of estoppel will be invoked.

Article 3. Rights of Land Owner

1022. (a) Subject to Section 1023, owner may elect to purchase the improvement at its fair value if:

(1) The improvement significantly enhances the value of the land; or

(2) The removal of the improvement would cause irreparable injury to the land; or

(3) The removal of the improvement would not cause irreparable injury to the land but its removal is not economically feasible.

(b) If the owner elects to purchase the improvement as provided in this section and the owner and the improver are unable to agree upon the fair value of the improvement, either may bring an action against the other to have the fair value of the improvement determined.

1022.1. The owner may elect to require the removal of the improvement unless the improvement significantly enhances the value of the land and its removal is not economically feasible. If the improver fails to remove the improvement as required by this section within 60 days after a demand from the owner that the improvement be removed, the owner may proceed as provided in Section 1022.4.

1022.2. The owner may elect to require the improver to purchase the land at its fair value where the improvement significantly enhances the value of the land and its removal would cause irreparable injury to the land. If the owner elects to require the improver to purchase the land and the owner and the improver are unable to agree upon the fair value of the land, either may bring an action against the other to have the fair value of the land determined.

1022.3. (a) The owner may elect to require the improver to make an election whether he will remove the improvement or purchase the land at its fair value where:

- (1) The improvement significantly enhances the value of the land;
- (2) Removal of the improvement is not economically feasible; and
- (3) Removal of the improvement would not cause irreparable injury to the land.

(b) If the improver fails to make the election required by this section within 60 days after a demand from the owner that such election be made, the owner may proceed as provided in Section 1022.4.

1022.4. If the improver is required to remove an improvement pursuant to this chapter and fails to do so within the time allowed by this chapter, the owner may:

- (a) Remove the improvement and recover the reasonable cost of such removal and, in addition, damages for any injury caused to the land by reason of the affixing or the removing of the improvement; or
- (b) Recover damages for any injury or loss of value to the land caused by reason of the affixing of the improvement.

1022.5. Subject to Section 741 of the Code of Civil Procedure, in addition to any other rights given him by this chapter, the owner has the right to recover from the improver the reasonable value of the use and occupancy of the land by such improver.

1022.6. In addition to any other rights given him by this chapter, the owner has the right to recover from the improver for all expenses reasonably incurred by the owner in bringing or defending any action to enforce rights or duties under this chapter. The expenses recoverable under this section include but are not limited to appraisal and attorney's fees reasonably incurred.

Article 4. Rights of Good Faith Improver

1023. To the extent such right exists under Section 1013.5, the improver has the right to remove the improvement unless the removal of the improvement will cause irreparable damage to the land.

1023.1. (a) If the removal of the improvement will cause irreparable damage to the land, the improver may make a demand on the owner that the owner make an election among the various rights he has under Article 3 of this chapter.

(b) If the owner does not make such election within 60 days after the demand is made, the improver has:

(1) The right to remove the improvement to the extent that such right exists under Section 1013.5.

(2) The right to purchase the land at its fair value. If the owner and the improver are unable to agree upon the fair value of the land, the improver may bring an action against the owner to have the fair value of the land determined.

SEC. 2. Section 1013. of the Civil Code is amended to read:

1013. Subject to Chapter 1.5 (commencing with Section 1020), when a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as otherwise provided in this chapter, belongs to the owner of the land, unless he chooses to require the former to remove it or the former elects to exercise the right of removal provided for in Section 1013.5 of this chapter.

SEC. 3. Section 1013.5 of the Civil Code is amended to read:

1013.5. (a) Subject to Chapter 1.5 (commencing with Section 1020), when any person, acting in good faith and erroneously believing because of a mistake either of law or fact that he has a right to do so, affixes improvements to the land of another, such person, or his successor in interest, shall have the right to remove such improvements upon payment, as their interests shall appear, to the owner of the land, and any other person having any interest therein who acquired such interest for value after the commencement of the work of improvement and in reliance thereon, of all their damages proximately resulting from the affixing and removal of such improvements.

(b) In any action brought to enforce such right the owner of the land and encumbrancers of record shall be named as defendants, a notice of pendency of action shall be recorded before trial, and the owner of the land shall recover his costs of suit and a reasonable attorney's fee to be fixed by the court.

(c) If it appears to the court that the total amount of damages

cannot readily be ascertained prior to the removal of the improvements, or that it is otherwise in the interests of justice, the court may order an interlocutory judgment authorizing the removal of the improvements upon condition precedent that the plaintiff pay into court the estimated total damages, as found by the court or as stipulated.

(d) If the court finds that the holder of any lien upon the property acquired his lien in good faith and for value after the commencement of the work of improvement and in reliance thereon, or that as a result of the making or affixing of the improvements there is any lien against the property under Article XX, Section 15, of the Constitution of this State, judgment authorizing removal, final or interlocutory, shall not be given unless the holder of each such lien shall have consented to the removal of the improvements. Such consent shall be in writing and shall be filed with the court.

(e) The right created by this section is a right to remove improvements from land which may be exercised at the option of one who, acting in good faith and erroneously believing because of a mistake either of law or fact that he has a right to do so, affixes such improvements to the land of another. This section shall not be construed to affect or qualify the law as it existed prior to the 1953 amendment of this section with regard to the circumstances under which a court of equity will refuse to compel removal of an encroachment.

SEC. 4. This act applies to any improvement constructed after its effective date.

MINUTES { Minutes - Regular Meeting
July 16 and 17, 1965

STUDY NO. 42 - GOOD FAITH IMPROVERS

The Commission considered Memorandum 65-36 and tentatively determined that the good faith improver and the good faith property owner should have the rights indicated below.

IMPROVEMENT SIGNIFICANTLY ENHANCES VALUE OF LAND

Removal economically feasible

Significant permanent damage

Owner:

1. May purchase improvement.
2. May require improver to purchase land.
3. May require removal of improvement.

Improver:

1. If owner does not otherwise elect, improver may purchase land or remove improvement.

No significant permanent damage

Owner:

1. May purchase improvement.
2. May require improver to remove improvement.

Improver:

1. If owner does not otherwise elect, improver may remove improvement.

Removal not economically feasible

Significant permanent damage

Owner:

1. May purchase improvement.
2. May require improver to purchase land.

Improver:

1. If owner does not otherwise elect, improver may purchase land.

No significant permanent damage

Owner:

1. May purchase improvement.
2. May require improver to elect to purchase land or to remove improvement.

Improver:

1. If owner does not otherwise elect, improver may elect to purchase land or remove improvement.

IMPROVEMENT DOES NOT SIGNIFICANTLY ENHANCE VALUE
OF LAND

Removal economically feasible

Significant permanent damage

Owner:

1. May purchase improvement.
2. May require removal of improvement.

Improver:

1. May require owner to elect to purchase or require removal.

No significant permanent damage

Owner:

1. May require removal of improvement.

Improver:

1. Improver may remove improvement.

Removal not economically feasible

Significant permanent damage

Owner:

1. May purchase improvement.
2. May require removal of improvement.

Improver:

1. May require owner to elect to purchase improvement or require removal.

No significant permanent damage

Owner:

1. May purchase improvement.
2. May require removal of improvement.

Improver:

1. If owner does not otherwise elect, improver may remove improvement.