

2/16/67

Memorandum 67-18

Subject: Senate Bill No. 254 (Good Faith Improvers)

Attached as Exhibit I (pink) is a revision of this bill designed to effectuate the decisions made at the last meeting. The exact language has not been approved. Attached as Exhibit II (yellow) is a draft of a report for the Senate Committee on Judiciary revising the comments to reflect the changes to be made by amendment of the bill.

The following matters are noted for your attention:

Improvements on public land; improvements by public agencies

The revision of Section 871.2 has the effect of making the statute not applicable where the improvement is made by a public entity. The Comment to Section 871.2 has been revised to make this clear.

An express provision has been added to provide that the statute is applicable where the improvement is made to land owned by a public entity. See Section 871.5(d).

Municipal court jurisdiction

We have added a reference in Section 871.3 to Section 396 (general section dealing with transfer of actions involving questions beyond jurisdiction of court). The Comment to Section 871.3 has also been revised to make it clear that the action is to be transferred to the superior court if determination of the cross-complaint or counterclaim filed in the pending municipal court action would necessarily involve questions beyond the jurisdiction of the municipal court. This effectuates the decision made at the January meeting.

Statute of limitations

This problem is covered by subdivision (b) of Section 871.3. See the Comment to Section 871.3 for a statement of the effect of subdivision (b).

Revision of Section 871.5

Approved as to form and substance at January meeting.

Position of State Bar

You will recall that CAJ took a dim view of the desirability of the proposed legislation, especially if it applies in encroachment cases. The Board of Governors concurs in the views of CAJ and has directed that the Commission be advised of that fact.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Introduced by Senator Bradley

February 6, 1967

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 741 of, and add Chapter 10 (commencing with Section 871.1) to Title 10 of Part 2 of, the Code of Civil Procedure, relating to real property.

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

- 1 SECTION 1. Section 741 of the Code of Civil Procedure is
 2 amended to read:
 3 741. (a) As used in this section, "good faith improver"
 4 has the meaning given that term by Section 871.1 of this code.
 5 (b) When damages are claimed for withholding the prop-
 6 erty recovered, upon which permanent and improvements have
 7 been made on the property by a defendant; or his predecessor
 8 in interest as a good faith improver those under whom he
 9 claims, holding under color of title adversely to the claim of
 10 the plaintiff, in good faith, the value of amount by which such
 11 improvements enhance the value of the land must be allowed
 12 as a setoff against such damages.
 13 SEC. 2. Chapter 10 (commencing with Section 871.1) is
 14 added to Title 10 of Part 2 of the Code of Civil Procedure, to
 15 read:

LEGISLATIVE COUNSEL'S DIGEST

SB 254, as introduced, Bradley (Jud.). Real property.

Amends Sec. 741, and adds Ch. 10 (commencing with Sec. 871.1), Title 10, Pt. 2, C.C.P.

Defines "good faith improver"; and establishes procedure for giving such person relief for improvements on land of another that enhance the value of the land in mistaken belief that he, the "good faith improver," owns the land, where existing forms of relief are inadequate. Makes related changes in provision for set-off by property improver in damage action against him for withholding the property.

Vote—Majority; Appropriation—No; State Expense—No.

CHAPTER 10. GOOD FAITH IMPROVER OF PROPERTY OWNED BY ANOTHER

871.1. As used in this chapter, "good faith improver" means:

(a) A person who makes an improvement to land in good faith and under the erroneous belief because of a mistake either of law or fact that he (1) is the owner of the land or (2) is entitled to possession of the land for not less than 15 years from the date that he first commences to improve the land.

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

871.2. As used in this chapter, "person" includes a natural person, corporation, unincorporated association, government or governmental subdivision or agency, two or more persons having a joint or common interest, and any other legal or commercial entity, whether such person is acting in his own right or in a representative or fiduciary capacity.

, but does not include a government or governmental subdivision or agency

association,

(a)

871.3. A good faith improver may bring an original action in the superior court or may file a cross-complaint or counterclaim in a pending action in the superior or municipal court for relief under this chapter.

, subject to Section 396.

(b) An action for relief under this chapter shall be commenced within the time prescribed for the commencement of an action for the recovery of real property under Chapter 2 (commencing with Section 315) of Title 2 of Part 2 of this code.

871.4. The court shall not grant relief under this chapter if the court determines that the right of setoff under Section 741 of the Code of Civil Procedure or the right to remove the improvement under Section 1013.5 of the Civil Code provides the good faith improver with an adequate remedy.

871.5. (a) Subject to Section 871.4, the court may effect such an adjustment of the rights, equities, and interests of the good faith improver, the owner of the land, and other interested parties (including, but not limited to, lessees, lienholders, and encumbrancers) as is consistent with substantial justice to the parties under the circumstances of the case. The relief granted shall protect the owner of the land upon which the improvement was constructed against pecuniary loss but shall avoid, insofar as possible, enriching him unjustly at the expense of the good faith improver.

shall

(b) Where the form of relief provided in Section 871.6 would substantially achieve the objective stated in subdivision

shall

(a), the court may not grant relief other than as provided in that section. In other cases, the court may grant such other or further relief as may be necessary to achieve that objective.

the shall

(c) This chapter does not affect any legal or equitable defenses, such as adverse possession, estoppel, or laches, that may be available to a good faith improver.

(d) This chapter applies where the good faith improver makes an improvement to land owned by a government or governmental subdivision or agency.

871.6. (a) As used in this section, "special assessment" means a special assessment for an improvement made by a public entity that benefits the land.

(b) In granting relief to a good faith improver under this section, the court shall first determine:

1 (1) The sum of (i) the amount by which the improvement
2 enhances the value of the land and (ii) the amount paid by the
3 good faith improver and his predecessors in interest as taxes,
4 and as special assessments, on the land as distinguished from
5 the improvement.

6 (2) The sum of (i) the reasonable value of the use and
7 occupation of the land by the good faith improver and his
8 predecessors in interest and (ii) the amount reasonably in-
9 curred or expended by the owner of the land in the action,
10 including but not limited to any amount reasonably incurred
11 or expended for appraisal and attorney's fees.

12 (c) If the amount determined under paragraph (1) of sub-
13 division (b) exceeds the amount determined under paragraph
14 (2) of subdivision (b), the court may require the owner of the
15 land upon which the improvement was made to elect, within
16 such time as is specified by the court, either:

17 (1) To pay the difference between such amounts to the good
18 faith improver or to such other parties as are determined by
19 the court to be entitled thereto or into court for their benefit;
20 and, when such payment is made, the court shall enter a
21 judgment that the title to the land and the improvement
22 thereon is quieted in the owner as against the good faith im-
23 prover; or

24 (2) To offer to transfer all of his right, title, and interest in
25 the improvement, the land upon which the improvement is
26 made, and such additional land as is reasonably necessary to
27 the convenient use of the improvement to the good faith im-
28 prover upon payment to the owner of the amount specified in
29 subdivision (d).

30 (d) The amount referred to in paragraph (2) of subdivi-
31 sion (c) shall be computed by:

32 (1) Determining the sum of (i) the value of the land upon
33 which the improvement is made and such additional land as is
34 reasonably necessary to the convenient use of the improvement,
35 excluding the value of the improvement, (ii) the reasonable
36 value of the use and occupation of such land by the good faith
37 improver and his predecessors in interest, (iii) the amount
38 reasonably incurred or expended by the owner of the land in
39 the action, including but not limited to any amount reasonably
40 incurred or expended for appraisal or attorney's fees, and (iv)
41 where the land to be transferred to the improver is a portion of
42 a larger parcel of land held by the owner, the reduction in the
43 value of the remainder of the parcel by reason of the transfer
44 of the portion to the improver; and

45 (2) Subtracting from the amount determined under para-
46 graph (1) the sum of the amounts paid by the good faith im-
47 prover and his predecessors in interest as taxes, and as special
48 assessments, on such land as distinguished from the improve-
49 ment.

50 (e) If the owner makes the election provided for in para-
51 graph (2) of subdivision (c) and the good faith improver
52 does not accept the offer within the time specified by the court,

1 the court shall enter a judgment that the title to the land and
2 the improvement thereon is quieted in the owner as against the
3 good faith improver.

4 (f) If the owner of the land fails to make the election au-
5 thorized by subdivision (c) within the time specified by the
6 court, the good faith improver may elect to pay to the owner
7 the amount specified in subdivision (d); and when such pay-
8 ment is made, the court shall enter a judgment that title to
9 the improvement and the land reasonably necessary to the con-
10 venient use of the improvement is quieted in the good faith
11 improver as against the owner.

12 (g) If the election provided for in paragraph (1) of sub-
13 division (c) is made, the court may provide in the judgment
14 that the payment required by that paragraph may be made in
15 such installments and at such times as the court determines to
16 be equitable in the circumstances of the particular case. In
17 such case, the good faith improver, or other person entitled to
18 payment, shall have a lien on the property to the extent that
19 the amount so payable is unpaid.

20 (h) If the offer provided for in paragraph (2) of subdivi-
21 sion (c) is made and accepted or if the election authorized in
22 subdivision (f) is made, the court shall set a reasonable time,
23 not to exceed three months, within which the owner of the land
24 shall be paid the entire amount determined under subdivision
25 (d). If the good faith improver fails to pay such amount
26 within the time set by the court, the court shall enter a judg-
27 ment that the title to the land and the improvement thereon
28 is quieted in the owner as against the good faith improver.
29 If more than one person has an interest in the land, the per-
30 sons having an interest in the land are entitled to receive the
31 value of their interest from the amount paid under this sub-
32 division.

33 Sec. 3. This act applies to any action commenced after its
34 effective date, whether or not the improvement was constructed
35 prior to its effective date. If any provision of this act or ap-
36 plication thereof to any person or circumstance is held invalid,
37 such invalidity shall not affect any other provision or appli-
38 cation of this act which can be given effect without the invalid
39 provision or application, and to this end the provisions of this
40 act are declared to be severable.

DRAFT OF REPORT FOR SENATE COMMITTEE ON JUDICIARY

REPORT OF SENATE COMMITTEE ON JUDICIARY ON SENATE BILL NO. 254

In order to indicate more fully its intent with respect to Senate Bill No. 254, the Senate Committee on Judiciary makes the following report.

Except for the revised comments set out below, the comments contained under the various sections of Senate Bill No. 254 as set out in the Recommendation of the California Law Revision Commission Relating to the Good Faith Improver of Land Owned by Another (October 1966) reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Senate Bill No. 254.

The following revised comments to various sections of Senate Bill No. 254 also reflect the intent of the Senate Committee on Judiciary in approving Senate Bill No. 254.

Section 871.2

Comment. This chapter does not apply where a public entity improves land owned by another. See Sections 871.2 (defining "person") and 871.1 (defining "good faith improver"). Where a public entity is the improver, relief under this chapter is unnecessary; the public entity may bring a condemnation action to acquire the land, and the owner of the land may bring an inverse condemnation action to recover damages for the taking. Relief is available under this chapter, however, where a good faith improver makes an improvement on land owned by a public entity. See Section 871.5(d).

Section 871.3

Comment. Subdivision (a) of Section 871.3 is based on Code of Civil Procedure Section 1060, relating to declaratory relief. Where relief is sought by cross-complaint or counterclaim in a pending action in municipal court and determination of the cross-complaint or counterclaim will necessarily involve the determination of questions not within the jurisdiction of the municipal court, the action must be transferred to the superior court. See Code of Civil Procedure Section 396.

The statute of limitations established by subdivision (b) of Section 871.3 applies only to an action for relief commenced by the good faith improver; it does not apply where an action is commenced by the owner of the land and the good faith improver seeks relief under this chapter by way of cross-complaint or counterclaim in that action.