

6/21/67

## Memorandum 67-43

Subject: Study 42 - The Rights of a Good Faith Improver (Senate Bill No. 254)

You will recall that this bill was recommended to pass by the Assembly Judiciary Committee, was passed by the Assembly, and then referred back to the Assembly Judiciary Committee after its passage was reconsidered.

I discussed the bill with Mr. Bagley, the Chairman of the Assembly Judiciary Committee. Acting in response to his suggestion, I discussed the bill with Mr. Knox who had moved to have the passage of the bill reconsidered. Mr. Knox stated that he had been approached by various persons who are substantial landholders and been advised that they objected to the bill. He stated that the bill should not pass this session but that it should be introduced again at the next session. This would, he believes, give interested persons more time to examine the bill and to determine its effect. He stated that he would see that the bill was killed on the floor if I attempted to get it out of the Committee.

I also discussed the bill with Mr. Harvey Johnson and Mr. Hayes, the two members of the Assembly Judiciary Committee who have strong feelings against the bill. I suggested that I might go over the bill with them to determine what changes could be made that would make the bill acceptable to them. They stated that they did not have time at this point in the session to go over the bill and further that, even if something could be worked out, interested persons would not have time to review a revised bill. They indicated a willingness to review the bill before it is introduced next session and to give the Commission the benefits of their views.

Mr. Negri, the only member of the Assembly Judiciary Committee who is strongly of the view that the bill should be enacted, doubts that it could be passed because there are strong objections to the bill.

Mr. Charles H. Olsen, who represents savings and loan associations, is the only person that I know is opposed to the bill. As far as I know, his objections are to the landowner's being forced to sell or to buy property when someone makes an improvement on property owned by another.

You will also recall that the Board of Governors of the State Bar took the view that the enactment of the bill was undesirable.

Because of the complex nature of the bill, it was not possible to find sufficient hearing time to go over the bill in detail with the Committee and, I suspect, some members of the Committee are concerned about the complexity of the bill.

I sought the advice of Senator Song and Senator Bradley as to what should be done with the bill. Both concluded that it would be unwise to attempt to push the bill at a Committee hearing when two members of the Assembly Judiciary Committee have strong feelings against it and when Assemblyman Knox has indicated that he will kill it on the floor. As Mr. Negri, the one Committee member strongly in favor of the bill, pointed out--the bill is so complex that it is not possible to explain it on the floor and obtain votes of persons who are not members of the Judiciary Committee when there are strong objections to the bill.

Senator Song and Senator Bradley both concluded that the bill should be referred to interim study and, at a hearing held on June 19, I requested that this be the action of the Committee on the bill. It

is doubtful, however, that the bill will actually be studied in the interim. Perhaps, however, we can obtain hearing time on a new report on his subject in January 1968 during the time when the Committee cannot hear bills.

The staff has prepared a revised version of the bill which is attached as Exhibit I. The revised version deletes the complex provisions of the bill. If the Commission approves this revision, the staff believes the bill would be in shape to make a floor fight, if necessary, on the bill at the 1968 session.

We believe that it is essential that the bill, or a revised version of it, be distributed to the State Bar and other interested persons before any decision is made on what recommendation on this subject should be made to the 1968 session.

The revisions suggested by the staff are noted below:

(1) Reference to long term lessees is eliminated from Section 339(4) (statute of limitations) and from 871.1 (definition of good faith improver). The inclusion of long term lessees caused confusion.

(2) The definition of "person" in Section 871.2 is simplified.

(3) Section 871.4 is revised in the interest of clarity to provide a more meaningful standard.

(4) Section 871.6 (the buy-sell option) is deleted and Section 871.5(b) (which refers to this option) is deleted.

(5) A clarifying new subdivision (b) is added to Section 871.5 to indicate that relief may be granted under the chapter by way of defense. This is important, we believe, because of the short statute of limitations on the right of the good faith improver to bring an action for relief under the chapter.

(3) We have added a new subdivision (b) to what would become Section 871.6 to indicate that the chapter does not affect the rules of law which determine the form of relief, if any, to be granted in an encroachment case. This addition should eliminate the opposition of the State Bar.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

AMENDED IN SENATE MARCH 17, 1967

AMENDED IN SENATE MARCH 9, 1967

SENATE BILL

No. 254

Introduced by Senator Bradley

February 6, 1967

REFERRED TO COMMITTEE ON JUDICIARY

*An act to amend Sections 339 and 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 339 of the Code of Civil Procedure is  
 2 amended to read:  
 3 339. Within two years:  
 4 1. An action upon a contract, obligation or liability not  
 5 founded upon an instrument of writing, other than that men-  
 6 tioned in subdivision 2 of Section 337 of this code; or an  
 7 action founded upon a contract, obligation or liability, evi-  
 8 denced by a certificate, or abstract or guaranty of title of real  
 9 property, or by a policy of title insurance; provided, that the

## LEGISLATIVE COUNSEL'S DIGEST

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

Amends Secs. 339 and 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 setoff by property improver in damage action against him for withholding the property.

Provides that limitations period for such action for relief by good faith improver is two years from the time such good faith improver discovers that he is not the owner ~~or is not entitled to possession~~ of the land improved.

~~When filing certified copy of judgment in office of county recorder of county where real property is situated constructive notice to subsequent purchasers and encumbrancers.~~

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

1 cause of action upon a contract, obligation or liability evi-  
 2 denced by a certificate, or abstract or guaranty of title of  
 3 real property or policy of title insurance shall not be deemed  
 4 to have accrued until the discovery of the loss or damage suf-  
 5 fered by the aggrieved party thereunder.

6 2. An action against a sheriff, coroner, or constable upon  
 7 a liability incurred by the doing of an act in his official ca-  
 8 pacity and in virtue of his office, or by the omission of an  
 9 official duty including the nonpayment of money collected  
 10 upon an execution. But this subdivision does not apply to an  
 11 action for an escape.

12 3. An action based upon the rescission of a contract not in  
 13 writing. The time begins to run from the date upon which the  
 14 facts that entitle the aggrieved party to rescind occurred.  
 15 Where the ground for rescission is fraud or mistake, the time  
 16 does not begin to run until the discovery by the aggrieved  
 17 party of the facts constituting the fraud or mistake.

18 4. An action by a good faith improver for relief under  
 19 Chapter 10 (commencing with Section 871.1) of Title 10 of  
 20 Part 2 of the Code of Civil Procedure. The time begins to run  
 21 from the date upon which the good faith improver discovers  
 22 that he is not the owner of the land ~~or is not entitled to pos-  
 23 session of the land for at least 15 years from the date that he  
 24 first commenced to improve the land.~~

upon which  
 the improve-  
 ments have  
 been made.

25 Sec. 2. Section 741 of the Code of Civil Procedure is  
 26 amended to read:

27 741. (a) As used in this section, "good faith improver"  
 28 has the meaning given that term by Section 871.1 of this code.

29 (b) When damages are claimed for withholding the prop-  
 30 erty recovered, and improvements have been made on the  
 31 property by a defendant or his predecessor in interest as a  
 32 good faith improver, the amount by which such improvements  
 33 enhance the value of the land must be allowed as a setoff  
 34 against such damages.

35 Sec. 3. Chapter 10 (commencing with Section 871.1) is  
 36 added to Title 10 of Part 2 of the Code of Civil Procedure, to  
 37 read:

38  
 39 CHAPTER 10. GOOD FAITH IMPROVER OF PROPERTY  
 40 OWNED BY ANOTHER

41  
 42 871.1. As used in this chapter, "good faith improver"  
 43 means <sup>a</sup>

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

his successor  
 in interest.

50 ~~(b) A successor in interest of a person described in sub-  
 51 division (a).~~

1 871.2. As used in this chapter, "person" includes a natural  
 2 ~~person, corporation, unincorporated association, partnership,~~  
 3 ~~partners having a joint or common interest, and any other legal~~  
 4 ~~or commercial entity, whether such person is acting in his own~~  
 5 ~~right or in a representative or fiduciary capacity.~~

6 871.3. An action for relief under this chapter shall be  
 7 brought in the superior court.

8 871.4. The court shall not grant relief under this chapter  
 9 if the court determines that the right of setoff under Section  
 10 741 of the Code of Civil Procedure or the right to remove the  
 11 improvement under Section 1013.5 of the Civil Code provides  
 12 the good faith improver with ~~an adequate~~ remedy.

the exercise of  
 which will result  
 in substantial  
 justice to the  
 parties under the  
 circumstances of  
 the case.

13 871.5. (a) Subject to Section 871.4, the court shall make  
 14 such an adjustment of the rights, equities, and interests of the  
 15 good faith improver, the owner of the land, and other inter-  
 16 ested parties (including, but not limited to, lessees, lienholders,  
 17 and encumbrancers) as is consistent with substantial justice to  
 18 the parties under the circumstances of the case. The relief  
 19 granted shall protect the owner of the land upon which the  
 20 improvement was constructed against pecuniary loss but shall  
 21 avoid, insofar as possible, enriching him unjustly at the ex-  
 22 pense of the good faith improver.

23 ~~(b) Where the form of relief provided in Section 871.6~~  
 24 ~~would substantially achieve the objective stated in subdivision~~  
 25 ~~(a), the court shall grant the relief provided in that section.~~  
 26 ~~In other cases, the court shall grant such other or further relief~~  
 27 ~~as may be necessary to achieve that objective.~~

(b) The court may grant relief to a good faith improver under this chapter in an action brought against the good faith improver by the owner of the land upon which the improvement was constructed.

871.6. (a)

28 ~~(a)~~ This chapter does not affect any legal or equitable de-  
 29 fenses, such as adverse possession, estoppel, or laches, that may  
 30 be available to a good faith improver.

(b) This chapter does not affect the rules of law which determine the form of relief, if any, to be granted in an encroachment case.

31 ~~871.6. (a) As used in this section, "special assessment"~~  
 32 ~~means a special assessment for an improvement made by a~~  
 33 ~~public entity that benefits the land.~~

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

36 (1) The sum of (i) the amount by which the improvement  
 37 enhances the value of the land and (ii) the amount paid by the  
 38 good faith improver and his predecessors in interest as taxes,  
 39 and as special assessments, on the land as distinguished from  
 40 the improvement.

41 (2) The sum of (i) the reasonable value of the use and  
 42 occupation of the land by the good faith improver and his  
 43 predecessors in interest and (ii) the amount reasonably in-  
 44 curred or expended by the owner of the land in the action,  
 45 including but not limited to any amount reasonably incurred  
 46 or expended for appraisal and attorney's fees.

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

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1 ~~(1) To pay the difference between such amounts to the good~~  
2 ~~faith improver or to such other parties as are determined by~~  
3 ~~the court to be entitled thereto or into court for their benefit;~~  
4 ~~and, when such payment is made, the court shall enter a~~  
5 ~~judgment that the title to the land and the improvement~~  
6 ~~thereon is quieted in the owner as against the good faith im-~~  
7 ~~prover or~~  
8 ~~(2) To offer to transfer all of his right, title, and interest in~~  
9 ~~the improvement, the land upon which the improvement is~~  
10 ~~made, and such additional land as is reasonably necessary to~~  
11 ~~the convenient use of the improvement to the good faith im-~~  
12 ~~prover upon payment to the owner of the amount specified in~~  
13 ~~subdivision (1).~~  
14 ~~(d) The amount referred to in paragraph (2) of subdivi-~~  
15 ~~sion (c) shall be computed by:~~  
16 ~~(1) Determining the sum of (i) the value of the land upon~~  
17 ~~which the improvement is made and such additional land as is~~  
18 ~~reasonably necessary to the convenient use of the improvement,~~  
19 ~~excluding the value of the improvement; (ii) the reasonable~~  
20 ~~value of the use and occupation of such land by the good faith~~  
21 ~~improver and his predecessors in interest; (iii) the amount~~  
22 ~~reasonably incurred or expended by the owner of the land in~~  
23 ~~the action, including but not limited to any amount reasonably~~  
24 ~~incurred or expended for appraisal or attorney's fees, and (iv)~~  
25 ~~where the land to be transferred to the improver is a portion of~~  
26 ~~a larger parcel of land held by the owner, the reduction in the~~  
27 ~~value of the remainder of the parcel by reason of the transfer~~  
28 ~~of the portion to the improver; and~~  
29 ~~(2) Subtracting from the amount determined under para-~~  
30 ~~graph (1) the sum of the amounts paid by the good faith im-~~  
31 ~~prover and his predecessors in interest as taxes, and as special~~  
32 ~~assessments, on such land as distinguished from the improve-~~  
33 ~~ment.~~  
34 ~~(e) If the owner makes the election provided for in para-~~  
35 ~~graph (2) of subdivision (c) and the good faith improver~~  
36 ~~does not accept the offer within the time specified by the court,~~  
37 ~~the court shall enter a judgment that the title to the land and~~  
38 ~~the improvement thereon is quieted in the owner as against the~~  
39 ~~good faith improver.~~  
40 ~~(f) If the owner of the land fails to make the election au-~~  
41 ~~thorized by subdivision (c) within the time specified by the~~  
42 ~~court, the good faith improver may elect to pay to the owner~~  
43 ~~the amount specified in subdivision (d); and when such pay-~~  
44 ~~ment is made, the court shall enter a judgment that title to~~  
45 ~~the improvement and the land reasonably necessary to the con-~~  
46 ~~venient use of the improvement (*describing the same with a*~~  
47 ~~*sufficient legal description*) is quieted in the good faith im-~~  
48 ~~prover as against the owner.~~  
49 ~~(g) If the election provided for in paragraph (1) of subdivi-~~  
50 ~~sion (c) is made, the court may provide in the judgment~~  
51 ~~that the payment required by that paragraph may be made in~~  
52 ~~such installments and at such times as the court determines to~~

1 be equitable in the circumstances of the particular case. In  
 2 such case, the good faith improver, or other person entitled to  
 3 payment, shall have a lien on the property to the extent that  
 4 the amount so payable is unpaid. The judgment shall set forth  
 5 the amount of the lien. A certified copy of the judgment re-  
 6 corded in the office of the county recorder of the county in  
 7 which the real property is situated from the time it is filed  
 8 with the recorder for record is constructive notice of the con-  
 9 tents thereof to subsequent purchasers and encumbrancers.

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

23 871.7. This chapter does not apply where the improver is  
 24 a government or governmental subdivision or agency or where  
 25 the improvement is made to land owned or possessed by a gov-  
 26 ernment or governmental subdivision or agency.

27 Sec. 4. This act applies to any action commenced after  
 28 its effective date, whether or not the improvement was con-  
 29 structed prior to its effective date. If any provision of this act  
 30 or application thereof to any person or circumstance is held in-  
 31 valid, such invalidity shall not affect any other provision or ap-  
 32 plication of this act which can be given effect without the in-  
 33 valid provision or application, and to this end the provisions of  
 34 this act are declared to be severable.

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