

6/21/65

Memorandum 65-36

Subject: Study No. 42 - Trespassing Improvers

Attached as Exhibit I (pink sheets) is an analysis of the significant variables in good faith trespassing improver cases. This analysis is provided so that the scheme proposed below may be tested against the various types of situations that may arise.

The analysis and the scheme set out below apply to a case where the owner has acted in good faith and the improver, 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 the land of another. (This is substantially the same standard as is provided in Civil Code Section 1013.5 (right of removal) except that Section 1013.5 also apparently applies to lessees and licensees.)

In order to simplify the problem for the purposes of discussion, we have not included any provisions for notice to or consent of lienholders, rights of lienholders, etc. When the basic scheme is determined, we will prepare an analysis of how the interests of lienholders can be protected and will provide additional details concerning notices, judicial proceedings, attorney's fees, costs of actions, etc.

The following general scheme is recommended by the staff as the solution to the good faith improver problem. Note that this scheme is designed to make the owner whole in every case and to avoid any requirement that the owner make an investment that he does not desire to make. On the other hand, the proposed scheme will, at the same time, prevent unjust enrichment of the owner at the expense of the good faith improver.

OWNER'S REMEDIES

1. Purchase improvement. In every case, the owner may elect to purchase the improvement. The value of the improvement is to be determined as of the date of the determination of its value (time of trial or time when parties agree on value) and is the amount by which the improvement enhances the value of the owner's interest. Value of use and occupancy by improver is to be offset against the value of the improvement. Owner may require improver to execute any documents necessary to clear record title to property as improved.
2. Removal of improvement. If owner does not desire to exercise his option to purchase the improvement, he may require the improver to remove the improvement if it is economically feasible to do so or if the improvement adds no significant value to the land. Improver must pay cost of removal and restoration of land to its original condition plus any permanent damages to owner's interest and also must pay the value of use and occupancy by improver. If improver fails to remove, owner may do so and recover from the improver the cost of removal and any other amounts to which owner is entitled to recover when improvement is removed.
3. Require improver to purchase land. The owner may require the improver to purchase the land at its fair market value (as of time of trial or agreement between parties) if the improvement significantly enhances the value of the land and removal of the improvement would cause significant permanent damage to the land. If the improver does not purchase the owner's interest within a specified time, the improver forfeits all interest in the improved property and the owner may require the improver to execute any documents necessary to clear the record title to the property as improved.

4. Require improver to elect to purchase land or remove improvement. The owner may require the improver to elect to purchase the land or to remove the improvement where the improvement significantly enhances the value of the land and removal is not economically feasible and removal would cause no significant permanent damage to the land. If the improver does not remove the improvement and does not purchase the owner's interest within a specified time, the improver forfeits all interest in the improved property and the owner may require the improver to execute any documents necessary to clear the record title to the property as improved.
5. Recover value of use. In any case, the owner may recover the value of the use and occupancy of the owner's interest; and, in such case if the improver does not resort to any other remedy or has no other remedy, the value of the improvement is to be offset against the value of the use and occupancy.

IMPROVER'S REMEDIES

1. Remove improvement. If the owner does not desire to purchase the improvement and if removal will not cause significant permanent damage to owner's interest, improver may elect to remove the improvement. In such case, improver must restore premises to original condition or pay owner cost of same and must, in addition, pay the value of the use and occupancy of the owner's interest.
2. Purchase land. If owner does not desire to purchase and removal would cause significant permanent damage to owner's interest, the improver (if the improvement significantly enhances the value of the land) may elect to purchase the owner's interest at its fair market value in which case he must pay, in addition, the value of the use and occupancy of the owner's interest. In such case, the improver may require owner to execute any documents necessary to clear record title to the property as improved.

3. Elect to purchase land or remove improvement. If the owner does not elect to purchase the improvement, the improver may elect to purchase the land or remove the improvement (under conditions indicated above) if the improvement substantially enhances the value of the land and removal of the improvement is not economically feasible.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

IMPROVEMENT SIGNIFICANTLY ENHANCES VALUE OF LAND

Removal economically feasibleSignificant 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.

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 feasibleSignificant 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. No remedies.

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.

Removal not economically feasible

Significant permanent damage

Owner:

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

Improver:

1. No remedies.

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.