42 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 wws recommended do 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.

(5) 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. DeMoully
Executive Secretary

Memo 67-43 EXHIBIT I

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.

~~Makes 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.

cause of action upon a contract, obligation or liability evidenced by a certificate, or abstract or guaranty of title of real property or policy of title insurance shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party thereunder.

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

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

4. An action by a good faith improver for relief under Chapter 10 (commencing with Section 871.1) of Title 10 of Part 2 of the Code of Civil Procedure. The time begins to run from the date upon which the good faith improver discovers that he is not the owner of the land ~~or is not entitled to possession of the land for at least 15 years from the date that he first commenced to improve the land.~~ upon which the improvements have been made.

SEC. 2. Section 741 of the Code of Civil Procedure is amended to read:

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

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

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

CHAPTER 10. GOOD FAITH IMPROVER OF PROPERTY OWNED BY ANOTHER

871.1. As used in this chapter, "good faith improver" means a ~~(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 his successor in interest. ~~(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,~~ an unincorporated association ~~, 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.~~

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

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

871.5. (a) Subject to Section 871.4, the court shall make 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 any pecuniary loss but shall avoid, insofar as possible, enriching him unjustly at the expense of the good faith improver.

~~(b) Where the form of relief provided in Section 871.6 would substantially achieve the objective stated in subdivision (a), the court shall grant the relief provided in that section. In other cases, the court shall grant such other or further relief 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) ~~(b)~~ 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.

(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.

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

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

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

ENTIRE SECTION DELETED

ENTIRE SECTION DELETED

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

(2) To offer to transfer all of his right, title, and interest in the improvement, the land upon which the improvement is made, and such additional land as is reasonably necessary to the convenient use of the improvement to the good faith improver upon payment to the owner of the amount specified in subdivision (d).

(d) The amount referred to in paragraph (2) of subdivision (c) shall be computed by:

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

(2) Subtracting from the amount determined under paragraph (1) the sum of the amounts paid by the good faith improver and his predecessors in interest as taxes, and as special assessments, on such land as distinguished from the improvement.

(e) If the owner makes the election provided for in paragraph (2) of subdivision (c) and the good faith improver does not accept the offer within the time specified by the court, the court shall enter a judgment that the title to the land and the improvement thereon is quieted in the owner as against the good faith improver.

(f) If the owner of the land fails to make the election authorized by subdivision (c) within the time specified by the court, the good faith improver may elect to pay to the owner the amount specified in subdivision (d); and when such payment is made, the court shall enter a judgment that title to the improvement and the land reasonably necessary to the convenient use of the improvement *(describing the same with a sufficient legal description)* is quieted in the good faith improver as against the owner.

(g) If the election provided for in paragraph (1) of subdivision (c) is made, the court may provide in the judgment that the payment required by that paragraph may be made in ~~such installments and at such times as the court determines to~~

~~be equitable in the circumstances of the particular case. In such case, the good faith improver, or other person entitled to payment, shall have a lien on the property to the extent that the amount so payable is unpaid. *The judgment shall set forth the amount of the lien. A certified copy of the judgment recorded in the office of the county recorder of the county in which the real property is situated from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and encumbrancers.*~~

~~(h) If the offer provided for in paragraph (2) of subdivision (c) is made and accepted or if the election authorized in subdivision (f) is made, the court shall set a reasonable time, not to exceed three months, within which the owner of the land shall be paid the entire amount determined under subdivision (d). If the good faith improver fails to pay such amount within the time set by the court, the court shall enter a judgment that the title to the land and the improvement thereon is quieted in the owner as against the good faith improver. If more than one person has an interest in the land, the persons having an interest in the land are entitled to receive the value of their interest from the amount paid under this subdivision.~~

ENTIRE SECTION DELETED

871.7. This chapter does not apply where the improver is a government or governmental subdivision or agency or where the improvement is made to land owned or possessed by a government or governmental subdivision or agency.

SEC. 4. This act applies to any action commenced after its effective date, whether or not the improvement was constructed prior to its effective date. If any provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.