

Question MEE 5 – July 2022 – Selected Answer 1

Issue 1

Frank is obligated to pay the property taxes on the family home. Upon the death of Oscar, Oscar devised a life estate in the family home to Wanda with the remainder in fee simple to Adele and her heirs. When Adele died, she left her entire estate to Frank. As such, after the death of Adele, Wanda had a life estate in the family home and Frank held the remainder in fee simple.

The issue is determining the rights and obligations of the holder of a life estate and the holder of the remainder in fee simple. A party with a life estate is entitled to possess, use and enjoy the property for their own lifetime and cannot commit waste. The holder of the remainder in fee simple has the right to the property in fee simple upon the death of the life estate holder. Furthermore, the holder of the remainder in fee simple is the party who is required to pay the property taxes on the property and mortgage principle while the life estate holder must pay mortgage interest. The motivation for Adele having regularly paid the taxes before her death is immaterial. Therefore, Frank will be required to pay the property taxes for the Life of Wanda.

Issue 2

To determine what interest Oscar had in the apartment building and whether it was valid depends upon the language of the conveyance along with rule of construction. The first issue is whether Oscar conveyed to Frank a fee simple determinable or a fee simple subject to condition subsequent.

A fee simple determinable is an estate that uses durational language whereby the interest conveyed will stay with the grantee while the condition imposed is met. Durational language indicating a FSD includes "for as long as" "so long as" "until" etc. Furthermore, a FSD is accompanied by a future interest. The future interest is the possibility of reverter. Typical language includes "but if" "if". A possibility of reverter means that title to the land automatically reverts back to the grantor if the imposed durational condition occurs. The automatic reverter language must be express.

A fee simple subject to condition subsequent is an estate whereby on the happening of the said condition, the holder of the future estate has a right to enter and take possession of the land. Typical language includes "but if" "if" etc.

In this case, the conveyance of the apartment uses durational language to convey the land to Frank. Furthermore it gives Oscar an express possibility of reverter. However,

the language for the future interest is "if." This is language that is commonly used for both FSDs and FSSCSs. However, this likely does not rise to the level to create an ambiguity. While courts disfavor forfeiture and will construe against automatic forfeiture whenever possible, there first must be an ambiguity to do so. Oscar's intent is clear that the estate be durational and revert back to Oscar if fewer than four apartments are rented to below median families.

Therefore, Oscar retained a possibility of reverter.

Furthermore, the interest is likely valid. A reverter back to the grantor is not subject to the rule against perpetuities so there is not a problem there. Additionally, this is likely not a restraint on alienation that would render the interest void. Restraints on alienation are void. A restraint on alienation is a restraint that limits the ability of the holder to sell or substantially use the land. Durational language will not violate this is tied to some legitimate purpose. IN this case, Frank can still sell the land. He is not unable to do so, the buyer would just have to abide by the same durational condition in the conveyance. therefore, the interest retained by Oscar is valid.

Issue 3

Upon Oscar's death, Wanda holds the possibility of reverter in the apartment building. As a general rule, future interests are transferable and devisable unless a state statute says that they are not. In this case, as discussed above, Oscar held a possibility of reverter in the apartment building. A possibility of reverter is a future interest. In Oscar's death, he left the entirety of his residual estate to Wanda. the residual estate is the property not specifically disposed of in the will. In the will Oscar specifically disposed of the family home and that is it. Therefore the residual estate is every thing else, every other property interest he had including the possibility of reverter. there is also no state statute saying that future interests cannot be devised so the devise is valid.

Furthermore, as mentioned, no statute makes this interest invalid and the rule against perpetuities does not apply to the possibility of reverter future interest held by the grantor.

Issue 4

The issue here is what is the effect of Frank breaches the condition imposed in the fee simple determinable conveyed to him by Oscar. As mentioned, Wanda holds a possibility of reverter which means that title to the property automatically reverts to her if at least 4 apartments in the building are not rented to low income families.

In this case, on Feb 1, 2021, Oscar had no low income families in the apartment. He breached the durational condition from the conveyance from Oscar. Therefore, Wanda's reverter became possessory and she automatically takes title to the land. In a lawsuit, Wanda will prevail.

Question MEE 5 – July 2022 – Selected Answer 2

(1) Developer as a Required Party

The issue with joining Developer is whether any of the necessary party factors under Rule 19(a) are satisfied. Under Rule 19(a) of the FRCP, a party is a necessary party to an action from which they are absent if (1) the absent party's interests would be harmed if not joined, (2) failure to join the absent party would cause multiple litigation for the parties, or (3) failure to join the absent party would prevent the court from awarding complete relief. Each of these factors will be assessed in turn as they related to Developer.

First, Developer's interests may be harmed if not joined because depending on how the court rules on the Builder v. Lender contract issue, either of them could go after Developer for payment. For instance, if Lender prevails, then Buyer will not get paid the \$100,000 that it is owed by Developer under Buyer and Developer's own contract, but if Buyer prevails, then Developer will owe more principal on the five-year term loan it has with Lender. However, Developer has evidently already occupied the building, so Developer's ability to occupy and lease the building is at harm. Thus, this first factor is uncertain.

Second, failure to join Developer would subject the parties to multiple litigation because the losing party may sue or be sued by Developer. For instance, if Lender prevails, then Buyer may turn around and sue Developer for the \$100k payment, meaning Developer is a necessary party.

And third, the court may not be able to accord complete relief without joining Developer because if the Lender prevails or partially prevails, Buyer will still not be whole since it will still be owed the \$100k payment. Just because the financing fails does not mean that the Developer no longer owes the Buyer anything. Thus, complete relief for the Buyer may require the Developer to be joined and pay damages as well. Thus, there are good arguments in favor of Developer being a required party to be joined if feasible, despite there being some reasons why not. But Developer is likely a required party.

(2) Subject Matter Jurisdiction after Joinder of Developer

The issue is whether Developer's joinder defeats complete diversity of citizenship for federal subject matter jurisdiction. For a federal court to have subject matter jurisdiction over an action, there are three options: (1) diversity of citizenship jurisdiction, (2) federal question jurisdiction, or (3) supplementary jurisdiction. Federal question jurisdiction requires that, under the well-pleaded complaint rule, the plaintiff pleads a cause of action arising under federal statute, regulation, or constitution. In this case, the cause of action is breach of contract claim, which does not arise under federal law, so no federal question jurisdiction.

The second alternative is diversity jurisdiction, requiring complete diversity of citizenship between the plaintiff and the defendants as well as an amount in controversy that exceeds \$75,000. The amount in controversy requirement is met because the Builder in good faith is claiming relief of \$100,000. The issue is diversity of citizenship. For a corporation, its citizenship is both where it is incorporated and where its principal place of business is located. But for non-incorporated business forms like an LLC, its citizenship is where any of its members are domiciled.

In this case then, the citizenship for the parties if Developer is joined are as follows: the plaintiff, Builder, is only a citizen of State B since its incorporated there and has its principal place of business there; the defendant, Lender, is a citizen of only state A for the same reasons; but Developer is a citizen of both State A and B because that is where its two members are domiciled. Based on these citizenship, complete diversity is defeated if Developer is joined because the plaintiff, Builder, is a domiciliary of state B while the joined defendant, Developer, is a domiciliary of B, and A, as well. With complete diversity defeated, the federal court lacks subject matter jurisdiction to join Developer. Supplemental jurisdiction is not available because there is no main claim to attach to.

(3) Ruling on Motion to Dismiss if Developer Cannot be Joined

The issue if Developer cannot be joined is whether the court should dismiss the case for failure to join a necessary party or allow the case to continue on. If a required party cannot be joined, and that party is considered indispensable, a federal court must weigh fairness factors to determine if the case should be dismissed altogether. Factors include but are not limited to how long has the case already gone on, how much expenses have been incurred, and whether another adequate forum exists where all the parties could be joined.

In this case, the court should likely grant the motion to dismiss because alternative forums exists where Developer can be joined. Particularly, instead of filing in a federal court, the plaintiff, Builder, can file the breach of contract action in a state court. Venue in this case would be proper in State A where the cause of action arises (Transactional venue) or State A where all the defendants would be domiciled (residential venue because Lender and Developer are both citizens of State A). Since

there is an alternative proper venue, the case can be dismissed without too much unfairness for the Builder. Assuming that the case has not gone on for a long time and too much expenses already incurred, this further reinforces the decision to dismiss the action. Based on these assumptions, the case should be dismissed for failure to join a necessary party.

Question MEE 5 – July 2022 – Selected Answer 3

Question 1 - Is Developer a person "required to be joined if feasible" to the Builder v Lender action under Federal Rule of Civil Procedure 19(a).

A joinder is required when it is feasible and necessary. It is necessary if the court, absent the party, is unable to render a complete relief for the parties, the party has an interest in the action that could be impaired or impeded, and the absence of the party would create multiple obligations and inconsistent liabilities. The joinder is feasible if the court has jurisdiction over the party and joining of the party does not disrupt the court's subject matter jurisdiction.

The Developer appears to be a necessary party because the Developer is heavily involved with the action between Builder and Lender. The cause of action arises from a loan agreement between the Lender and the Developer, to which the Builder is an intended beneficiary (and thus entitled to bring action here). To address the action between the Lender and the Builder, the court will have to dig into the loan agreement, and the interest of the Developer could very well be affected by this case. If the Developer does not join, there is a risk of creating multiple obligations and inconsistent liabilities, for example, if the Builder brings a subsequent suit against the Developer. If the Developer does not join, the Developer's interest could also be impaired. Overall, Developer appears to be a necessary party here.

Whether the joinder is feasible is addressed in the next question.

Question 2 - whether joinder of Developer deprives the court of subject-matter jurisdiction.

Builder has sued Lender in federal court in State A, invoking the court's diversity jurisdiction. Diversity jurisdiction requires complete diversity between the plaintiff and defendants and the amount of controversy to be greater than \$75000. A corporation's domicile is where it's incorporated AND where it's principal place of business is. An LLC's domicile is the place of domicile of each of its members.

Here, the Builder is a corporation in State B with a principal place of business in State B, and thus is domiciled in State B. The Lender is incorporated in State A with its principal place of business in State A, and thus domiciled in State A. Accordingly, there is complete diversity between Builder and Lender. Also, the amount in controversy is \$100,000, which is above the requisite \$75,000.

The Developer's domicile is places of domicile of its members, Amy in State A and Barbara in State B. So, Developer is domiciled in both State A and State B. In this circumstance, if the Developer were to join the suit, the court would be deprived of subject matter jurisdiction.

Question 3 - If Developer cannot be joined, how should the court rule on the motion to dismiss.

When a necessary party cannot be joined, the court should consider dismissing the case. When considering such issues, courts look at (1) the risk of prejudice the parties may face without joinder, (2) whether that prejudice can be reduced, (3) the risk of harm that the absent party may face, and (4) if the case is dismissed, whether plaintiff will have adequate remedy.

As discussed above, Developer is likely a necessary party in this suit, which means that if the Developer is not joined, Developer, as well as other parties may face prejudice or risk of multiple and inconsistent obligations/liabilities. So there is a strong incentive for the court to dismiss the case. If the court were to dismiss the case, Builder will have alternative judicial venues where it can bring a case, for example, in a state court. As such, risk of prejudice that the parties will face is minimal compared to the risk of harm/injury for not joining Developer. Consequently, the court should grant the motion and dismiss the case.