Title Chat

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What Can Happen When a Boundary Line is Changed?

Suppose John owns two adjacent lots (Lots 1 and 2) each improved with a home. John lives on Lot 1. He decides to sell Lot 2 but wants to retain title to the west ten feet of Lot 2. A replat of Lots 1 and 2 is prepared reflecting John's intent and is approved by the county but not recorded. John then had a fence erected along the new boundary line as shown on the replat and placed shrubbery in the area that had been the west ten feet of Lot 2.

John then lists the home (on Lot 2) with Max, a Realtor, giving him copies of the replat and proposed description. Max marketed the property making copies of these documents available to any interested person or Realtor. A written offer was received from Barry, which was prepared by Erma, Barry's Realtor. The offer identified the property only by street address. John accepted the offer. Neither Realtor attached or referred to the new plat or legal description.

Just before the scheduled closing, the title agent that was to do the closing called Barry advising of the receipt of the survey which showed that part of Lots 2 had been fenced in by the owner of Lot 1 (John). A dispute arose as to what description was to be placed in the deed. Barry said he was never given the replat and intended to purchase all of Lot 2. John said Barry visited the property several times and saw the fence and shrubbery.

The dispute was not resolved between the parties and Barry filed suit for specific performance. John cross claims against Max claiming negligence in not presenting the new plat to Barry and in not making sure that the contract offer was clear on the location of this boundary. The lower court dismissed the counter claim against Max. John appeals. What result? What about the suit for specific performance against John?

The Supreme Court of Virginia was asked to rule on the question of Max's liability to John while the specific performance suit was pending in the lower court. The Supreme Court ruled that sufficient evidence had been presented to make out a prima facie case regarding Max's liability to John and remanded the case for trial on the facts. See *563 S.E. 2d 775*. We do not know the final outcome…so we are left with our own thoughts.

We can see that there was no clear communication of what John intended to convey to Barry even though John had given the information to Max to share with potential buyers. Certainly John could have communicated with Barry before the contract was signed to make sure there was a meeting of the minds on this issue. From Barry's perspective it may be reasonable to believe that when he first saw the property and the fence, he would have assumed the fence to be the boundary of the property even without seeing the new plat.

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