Real Property – Possibilities of Reverter – Constitutionality of Statute

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and depressing to persons of normal sensibilities and not those who are hypersensitive and extra-fastidious, or possess an overly superstitious nature. While it is true that a cemetery and a funeral home have many comparable characteristics, it still rests upon the facts and circumstances of each case to determine whether a nuisance in fact exists. The instant decision appears to be unfounded in fact and in law since no evidence was produced to show actual or probable danger to health and physical comfort. It seems repugnant to the principles of equity to arbitrarily declare a cemetery a nuisance for psychic reasons only. It represents the inequitable situation whereby a person is deprived of the right to reasonably use his land for a lawful and necessary enterprise when no harm comes to others.

Paul Low

REAL PROPERTY—POSSIBILITIES OF REVERTER—CONSTITUTIONALITY OF STATUTE

Two suits were brought by purchasers of tax deeds against a holder of a possibility of reverter. Relief in the first case was sought under a Florida statute which was enacted to cancel reverter clauses of unlimited duration, in plats and deeds, which have been in existence more than 21 years. The second suit sought relief under the Murphy Act, which

298 Mich. 15, 298 N.W. 386 (1941); Streett v. Marshall, 316 Mo. 698, 291 S.W. 494 (1927); Bragg v. Ives, 149 Va. 482, 140 S.E. 656 (1927).
21. Testimony proved that the atmosphere and the well water near the cemetery would not be contaminated by the interment of dead bodies. Where there is no injury or danger of injury, there should be no restraints placed upon the operation of a lawful business.
22. "To complaints based upon purely psychic objections, equity gives no heed, for it does not regard the melancholy reflections that may be engendered in sensitive minds by the close proximity of a cemetery as sufficient to brand it a nuisance within the legal meaning of the term." Denney v. Hughes, 214 Miss. 687, 59 So.2d 316 (1952). 3 COOLEY, TORTS 180 (4th Ed. 1933): "Cemeteries are not enjoined from operation as nuisances because offensive to the sensibilities of those residing in the vicinity"; BURDICK'S, LAW OF TORTS 488 (4th Ed. 1926); "A cemetery is not a nuisance because it offends the fancy, delicacy or fastidiousness of neighbors . . . ."
23. "Relief by injunction is so severe . . . that it is not to be granted . . . except when the right to it is clearly and conclusively made out. To interfere with one's right to use his own land for the production of what he pleases, in a case of doubt, would be a flagrant abuse of power." McCutchen v. Blanton, 59 Miss. 116 (1881).
24. " . . . a cemetery is not unlawful, for to provide for the repose of the dead is just as lawful, and equally as necessary, as to provide for the health and comfort of the living. The dead must be disposed of in some way, and burial in the earth seems most appropriate, and certainly is generally resorted to." Farb v. Theis, 250 S.W. 290 (Tex.Civ.App. 1923).

1. FLA. STAT. § 689.18 (1951) (clause 2 reads: "All reverter or forfeiture provisions of unlimited duration embodied in any plat or deed executed more than twenty-one years prior to the passage of this law conveying real estate or any interest therein of the State of Florida, be and the same are hereby cancelled and annulled and declared to be of no further force and effect.")
2. Laws of Fla. 1937, c. 18296.
declared that reverter rights do not survive a tax deed. Circuit court judgments were for the tax deed holders and on appeal, held, reversed Application of the 1951 statute to pre-existing reverter clauses would impair the obligation of contract, and also deprive persons of their property without due process of law. The statute is unconstitutional when so applied. *Biltmore Village, Inc. v. Royal Biltmore Village, Inc. v. Rotolante*, 71 So.2d 727 (Fla. 1953).

The obligation of contracts is protected by both the Federal and Florida Constitutions. The limitation imposed by the Federal Constitution applies only to states and is not a limitation on the legislative power of our national congress. Since no state can pass a law impairing the obligation of contracts, it necessarily follows that state agencies are also similarly restricted. The "obligation of contracts" within the terms of the Federal Constitution refers to legal obligations which are measured by the law existing at the time the contract is entered into. This constitutional protection also applies to property rights. But it must be shown in all cases that a valid and lawful contract is in existence which is subject to impairment. In this case, neither the legality of the contract nor of its covenants was in issue. It is now accepted, by both state and federal courts, that once a valid contract has been entered into, state legislation will not be enforced which impairs the obligations of those valid contracts or destroys the means of enforcing those obligations, where the means of enforcement are part of the contract.

The United States Supreme Court has held that "obligation" also includes the means of enforcement. The reverter rights were put into the deeds in question to enforce restrictive covenants. Although reverter rights are not essential to the enforcement of covenants, they are a legal means of enforcement. The Florida Supreme Court has stated that any legislation which lessens the efficacy of legal means of enforcing legal obligations is an "impairment" of an obligation of contract contrary to constitutional prohibitions. By the wording of the 1951 statute, the legislature has declared reverter rights, such as the ones involved in the instant case, to be null and void and of no further force and effect.

3. See note 1, supra.
4. Ibid.
15. See note 1, supra.
after they have been in existence 21 years. This statute attempts to take away from reverter holders a property right to which they are, by valid contract, lawfully entitled. Therefore, unless this statute comes within some exception to the general prohibition against impairment of obligations of contract, the Florida statute is unconstitutional as applied to the reverter right holders in this case, and those similarly situated.

Those cases which have held that a state, by legislation, may impair obligations of contracts, have so held only when that legislation was a valid exercise of state police powers. The Florida Legislature based its justification for the 1951 statute mainly on the ground that reverter rights, unlimited in duration, make the title to land unmarketable, and this has the effect of retarding the growth of the State. Since reverter rights of this type do make titles unmarketable, and it is generally conceded that state police powers embrace the state's economic welfare, it is conceivable that this statute could have been upheld as constitutional. However, courts have refused to uphold legislation which takes land, or any interest therein, from one person and gives it to another purely for private use. Therefore, the 1951 statute is unconstitutional as applied to reverter clauses that were in existence when the statute was passed.

The decision in this case left some questions unanswered. Did the court, in effect, place a new interpretation on the Murphy Act, or was it held inapplicable? The Florida Supreme Court has previously held that a tax title, under this act, vests fee simple title in the State and that the act is constitutional. Had the majority opinion been more explicit on these questions, future litigation concerning these problems might be greatly minimized.

Howard Barwick.

**STATUTES—FLORIDA FAIR TRADE ACT—UNCONSTITUTIONALITY**

Plaintiff, a manufacturer, commenced an action against the defendants, attempting to enforce the Florida Fair Trade Act. From a judgment dismissing its complaint, plaintiff appealed. Held, the particular provision of the Fair Trade Act sought to be enforced (i.e. the non-signer clause)