

The Supreme Court of Ohio

**AMICUS CURIAE REPLY BRIEF OF
OHIO ASSOCIATION OF INDEPENDENT TITLE AGENTS,
IN SUPPORT OF REVERSAL**

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I. AMICUS CURIAE AND ITS INTEREST IN THIS APPEAL

Amicus curiae, the Ohio Association of Independent Title Agents (OAITA), entered its appearance in this case to support the ability of attorneys, title insurance agents, title examiners, title abstractors and title insurance underwriters to continued their reliance on R.C. 5302.04 in examining conveyances of real estate in Ohio.

In a conveyance of real estate or any interest therein, all rights, easements, privileges, and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary is stated in the deed, and it is unnecessary to enumerate or mention them either generally or specifically.

(Emphasis added).

R. C. 5302.04.

The majority decision of the appeals court undermines that reliance.

II. REPLY TO APPELLEES' ARGUMENTS: PROPOSITION OF LAW I

A. No Reference To “Rents” In Four Corners of Deed Of Conveyance

Whether B.E.B. Properties’ deed of conveyance to Keith R. Baker and Joseph E. Cyvas executed on March 22, 1995 and filed with the Geauga County Recorder on April 4, 1995, (Listed Document #6), **reserved the right to receive rents** from the Northern Ohio Cellular Telephone Company lease is the controlling factual issue in this case. If B.E.B. Properties did not make such a reservation then its right to receive rents from that lease was conveyed to Keith R. Baker and Joseph E. Cyvas.

The term “rent” cannot be found in B.E.B. Properties’ deed of conveyance to Keith R. Baker and Joseph E. Cyvas. Therefore, Appellees cannot avoid the obvious failure or mistake of B.E.B. Properties to expressly reserve the right to receive rents from the Northern Ohio Cellular Telephone Company in its deed of conveyance.

B. Memorandum Of Assignment Not In Appellants' Chain of Title

Bruce Bird and Sheila Bird, ("Appellees"), make the erroneous assertion that after a conveyance by a grantor of real estate without a reservation in the deed of conveyance of the rents from an existing lease, an assignment of the rents from the existing lease, subsequently made and filed of record, is in the "chain of title" of a subsequent purchaser of the real property. (See Merit Brief of Appellees Bruce And Sheila Bird, page 24, footnote 3).

The chain of subsequent deeds of conveyances following the deed from B.E.B. Properties to Keith R. Baker and Joseph E. Cyvas are: Keith R. Baker and Joseph E. Cyvas to Magnum Machine Co., (Listed Document #10); Magnum Machine Co to Parker Court, LLC, (Listed Document #11) ; and Parker Court, LLC to LRC Realty, Inc., (Listed Document #13). The chaining of and examination of those deeds of conveyances disclose that Appellants are the subsequent grantees of the unreserved rights to the rents from the Northern Ohio Cellular Telephone Company lease. Therefore, no reservation of the right to rents exists in Appellants chain of title. No extrinsic facts regarding intent of Appellees and B.E.B. Properties will re-write B.E.B. Properties' deed of conveyance to Keith R. Baker and Joseph E. Cyvas and place an express reservation of rents in Appellants' chain of title.

C. Memorandum Of Assignment Is An Assignment of Partnership Interest Not Rents

Appellees also maintain that the Memorandum Of Assignment, (Listed Document #7), was an assignment by B.E.B. Properties of the rents from the Northern Ohio Cellular Telephone Company lease to Appellees. However, an examination of the Memorandum Of Assignment reveals an assignment by David J. Eardley and Robert Bosler of their interest in B.E.B. Properties partnership

to Appellees. The Memorandum Of Assignment was not an assignment by B.E.B. Properties of its right to receive rents from a lease to Appellees.

D. A Search Of Grantor-Grantee Index Will Not Disclose Memorandum Of Assignment As Claimed

A search of the Geauga County Recorder's grantor-grantee index under the name of B.E.B. Properties will not reference the Memorandum of Assignment because B.E.B. Properties was neither the grantor or grantee of the instrument. The indexed grantor(s) would be David J. Eardley and Robert Bosler and Appellees, Bruce Bird and Sheila Bird, would be the indexed grantee(s).

E. Memorandum Of Assignment Is Not Evidence of Reservation

The effective date, execution date and filing date of the Memorandum Of Assignment chronologically belies Appellees' claim that the memorandum is evidence of the intent to create a reservation of the rights to rents by B.E.B. Properties in its March 22nd, 1995 deed of conveyance to Keith R. Baker and Joseph E. Cyvas. The Memorandum Of Assignment provides: "The effective date of this assignment shall be May 6, 1995." And the Memorandum Of Assignment was not signed or recorded until June 22, 1995. Since B.E.B. Properties, under R.C. 5302.04. did not make a reservation of interest in real estate in the deed of conveyance to Keith R. Baker and Joseph E. Cyvas, B.E.B. Properties had no interest in the real estate conveyed to assign.

II. REPLY TO APPELLEES' ARGUMENTS: PROPOSITION OF LAW II

A. Creation Of Reservation By Implication Is Contrary To R.C. 5302.04

The majority decision of the appeal court created a reservation of rents by implication in the B.E.B. Properties deed of conveyance by the "subject to" provision of the Northern Ohio Cellular

Telephone Company lease is void of any authority to justify such a severance of the right to rents from the rights in real estate conveyed by B.E.B. Properties. Use of the terminology “subject to” in a conveyance of real property can create a reservation, however, the term “subject to” must be followed by what specific interest in real estate is being reserved, otherwise R.C. 5302.04 has no meaning.

A reservation by implication based upon extrinsic intent would leave all conveyances of interest in real estate open to a subsequent reservation claim based upon extrinsic evidence of intent that a reservation was reserved. Allowing subsequent reservations by implication based upon extrinsic evidence of intent outside the four corners of the deed of conveyance will undermine the value of reviewing conveyances of interest in real estate under R. C. 5302.04.

B. R.C. 5302.04 Provides Consistency To Land Titles

In Ohio no expert is necessary to determine if there was a failure of the grantor to a deed of conveyance to reserve rents from a lease. In reliance on R.C. 5302.04 an examination of any deed of conveyance can determine if any reservation is expressed in the words of the deed of conveyance. If there is no expressed reservation by an express “reservation of”, “exception to” or “subject to” **the right to receive rents from a lease**, then all rights were conveyed by the grantor. This is the basic assumption under which attorneys, title insurance agents, title abstractors and title examiners in Ohio employ when examining deeds of conveyances in any chain of title to real property.

In order to have consistency, R. C. 5302.04 must be the controlling law in reviewing deeds of conveyances in Ohio and the controlling law in the case *sub judice*.

IV. CONCLUSION

Amicus curiae, OAITA, supports the reversal of the decision of the 11th District Court of Appeals.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Brief of Amicus Curiae OAITA*, was served upon the following counsels via electronic transmission this 17th day of April, 2019.

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