

## *McMurray v. Housworth*

- Houseworth sold 12 of 24-acre to McMurray's
- Including in deed was a "general warranty of title" clause:
  - Grantors agree to "defend the right and title to the above described property, unto [the grantees], their heirs, assigns, and successors in title, against the claims of all persons."
- OCRSCD has "floodwater retarding structure" easement on McMurray's parcel



## *McMurray v. Housworth*

- Easement breach general warranty of title?
- Existence of public encumbrance violate general warranty?
  - Public Road
  - Zoning
  - What if public encumbrance is being violated when sold?
- Existence of private encumbrance violate general warranty?
  - Easement
  - Does it matter if private encumbrance is being violated?
- How does notice/knowledge play a role here?

8. The exception for zoning regulations can be tricky. Suppose that the property is a vacant lot and that local zoning laws restrict houses to 15 feet in height? Is this an encumbrance? What if the property contains a house 30 feet high? Would it make a difference in either case if the restriction came from a private neighborhood covenant rather than a public zoning law?

## A contracts to buy from C

- Contract contains following clauses:
  - “certified to date showing good merchantable title . . . guaranteeing said title . . . free and clear of all encumbrances”
  - “subject, however, to all restrictions and easements of record applying to this property
  - “shall have sufficient time to . . . correct any imperfections”
- House subject to a restrictive covenant requiring any house erected to be two stories or higher
  - Current house one story
- House also subject to a zoning ordinance— 3 foot setback on rear and side of property
  - Not currently violating

## DEED WITH FULL COVENANTS.

This indenture, made the ..... day of ..... nineteen hundred and ....., between .....(insert residence) party of the first part, and ..... (insert residence) party of the second part,

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ..... and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever. And said ..... covenants as follows:

First. That said ..... is seized of said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said ..... will forever warrant the title to said premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

## QUITCLAIM DEED.

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence), party of the first part, and ....., (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release, and quitclaim unto the party of the second part, ..... and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, ..... and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of: