

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (3d) 130353-U  
Order filed May 8, 2014

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2014

VILLENEAUVE DEVELOPMENT CO.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellant,	)	Tazewell County, Illinois,
	)	
v.	)	Appeal No. 3-13-0353
	)	Circuit No. 06-CH-35
ILLINOIS CENTRAL COLLEGE,	)	
	)	Honorable
Defendant-Appellee.	)	Paul Gilfillan,
	)	Judge, Presiding.
	)	

---

JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Holdridge and Schmidt concurred in the judgment.

---

**ORDER**

- ¶ 1 *Held:* The appellate court agreed with the trial court's judgment on remand that an ambiguous warranty deed, when construed in conjunction with two related agreements, did not create a covenant to construct an access road that ran with the land.
- ¶ 2 The plaintiff, Villeneuve Development Co. (Villeneuve), brought suit against the defendant, Illinois Central College (ICC), contending that ICC breached a covenant running with land that Villeneuve had acquired. The trial court initially found in favor

of ICC, but we reversed and remanded. *Villeneuve Development Co. v. Illinois Central College*, 2012 IL App (3d) 110285-U. On remand, the trial court again found that a covenant to build an access road did not run with the land, and again ruled in favor of ICC. Villeneuve appealed.

¶ 3

### FACTS

¶ 4

In our prior order, we reversed a trial court judgment in favor of ICC, finding that a warranty deed was ambiguous regarding ICC's obligation to construct an access road for Villeneuve. *Villeneuve Development Co*, 2012 IL App (3d) 110285-U, ¶ 37. We remanded with instructions for the trial court to allow other evidence regarding whether the original grantors and ICC intended to create a covenant running with the land obligating ICC to construct the access road. *Id.* at ¶ 38. On remand, the trial court ordered the parties to file written briefs, and it heard oral argument. The parties, and the trial court, agreed that there was no new or additional testimonial evidence available to present to the trial court.

¶ 5

The facts are more fully set forth in our prior order. Around the time that ICC was established in 1966, it acquired various parcels of real estate, including an option to purchase a 25-acre parcel from the grantors in this case (referred to as the Cone property). That Option Agreement, between Cone and ICC dated November 28, 1966 included three relevant parts; a) the purchase option b) a reservation of an easement over the Cone property and c) an agreement for ICC to construct a public street over the easement. Thereafter, ICC exercised its option to purchase the Cone property. Cone executed a warranty deed, on April 17, 1967, conveying the Cone property to ICC and retaining the easement. Prior to recording the deed, Cone and ICC entered into a separate agreement, dated May 12, 1967, which provided for the designation of the easement and required

ICC to construct a public street (access road) on the easement. The deed was then recorded on May 16, 1967. Some preliminary construction work was done on the road in 1967, but Cone never designated the easement route.

¶ 6 In March 1978, ICC's board approved a resolution authorizing the dedication of 0.4 acres of the Cone land for the construction of the access road as provided for in the May 12, 1967, agreement. By that time, Cone had provided ICC with a legal description of the land for the road. In May 1978, legal counsel for ICC proposed that ICC pay Cone the sum that had been appropriated in 1967 to construct the road, plus interest, which Cone indicated it would accept. The dedication was recorded on July 20, 1978. In October 1978, the Cone property was acquired by Villeneuve. In January 1979, a release was executed by Cone and ICC, which purported to release ICC from the May 12, 1967, agreement requiring construction of the access road in exchange for paying Cone the amount that had been appropriated for the construction (\$12,327.50). The release was not recorded, and no access road was ever constructed by ICC.

¶ 7 Villeneuve filed a two-count complaint against ICC on January 20, 2006. Count I alleged a breach of a covenant running with the land, specifically, ICC's failure to construct the access road. Count II sought a declaratory judgment that ICC violated that covenant and sought damages. The cause proceeded to a bench trial, which, as already stated, resulted in judgment for ICC. In that order, the trial court found that the deed was unambiguous, and while it created an easement that ran with the land, it did not create a duty to construct a road that ran with the land. We reversed and remanded, holding that the warranty deed was ambiguous, so the parties should be allowed to present evidence of Cone's and ICC's intent as to whether the agreement to construct an access road was a covenant running with the land. On remand, the trial court considered the same evidence,

however, because there was no additional evidence available. Noting that the deed was ambiguous, the trial court construed together the deed, the option agreement, and the separate agreement dated May 12, 1967, and determined that Cone and ICC did not intend to create a covenant running with the land so as to require ICC to construct an access road beyond its contractual obligation to Cone. Since ICC's obligation to build a road did not run with the land, the trial court again issued a judgment in favor of ICC. The trial court noted that Villeneuve's contrary argument was legitimate, but that ICC's position was more persuasive. Villeneuve appealed.

¶ 8

#### ANALYSIS

¶ 9

Villeneuve argues that the trial court's interpretation of the three relevant agreements was incorrect, and the documents, interpreted as a whole, showed that ICC's obligation to construct the road was a covenant that ran with the land. ICC argues that the three agreements, construed together, established that ICC's agreement with Cone to construct an access road was not a covenant running with the land.

¶ 10

Since this appeal is based on the interpretation of the three relevant agreements, and there are no questions of fact to be resolved, our review is *de novo*. *Hot Light Brands, L.L.C. v. Harris Realty Inc.*, 392 Ill.App.3d 493, 498 (2009). Our goal when interpreting a deed is to ascertain the intent of the parties. *Sadler v. Creekmur*, 354 Ill.App.3d 1029, 1036 (2004). As with any other contract, the terms of the deed must be given their ordinary and natural meaning when they are clear and unambiguous. *Sadler*, 354 Ill.App.3d at 1036. However, if the deed is capable of being understood by reasonably well-informed persons in two different ways, it is ambiguous, and a court may resort to extrinsic evidence to discover the real intention of the parties. *Reynolds v. Coleman*, 173 Ill.App.3d 585, 593 (1988). Contemporaneous documents, executed by

the same contracting parties in the course of the same transaction, should be construed together. *Tepfer v. Deerfield Savings and Loan Ass'n*, 118 Ill. App. 3d 77 (1983); 17A Am. Jur. 2d Contracts § 379. Thus, if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of a contemporaneous document, they will be given effect. *Tepfer*, 118 Ill. App. 3d at 80.

¶ 11 The Option agreement stated that Cone reserved an easement, sufficient for a public street. It also provided that the purchaser would construct a road on the easement. The agreement was made binding upon, and for the benefit, of the heirs, devisees, executors, administrators, successors, and assigns of the parties. The May 12, 1967, agreement, between Cone and ICC, provided that Cone was to designate the route for the easement within three months, and ICC was to dedicate the land for the access road within one year. The agreement also provided that ICC would construct the road. The Deed reserved an easement to the grantors (Cone) “until such time as Grantee shall dedicate and construct a public street from such point of access to Grantors' said lands.” The trial court’s conclusion that the option agreement merely reserved an easement, and the separate agreement to build the access road, referenced in the option agreement, was not intended to extend to Cone’s successors, was a reasonable interpretation of the three agreements.

¶ 12 Since we have found in favor of ICC, we decline to address ICC’s arguments that Villeneuve’s complaint is barred by the 10-year statute of limitations applicable to written contracts (735 ILCS 5/13-206 (West 2008) or by *laches*.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Tazewell County is affirmed.

¶ 15 Affirmed.