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When Logic And Proportion Fall: Do Policy Objectives Override Common Rules Of Conveyancing For Conservation Easements?

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The Second District Court of Appeal's decision in *Canyon Vineyard Estates I, LLC v. DeJoria*1 (see summary at page 544, below) sidesteps several potentially troublesome conveyancing issues by focusing on the statutory authorization for "conservation easements" and giving only limited attention to more prosaic principles of traditional California real property law. The decision upholds the continued effectiveness and enforceability of restrictive covenants limiting use of the property to open space and natural habitat preservation, which were contained in a grant deed of fee simple title to 400 acres of coastal property, on the theory that the deed actually conveyed both the fee simple title and a statutory conservation easement, evidently *to the same grantee*. It further concludes that these distinct interests in the same parcel of real property, although held by the same party, would not "merge" in such a manner as to make the conservation easement go away after foreclosure of a deed of trust encumbering the grantee/easement holder's interest. It thus goes on to find that the open space restrictions of this "conservation easement" remain enforceable against a purchaser in foreclosure under a deed of trust encumbering the grantee's estate, which had financed the purchase of the fee interest in the property by that same grantee. This holding is based apparently on the court's unstated assumption that the deed of trust had not encumbered the grantee's interest in the "conservation easement" when the grantee of the deed next executed the deed of trust encumbering the fee interest in the property. (The *grantor* had subordinated its rights of enforcement of the "conservation easement" under the deed to the deed of trust, but the grantee, according to the court, had not.) Somehow the failure of the grantee, who executed the deed of trust, to also "subordinate" its rights under the conservation easement to the deed of trust, meant the conservation easement would survive foreclosure as a continuing easement held by the grantee enforceable against the purchaser in foreclosure of the grantee's fee simple ownership interest in the property—a conclusion that is hard to reconcile with any ordinary understanding of real property security transactions.

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