

Question from 2006 EXAM – WATSON – PROPERTY I (ON RESERVE)

KENNY purchased three contiguous lots in 2000. On the east lot there is a house. On the middle lot there is a building and a parking area. On the west lot there is also a building and a parking area. KENNY operates an ice cream parlor in the building on the west lot. On December 1, 2003, KENNY leased both the east and middle lots to ERIC for four years, starting immediately and ending November 30, 2007. The lease, which was recorded, contained the following provisions:

ERIC promises to pay KENNY a rent of \$2,000 per month, payable on the first day of each month, for use of the east lot. ERIC agrees to pay KENNY a rent of \$3,000 per month, payable on the first day of each month, with regard to the middle lot. ERIC promises KENNY and his successors to never engage in the same business as the business conducted by KENNY and his successors on the west lot.

ERIC opened a health food store on the middle lot, and moved into the house on the east lot. ERIC always paid his rent on time. KENNY died in the summer of 2004 and left everything to STAN. After KENNY's death, ERIC paid his rent to STAN.

On December 1, 2005, ERIC assigned to KYLE the remaining two years of his lease to the east lot. KYLE agreed to pay the \$2,000 monthly rent directly to STAN. STAN had no objections to the lease assignment, which was recorded.

KYLE is also in the health food business, and in November 2006, ERIC agreed (for an undisclosed sum) to assign the remaining year on his "middle lot" lease to KYLE. STAN had no objection to the lease assignment, which was recorded. KYLE occupied the middle lot on December 1, 2006, and paid the \$3,000 monthly rent directly to STAN. Because he enjoys frozen yogurt, KYLE immediately installed a frozen yogurt machine in the store. He did not advertise this fact, but when two customers asked KYLE to sell them some frozen yogurt, KYLE was happy to do so.

STAN saw two people leaving KYLE's store with frozen yogurt. He does not want KYLE to sell frozen yogurt. STAN is also upset because KYLE has not paid rent on the east lot for the last six months (July through December of 2006). Last June the air conditioner unit installed in the master bedroom window stopped working because of a "short" in the wiring in the house. KYLE informed STAN, but STAN did nothing. Consequently, KYLE stopped paying rent, and recently threatened to move to another residence. A housing inspector says the wiring is a fire hazard, violates the local housing code, and will cost \$6,000 to repair. The air conditioning unit will cost \$1,000 to replace.

Please evaluate the rights of STAN and KYLE.