

1955

Jack Porter Kartchner v. State Tax Comm. Of Utah et al : Brief for Appellant

Utah Supreme Court

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IN THE SUPREME COURT

FILED

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OF THE STATE OF UTAH

Clerk, Supreme Court, Utah

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JACK PORTER KARTCHNER, FEB 21 1956

Appellant

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vs.

STATE TAX COMMISSION OF UTAH,
CHARLES S. WYATT and ALICE D.
WYATT, his wife, WILLIAM L.
BENNETT and UNITED STATES OF
AMERICA,

Respondents,

Civil No. 8398

BRIEF FOR APPELLANT

DAVID H. BYBEE

Attorney for Appellant

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STATEMENT OF FACT

This is an action in which Plaintiff seeks to quiet title to property located in Salt Lake County.

State of Utah, more particularly described as:

Commencing at a point 469.08 feet South of the center of the intersection of 1300 East Street and 5600 South Street, said intersection being 19.85 chains, more or less, West from the Northeast corner of Section 17, Township 2 South, Range 1 East, Salt Lake Base and Meridian, in the County of Salt Lake, State of Utah, and running thence North 131.52 feet; thence West 195 feet; thence South 131.36 feet; thence East 195 feet to the place of beginning.

Excepting therefrom that portion thereof included within the line of 1300 East Street.

The Plaintiff obtained this property from Charles E. Wyatt and Alice D. Wyatt, his wife, who were the owners of record of this property. On August 3rd, 1931, the Wyatts executed a warranty deed whereby they conveyed this property to the Appellant.

This document was recorded in the office of the Recorder in Salt Lake County, State of Utah, on September 15, 1953.

A judgment in the sum of \$1,959.77, plus other items, was obtained by the Defendant William L. Bennett and that the judgment was docketed on March 23, 1952. The judgment was obtained against Charles S. Wyatt and Alice D. Wyatt.

On March 16th, 1953, a judgment for \$1,478.24 was docketed wherein the Continental Bank and Trust Company was the judgment creditor and the Wyatts were the judgment debtors. This judgment was assigned to the United States of America and the United States of America has substituted as parties defendant in this action.

A pretrial was had upon this matter on the 21st day of March, 1955, and a further hearing on pretrial was had on April 19, 1955. Thereafter the Court was and entered its judgment dismissing the action, decre

ing that the Defendants Bennett and the United States of America had a lien which was superior to the title of the Plaintiff and that the deed transferring the property from the Wynne to the Plaintiff was subordinate, junior and inferior to the judgment lien of the Defendants.

It is from this judgment that Plaintiff now appeals.

Point 1. The Trial Court erred in dismissing the complaint and in ruling that as a matter of Law the two Docketed Judgments were superior liens to the Appellant's title.

ARGUMENT

It is necessary for the Court to construe two statutes in order to determine whether or not the judgment of the lower court should be upheld or reversed. The first statute is found in Utah Code Annotated, 1953, 73-22-1 - Lien of Judgment -

"From the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor not exempt from execution in the county in which the judgment is entered owned by him at the time or by him thereafter acquired during the existence of said lien. A transcript of judgment rendered in a District Court of this State in any county thereof may be filed and docketed in the office of the clerk of the District Court of any other county and when so filed and docketed it shall have, for purposes of lien and enforcement, the same force and effect as a judgment entered in the District Court in such county. The lien shall continue for eight years unless the judgment is previously satisfied or unless the enforcement of the judgment is stayed on appeal by the execution of sufficient undertaking as provided by Law in which case the lien of the judgment ceases."

The second statute is our Recording Statute.

Utah Code Annotated, 1943, 37-3-3 - Effect of

Failure To Record -

"Every conveyance of real estate hereafter made which shall not be recorded as provided in this title shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof where his own conveyance shall be first duly recorded."

In construing the first above statute, in order to prevail Respondent would have to read into the statute something that was not written there. The statute says "From the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor" and it would be necessary to write in the word "recorded" so that the statute would read "From the time the judgment is docketed it becomes a lien upon all the real property RECORDED in the name of the judgment debtor... etc." Had that been the intent of the legislature when this statute was enacted they would certainly have written in "recorded owner of property" rather than "owner of property".

It is not disputed in this case that Wyatt and his wife had parted with the possession and title to the real estate property. It is also not disputed that the purchaser, the Appellant herein, did not record the warranty deed by which title of property was conveyed until after the time the two judgments were docketed. The judgment could not become a lien upon this property because both judgments were obtained against Wyatt and his wife and at the time they were obtained and at the time they were docketed neither Wyatt nor his wife owned the real estate herein sued upon.

The Trial Court has ruled that as a matter of Law a docketed judgment becomes a lien upon real estate of the Record Owner. The Courts of this State in similar cases have heretofore looked to the actual ownership of the property; not the Recorded Owner but the Actual Owner. In the case of Utah Cooperative Association vs. White Distributing and Supply Compa

et al cited in 237 Pacific 2nd, Page 352, the Court went at great lengths to determine just who the owner or owners of the real estate property were so that it could determine upon which property or what property if any, the judgment should attach. This was an action by judgment creditor against the debtor corporation to establish that the corporation had in certain realty an equitable interest subject to the judgment creditor's lien. Where the corporation was found to have interest in such realty, though record title to the realty was not in the corporate name the court properly declared that the lien attached to such realty. It is also interesting to note that in this same case that Austin, one of the defendants, had previously assigned his interest in this real estate property to one M. A. Strand who was not a party to the action and no judgment against his interest was entered.

It is appreciated that it is necessary to construe the Utah statute to determine this matter. However

it will probably be helpful to the Court to consider the following cases which are in point on this particular subject:

Postlethwaite vs. Edson, 171 Pacific 769 -

"Only the actual interest of judgment debtor can be appropriated."

Oil Well Supply Company vs. Cremin, 267

Pacific, Page 414, "The District Court judgment

is lien only on judgment debtors actual interest in realty in the county".

Hawthornson vs. Rostad, 169 Pacific, Page 350,

"A judgment is a lien only on the actual interest of the judgment debtor in land so that a creditor obtaining judgment after a voluntary conveyance of land to the debtor who reconveyed by an unrecorded deed had no interest in the land."

Vandin vs. Henry McCleary Timber Co., 289

Pacific, Page 1016, "A judgment is lien upon REAL

not APPARENT interest of the judgment debtor".

These decisions are from jurisdictions having statutes similar to our own.

It is apparent that the word "recorded" or the phrase "recorded owner" was not intended by the legislature in this particular statute.

In order to prevail the Defendant and Respondent must show that the judgment creditor is a purchaser in good faith and for a valuable consideration.

It has been held by this Court in construing this Statute that a mortgage lien is included in term "conveyance" as used in this action. Mortgagee is a purchaser and Law of priority of record applies to mortgages. This was held in *Federal Land Bank of Berkley vs. Pace* at 48 Pacific 2nd, Page 480. So far as I have been able to determine there has never been a Utah case holding that the judgment creditor is a purchaser in good faith and for a valuable consideration.

The Iowa code (which is not worded identically

with ours) "No instrument affecting real estate is of any validity against subsequent purchasers for valuable consideration without notice unless filed in Office of Recorder of county in which same lies".

The effect of this Statute and the meaning is the same as ours and the same construction should be placed upon it. The Iowa Court on two separate occasions has held that a judgment creditor is not a subsequent purchaser for value of land within the meaning of the recording laws. The above was held in *Cunningham vs. First National Bank of Sigourney*, 262 Northwestern, Page 558, and the case of *Branch vs. Prehling*, 256 Northwestern, Page 892, holds that a judgment creditor is not a purchaser under the recording act.

From the foregoing it is apparent the Trial Court erred in dismissing Plaintiff's complaint and in ruling that as a matter of Law Appellant's title was inferior to the two judgment liens.