

1955

Jack Porter Kartchner v. State Tax Comm. Of Utah et al : Brief of Respondent, William L. Bennett

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Kartchner v. State Tax Comm. Of Utah*, No. 8398 (Utah Supreme Court, 1955).
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**In the Supreme Court
of the
State of Utah**

JACK PORTER KARTCHNER,
Plaintiff and Appellant,

— vs. —

**STATE TAX COMMISSION OF
UTAH, CHARLES S. WYATT AND
ALICE D. WYATT, HIS WIFE,
WILLIAM L. BENNETT AND
UNITED STATES OF AMERICA,**
Defendants and Respondents.

FILED
DEC 27 1955

Clerk, Supreme Court, Utah

Case No. 8398

BRIEF OF RESPONDENT, WILLIAM L. BENNETT

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UNITED STATES OF AMERICA,
Defendants and Respondents.

Case No. 8398

BRIEF OF RESPONDENT, WILLIAM L. BENNETT

NATURE OF THE CASE

Appellant commenced action to Quiet Title to certain real property in Salt Lake County against Respondent, Bennett, and others. From a Judgment of the Trial Court

adjudging that the Judgment Lien of Respondent, Bennett, was superior to the Deed under which Appellant claimed the property and dismissing Appellant's suit, the Appellant prosecutes this Appeal.

STATEMENT OF FACTS

Pre-Trials of this action were held by the Trial Court on March 21, 1955 and on April 19, 1955. Thereat the following facts were stipulated to. On August 3, 1951 a Deed was signed wherein Charles S. Wyatt and Alice D. Wyatt, his wife, were Grantors and Appellant was Grantee. Said Deed was not recorded until September 15, 1953 by Appellant. On March 28, 1952 Respondent, Bennett, obtained a Judgment for the sum of \$1,959.77, and other items, against said Wyatts as Judgment Creditors. Said Judgment of said Respondent was docketed on March 28, 1952. Said Wyatt and Wife were named as Defendants by Appellant in his suit but they were not served with Summons by Appellant.

Briefs were duly submitted to the Trial Court by Appellant and Respondent, Bennett, through their respective counsel. The Trial Court after due consideration thereof and after oral argument by counsel to the Court made the ruling and judgment from which Appellant appeals.

STATEMENT OF POINT

POINT I.

THE COURT DID NOT ERR IN RULING THAT AS A MATTER OF LAW THE JUDGMENT OF RESPONDENT, BENNETT, WAS A PRIOR, VALID AND SUBSISTING LIEN UPON SAID REAL PROPERTY AS AGAINST THE DEED OF CONVEYANCE UNDER AND BY WHICH APPELLANT CLAIMED TITLE.

ARGUMENT

Respondent, Bennett, asserts that his Judgment Lien takes precedence over the unrecorded Deed of Appellant.

Appellant has cited to the Court the provisions of Sections 78-22-1, U. C. A. 1953 and 57-3-3, U. C. A. 1953 and repeat thereof is not requisite. In conjunction with said Statutes the provisions of Section 57-3-2, U. C. A. 1953 which are as follows should be considered.

“Record imparts Notice. - Every conveyance, or instrument in writing affecting real estate, executed, acknowledged or proved, and certified, in the manner prescribed by this title, and every patent to lands within this state duly executed and verified according to law, and every judgment, order or decree of any court of record in this state, or a copy thereof, required by law to be recorded in the office of the county recorder shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers, mortgagees and lienholders shall be deemed to purchase and take with notice.” (Italics ours)

Study of said Utah Statutes conjunctively does not present problem nor is there necessity to as Appellant contends read in to the same any additional words or provisions. Resolvment of the question can be made chronologically. Appellant claims title under Deed of Conveyance dated August 3, 1951. Respondent, Bennett, obtained Judgment Lien against the property by a Judgment docketed on March 28, 1952. Appellant recorded his Deed of Conveyance on September 15, 1953. The protection of the provisions of Section 57-3-2, 1953 supra, were available to Appellant. He did not see fit to avail himself thereof and not having done so he should not now be heard to complain. His reasons for not recording his conveyance until more than Two (2) years after date thereof were not shown.

There is no necessity to delve in to the realm of what interest the Judgment Debtors, Wyatt, had in the real property. The Recording Statutes of this State preclude such speculation. There is no basis for distinction between Recorded Owner and Actual Owner. If in our complex commercial world reliance cannot be placed upon the Recording Statutes to determine ownership to real property then such ownership will be a matter of conjecture at all times since it will be necessary to by facts beyond the Records determine who is Actual Owner. The Actual Owner must be deemed to be the Recorded Owner. Until he is the Recorded Owner he is not the Actual Owner.

Appellant cites to the Court the case of Utah Cooperative Association -vs- White Distributing and Supply Company, 237 P. 2d 262. In said case this Court subjects an equitable interest in real property to a judgment creditor's lien even though the record title was not in the name of the judgment debtor. This Court upheld the sanctity of the judgment lien. Said Utah case is not of aid in the case at bar.

The great weight of authority as shown in case law is that a prior deed not recorded does not affect a Judgment Lien and that such Lien is prior to and superior to the unrecorded deed. The Judgment Lien is held to attach and be prior to such deed and to be a valid and subsisting lien upon the real property held in the name of the judgment debtor on the records. This position has been adopted by the Courts to preserve the notice and recording statutes. To hold otherwise would reduce their effectiveness and render them of no value or consequence.

We herewith cite to the Court cases from different jurisdictions indicative of the foregoing. In doing so, we shall present the ruling of the Courts without citing at long length therefrom.

In *Webb v. United American Soda Fountain Co.*, 59 F. 2d 329, the Court holds that unrecorded deeds are not postponed to subsequent judgment liens. To the same effect is the case of *Fooshe v. Swarley*, (Virginia) 58 F. 2d 774.

In *Eaton v. Doub*, 190 N.C. 14, 128 S. E. 494, 40 A. L. R. 273, an excellent discussion of the very problem

at hand is set forth with the Court holding that a prior unrecorded deed is subsequent and subservient to the Judgment Lien.

In *Segrest v. Hale*, Texas, 164 S. W. 2d 793, the Court holds that a judgment lien takes precedence over a prior unrecorded deed by the judgment debtor unless the judgment creditor had notice of the deed, and the holder of the unrecorded deed has the burden of proving that the judgment creditor had notice.

In *Juran v. Fitzgerald*, Minnesota, 226 N. W. 201, the Court holds that attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice.

In *Commercial Trust v. Murray*, Illinois, 246 Ill. App. 355, the Court holds that where a judgment creditor has no notice of an unrecorded deed, the judgment lien will not be affected by the subsequent recording of the deed.

In *Donahue v. Kohler-McLister*, Colorado, 81 Colo. 244, 254 P. 989, the Court holds that the lien of the judgment creditor was superior to the claim of the vendee in an unrecorded deed.

Holding similar to the foregoing cases are *Sack v. Gilmer Dry Goods*, Mississippi, 115 So. 339, *Feinberg v. Stearns*, Florida, 47 So. 797 and *Maxton Realty v. Carter*, North Carolina, 86 S.E. 714.

The contention of Respondent, Bennett, and the Ruling of the Trial Court that the Judgment Lien of said

Respondent is prior to and superior to the unrecorded deed of appellant is thusly well supported by law.

Appellant contends that Respondent, Bennett, as a Judgment Creditor must show that he is a purchaser in good faith and for value in order to prevail. Respondent, Bennett, can fully sustain this burden. We do not believe that such showing is the controlling point in the case at bar but we are committed to the view that the decisive issue of this case is whether or not a judgment lien is superior to an unrecorded deed. Respondent, Bennett, maintains that it is.

However, there is ample authority for the proposition that a judgment creditor is a purchaser in good faith and for value.

In *Agricultural Credit Corp. v. State*, 74 N.D. 71, 20 N.W. 2d 78, the Court holds that a judgment creditor under a judgment lawfully obtained and docketed against record owner of realty occupies the same position with respect to unrecorded conveyances of such realty as does any subsequent purchaser thereof in good faith whose conveyance is first duly recorded.

In the case of *Gary v. Newton*, Illinois, 66 N. E. 267, the Court holds that judgment creditors are to be regarded as purchasers within the meaning of the Conveyance Act which declares that "all deeds and title papers shall be adjudged void as to all creditors and subsequent purchasers without notice until the same shall be filed for record".

In the case of *In Re Buchner*, 205 Fed. 454, the Federal Court held that where a Bankrupt was in possession of real property on the date that a judgment was recovered against him, the judgment creditor was a bona fide purchaser as of that date and was entitled to priority over the rights of a vendee whose contract of sale was filed of record three days after the entry of the judgment. At page 461 thereof the Court says:

“A judgment creditor is conclusively presumed to have advanced credit on the apparent state of the title as disclosed by the records and open possession of the property as of the date of the recovery on his judgment, and he is a bona fide purchaser as of that date”.

Appellant cites in his Brief cases dealing with Actual Interest of the Judgment Debtor in realty. Pertinency thereof in the case at bar is questioned by this Respondent on the grounds that Appellant assumed and believed at the time of the commencement of this action to quiet title that the Judgment Debtors, Charles S. Wyatt and Alice D. Wyatt, did have such interest in the real property. Appellant made them Party Defendants in said action but did not serve Summons on them. Appellant alleged in his Complaint that they claimed interest in the real property. Having so done, Appellant cannot now be heard to assert that such Judgment Debtors had no such interest in the real property to which the Judgment Lien attached.

Of importance to this Court and to the parties is a determination of whether or not under the Recording Statutes of this State a Judgment Lien is prior to and superior to an unrecorded deed. A Ruling thereon by this Court will prove beneficial to the business world of this State and serve as future guidance. If Appellant's position is sustained then the Lien of a Judgment will hereafter be fruitless since a party who has carried an unrecorded deed around in his pocket for years may step in and wholly render the Judgment Lien null and void by recording such instrument.

Appellant in his Quiet Title suit relies solely on Record Title in himself. Showing thereof by Appellant was by Deed, dated August 3, 1951, and recorded on September 15, 1953 and after Judgment of this Respondent had been docketed on March 28, 1952. Record Title as claimed by Appellant falls completely in the light of the Recording Statutes. Also, this Court in the case of *Home Owners' Loan Corporation v. Dudley*, 105 Utah 208, 141 P. 2d 160, has held that in a quiet title action a plaintiff can only prevail on a claim of record title by showing such title in himself. Application of this doctrine to the case at bar fully supports the Judgment of the Trial Court dismissing the Appellant's Complaint and entering Judgment of No Cause of Action against Appellant in favor of this Respondent.

CONCLUSION

Due and careful consideration of the facts and the law was made by the Trial Court. Appellant has not and cannot show error which requires reversal of the ruling of the Trial Court. If the Recording Statutes of this State are to be given effectiveness and the sanctity of the Judgment Lien preserved, the Judgment of the Trial Court must be Affirmed by this Court.

Respectfully Submitted,

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