

1956

Jack Porter Kartchner v. State Tax Comm. Of Utah et al : Brief of Respondent, United States of America

Utah Supreme Court

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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

JAN 27 1956

Supreme Court, Utah

Case No.
8398

**BRIEF OF RESPONDENT,
UNITED STATES OF AMERICA**

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BRIEF OF RESPONDENT,
UNITED STATES OF AMERICA

STATEMENT OF FACTS

This respondent agrees substantially with the statement of facts presented by appellant and respondent, William L. Bennett, in their briefs filed in this action except to point out that there is no evidence to show possession of the real property involved by appellant prior to the date

of the recording of appellant's deed, September 15, 1953. Rather, it appears that appellant's grantors, Charles S. Wyatt and Alice D. Wyatt, his wife, executed the modernization note, upon which this respondent's judgment lien was based, on September 21, 1951, which was more than one month after the date of the said grantors' deed to appellant, dated August 3, 1951, under the provisions of Title I of the National Housing Act, Title 12, Sec. 1701, as amended, United States Code Annotated, to modernize and improve his residence located on part of the real property involved in this action, which they then, presumably, occupied.

Also, the judgment presently held by this respondent was entered of record in the District Court on May 16, 1952, at which time it became a lien upon the said real property and was in the amount of \$1,478.20, with interest thereon at eight per cent per annum, plus attorney's fees in the sum of \$235.00, and costs in the amount of \$16.40, and that the assignment of the said judgment to this respondent is dated August 20, 1952.

STATEMENT OF POINTS

POINT I

THE COURT DID NOT ERR IN RULING THAT AS A MATTER OF LAW THE LIEN OF RESPONDENT, UNITED STATES OF AMERICA, ON THE REAL PROPERTY INVOLVED HEREIN BY VIRTUE OF ITS SAID JUDGMENT IS

PRIOR AND SUPERIOR TO THE CLAIMS OF APPELLANT TO OWNERSHIP AND RIGHT OF POSSESSION OF SAID PROPERTY.

ARGUMENT

POINT I

THE COURT DID NOT ERR IN RULING THAT AS A MATTER OF LAW THE LIEN OF RESPONDENT, UNITED STATES OF AMERICA, ON THE REAL PROPERTY INVOLVED HEREIN BY VIRTUE OF ITS SAID JUDGMENT IS PRIOR AND SUPERIOR TO THE CLAIMS OF APPELLANT TO OWNERSHIP AND RIGHT OF POSSESSION OF SAID PROPERTY.

Respondent, William L. Bennett, and this respondent, occupy the same position as relates to the priority of lien over appellant's claim, the judgment of respondent, Bennett, being entered March 28, 1952 and that of this respondent being entered May 16, 1952, and the pertinent law applies equally to both respondents. Consequently, the argument and the authorities cited in the brief of the said respondent, William L. Bennett, filed herein, are hereby adopted and made a part of the argument of respondent, United States of America, in this case.

It would appear that the equities involved in this action should be considered, appellant having instituted a quiet title action in the trial court.

Respondents' contention that a judgment creditor comes within the same category as or is considered to be equal with a purchaser, as relates to our recording statute, Title 57-3-3, Utah Code Annotated 1953, appears to be sustained by the following authorities.

In the case of *Semple v. Burd*, 7 Sergeant and Rawle's Reports 285, the Supreme Court of Pennsylvania held that a mortgage not duly recorded is not a prior lien on the land against a subsequent judgment creditor.

While a mortgage may properly be considered to have a different legal import than a deed, nevertheless the same principle regarding priority would apply, in view of the following statement found in *Pomeroy's Equity Jurisprudence*, 5th Ed., Vol. 3, Sec. 758, being:

“Although the statutes pronounce unrecorded deeds and mortgages to be void as against subsequent purchasers who have complied with their provisions, yet in the practical operation of this legislation the right created by a prior unrecorded instrument is generally regarded as tantamount to an equitable interest, which may, therefore, be cut off by a subsequent purchaser for value or encumbrancer who is in all respects bona fide, and who has also obtained the first record. *The total effect of the system is thus two-fold; it both enlarges the scope of the doctrine concerning bona fide purchase, by extending it to all those interests, legal or equitable, which are required or permitted to be recorded, and it adds to the elements constituting a bona fide purchase the further requisite of a registration.*” (Italics ours.)

We also quote the following from Section 722 of *Pomeroy's Equity Jurisprudence*, 5th Ed., Vol. 3, being:

“Thus under statutes making the recordation of a mortgage a prerequisite to its validity as against subsequent bona fide purchasers and creditors, it is held that a judgment lien is entitled to priority over the lien of a previous unrecorded mortgage, when the judgment creditor has obtained his judgment without notice of the existence of the mortgage, and that the judgment lien attaches to whatever interest in real estate the record discloses in the judgment debtor, *the statutes being construed as placing judgment creditors on an equality with bona fide purchasers.*” (Italics ours.)

CONCLUSION

The judgment of the trial court should be affirmed and such is suggested.

Respectfully submitted,

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