William & Mary Law Review

Volume 1 (1957-1958)
Issue 1

Article 14

October 1957

Recordation of Deed of Trust as Inquiry Notice

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by the exercise of due diligence could not have been discovered previously; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason justifying relief. The evidence which must be produced at the hearing would have to be more than cumulative. Its nature must be such that if it had been produced at the trial, the outcome would have been materially altered. The motion must be made within a reasonable time but in no event should it exceed a period of one year from the entry of the final judgment.

The adoption of such an amendment would in no way affect the finality of the judgment nor suspend its operation. If the motion were sustained, the money paid to the plaintiff in satisfaction of this judgment would be held in trust for the moving defendant. The effect of such a rule would be to place before the trial court matters which, if they had been presented at the original trial, could possibly have produced a different verdict. The purpose of such a rule would be to prevent recurrence of the situation which presented itself in the *Harvey* case. If this recommendation is enacted, it would become an easy matter in proper cases to get before the trial court where exceptions could be taken. With this rule, the absolute discretion now vested in the trial court could be reviewed by the highest court in the Commonwealth and would provide another liberal and forward moving step in the overall trial procedure.

J. E. M.

RECORDATION OF DEED OF TRUST AS INQUIRY NOTICE

The Supreme Court of Appeals of Virginia in *Chavis* v. *Gibbs*[1] has been able to delineate its definition of notice in respect to purchasers of property under the requirements of the Virginia Recording Act.[2]

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[1] 198 Va. 379, 94 S.E. 2d. 195 (1956).

[2] Va. Code §55-96 (1950), which states: "Every such contract in writing, and every deed conveying any such estate or term, . . ., when the possession is allowed to remain with the grantor, shall be void as to all purchasers, for valuable consideration *without notice* not parties thereto and lien creditors, until and except from the time it is duly admitted to record . . . . ., but the mere possession of real estate shall not of itself constitute notice to purchasers thereof for value of any interest or estate therein of the person in possession [Emphasis added]."

Gibbs, the appellee, purchased, on October 20, 1948, property which had been purchased by his immediate grantor pursuant to the foreclosure of a recorded deed of trust[3] in 1936 but had not been recorded until August 1, 1948. The appellant, Chavis, purchased the same property on January 14, 1948, recording such deed on January 19, 1948. This sale was by a party whose sole interest, if any, was the equity of redemption in the property. Chavis' deed stated that his title was subject to a recorded deed of trust. Gibbs instituted this suit to determine the title to the land.

The Supreme Court of Appeals, affirming the judgment of the trial court[4] in favor of Gibbs, held that:

> The recorded deed of trust and the recitals of the deed to Chavis each furnished to him a reasonable and natural clue to the facts of the subsequent happenings thereunder which might have been disclosed upon proper inquiry. Under the circumstances, as shown by the record in this case, he was not a purchaser without notice, and consequently does not take title to the property in question by virtue of the provisions of the Code, §55-96.[5]

This case illustrates what information gathered from the records is sufficient to put a duty upon a purchaser to inquire into the facts ascertained from an examination of the record. That is, "he must look to the title papers under which he buys, and is charged with notice of all the facts appearing upon their face, or the knowledge of which anything there appearing will conduct him."[6]

In *Burwell* v. *Fauber*,[7] the Supreme Court of Appeals held that a purchaser of land from a grantor claiming title under a will which directed that the debts of the testator were to be paid out

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[3] The deed of trust was dated May 7, 1928, and was recorded on September 8, 1928.

[4] 198 Va. 379, 381, 94 S.E. 2d 195, 196 (1956) which stated: "Where a person purchases land upon which there is a deed of trust, he is required to take notice of the deed of trust and to determine what has happened under the deed of trust. In this case such an inquiry would have disclosed that the property had been sold under the deed of trust although such deed had not been recorded. I am therefore of the opinion that the deed from the Trustee takes priority over the deed from Morris to Chavis."

[5] *Id.* at 388.

[6] Burwell v. Fauber, 21 Grat. (62 Va.) 446, 463 (1871).

[7] *Ibid.*

of certain land had constructive notice that this land had been sold to pay charges upon other property. Such information was sufficient to put a subsequent purchaser on inquiry to determine if all the debts of the testator had been discharged.

Constructive notice as defined by the Supreme Court of Appeals in *Fisher* v. *Borden*[8] is that information which is "sufficient to put a person upon inquiry and will charge him with actual knowledge of the facts of which a diligent pursuit of that inquiry would have informed him." The code expressly states that mere possession is insufficient notice to put a prospective purchaser on inquiry. The interpretation of the present case holds that a deed of trust given and recorded to secure two notes payable nine and eighteen months after date is sufficient information to require diligent inquiry to ascertain if the notes are in default or if the statute of limitation on the right to foreclose has run.[9] Chavis had the actual notice imparted from the terms of his deed as well as the constructive notice afforded by recordation of the deed of trust.

In *Yancy* v. *Mauck*,[10] which has been consistently followed in Virginia, the court held that a "purchaser or incumbrancer of a mere equitable title must take the place of the person from whom he purchases." And in *Briscoe* v. *Ashley*,[11] the Supreme Court of Appeals distinguished between the purchaser of a legal interest and the purchaser of a mere equitable title, stating that a purchaser must hold legal title or be entitled to call for it in order to claim the protection of a bona fide purchaser.

It should be noted that the appellant in the instant case purchased, at the most, the equitable title. The legal title had previously been conveyed to the appellee. Chavis' right was thus limited to that of his vendor who could not redeem the legal title because the foreclosure sale under the deed of trust extinguished this right.

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[8] 111 Va. 535, 543, 69 S.E. 636, 639 (1910).

[9] Va. Code §8-11 (1950). Although not germane to the decision, the court did discuss this point and reached the conclusion that the statute of limitations would not have run until March 8, 1949.

[10] 15 Gratt. (56 Va.) 300 (1859). And see Briscoe v. Ashley, *infra;* Wasserman v. Mitzger, 105 Va. 744, 54 S.E. 893, 7 L.R.A. (N.S.) 1020. In the latter case, the vendee of an equity of redemption was charged with notice that the conveyance to his vendor was not made pursuant to the terms of the deed of trust which had been foreclosed.

[11] 24 Gratt. (65 Va. 3) 454 (1874).

Chavis did not hold the legal title, nor was he entitled to call for it; hence, he could not claim the protection of a bona fide purchaser.

The court in the instant case summarily dismissed the contention of Chavis that requiring him to search the title to the property would thus put an intolerable burden upon the legal profession in their examination of the title to real property by stating that any competent and prudent title examiner would have found the deed of trust to the trustee, would have noticed that the debt secured thereby was long past due, would have seen that there was no deed of release, and that the enforcement of the trust deed was not barred by the statute of limitations. Thus, this case is important not only from the viewpoint of what constitutes record notice, but also from the viewpoint of establishing a partial standard to which a title examiner will be held.

J. R. S.

TORT—AIR CARRIERS—COMPENSATION FOR AIR PRESSURE INJURY

This case is presented because of its unique fact situation. In *Marchant* v. *American Air Lines, Inc.*,[1] the court was faced with ruling upon a motion for judgment notwithstanding the jury's verdict, or, in the alternative, for a new trial. Such motion alleged thirty-seven grounds as a basis for the granting thereof, including excessiveness of verdict, verdict contrary to law and evidence, refusal to grant instructions, and newly-discovered evidence.

The evidence established that plaintiff while a passenger on defendant's airplane, suffered a ruptured eardrum and damage to the inner ear resulting in partial loss of hearing and tinnitus, occasioned, according to the plaintiff, by pressure differences between his middle ear cavity and that of the cabin in which he was riding. Allegations were made that defendant was negligent in permitting these pressure differences to arise and, also, in allowing, after due notice had been given to one of its stewardesses, the situation to continue to exist. The stewardess denied having been informed of the discomfort of the plaintiff without, however, ex-

[1] 146 F.Supp. 612 (D.C.D. R.I. 1956).