

NO. A05-1178

State of Minnesota
In Court of Appeals

In the Matter of the Petition of Joshua S. Collier,
in Relation to Property Registered in Certificate of Title No.
1596547 for an Order Directing Entry of a New Certificate and
Declaratory Relief

**APPELLANT'S BRIEF
AND APPENDIX**

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LEGAL ISSUES ON APPEAL

- I. Did the district court erred as a matter of law in granting the property to M & I Bank FSB?

The district court held: M & I Bank FSB's interests are superior to any of those of Joshua Collier.

STATEMENT OF THE CASE

In March 2004, Joshua S. Collier, (hereinafter “Appellant”) brought a Motion for summary judgment regarding the legal title to registered property with the legal description of Lot 2, Stipe’s Rearrangement, St. Paul, MN.

A hearing came before the Honorable M. Michael Monahan, Judge of the Second Judicial District Court, on September 8, 2004. At this hearing Appellant’s motion for summary judgment against M & I Bank FSB (hereinafter “M & I”). M & I’s cross motions for summary judgment against Appellant and Dennis Wager, and Mr. Wager’s cross motion for summary judgment against M & I Bank were heard.

On October 21, 2004, the parties were given copies of a supplemental report by the Deputy Ramsey County Examiner of Titles. The parties were given until November 15, 2004 to respond.

Judge Monahan issued an order dated December 22, 2004. The order denied Appellant’s and Mr. Wager’s Motions for summary judgment, denied M & I’s summary judgment motion against Mr. Wager, and granted M & I’s summary judgment motion against Appellant. [Order dated December 22, 2004, App’s Appdx. at p. A-9 (hereinafter “Order”)].

The district court determined Appellant was not a good-faith purchaser pursuant to Minn.Stat. § 508.25, and any interest that he had in the property was junior to M & I’s interest. [Order at App’s Appdx. p. A-14].

On March 9, 2005, Mr. Wager and M & I signed a stipulation for dismissal with prejudice. [Stipulation for Dismissal with Prejudice, App's Appdx. at p. A-15].

This Appeal followed.

STATEMENT OF THE FACTS

On April 24, 2003, Appellant purchased real property from Joseph R. Conley, who was the registered owner as listed on Certificate No. 510801, and registered a warranty deed with the Ramsey County Registrar of Titles as Document No. 1747267. (hereinafter "Property"). [Order at App's Appdx. p. A-10]. Also on April 24, 2003, Appellant mortgaged the Property to Mr. Wager and it was registered as with the Ramsey County Registrar of Titles as Document No. 174268. [Order at App's Appdx. p. A-11].

The Property at issue is classified as Torrens property with a legal description of Lot 2, Stipe's Rearrangement, St. Paul, Minnesota. [Order at App's Appdx. p. A-9-10].

M & I claimed below that prior to Appellant's purchase of the property, it acquired interest in the property at issue by a mortgage and a foreclosure sale conducted on March 11, 2003. [Order at App's Appdx. p. A-10].¹ The underlying mortgage was never registered with the Registrar of Title in Ramsey County, but was instead recorded with the Ramsey County Recorder. [Order at App's Appdx. p. A-10].

¹ Apparently, M & I's position on this has changed as it has now re-foreclosed the mortgage after Judge Monahan's ruling.

ARGUMENT I

THE DISTRICT COURT ERRED AS A MATTER OF LAW IN DETERMINING APPELLANT'S INTEREST IN THE PROPERTY WAS SUBORDINATE TO THE BANK'S INTERESTS.

A. Standard of Review

Interpretation of a statute is a question of law that is reviewed *de novo*. Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W.2d 527, 529 (Minn. 1985).

B. Applicable Law

Minnesota's Torrens Act provides:

An owner of registered land may use any form of deed, mortgage lease, or other voluntary instrument sufficient in law for the purpose intended. No voluntary instrument of conveyance purporting to convey or affect registered land, except a will, and a lease for a term not exceeding three years, shall take effect as a conveyance, or bind or affect the land, but shall operate only as a contract between the parties, and as authority to the registrar to make registration. The act of registration shall be the operative act to convey or affect the land.

Minn.Stat. § 508.47, subd. 1 (emphasis added).

Every conveyance, lien, attachment, order, decree, or judgment, or other instrument or proceeding, which would affect the title to unregistered land under existing laws, if recorded, or filed with the county recorder, shall, in like manner, affect the title to registered land if filed and registered with the registrar in the county where the real estate is situated, and shall be notice to all persons from the time of such registering or filing of the interests therein created. Neither the reference in a registered instrument to an unregistered instrument or interest nor the joinder in a registered instrument by a party or parties with no registered interest shall constitute notice, either actual or

constructive, of an unregistered interest.

Minn.Stat. § 508.48 (emphasis added).

All interests in registered land, less than an estate in fee simple, shall be registered by filing with the registrar the instrument which creates, transfers, or claims the interest, and by brief memorandum or memorial of it made and signed by the registrar upon the certificate of title.

Minn.Stat. § 508.49 (emphasis added).

The owner of registered land may mortgage the same by deed or other instrument sufficient in law for that purpose ***. Such deed, mortgage, or other instrument *** shall be registered and take effect upon the title only from the time of registration.

Minn.Stat. § 508.54 (emphasis added).

The purpose of the Torrens system of land registration is to ensure that a person dealing with registered property “need look no further than the certificate of title for any transactions that might affect the land.” Mill City Heating & Air Cond. v. Nelson, 351 N.W.2d 362, 364-65 (Minn. 1984). The Torrens Act provides a registered land ownership system where a “purchaser may accept [a certificate of title to registered land] as truly stating the title and may disregard any claim not so appearing.” Kane v. State, 237 Minn. 261, 268-69, 55 N.W.2d 333, 338 (Minn. 1952).

Concerning Torrens property, a prior, unregistered mortgage is “ineffective” against a later mortgage which is property registered even if it was executed at a later time. Fingerhut Corp. v. Suburban Nat. Bank, 460 N.W.2d 63, 65-66 (Minn.Ct.App.

1990). Instead, the prior mortgage simply acts as a contract between the parties. It is only the act of registration that creates a mortgage lien interest in Torrens property. Minn.Stat. § 508.54; Fingerhut Corp., 460 N.W.2d at 66.

Thus, whether Appellant has “constructive, “actual,” or any knowledge of the unregistered prior mortgage is irrelevant here. Minn.Stat. § 508.54; Fingerhut Corp., 460 N.W.2d at 66. After all, the Torrens act “abrogates the doctrine of constructive notice except as to matters noted on the certificate of title. In re Juran, 178 Minn. 55, 60, 226 N.W. 201, 202 (1929).

Actual notice means actual knowledge of an enforceable agreement. Comstock & Davis, Inc. v. G.D.S. Assocs., 481 N.W.2d 82, 85 (Minn.Ct.App. 1992).

C. Analysis

The district court found in its order Appellant had purchased the property in question and properly registered his interest in the property before M & I registered its claimed mortgage. [Order at App’s Appdx. at A-10-11]. By failing to register its mortgage before Mr. Conley sold the property, M & I has lost any lien potential it might have had because the mortgage it had with Mr. Conley was “effective” only upon registration. Minn.Stat. § 508.54; Fingerhut Corp., 460 N.W.2d at 65-66.

Appellant’s actual notice of the existence of the M & I mortgage is irrelevant. It is irrelevant because, by specific statute, it is the act of registration that renders the mortgage “effective.” Minn.Stat. § 508.49; Fingerhut Corp., 460 N.W.2d at 65-66.

Second, if actual notice requires knowledge of an enforceable agreement, See Comstock & Davis, 481 N.W.2d at 85, Appellant's knowledge of the existence of the purported mortgage, as well as his knowledge it was unregistered, and his knowledge that the law requires registration to render a mortgage "effective" would mean Appellant has no "actual knowledge."² See In re Petition of Alchemedes/Brookwood, Ltd., 546 N.W.2d 41, 42 (Minn.Ct.App. 1996) (actual notice of leases did not affect Torrens title where leases were not registered as required by Minn.Stat. § 508.60).

M & I's complete failure to register its mortgage prevented it from ever acquiring a mortgage lien in the property.

Moreover, M & I's recording of its mortgage, as if it were abstract property, did not provide notice of their claimed interest in the property. Recording in this manner provides notice when dealing with abstract property, but this is irrelevant and inapplicable in this case because the real estate at issue is registered or Torrens property.

Actual notice of the property interest does not mesh with the scheme of the Torrens Act, it collides with it. If actual knowledge were sufficient notice of an interest that is required by the Torrens Act to be recorded, it would eviscerate the statutory

²In other words, Appellant should get the benefit of all his knowledge, not just the fact that he knew the mortgage has not been registered. He also should be "presumed to know the law." State v. King, 297 N.W.2d 693, 697 (Minn. 1977). And knowing the law, he knows, by statute, that the mortgage is not "effective" until it is registered.

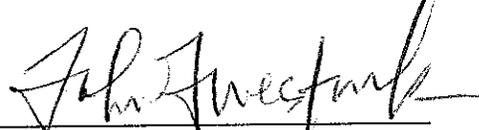
requirement and the Torrens scheme.³

CONCLUSION

For the reasons stated above, Appellant respectfully request this Court reverse the district court's order.

Dated: July 8, 2005

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³After all, standard procedure for a closing is a name and judgment search. A report showing a judgment, not registered on the certificate but in the name of the seller, would impart "actual notice" of that judgment. But, the law is clear that unregistered judgments do not attach to the property. Minn.Stat. § 508.47; See United States v. Ryan, 124 F.Supp. 1, 9 (D.C.Minn. 1954) (unregistered instruments do not affect Torrens title). Thus, under M & I's theory, that judgment would become enforceable as if it were registered because the report provided "actual notice." Chaos would result as the Torrens system would in fact produce a less certain title than abstract recordation.

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).