

NO. A05-1178

State of Minnesota
In Supreme Court

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

RESPONDENT'S BRIEF

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LEGAL ISSUES ON APPEAL

- I. Whether Respondent was a good-faith purchaser of Torrens property because he had knowledge of an unregistered instrument that did not create an encumbrance on the property?

The district court held: Respondent was not a good-faith purchaser.

The Court of Appeals held: Respondent was a good-faith purchaser.

STATEMENT OF THE CASE

In November 2003, Respondent Joshua S. Collier (“Respondent”) brought this action against Appellant M & I Bank FSB (“Appellant”), seeking a determination as to the priority of the interests regarding the legal title to registered property with the legal description of Lot 2, Stipe’s Rearrangement, St. Paul, MN (“Property”).

In March 2004, Respondent brought a motion for summary judgment. On September 8, 2004, a hearing came before the Honorable M. Michael Monahan, Judge of the Second Judicial District Court. At this hearing Respondent’s motion for summary judgment, Appellant’s cross motions for summary judgment against Appellant and Dennis Wager (“Wager”), and Wager’s cross motion for summary judgment against Appellant 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.

On December 22, 2004, the district court issued its order. The district court denied Respondent’s and Mr. Wager’s motions for summary judgment, denied Appellant’s summary judgment motion against Wager, and granted Appellant’s summary judgment motion against Respondent. [Order dated December 22, 2004, App’s Appdx. at p. A-176 (hereinafter “Order”)].

On March 9, 2005, Wager and Appellant signed a stipulation for dismissal with

prejudice. [Stipulation for Dismissal with Prejudice, App's Appdx. at p. A-182].

Judgment was entered on the Order, and the Stipulation for Dismissal on May 9, 2005.

In June 2005, Respondent appealed to our Court of Appeals. Our Court of Appeals reversed the district court in its opinion dated April 4, 2006. In re Collier, 711 N.W.2d 826 (Minn.Ct.App. 2006).

In May 2006, Appellant brought a Petition for Review of the Court of Appeals decision to this Court. On June 20, 2006, this Court granted Appellant's Petition.

STATEMENT OF THE FACTS

On or about September 25, 2000, Joseph Conley received a loan of \$135,000.00 from Great Northern Mortgage Corporation. [Exhibit D attached to Affidavit of Katheryn A. Gettman dated June 18, 2004, App's Appdx. at A-111 ("Gettman Affidavit")]. Repayment of the loan was secured by a mortgage executed by Mr. Conley, Great Northern Mortgage, and encumbered the Property at issue in this litigation.

On the same date, Great Northern Mortgage assigned its rights in the indebtedness and the mortgage to Appellant. [Exhibit E, Gettman Affidavit, App's Appdx. at A-120]. On November 20, 2000, the mortgage and the assignment of mortgage were recorded with the Ramsey County Recorder as document numbers 3357407 and 3357408, respectively. [Exhibit D and E, Gettman Affidavit, App's Appdx. at A-111, 120].

The Property at issue in the litigation is Torrens Property, and the mortgage and assignment were required to be registered with the Ramsey County Registrar of Titles,

Minn.Stat. ch. 508, rather than recorded with the Ramsey County Recorder, which is proper only for Abstract Property. [Exhibit H, Gettman Affidavit, App's Appdx. at A-132].

In 2002, Mr. Conley defaulted on the mortgage, and in December 2002, Appellant commenced foreclosure proceedings. On or about March 11, 2003, the Ramsey County Sheriff foreclosed the mortgage and sold it to Appellant for \$118,000.00, subject to Mr. Conley's redemption. Mr. Conley eventually filed bankruptcy.

The Power of Attorney to Foreclose the Mortgage and the Sheriff's Certificate of Sale were recorded with the Ramsey County Recorder, not the Registrar of Titles.

[Exhibit F and G, Gettman Affidavit, App's Appdx. at A-123, 125].

On or about April 1, 2003, Respondent learned of the foreclosure of the Property. Respondent contacted Appellant in an attempt to purchase the indebtedness on behalf of Blue Heron, Inc. [Exhibit M, Gettman Affidavit, App's Appdx. at A-145-46]. However, Appellant and Respondent did not reach an agreement.

Respondent then conducted a title search of the property and learned that the mortgage, the assignment of mortgage, the Power of Attorney to Foreclose the Mortgage, and the Sheriff's Certificate of Sale were recorded with the Ramsey County Recorder, rather than registered with the Ramsey County Registrar of Titles. [Exhibit M, Gettman Affidavit, App's Appdx. at A-145].

On or about April 24, 2003, Respondent purchased the Property from Mr. Conley,

who was the registered owner as listed on Certificate No. 510801. On that same date, Respondent executed and registered a warranty deed with the Ramsey County Registrar of Titles as Document No. 1747267. [Order, App's Appdx. at p. A-177; Exhibit J, Gettman Affidavit, App's Appdx. at A-134]. On April 24, 2003, Respondent mortgaged the Property to Wager and it was registered as with the Ramsey County Registrar of Titles as Document No. 1747268. [Order, App's Appdx. at p. A-178; Exhibit J, K and L, Gettman Affidavit, App's Appdx. at A-134, 137, 142].

As stated above, the Property at issue is classified as Torrens property with a legal description of Lot 2, Stipe's Rearrangement, St. Paul, Minnesota. [Order, App's Appdx. at p. A-177-78].

Respondent initiated this action in November 2003. In March 2004, Respondent brought a motion for summary judgment regarding the legal title to the property. A hearing came before the Honorable M. Michael Monahan, Judge of the Second Judicial District Court, on September 8, 2004.

At this hearing Respondent's motion for summary judgment against Appellant, Appellant's cross motions for summary judgment against Appellant and Wager, and Wager's cross motion for summary judgment against Appellant were heard.

Appellant claimed below that prior to Respondent'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, App's Appdx. at p. A-177].¹ Again, the underlying mortgage was never registered with the Registrar of Title in Ramsey County, but was instead recorded with the Ramsey County Recorder. [Order, App's Appdx. at p. A-177].

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.

On December 22, 2004, the district court issued its order. The order denied Respondent's and Mr. Wager's motions for summary judgment, denied Appellant's summary judgment motion against Wager, and granted Appellant's summary judgment motion against Respondent. [Order, App's Appdx. at p. A-176].

The district court determined Respondent was not a good-faith purchaser pursuant to Minn.Stat. § 508.25, and any interest that he had in the property was junior to Appellant's interest. [Order, App's Appdx. p. A-181].

On March 9, 2005, Wager and Appellant signed a stipulation for dismissal with prejudice. [Stipulation for Dismissal with Prejudice, App's Appdx. at p. A-182]. Judgment was entered on the Order, and the Stipulation for Dismissal on May 9, 2005.

In June 2005, Respondent appealed to our Court of Appeals. In reversing the district court, our Court of Appeals held that Respondent's "knowledge" of Appellant's

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

unregistered mortgages was not “actual notice” of an encumbrance or interest that was inconsistent with his. In re Collier, 711 N.W.2d at 831. The Court of Appeals held that since Appellant’s mortgage as not registered, it was merely a private contract and did not create an encumbrance on the Property. In re Collier, 711 N.W.2d at 831. Thus, Respondent was a good-faith purchaser and his registered interest was superior to Appellant’s unregistered interest. In re Collier, 711 N.W.2d at 831.

In May 2006, Appellant brought a Petition for Review of the Court of Appeals decision to this Court. On June 20, 2006, this Court granted Appellant’s Petition for Review.

ARGUMENT

I. THE COURT OF APPEALS SHOULD BE AFFIRMED AS RESPONDENT IS A GOOD FAITH PURCHASER OF THE PROPERTY BECAUSE HE DID NOT HAVE ACTUAL NOTICE OF AN INSTRUMENT THAT CREATED AN ENCUMBRANCE ON THE PROPERTY.

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).

However, when the language of a statute is clear, statutory construction is not only unnecessary, it is not permitted. See State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695, 701 (Minn. 1996).

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 Respondent has constructive, actual, or any knowledge of the unregistered prior mortgage is irrelevant. Minn.Stat. § 508.54; Fingerhut Corp., 460 N.W.2d at 66. Moreover, 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 that Respondent had purchased the property in question and registered his interest in the property before Appellant registered its claimed mortgage. [Order, App's Appdx. at A-177-78]. However, the district court found that Respondent was not a good faith purchaser because of his knowledge of Appellant's unregistered interests. [Order, App's Appdx. at A-181].

Our Court of Appeals correctly held that since Respondent did not have actual knowledge of a registered instrument that was enforceable against the Property, he was a good-faith purchaser, and his properly registered interests were superior to Appellant's unregistered instruments. In re Collier, 711 N.W.2d at 831.

1. Actual Knowledge.

Respondent's actual knowledge of the existence of Appellant's unregistered mortgage is irrelevant, since Respondent registered his interests first. 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. By failing to register its mortgage before Mr. Conley sold the property, Appellant 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.

Second, actual notice requires knowledge of an enforceable agreement. See Comstock & Davis, 481 N.W.2d at 85. Respondent'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 Respondent had “actual knowledge” of an unenforceable mortgage.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).

Appellant’s complete failure to register its mortgage prevented it from ever acquiring a mortgage lien on the property. And it should not be forgotten that Appellant improperly recorded all of the foreclosure documents with the Ramsey County Recorder as well.³ Because of this, the only thing Respondent had actual knowledge of was of an unregistered mortgage, which means Respondent had knowledge of an agreement not enforceable against the land. See Comstock, 481 N.W.2d at 85 (actual notice means actual knowledge of an enforceable agreement).

Moreover, Appellant’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

² In other words, Respondent 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.

³ Because the mortgage and the assignment of mortgage were recorded, and not registered, Appellant was not entitled to foreclose on the Property. Minn.Stat. § 580.01(3).

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 of an ineffective agreement were sufficient notice of an interest that is required by the Torrens Act to be recorded, it would eviscerate the statutory requirement and the Torrens scheme.⁴

2. Good-Faith Purchaser.

Appellant argues that since Respondent had actual knowledge of Appellant's interests in the property he is not a good-faith purchaser, and Appellant's interests are superior to Respondent's. [Appellant's Brief]. However, having "actual knowledge" and being a "good-faith" purchaser are two separate things when it comes to mortgages and the Torrens System.

Appellant cites and analyzes several cases in support of its position, some of which are unpublished.⁵ See Nolan v. Stuebner, 429 N.W.2d 918 (Minn.Ct.App. 1988); 5th Street Ventures, L.L.C. v. Frattalone's Hardware Stores, Inc., 2004 WL 1878822 (Minn.Ct.App.

⁴After 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 Appellant'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.

⁵ Unpublished cases have no precedential value and should not be relied upon as such. Minn.Stat. § 480A.08, subd. 3.

2004); In Petition of Willimus, 1996 WL 33095 (Minn.Ct.App. 1996).⁶

All of the cases mentioned above are factually distinct from the issue presented here, and are inapplicable to the case at hand. Nolan, 429 N.W.2d at 923 (Appellants were not bona fide purchasers because they were on record notice, of the Respondent's easement); In Petition of Willimus, 1996 WL 33095 (unregistered easement); 5th Street Ventures, LLC v. Frattalone's Hardware Stores, Inc., 2004 WL 1878822 (unrecorded lease).

None of these cases deal with mortgages. Mortgages are treated differently. They have their own specific section in the Torrens Act. Minn.Stat. § 508.54. This section clearly and unequivocally states that mortgages "shall be registered and take effect upon the title only from the time of registration." Minn.Stat. § 508.54.

Appellant argues that Respondent should be deemed to have "actual notice" because he has knowledge of Appellant's unregistered (and thereby unenforceable) mortgage and assignment of mortgage. [Appellant's Brief at p. 17-18]. Appellant argues that if "in good faith" is negated only by matters properly registered, this interpretation renders the term "in good faith" a nullity and superfluous. [Appellant's Brief at p. 17].

Appellant is incorrect in their definition of "in good faith" and its application to the Torrens system. Appellant's definition of "in good faith" directly contradicts the

⁶ The three (3) unpublished cases are included in Appellant's Addendum to Unpublished Cases.

Torrens Act, and essentially would turn the Torrens property into Abstract property.

Appellant cites to the so-called “majority rule” nationwide with regards to notice or knowledge of unregistered interests. [Appellant’s Brief at p. 25]. None of the cases that support Appellant’s arguments are applicable in this case. See One-O-Six Realty, Inc. v. Quinn, 66 Mass.App.Ct. 149, 845 N.E.2d 1182 (App.Ct. 2006) (easements); Hermitage Club Co. v. Powers, 107 Ohio App.3d 321, 668 N.E.2d 955 (1995) (lease was noted on certificate of title); Finley v. Finley, 43 Wash.2d 755, 264 P.2d 246 (1953) (subsequent purchaser was not a good faith purchaser because he was an execution creditor who purchased at this own levy).

To be consistent with the Torrens Act, it would seem that one is a good faith purchaser, unless the conveyance is acquired through fraud or some type of illegality. This definition would not render the language “in good faith” a nullity or superfluous. In fact, this definition follows the legislative intent, would simplify, and would allow for more consistency of the Torrens act with regards to mortgages.

Other jurisdictions agree. Waikiki Malia Hotel, Inc. v. Kinkai Props. Lt. P’ship, 75 Haw. 370, 390-91, 862 P.2d 1048, 1060 (1993) (to allow the assertion of unregistered rights would be to subvert the obvious intent and purpose of the title registration system); Dorsey v. Abernathy, 30 Misc.2d 707, 709, 217 N.Y.S.2d 718, 720 (1961) (except in the case of fraud, knowledge of an unregistered mortgage or judgment does not vitiate the effect of a prior Torrens registration).

Although Appellant alleges that Respondent acquired his interests through “trickery and deceit,” nothing Respondent did in this situation was illegal or fraudulent. Respondent conducted a title search, discovered that Appellant’s interests were not registered, thus not enforceable, and paid consideration to Mr. Conley for the conveyance.⁷

As stated above, the only thing Respondent had actual knowledge of was of an unregistered mortgage, which means Respondent did not have actual notice of anything. See Comstock, 481 N.W.2d at 85 (actual notice means actual knowledge of an enforceable agreement). Since Respondent did not have “actual notice” of an enforceable agreement, and did not engage in any fraud or illegality in obtaining his interest in the Property, Respondent was a good-faith purchaser.

Our Court of Appeals correctly interpreted the Torrens Act in this case. The Court of Appeals held that since a mortgage does not become an encumbrance upon the land until it is registered, Respondent’s knowledge of Appellant’s unregistered mortgage was not actual notice of an encumbrance or interest that was inconsistent with his interest. Therefore, Respondent is a good-faith purchaser and his registered interest is superior to Appellant’s unregistered interest. In re Collier, 711 N.W.2d at 831.

The Court of Appeals holding creates a simple and easy rule, as required by the

⁷ In doing so, Respondent bought a very expensive lawsuit, the least of which must be added to his consideration to obtain the property.

clear and unambiguous language of the Torrens Act, that unless a mortgage and assignment of mortgage is properly registered, it is not enforceable against the property, irrespective of who knows about it. In re Collier, 711 N.W.2d at 831. Respondent respectfully requests this Court affirm the decision of our Court of Appeals.

3. The Language in Juran Should be Overturned.

The one constant throughout the cases cited by Appellant and the Hennepin County Examiner of Titles is the language from Juran which states “[The Torrens] act abrogates the doctrine of constructive notice except as to matter noted on the certificate of title. We think, however, that it does not do away with the effect of actual notice, although it undoubtedly imposes the burden of proving such notice upon the one asserting it.” In re Juran, 178 Minn. 55, 60, 226 N.W. 201, 202 (1929) (emphasis added).

This language in Juran was mere dictum, but this language has been referenced constantly over the years, and has since become law. In re Collier, 711 N.W.2d at 830. This dictum is inapplicable to the issues involved here, and should be overturned by this Court.

In Juran, in 1923, Mr. Peterson, the owner of a house and lot in St. Paul, which was subject to a mortgage registered with the registrar of titles, executed a contract for deed with one of the Respondent’s, the Frieds, who took possession of the property, but did not register the contract. In re Juran, 178 Minn. at 57, 226 N.W. at 201.

A few years later, in 1925, the owner executed a warranty deed to Anna M. Scott,

subject to the mortgage and the Respondent's contract. Then, in 1926, Scott executed a warranty deed to another Respondent, Mary Juran, subject to the mortgage and the contract for deed. Neither of the deeds were registered. In re Juran, 178 Minn. at 57, 226 N.W. at 201.

In 1928, the Appellant in Juran registered a writ of attachment, and two (2) judgments that he held against Peterson. The Appellant in Juran then caused an execution to be levied on the property, and a sheriff's sale was held. The execution and the certificate of sale were duly registered. In re Juran, 178 Minn. at 57, 226 N.W. at 201. The Juran Appellant had bought the property at the sheriff's sale.

This Court held that since neither the deeds nor the contract for deeds were registered, "by force of the statute, they had no effect on the title and created no rights in the land." In re Juran, 178 Minn. at 58-59, 226 N.W. at 202. Since the Appellant in Juran had duly registered his attachment, judgments, execution levy, and sheriff's certificate of sale, he acquired valid rights in the property superior to those of Juran and the Frieds. In re Juran, 178 Minn. at 58, 226 N.W. at 201.

The Respondents in Juran argued that the Appellant was on notice of their interests because the Frieds were in "possession" of the property. In re Juran, 178 Minn. at 60, 226 N.W. at 202. This Court then went on to state that the Torrens Act abrogated the doctrine of constructive notice, but not actual notice. In re Juran, 178 Minn. at 60, 226 N.W. at 202.

Juran is factually inapplicable to this case, but to clear up this nagging concept, should be overturned. The comment in Juran was unnecessary to the ruling. When this Court mentioned that the Torrens Act did not do away with actual notice, it was addressing whether or not the Respondent's "possession" of the property was sufficient to give notice of the unregistered contract for deed. In re Juran, 178 Minn. at 60, 226 N.W. at 202.

Of course, there is absolutely no issue in this case regarding possession. Appellant has never had possession of the Property. And, of course, this case involves a mortgage, and mortgages have their own section in the Torrens Act, which should control.

Although this Court's language was not necessary to the holding in Juran, it has been cited repeatedly over the years, and is heavily relied upon by Appellant and the Hennepin County Examiner of Titles.

However, this language is directly contrary to the Torrens Act. The Torrens Act specifically and unambiguously states that the act of registration shall be the "operative act to affect the land. Minn.Stat. § 508.47, subd. 1. Minn.Stat. § 508.54 specifically and unambiguously states that a mortgage and all instruments assigning that mortgage "shall be registered and take effect upon the title only from the time of registration." (emphasis added).

As has been stated by this Court, when the language of a statute is clear, statutory construction is not only unnecessary, it is not permitted. See State by Beaulieu, 552

N.W.2d at 701.

To hold otherwise, absent fraud or illegality, would be to undermine the legislative intent of the Torrens system. Waikiki Malia Hotel, Inc., 75 Haw. at 391, 862 P.2d at 1060-61 (it is illogical to say that a certificate of title may be impeached if the purchaser for value had knowledge of an unregistered encumbrance); Dorsey, 30 Misc.2d at 709, 217 N.Y.S.2d at 720 (knowledge of unregistered liens or claims is not itself fraud sufficient to vitiate effect of prior Torrens registration of mortgage).

As stated above, the “actual notice” language in Juran was mere dictum, but overtime has become law. This language is in direct contrast to the clear and unambiguous language of the Torrens Act.

It is time for this Court to overturn the Juran dictum, and make a simple and easy rule, as enacted by our Legislature, that unless a mortgage and assignment of mortgage is properly registered, it is not enforceable against the property, irrespective of who knows about it.

CONCLUSION

For the reasons stated above, Appellant respectfully request this Court affirm the Court of Appeals.

Dated: August 21, 2006

WESTRICK & MCDOWALL-NIX, PLLP

A handwritten signature in cursive script, appearing to read "John G. Westrick", written over a horizontal line.

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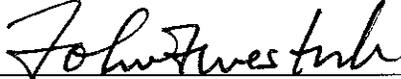
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CERTIFICATE AS TO BRIEF LENGTH

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Dated: August 21, 2006



John G. Westrick