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Sales - Scope of Public Records Doctrine - Succession Judgments

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were not legally collectible amounted to an allegation that the error related to a material part of the contract. She had therefore stated a cause of action for rescission on the ground of error induced by fraud.

The defendants also contended that plaintiff's petition did not state a cause of action because the alleged misrepresentation was not contained in the formal act of sale. That contention, as recognized by the court, was based on the premise that plaintiff would be unable to prove the charges in her petition because parol evidence is inadmissible to contradict or vary the recitals of the act. The court rightly dismissed this contention on the well settled ground that the parol evidence rule is inapplicable where, as in the instant case, the plaintiff alleges fraud bearing on a material fact, or error relating to the principal *cause*.[20]

The decision, it is submitted, is in keeping with the established principles of civil law.

John S. Covington

SALES—SCOPE OF PUBLIC RECORDS DOCTRINE—SUCCESSION JUDGMENTS

By authentic act plaintiff bought certain land from Richard Raney in 1948. Raney had purchased the property during his marriage to Belle Fraser Raney, and upon her death the property was adjudicated to him by the court. In the succession proceeding, Raney had represented to the court that Belle Fraser Raney died intestate and left no ascendants, descendants, or adopted children. In 1950 the defendants in the instant case instituted proceedings alleging that they were the children and sole heirs at law of the decedent, and should therefore be put in possession of Belle Raney's one-half interest in the community property. The court sent them into possession of the decedent's one-half interest in the realty.

20. Broussard v. Sudrique, 4 La. 347 (1832); Brownson v. Fenwick, 19 La. 431 (1841); Bell v. Western M. & F. Ins. Co., 5 Rob. 423, 39 Am. Dec. 542 (La. 1843); Bauduc v. Conrey, 10 Rob. 466 (La. 1845); Jamison v. Ludlow, 3 La. Ann. 492 (1847); Morris v. Terrenoire, 2 La. Ann. 458 (1847); Cox v. King, 20 La. Ann. 209 (1868); LeBleu v. Savoie, 109 La. 680, 33 So. 729 (1930); Great Eastern Oil & Ref. Co. v. Bullock, 151 La. 209, 91 So. 680 (1922). See also Baker v. Baker, 209 La. 1041, 26 So. 2d 132 (1946); Pike v. Kentwood Bank, 146 La. 704, 83 So. 904 (1919). Generally see Comment, 3 LOUISIANA LAW REVIEW 427 (1941).

In the instant case the plaintiff, Riley Allen, sought to have himself judicially declared the owner of and entitled to the undisturbed possession of the land which was occupied by the defendants. Plaintiff relied on his acquisition from Raney and the judgment giving the latter possession of his wife's one-half interest in the community property. *Held*, that on the death of Belle Fraser Raney, the only interest in the property which Richard Raney had was his community share, and he could convey and transmit no more than that to his vendee, Riley Allen, plaintiff. The wife's share was the property of the defendants, her forced heirs. *Allen v. Anderson*, 55 So. 2d 596 (La. 1951).

No reference was made by the court to the fact that when Allen bought the property, he relied on the judgment giving possession to Raney. Since court judgments are as a matter of course entered in the public records, the question arises as to the relation of this decision to the *McDuffie v. Walker* rule that purchasers of immovable property may rely on the public records.[1]

The *McDuffie* rule, predicated on Article 2266 of the Louisiana Civil Code, is well established in Louisiana jurisprudence.[2] This famous case permanently settled the rule that unrecorded contractual rights are null and void as to third parties relying on the public records. The third party purchaser, then, is not bound by any secret equities between the vendor and other persons if he has purchased the property in reliance on public records which declare that the title to the property rests with the vendor.[3] In fact, under the *McDuffie* rule even actual knowledge of an unrecorded title is not equivalent to knowledge or notice resulting from recordation of the act transferring title.

The *McDuffie* rule is so well known that one is likely to overlook the instances where a purchaser of immovable property is not allowed to rely on the public records. In the *Succession of James* a wife bought and mortgaged property during the marriage, listing herself in both transactions as a single woman. It was held that third party purchasers (after foreclosure) could

1. 125 La. 152, 51 So. 100 (1909).

2. "All sales, contracts and judgments, affecting immovable property, which shall not be so recorded, shall be utterly null and void, except between the parties thereto. The recording may be made at any time, but shall only affect third persons from the time of the recording.

"The recording shall have effect from the time when the act is deposited in the proper office, and indorsed by the proper officer." Art. 2266, La. Civil Code of 1870.

3. Adam v. Brownell-Drews Lumber Co., 115 La. 179, 38 So. 957 (1905).

not, by relying on those recorded transactions wherein the wife had listed herself as single, defeat the husband's right to a one-half interest in the property. The court declared that the protection of the right of a surviving spouse to an undivided one-half interest in the community property operates as an exception to the rule that third parties may rely on the public records.[4] The husband's rights in the community, being vested by law, did not require recordation in order to be effective against third parties.

In *Humphreys v. Royal*[5] a husband bought property during the marriage and stated in the act of sale that he was a single man. Subsequently he obtained a divorce which was not recorded; and then sold the property, again declaring that he was a single man. The court held that the unrecorded divorce judgment in controversy was utterly null as to the defendant, a third party purchaser relying on the public records. This case is not contrary to the *Succession of James*. Whereas the wife in the *James* case had no power to defeat her spouse's vested interest in the community property, the husband in the *Humphreys* case did have such power, and as far as third parties were concerned recordation of the judgment of divorce, like recordation of a prior sale, was necessary to destroy that power. Article 2266 of the Louisiana Civil Code requires recordation for final judgments as it does for contracts affecting immovable property.

Long v. Chailan[6] presented another situation which could not be included within the scope of the general rule. The court there held that the doctrine of *McDuffie v. Walker* does not defeat the rights of forced heirs who inherit their mother's half of community property, even though there is no positive information on the public records as to their inheritance rights. The rights of the forced heirs as that of the husband in the *James* case were vested by law and thus did not require recordation to be effective against third parties.

Subsequent to this case, *Chachere v. Superior Oil Company*[7] reaffirmed the *McDuffie* case when the court refused to admit evidence by forced heirs tending to vary the public records after the property had passed into the hands of third parties. *Long v.*

4. 147 La. 944, 86 So. 403 (1920).
5. 215 La. 567, 41 So. 2d 220 (1949), noted in 11 LOUISIANA LAW REVIEW 389 (1951).
6. 187 La. 507, 175 So. 42 (1937).
7. 192 La. 193, 187 So. 321 (1939), noted in 2 LOUISIANA LAW REVIEW 387 (1940).

Chailan is not overruled by this decision because the cases may be distinguished on their facts. In the *Long* case the father had acquired the property during the marriage and it was therefore community property. Upon dissolution of the community by the mother's death, the husband's vested power to administer community property ended, and the heirs became vested by law with their inherited one-half interest in the community. Since the father then had no power to transfer title to the property belonging to his children, title did not pass to the third party purchaser when a seizing creditor had the property sold at a judicial sale to satisfy a personal debt of the father. On the other hand, in the *Chachere* case the father had purchased the property after the dissolution of the community. Because a spouse has power to dispose of property acquired after dissolution of the community the third party purchasing from the father could acquire title even though the father had purchased the land with community funds, since there was nothing on the public records to put the third party purchaser on notice that the property had been so purchased.

In *Thompson v. Thompson*[8] it was held that the right of a third party relying on the public records to enforce a contract *to sell* did not supersede the right of the forced heirs to claim collation. In affirmation of the *Chachere* case the court agreed that if the third party purchaser had secured title by an act of *sale* he would have been protected against the unrecorded rights of forced heirs who would not have been allowed to annul the simulated sale of their ancestor. In the *Thompson* case, as in the *Chachere* case, the husband had the power to sell, for the community was still in existence when the husband purportedly sold the land to his son Jesse. The fact that the deed from husband to son was a donation in disguise prevented title from vesting in the son and upon the death of the father the land, not having been transferred by the son, returned fictitiously to the succession by virtue of Article 1505 of the Louisiana Civil Code.[9] It should be noted that the court did not rely upon Article 2239[10] in reach-

8. 211 La. 468, 30 So. 2d 321 (1947), noted in 8 LOUISIANA LAW REVIEW 429 (1947), 22 Tulane L. Rev. 208 (1947).

9. "To determine the reduction to which the donations, either inter vivos or mortis causa are liable, an aggregate is formed of all the property belonging to the donor or testator at the time of his decease; to that is fictitiously added the property disposed of by donation inter vivos, according to its value. . . ." Art. 1505, La. Civil Code of 1870.

10. "Counter letters can have no effect against creditors or bona fide purchasers; they are valid as to all others; but forced heirs shall have the

ing its decision, although the right of the heirs to have the sale made by their father set aside as a simulation came into existence under this article long before the vendee of the simulated sale promised to sell the land to the third party. This right could not affect the subsequently acquired right of the third party to a specific performance of his contract, because the third party was without knowledge of the right of the heirs under Article 2239 and there was nothing on the public records to advise him of its existence.

The instant case presents another situation where the rule of the *McDuffie* case does not apply, that is, where the third party relies upon a succession judgment giving his vendor possession of the property. But the fact that succession judgments are not final was expounded long before the *McDuffie* rule and therefore are not included under Article 2266 of the Louisiana Civil Code. As early as 1841 the Supreme Court of Louisiana declared that recognition of some heirs does not preclude other heirs appearing afterwards from showing that they are in fact heirs.[11] Such an opinion necessarily implies that third party purchasers cannot safely rely on succession judgments, and thus justifies the action of the court in the present case.[12] A succession judgment is considered as only ex parte, and although it is prima facie evidence of the fact of heirship, it gives only possession, not ownership.[13] An heir is able to transfer title only to his own interest in the succession and not the whole even though he is given possession of it by a decree of the court.

Allen v. Anderson, therefore, is by no means a new or outstanding pronouncement by a Louisiana court, but it recognizes the rule that the unrecorded rights of forced heirs may in certain situations be asserted against third parties relying on public records, and incorporates into it the old civil law theory that succession judgments are not final as long as there are other heirs who may assert valid claims to the estate, even though the

same right to annul absolutely and by parol evidence the simulated contracts of those from whom they inherit, and shall not be restricted to the legitimate [legitime]." Art. 2239, La. Civil Code of 1870.

11. Glover v. Doty, 1 Rob. 130 (La. 1841).

12. This does not seem to be the rule where a third party purchaser relies on a judgment giving a tutor permission to sell. A tutor is able to transfer title to the purchaser by virtue of a judicial order. Pike v. Monget, 4 La. Ann. 227 (1849).

13. Chamberlain v. City of New Orleans, 48 La. Ann. 1055, 20 So. 169 (1896); Dixon v. Commercial National Bank, 13 La. App. 204, 127 So. 428 (1930).

property has been transferred into the hands of a good faith third party purchaser who has relied on the public records.

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SECURITY DEVICES—PERSONAL LIABILITY OF THIRD PARTY PURCHASERS UNDER REVISED STATUTES 9:5362

The Harris Finance Company brought action against Fridge to recover the balance of the purchase price of an automobile which was secured by a chattel mortgage. Fridge purchased the car from the mortgagor and was being sued under the provisions of Title 9, Section 5362, of the Louisiana Revised Statutes. This statute states: "It shall be unlawful for a resident of any parish to purchase the movable property described in R.S. 9:5351 from any non-resident of such parish, without first obtaining an affidavit from the non-resident that there is no mortgage on the property, nor any money due on the purchase price thereof, and the purchaser who shall buy the movable property without having obtained the affidavit, shall be personally liable to the creditor for the debt secured by the property." Defendant Fridge failed to get the affidavit required by the statute. Harris Finance Company had failed to record the mortgage. Because of this fact Fridge was a purchaser without notice, and the question was whether the provisions of the statute applied to him. *Held*, Fridge was personally liable to the Harris Finance Company on the basis of the statute. *Harris Finance Company v. Fridge*, 55 So. 2d 707 (La. 1951).

The particular section in question was originally enacted as Section 5 of Act 151 of 1916. It was included as Section 5 of Act 198 of 1918 and Section 8 of Act 172 of 1944. It was then written verbatim into the Revised Statutes of 1950. The court of appeal said in *Finance Security Company v. Williams*[1] that although the mortgage in that case could not affect third persons because it was invalid, "the liability herein sought to be imposed on them does not arise out of the act of mortgage itself. Their liability, if any, is purely statutory and came into existence by virtue of the provisions of Section 8 of Act 172 of 1944."[2] In the *Harris*

1. 42 So. 2d 310 (La. App. 1949), rehearing refused 42 So. 2d 901 (La. App. 1949).
2. 42 So. 2d 310, 313.