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Marketable Record Title Act: Wild, Forged, and Void Deeds as the Roots of Title

Richard H. Powell

CASE COMMENTS

MARKETABLE RECORD TITLE ACT: WILD, FORGED, AND VOID DEEDS AS ROOTS OF TITLE*

Marshall v. Hollywood, Inc., 224 So. 2d 743 (4th D.C.A. Fla. 1969)

In 1913 the Atlantic Beach Company, with M. A. Marshall as majority stockholder, acquired title to the real property in controversy. In 1924 a forged deed purported to convey this same property to defendant's predecessors. The defendant, Hollywood, Inc., claimed under a 1931 deed.[1] Plaintiff, administrator of the estate of M. A Marshall, sought a decree establishing his interest as administrator of the disputed land, which had remained wild, unimproved, and vacant. The trial court dismissed the amended complaint by final judgment with prejudice. On appeal, the Fourth District Court of Appeal affirmed and HELD, where title transactions were of record more than thirty years and purported to create a fee simple in defendants and their predecessors in title, defendants had a marketable record title, notwithstanding that the deed delivered to the predecessor more than thirty years before may have been void.[2]

The recording acts are the cornerstone of American title security systems.[3] The acts primarily protect subsequent vendees against claims arising from prior unrecorded deeds;[4] however, they afford no protection to purchasers relying on invalid instruments.[5] Consequently, one claiming title under a forged deed receives no title even though he relies on the record thereof and is unaware of the forgery.[6] The rule for "wild deeds"[7] is also well estab-

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1. The relevant chain of title to the property involved in this lawsuit is: *X* (Atlantic Beach Co.) forged deed to *A* recorded 1924; *A* warranty deed to *B* recorded 1924; *B* warranty deed to *C* recorded 1924; sheriff's deed to *D* recorded 1930; and *D* fee simple deed to *E* (defendant Hollywood, Inc.) recorded 1931. The plaintiff claims under *X*.

2. 224 So. 2d 743 (4th D.C.A. Fla. 1969).

EDITOR'S NOTE: Marshall v. Hollywood, Inc., 236 So. 2d 114 (Fla. 1970) affirmed the lower court, in effect, holding that the Florida Act confers marketability to a chain of title arising out of a forged or a wild deed, provided the strict requirements of the Act are met.

3. *See* Barnett, *Marketable Title Acts—Panacea or Pandemonium*, 53 CORNELL L.Q. 45 (1967).

4. 1 R. BOYER, FLORIDA REAL ESTATE TRANSACTIONS §26.03 (1969).

5. *E.g.*, Reiter v. Kille, 143 F. Supp. 590 (E.D. Pa. 1956); Braddy & Hale Fishery Co. v. Thomas, 93 Fla. 326, 112 So. 55 (1927); Vance v. Fields, 172 So. 2d 613 (1st D.C.A. Fla. 1965).

6. 1 R. BOYER, note 4 *supra* §26.03. "A forged deed . . . is absolutely void and wholly ineffectual to pass title." 16 AM. JUR. *Deeds* §27 (1938). *See also* 8 G. THOMPSON, REAL PROPERTY §4303 (1963).

7. Wild, interloping or stray deeds "would not be indexed under any name in the purchaser's chain of title. Since a purchaser making a title search by means of a grantor-grantee index alone would have no means of finding them, either in the grantor or grantee index, they are deemed 'unrecorded' as against him." Barnett, *supra* note 3, at 51.

lished:[8] recording a wild deed is not constructive notice to subsequent purchasers.[9]

Before Florida's Marketable Record Title Act[10] was passed in 1963, Florida Statutes, section 95.23, was the broadest curative legislation affecting title to real property.[11] However, the Florida supreme court held that this section did not apply to a deed voided by forgery of the grantor's name.[12]

In recent years an increasing number of states have enacted marketable title acts.[13] The major stimuli leading to the passage of these acts were the Michigan Act[14] adopted in 1945 and the Model Marketable Title Act, which was based on the Michigan statute.[15] The objective of marketable title legislation is to automatically eliminate old title defects through the passage of time and, consequently, to shorten and simplify the necessary title examination.[16] Underlying this objective is the legislative intent to implement the public policy favoring free alienability of land.[17]

In 1963 the Florida Legislature passed a marketable title act,[18] which renders a title marketable by virtue of a recorded chain of title that extends over a period of at least thirty years. Subject to specified exceptions,[19] the act nullifies all claims and interests antedating the "root of title."[20]

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8. *See* 2 M. MERRILL, Notice §983 (1952).

9. Poladian v. Johnson, 85 So. 2d 140 (Fla. 1955). *See also* 4 AMERICAN LAW OF PROPERTY §18.25 (A. J. Casner ed. 1952).

10. FLA. STAT. §§712.01-.10 (1967).

11. FLA. STAT. §95.23 (1967) provides: "(1) After the lapse of twenty years from the record of any deed or the probate of any will purporting to convey lands no person shall assert any claim to said lands as against the claimants under such deed or will, or their successors in title. (2) After the lapse of twenty years all such deeds or will shall be deemed valid and effectual for conveying the lands therein described, as against all persons who have not asserted by competent record title an adverse claim."

12. Wright v. Blocker, 144 Fla. 428, 198 So. 88 (1940); *cf.* Reed v. Fain, 145 So. 2d 858 (Fla. 1961).

13. Thirteen states have now adopted them in one form or another. FLA. STAT. §§712.01-.10 (1967); ILL. REV. STAT. ch. 83, §12.1-.4 (1961); IND. ANN. STAT. §§56-1101 to -10 (1961); IOWA CODE ANN. §§614.17-.20 (Supp. 1966); MICH. STAT. ANN. §§26.1271-79 (1953); MINN. STAT. ANN. §541.023 (Supp. 1966); NEB. REV. STAT. §§76-288 to -298 (1966); N.D. CENT. CODE §§47-19A-01 to -11 (1960); OHIO REV. CODE ANN. §§5301.47-.56 (Page Supp. 1966); OKLA. STAT. ANN. tit. 16. §171-81 (Supp. 1966); S.D. COMPILED LAWS ANN. §§43-30-1 to -15 (1967); UTAH CODE ANN. §§57-9-1 to -10 (Supp. 1965); WIS. STAT. ANN. §893.15 (1966).

14. MICH. STAT. ANN. §§26.1271-.1279 (1953). *See* Barnett, *supra* note 3, at 46.

15. L. SIMES, IMPROVEMENTS OF CONVEYANCING BY LEGISLATION 341 (1960). Florida's Marketable Record Title Act is based on the Model Act. Barnett, *supra* note 3, at 48 n.9.

16. Barnett, *supra* note 3, at 47.

17. Rohde, *Illinois Marketable Title Act*, 39 CHI.-KENT L. REV. 49, 50 (1962).

18. FLA. STAT. §§712.01-.10 (1967).

19. FLA. STAT. §712.03 (1967) enumerates the exceptions to marketability.

20. FLA. STAT. §712.01 (2) (1967) provides: "Root of title means any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least thirty years prior to the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded."

Because most of the marketable title acts were enacted so recently, there is a dearth of decisions interpreting them. In *Whaley v. Wotring*,[21] the most recent case construing the Florida Act, plaintiff's chain of title was based on his predecessor's 1908 deed, while defendant's root of title was an 1897 land patent.[22] The First District Court of Appeal applied the Act and held that the patentee's heirs were precluded from asserting whatever claim, if any, they had under the 1897 land patent, since the 1908 deed in plaintiff's chain of title had been on record for more than thirty years.[23] *Whaley* epitomizes the mechanical operation of the Florida Act, and it established a solid foundation for future applications.

In *Wilson v. Kelley*,[24] plaintiffs' predecessor in title acquired property through a United States patent. In 1892 the patentee conveyed part of the land to defendants' predecessor in title. Twenty years later a quitclaim deed conveying "an undivided one-half interest in the entire east half" was executed to another remote grantor of defendant. Plaintiffs' chain of title consisted of their ancestor's patent and proof of the patentee's ancestry. Defendants relied upon the 1912 quitclaim deed as root of title. The Second District Court of Appeal found for plaintiffs and held that a quitclaim deed conveying "an undivided one-half interest" in land did not disclose what estate it purported to transfer, and therefore could not constitute a root of title that could be the basis of a marketable record title in successors in interest.[25] The court reasoned that although a quitclaim deed is clearly a title transaction, it is impossible to determine what estate it purports to transfer.[26] However, the court lessened the impact of its holding by stating that a quitclaim deed could serve as a root of title if it evidenced an intent to convey an identifiable interest in the land.[27] This connotation of a quitclaim deed is unsuitable in this situation. Clearly, the decisions unanimously hold that a quitclaim deed does not purport to create any specific interest in property.[28] If a deed specifically names the interest the grantor intended to convey, it can constitute a root of title; however, the instrument of conveyance should not be labeled a quitclaim deed. The *Wilson* dictum invites a contest in semantics on the issue of a quitclaim deed as a root of title.

Wilson also stated that under the Florida Act, an "interloping" or wild deed could form a root of title that might eventually cut off the interest of a person who otherwise would have a valid claim.[29] Regarding wild deeds

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21. 225 So. 2d 177 (1st D.C.A. Fla. 1969).

22. A land patent is a government conveyance transferring title to land owned by the United States. *See* 73 C.J.S. *Public Lands* §187 (1951).

23. Whaley v. Wotring, 225 So. 2d 177, 182 (1st D.C.A. Fla. 1969).

24. 226 So. 2d 123 (2d D.C.A. Fla. 1969).

25. *Id.* at 128.

26. *Id.*

27. *Id.*

28. *See* 26 C.J.S. *Deeds* §8 (1956). In Smith v. Berberich, 168 Neb. 142, 95 N.W.2d 325 (1959), the Supreme Court of Nebraska accepted this view in construing that state's marketable title act.

29. Wilson v. Kelley, 226 So. 2d 123, 127 (2d D.C.A. Fla. 1969).

as the basis of a root of title, most marketable title act states concur with the *Wilson* decision.[30] However, wild deeds have been troublesome under marketable title legislation because of the apparent existence of two "record owners" or two "chains of title."[31] Several states have avoided the problem of two independent chains of title by requiring the title claimant to be in possession in order to benefit from the extinguishment feature of the acts.[32] Other states require that the property not be in the adverse possession of another.[33] A unique exception[34] in the Florida Act partially resolves the problem of the wild deed by protecting the record title of a senior grantee *in possession* from being cut off by a junior grantee not in possession.[35] The *Wilson* decision is significant because wild deeds are relatively common,[36] sometimes resulting from a mistake in land description.[37] That holding clarified the issue of wild deeds as roots of title and indicated that the Florida Act is capable of divesting title of a record owner in favor of a grantee holding a wild deed.

The instant case expanded the thrust of *Wilson* by demonstrating that the Florida Marketable Record Title Act tends to protect a junior grant recorded after a competing senior grant.[38] The present decision fostered the argument that "the opinion will constitute a blueprint which land pirates could follow with ease to effectively steal large tracts of wild land throughout

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30. L. SIMES, *supra* note 15, at 295-349. However in Exchange Nat'l Bank v. Lawndale Nat'l Bank, 41 Ill. 2d 316, 243 N.E.2d 193 (1968), the Illinois supreme court held that a chain of title may not be founded on a wild deed. Utah and North Dakota provide official tract indexes that appear to eliminate the problem of wild deeds.

31. L. SIMES, *supra* note 15 at 317. In Wichelman v. Messner, 250 Minn. 88, 83 N.W.2d 800 (1957), the Supreme Court of Minnesota said the title may not be founded upon a stray, accidental, or interloping conveyance because the statute did not operate to provide a foundation for a new title. In response to this decision, the Minnesota Marketable Title Act was amended to make any recorded fee simple transaction a sufficient root of title. *See* MINN. STAT. §541.023 (1957), *as amended*, Minn. Laws 1959, §492.

32. IOWA CODE ANN. §614.17 (Supp. 1970); MINN. STAT. ANN. §541.023(4) (Supp. 1970); NEB. REV. STAT. §76-288 (1966); N.D. CENT. CODE §47-19A-01 (1960); S.D. COMPILED LAWS ANN. §43-30-1 (1967).

33. ILL. ANN. STAT. ch. 83, §12.1-.4 (1966); MICH. STAT. ANN. §26.1271 (1953).

34. Examination of the marketable title acts of the other twelve states has not revealed an exception comparable to FLA. STAT. §712.03(3) (1967).

35. FLA. STAT. §712.03(3) (1967). The possession exception would not resolve a wild deed problem where a "vacant" lot is in litigation. Thus, it did not apply to the instant case.

36. Barnett, *supra* note 3, at 58.

37. A wild deed would also arise when a grantor executes a second unrecorded conveyance on the same land. Swenson, *The Utah Marketable Title Act*, 8 UTAH L. REV. 200, 209 (1963). A deceased owner's heir with no locally recorded documents to establish his heirship could also become a grantor of an apparent interloping deed.

38. *A*, senior grantee, acquires real estate under a warranty deed recorded in 1925 and makes no further title transactions and *B*, junior grantee, claims the same land under a wild deed recorded in 1935 then, assuming *A* does not fall within any exception in the Florida Act, *B* will have a marketable record title in 1965. "A more complete reversal of the philosophy of the common law rule and of the recording acts is difficult to imagine." Barnett, *supra* note 3, at 57.

this state."[39] This contention should not be taken seriously because the situation found in the instant case rarely occurs. Since at least one title transaction will occur every thirty years on most real estate,[40] Florida Statutes, section 712.03 (4), should save the "live" senior claim from extinguishment.[41] Because of explicit safeguards in the Act[42] few competing junior claims are likely to survive on record long enough to prevail. However, if a senior grantee is remiss in seeking the protection of the Act, then "[i]n the public interest of simplifying and facilitating land title transactions, it does not seem unreasonable for the legislature to create a presumption that one who is negligent in claiming his land has abandoned his claim."[43]

If the principal decision had refused to apply the Marketable Record Title Act to a void deed thereby eliminating claims of title that depended upon transactions antecedent to the void deed, the effectiveness of the Act would have been severely lessened. Such a holding would have preserved from extinction all claims arising out of defective deeds.

The present case has apparently resolved three other constructional problems existing in the Florida Act. First, Florida Statutes, section 712.02, states: "[A]ny person . . . who . . . has been *vested with any estate in land* for thirty years or more, shall have a marketable record title to such estate in said land."[44] According to one writer this section clearly limits the interests that may be benefited by the Act.[45] However, the instant case illustrates that although a void deed could not create an estate in land under the recording acts, it can establish a chain of title, the defectiveness of which is cured by the Florida Act.

Second, Florida Statutes, section 712.07, shall not be construed "to affect the operation of any statute governing the effect of the recording or failure to record any instrument affecting land."[46] Professor Boyer noted that this provision might cause difficulty if literally applied.[47] Indeed, a literal application would render the Marketable Record Title Act subservient to Florida Statutes, section 95.23. Relying on *Wright v. Blocker*,[48] the plaintiff in the principal case argued that Florida's Act did not eliminate claims of title

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39. Brief for Petitioner at 21, Marshall v. Hollywood, Inc., 236 So. 2d 114 (Fla. 1970).

40. Barnett, *supra* note 3, at 59. *See* note 42 *infra*.

41. FLA. STAT. §712.03 (4) (1967) provides that a marketable record title shall not affect or extinguish "[e]states or interests arising out of a title transaction which has been recorded subsequent to the effective date of the root of title."

42. Under Florida's Marketable Record Title Act, a claimant will not be cut off if he has been a party to any title transaction recorded within a period of not less than thirty years or if he files notice prescribed by the act during the time allowed for that purpose. Nor will he be cut off if he remains in possession or if the land is assessed to him on the county tax roll. *See* Wilson v. Kelley, 226 So. 2d 123, 127 (2d D.C.A. Fla. 1969); FLA. STAT. §712.03 (1967).

43. Wilson v. Kelley, 226 So. 2d 123, 127 (2d D.C.A. Fla. 1969).

44. FLA. STAT. §712.02 (1967) (emphasis added).

45. Barnett, *supra* note 3, at 65.

46. FLA. STAT. §712.07 (1967).

47. 1 R. BOYER, note 4 *supra* §14.14-6.

48. 144 Fla. 428, 198 So. 88 (1940).