St. John's Law Review

Volume 11, November 1936, Number 1 Article 24

Real Property--Recording Act--Burden of Proof (Hood v. Webster, 291 N.Y. 57 (1936))

St. John's Law Review

In cases where a complete and adequate remedy at law exists, the six-year Statute of Limitations is applicable [1] and the time cannot be enlarged [2] by proceeding in equity under the ten-year statutory period.[3] When the jurisdiction of equity has been challenged because of an alleged adequate remedy available at law, courts have held that such adequate remedy deprives the plaintiff of relief in equity.[4] But where the relief sought in equity is challenged [5] because of an alleged outlawing of the action in that the remedy at law was not utilized for six years, the courts hold that the remedy or relief at law must be an affirmative one in order for the six-year period to apply.[6] The rule is well established that the Statute of Limitations does not apply to *defenses* at law; [7] the purpose of the Statute of Limitations is to establish a period within which a cause of action in law or in equity must be prosecuted. Thus, the remedy at law being only a defense, there is no limitation to apply in equity other than the proper ten-year limitation period. The court in the instant case followed the above reasoning though basing its decision largely on its reluctance to further limit the application of the ten-year limitation by denying equity jurisdiction because a defense at law had been available for six years.

A. O'D.

REAL PROPERTY—RECORDING ACT—BURDEN OF PROOF.—Plaintiff's grantor unconditionally executed a deed to plaintiff and delivered it in escrow, to take effect upon grantor's death. This deed was not

---

[1] N. Y. CIV. PRAC. ACT § 48: "any action to procure a judgment on the grounds of fraud must be commenced within six years after the cause of action has accrued."

[2] Rundle v. Allison, 34 N. Y. 180 (1866); Keys v. Leopold, 213 App. Div. 760, 210 N. Y. Supp. 406 (1st Dept. 1925), *rev'd on other grounds*, 241 N. Y. 189, 149 N. E. 828 (1925).

[3] N. Y. CIV. PRAC. ACT § 53: "an action, the limitation of which is not specifically prescribed in this article must be commenced within ten years after the cause of action accrues." See also Dodds v. McColgan, 125 Misc. 405, 211 N. Y. Supp. 371 (1925); Ford v. Clendenin, 155 App. Div. 433, 137 N. Y. Supp. 54 (2d Dept. 1911); Gilmore v. Ham, 142 N. Y. 1, 36 N. E. 826 (1911); Pitcher *et al.* v. Sutton, 238 App. Div. 291, 264 N. Y. Supp. 488 (4th Dept. 1933); Clarke v. Gilmore, 149 App. Div. 445, 133 N. Y. Supp. 1047 (1st Dept. 1912).

[4] Town of Venice v. Woodruff, 62 N. Y. 462, 20 A. L. R. 495 (1895); Pennsylvania Mutual Life Insurance Co. v. McCarthy, 245 App. Div. 784, 280 N. Y. Supp. 948 (3d Dept. 1935); New York Life Insurance Co. v. Sisson, 19 F. (2d) 410 (W. D. Pa. 1926).

[5] As in the instant case, the sole defense of the Statute of Limitations concedes that equity has jurisdiction but alleges that the action is barred. Bidiwell & Banta v. Astor Mutual Insurance Co., 16 N. Y. 263 (1857).

[6] Clarke v. Boorman's Executors, 85 U. S. 493, 21 L. ed. 904 (1875); Pattir v. Walker, 159 Misc. 339, 287 N. Y. Supp. 806 (1936).

[7] Maders v. Lawrence, 49 Hun 360, 2 N. Y. Supp. 159 (1888); People v. Faxon, 111 Misc. 699, 182 N. Y. Supp. 242 (1920).

recorded. Subsequently the grantor conveyed the same property to defendant who took without notice of the prior deed. Defendant recorded his deed. When the grantor died, plaintiff instituted this action to cancel the recorded deed. Plaintiff proved the validity of his deed and relied on the proposition that the recital of "One dollar and other valuable consideration" in defendant's deed was not sufficient to make the subsequent purchaser a "purchaser for value" under the Recording Act.[1] Defendant produced no evidence of consideration other than the recital in the deed. *Held,* that under the Recording Act, where the subsequent deed does not recite a consideration sufficient to satisfy the Act, the subsequent purchaser has the burden of proving, by a fair preponderance of evidence that he has paid a valuable consideration. *Hood* v. *Webster,* 291 N. Y. 57, 2 N. E. (2d) 43 (1936).

It is well settled in New York, that the grantee who claims under a prior unrecorded deed is required to prove that the subsequent purchaser of record took with *notice.*[2] Similarly, the prior grantee is required to prove, *if he asserts it,* that the junior purchaser did not pay a valuable consideration. The burden of proving these issues is upon the prior purchaser,[3] but the burden of producing evidence may be shifted to the subsequent purchaser.[4] In the instant case the subsequent purchaser's deed is of no value unless protected by the Recording Act[5] but it devolves upon the prior purchaser to prove that the subsequent purchaser does not come within the provisions of the statute. The courts, in construing the Recording Act, hold that the consideration must not only be good, but valuable in the sense that a fair equivalent is given for the property granted in order to constitute the subsequent grantee a purchaser for value.[6] The recital in

[1] N. Y. REAL PROP. LAW § 291: "Every conveyance of real property not recorded is void as against any subsequent purchaser in good faith and for a valuable consideration from the same vendor, his heir or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded."

[2] Brown v. Volkening, 64 N. Y. 76 (1876); Constant v. University of Rochester, 111 N. Y. 604, 19 N. E. 631 (1889); Gratz v. Land and River Improvement Co., 82 Fed. 381 (C. C. A. 7th, 1897).

[3] Gratz v. Land and River Improvement Co., 82 Fed. 381 (C. C. A. 7th, 1897) (In the state of New York it is ruled that under the Recording Act the junior purchaser—whose deed is first recorded is presumptively a *bona fide* purchaser for a valuable consideration, without notice—and the burden of proof to the contrary rests upon the prior purchaser—whose deed has not been recorded.). But see Ten Eyck v. Witbeck, 135 N. Y. 40, 31 N. E. 994 (1892) and Lehrenkrauss v. Bonnell, 199 N. Y. 240, 243, 92 N. E. 637, 638 (1910).

[4] Brody v. Pecoraro, 250 N. Y. 56, 164 N. E. 741 (1928); Ten Eyck v. Witbeck, 135 N. Y. 40, 31 N. E. 994 (1892); Lehrenkrauss v. Bonnell, 199 N. Y. 240, 92 N. E. 637 (1910); THAYER, PRELIMINARY TREATISE ON EVIDENCE (1898) pp. 353-389.

[5] Saltzeider v. Saltzeider, 219 N. Y. 523, 114 N. E. 86 (1916); Seymour v. McKinstry, 106 N. Y. 230, 14 N. E. 94 (1887); Fleckinger v. Glass, 222 N. Y. 404, 118 N. E. 972 (1918).

[6] Ten Eyck v. Witbeck, 135 N. Y. 40, 46, 31 N. E. 994, 995 (1892) (One who acquires title to valuable property for a merely nominal money consideration, although actually paid, but under circumstances indicating a gift or ad-

the deed of "one dollar and other valuable consideration" is not sufficient to put him in this position.[7] Thus the prior grantee by establishing that the junior grantee is not protected by the Recording Act, compels the subsequent grantee to produce further evidence of consideration to bring himself within the meaning of "a purchaser for a valuable consideration" under the statute.

Likewise, the burden of producing evidence is upon the holder of the unrecorded deed, when the subsequent deed, first recorded, *acknowledges receipt of consideration sufficient to satisfy the Recording Act.*[8] In this instance, as in the preceding one, the prior grantee must show, *if he asserts it,* that the subsequent grantee took with notice. Although the subsequent grantee meets the requirements of the Recording Act, if the prior purchaser shows that a fraud has been perpetrated upon him by the grantor, the burden of producing evidence then shifts to the subsequent purchaser who must prove that he had no knowledge of the fraud and that he purchased for a valuable consideration.[9] In this instance (where a fraud has been perpetrated by the grantor), the proof of a substantial payment by the subsequent grantee, is held to be more than evidence of a valuable consideration—it is construed as an inference of a purchase without notice.[10] The burden of adducing evidence to offset this inference then shifts to the prior purchaser.

E. O. C.

TORTS—NUISANCE—LIABILITY OF LESSOR AND SUB-LESSEE FOR WRONGFUL ACT OF INDEPENDENT CONTRACTOR.—Defendant Gotham Silk Hosiery Co. was lessee of an entire building at 34th Street and Broadway, New York City. Five large signboards were affixed to the sides and on the roof of the building. Two of these signs were leased to defendant Strauss & Co., which was engaged in the sign advertising business. Plaintiff was seriously injured when one end of a scaffold, which was insecurely suspended from said building, gave

---

vance is not, within the meaning of the Recording Act, a purchaser for valuable consideration and his deed, although recorded, conveys no title as against a prior unrecorded conveyance of the same property. The consideration must not only be good, but valuable, in the sense that a fair equivalent is given for the property granted, in order to constitute the grantee a purchaser for value.).

[7] Lehrenkrauss v. Bonnell, 199 N. Y. 240, 92 N. E. 637 (1910).

[8] Wood v. Chopin, 13 N. Y. 509 (1856); Page v. Waring, 76 N. Y. 63 (1882).

[9] Brody v. Pecoraro, 250 N. Y. 56, 164 N. E. 741 (1928) (Where the proof shows a fraud has been perpetrated, by the grantor, the burden of evidence is shifted upon one who claims to be an innocent purchaser to show that he acquired the property *without any knowledge or notice* that would put him upon inquiry and for a *full and adequate consideration.*).

[10] Brown v. Volkening, 64 N. Y. 76 (1876); Constant v. University of Rochester, 111 N. Y. 604, 19 N. E. 631 (1889).