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Equitable Title; Effect Of Contract to Convey and/or Void Deed

RECENT CASES

EQUITABLE TITLE; EFFECT OF CONTRACT TO CONVEY AND/OR VOID DEED

In a recent case,[1] the Supreme Court was afforded an opportunity to determine whether either legal or equitable title to land, standing alone, would give the title holder a right to homestead exemption. The court avoided such an adjudication by finding that under the following facts there was no division of these titles:

A, under a contract to convey land, delivered to B, vendee, on December 26, 1944, a deed blank as to the grantee's name, B having paid the purchase price. Under the contract, A remained in possession until January 15 in the position of tenant (at least both parties so regarded A's occupancy). On January 8, B sold to C, delivering the original deed to C and inserting C's name therein as grantee. The City of Jacksonville, in which the land was situated, contended that none of these parties was entitled to homestead exemption for the year 1945.

The court held that the deed was void and that consequently neither legal nor equitable title passed to B. The previous decisions of that court negative such a conclusion as to equitable title; instead, they indicate that the execution and delivery of the deed was a superfluous transaction, in that equitable title passed to the vendee, B, under the contract to convey.[2] The Florida court did not stand alone in its past opinions.[3]

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1 *Simpson v. Hirshberg,* .....Fla....., 30 So. 2d 912 (1947).

2 In *Felt v. Morse,* 80 Fla. 154, 85 So. 656, (1920) the court adopted as its own a Maryland doctrine that from the time the vendor and purchaser of land have entered into a binding agreement, the purchaser becomes "in equity the owner."

Compare the language in *Schmidt v. Kibbens,* 100 Fla. 1684, 132 So. 194, (1931) where the court spoke of the "vendee's equitable estate in the lands" under the "contract establishing the relation of vendor and vendee."

In *Marion Mortg. Co. v. Grennan,* 106 Fla. 913, 143 So. 761, 87 A. L. R. 1942, (1932) the court affirmed its previous decisions, saying: "In the case of *Felt v. Morse,* 80 Fla. 154, So. 656, this court said 'that from the time the owner of land enters into a binding contract for its sale, he holds the same in trust for the purchaser, and the latter becomes a trustee of the purchase money for the vendor.' It is a general rule also that the legal title to property agreed to be conveyed remains in the vendor as security for the payment of the agreed purchase price, and the vendee is regarded as beneficial owner. *Schmidt v. Kibben,* 100 Fla. 1684, 132 So. 194."

Again in *Laganke v. Sutter,* 137 Fla. 71, 187 So. 586, (1939) the court said that it was immaterial whether or not the grantor had executed and delivered to the grantee a valid deed, that is, a deed containing a description of the property to be conveyed; the grantor

It could not be contended that the court's conclusion was based on a theory that the effect of the void deed was to eradicate the consequences of the agreement of sale and payment thereunder, for that court held on a previous occasion that where a deed was invalid because of non-conformity with the formalities as to witnesses, there was a contract to convey by reason of the invalid deed.[4] The court's statement would seem to be inconsistent with its previous definitions of equitable title.[5]

Following a circuitous route to judgment, the court reasoned that since A held both the legal and the equitable title on January 1, the land acquired its homestead character on that date and this exemption passed ultimately to C. However, assuming that the court was motivated by a desire to award homestead exemption, it does not appear that it was necessary to decide that A held both titles, for the words of the statute indicate that either legal *or* equitable title is sufficient to support the homestead claim.[6]

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had received the consideration, and the beneficial title had passed to the grantee.

3 In *Golden v. Bilbo,* 192 Iowa 319, 184 N. W. 643, (1921) the court held that a deed lacking the name of the grantee passed equitable title by delivery. Accord: *Gilmore v. Shearer,* 197 Iowa 506, 197 N. W. 631, 32 A. L. R. 733 (1924); *Nebraska Wesleyan University v. Smith,* 113 Nebr. 208, 202 N. W. 625 (1925).

4 *Seitter v. Riverside Academy,* 144 Fla. 69, 197 So. 764 (1940).

5 In *George E. Sebring Co. v. O'Rourke,* 101 Fla. 885, 134 So. 566, 559, it was said: " 'An equitable title is a right or interest in land, which, not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, requires the aid of such court to make it available.' *Pogue v. Simon,* 47 Or. 6, 81 P. 566, 567, 114 Am. St. Rep. 903, 8 Ann. Cas. 474 (1905).

" 'Equitable title' has also been defined to be a right, imperfect in law, but which may be perfected by the aid of a court of chancery by compelling parties to do that which in good faith they are bound to do, or removing obstacles interposed in bad faith to the prejudice of another. See Words and Phrases, Second Series, Vol. 2 page 308, and authorities there cited."

6 "Every person who has the legal title *or* beneficial title in equity to real property in this state and who resides thereon and in *good faith* makes the same his or her *permanent home,* or the permanent home of another or others legally or naturally dependent upon said person. shall be entitled to an exemption..." Fla. Const. art. 10, sec. 7, in which the use of the conjunction indicates that either of the two titles by itself is sufficient to support the homestead right.

As to equitable title, in *Beall v. Pickney,* 150 F. 2d 467, 161 A.L.R. 1281 (1945), the Federal Court, after a thorough discussion of homestead laws and the Florida constitutional provisions, in particular, held that an equitable interest is enough to support the homestead claim as against creditors of the claimant. While the question of bankruptcy was there involved, the situation would seem to be analogous to that in the principal case.

The City contended that A had retained only the naked legal title and was therefore not entitled to homestead exemption, the other parties being obviously not qualified. It would appear that the court reasoned as the City did; that legal title alone would not suffice.

If the court did so decide, then it would appear that the court overlooked the obvious fact that even though A had held both the legal and the equitable title on January 1, on that date A was a mere tenant, if not in fact, at least as far as his intention was concerned. That intention was clearly in conflict with the Constitutional provisions.[7] Assuming that A held both titles, can it be said that he had the requisite "good faith"?

Another question arising from the Simpson case is whether or not the delivery of a deed to the grantee authorizes the completion of blank spaces as in the Law Merchant and Negotiable Instrument Law. According to some authorities, when the grantor receives the consideration and delivers the deed fully executed in other respects, unless a contrary intention appears, authority to a grantee to fill a blank for his name is implied.[8]

NATURE OF RIGHT CONFERRED BY OCCUPATIONAL LICENSE*

The recent reversal upon rehearing in the Paoli Case demonstrates confusion as to the nature of licenses, prevalent in Florida as elsewhere. In this case an administrative board arbitrarily revoked the license of a horse trainer.[1] Originally, the court took the position that a mere

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7 As will be seen, Note 5, *supra,* the Constitution declares that the claimant to exemption must "in good faith" make the premises on which he resides "his or her permanent home". Would that not exclude A in the principal case?

8 In *Fisher v. Paup,* 191 Iowa 296, 180 N. W. 167 (1920), the court determined that where the seller of property executed a deed with the grantee's name blank, and the buyer exchanged the property with another by delivering to him the blank deed, authority in such other to insert his name as grantee in the blank deed was to be implied, and when that was done, the conveyance, including covenants, related back to the date of its execution by the grantor.

Other courts have spoken of this implied authority: *Handelman v. Mandel,* 70 Colo. 136, 197 P. 1021 (1921); *Gilbert v. Plowman,* 218 Iowa 1345, 256 N. W. 746 (1934); *Holliday v. Clark,* Mo., 110 S. W. 2d 1110, 1111 (1937).

*State ex rel. Paoli v. Baldwin et al. Fla. ···, 31 So. 2d 627 (1947).

1 Paoli, a trainer, had been licensed under rules promulgated by the State Racing Commission requiring that, "The trainer shall be the absolute insurer of, and responsible for, the conditions of the horse entered in the race, regardless of the acts of third parties, . . ." Benzedrine was found to have been administered to Jane Acker, a horse trained by Paoli. The substance of the evidence was that at the time of the race a groomsman, only recently employed, was in charge of