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Public Records Doctrine - Defeat of Record Title by Reason of "Notice" of Unrecorded Tax Redemption Certificate

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application.²⁵ The lack of a clear standard as to what constitutes "unclean hands" will make the enforcement of zoning ordinances highly uncertain. Changes in city administrations and practical problems of law enforcement²⁶ will offer fertile grounds for uncertainty in the application of the maxim. If unclean hands means conduct short of intentional or purposeful misconduct, the result may be judicial eradication of otherwise valid ordinances. Thus, in the instant case, although the city had made efforts to enforce the ordinance, and had not engaged in purposeful or intentional misconduct, the failure to enforce it against all violators destroyed the effectiveness of the ordinance.²⁷ Since it is so uncertain as to what conduct short of intentional or purposeful misconduct will constitute "unclean hands," it is submitted that only the constitutional test of intentional or purposeful misconduct should bar a city from injunctive enforcement of zoning ordinances. Thus, the application of the "clean hands" maxim to zoning ordinance cases seems both undesirable and unnecessary.

Leslie J. Schiff

PUBLIC RECORDS DOCTRINE—DEFEAT OF RECORD TITLE BY REASON OF "NOTICE" OF UNRECORDED TAX REDEMPTION CERTIFICATE

Plaintiff brought suit to quiet and confirm his tax title, relying on the public records doctrine as a third party purchaser. Plaintiff's title was derived from the heirs of the tax adjudicatee. Defendant's title traced back to the heir of the tax debtor who had been placed in possession of the property by an ex parte judgment of possession which was rendered *after* the tax sale. The debtor's heir timely redeemed the property but failed to record the redemption certificate within the redemption period. This heir subsequently conveyed the property to third parties in whose name the property was assessed, the heir or her vendees

25. See *Rhodes v. Miller*, 189 La. 288, 179 So. 430 (1938) (public policy reasons may demand non-application of the maxim).

26. See concurring opinion of Justice McCaleb in *New Orleans v. Levy*, 233 La. 844, 98 So.2d 210 (1957) (city had tried to enforce ordinance against several violators with no success because of crowded court dockets, difficulties of serving some defendants with notice and continuances granted by courts).

27. This does not mean that the ordinance was made ineffective as regards the imposition of penalties. The ineffectiveness referred to here stems only from the fact that an injunction was the only remaining way in which the violation could be stopped, since the defendant had already paid a fine, and could not be fined again or imprisoned. See *New Orleans v. Mangiarisina*, 139 La. 605, 71 So. 886 (1916).

paying taxes on the property until the time of this suit. When plaintiff filed his suit, long after the redemption period had run, the heir recorded the redemption certificate. The court of appeal reversed the district court and held for the defendant heir and her vendees. On writ of certiorari to the Supreme Court, *held*, affirmed. Plaintiff was placed on notice as to the invalidity of his tax title by the ex parte judgment of possession to the defendant heir and other instruments which reflected a claim adverse to that of his vendor. *Wells v. Joseph*, 234 La. 780, 101 So.2d 667 (1958).

The public records doctrine of Louisiana relative to the sale of immovable property is based on Article 2266 of the Civil Code,¹ Revised Statutes 9:2721,² and the leading case of *McDuffie v. Walker*.³ In effect, this doctrine holds that a purchaser, in the absence of fraud, may rely on the validity of his vendor's title where, on the face of the public records, there are no defects in his vendor's title, even though it is known that there are defects outside of the records. Unrecorded transactions or any other unrecorded facts cannot operate to defeat the title of a person who has relied upon the public records. Certain exceptions to this general rule have developed, which are beyond the purview of this Note.⁴

1. "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."

2. "No sale, contract, counter letter, lien, mortgage, judgment, surface lease, oil, gas or mineral lease or other instrument of writing relating to or affecting immovable property shall be binding on or affect third persons or third parties unless and until filed for registry in the office of the parish recorder of the parish where the land or immovable is situated; and neither secret claims or equities nor other matters outside the public records shall be binding on or affect such third parties." La. Acts 1950 (E.S.), No. 7, § 1.

3. 125 La. 152, 51 So. 100 (1910), which held that a third person may acquire a valid title from the owner of record, even though that third person knows in fact that his vendor has already divested himself of title through an act not yet recorded. This case gave full effect to Article 2266 of the Civil Code and made the public records the ultimate source of valid titles. Of course, this case did not affect the passage of ownership between the parties to the unrecorded sale so long as no third party purchased relying on the records.

4. *Long v. Chailan*, 187 La. 507, 175 So. 42 (1937) held that a third party purchaser relying on the public records could not defeat the unrecorded title of forced heirs to their mother's share of the community property. *Succession of James*, 147 La. 944, 86 So. 403 (1920) held the husband's share of the community inviolate though third parties had relied on statements in the public records which stated that the vendor wife was a single woman holding property in her own name. *Humphreys v. Royal*, 215 La. 567, 41 So.2d 220 (1949), 11 LOUISIANA LAW REVIEW 389 (1951), denied application of *Succession of James* to a case where husband dealt with property acquired during marriage in his name, pur-

Under the Constitution⁵ and the statutes⁶ of Louisiana, a tax adjudicatee may perfect his title after a three-year period of redemption has run against the tax debtor. During this three years the tax debtor, his heirs, or assigns may redeem the property by paying to the tax adjudicatee the taxes paid for the property plus other costs provided by law.⁷ This redemption, if timely, destroys the rights of the tax adjudicatee in the property and restores the tax debtor's title.⁸ It has been held that the public records doctrine is applicable to these tax sales and, since the property stands of record in the name of the tax adjudicatee after the tax sale, it would seem to follow that only a recordation of the redemption could divest him of title and restore it to the tax debtor insofar as a third party purchaser relying upon the records is concerned.⁹ Such a result was reached in *Blanchard v. Garland*,¹⁰ where the plaintiff acquired the property at a tax sale from the tax adjudicatee who had purchased the property in 1921 at the original tax sale from the defendant. In 1922, the heirs of the original tax debtor redeemed the property, but failed to record the redemption certificate. When plaintiff brought suit in 1927, the court held that the recordation of the redemption in 1925 was of no effect against the plaintiff. Although the *Blanchard* case was brought to the court's attention by brief of counsel in the instant case,¹¹ the court did not mention it in its opinion.

The result of the instant case is that an unrecorded redemption certificate defeats a title of a third party purchaser that was valid on the face of the records at the time of his purchase. It would seem that a redemption certificate should come within the words "all sales, contracts, and judgments affecting immovable property" as contained in R.S. 9:2721.¹² Under an ap-

porting to be a single man after a divorce had been granted but not recorded. Here the husband as head and master of the community or as sole owner could deal with the community property until the records reflected the dissolution of the community.

5. LA. CONST. art. X, § 11.

6. LA. R.S. 47:2228 (1950).

7. *Id.* 47:2222.

8. *Kelso v. Chaffery*, 221 La. 1, 58 So.2d 402 (1952).

9. The period of redemption begins to run from the date of the recordation of the tax deed. *Gonzales v. Saux*, 119 La. 657, 44 So. 332 (1907). Recordation gives the adjudicatee an interest of record in the property and under Article 2266 of the Civil Code and R.S. 9:2721 it would seem that to be nullified this interest of record must be eradicated by the recordation of some instrument which nullifies that interest, and restores the debtor's title.

10. 6 La. App. 508 (1927).

11. Brief for Plaintiff-Relator, p. 12, *Wells v. Joseph*, 234 La. 780, 101 So.2d 667 (1958); Brief for Defendants-Appellees, pp. 14-17, *ibid.*

12. *Ibid.*

plication of well-settled public records law, if the certificate is treated as one of these items, its non-recording should prevent its being of any effect as against the plaintiff, a third party purchaser.¹³ Examination of the records at the time that the plaintiff purchased from his vendor showed that the redemption period had run and no redemption certificate was recorded. The basis given for the holding in the instant case was that the plaintiff was placed on "inquiry" as to his title and he therefore purchased at his risk and peril. The instruments which the court said placed plaintiff on inquiry were the *ex parte* judgment of possession rendered in the succession of the tax debtor¹⁴ and subsequent conveyances from his heir and suits involving the property. All of these instruments were recorded and dated subsequent to the tax sale from which plaintiff traced his title, but the tax sale nonetheless seemed to have force because the redemption period had expired at the time the plaintiff purchased the tax title.¹⁵

An application of the notice or inquiry concept in this case seems inappropriate in view of the purpose of the law of registry and in light of the field of the law where the notice principle originated. The public records doctrine is directed at protecting the certainty of titles as reflected in the records.¹⁶ The notice principle becomes important only where the title involved is in fact defective as reflected in the records.¹⁷ It is well settled that if the defect of title appears in the record the purchaser has

13. *McDuffie v. Walker*, 125 La. 152, 51 So. 100 (1910).

14. The court held in *Taylor v. Williams*, 162 La. 92, 110 So. 100 (1926) and *Curry v. Caillier*, 37 So.2d 863 (La. App. 1958) that a judgment of possession issued by a competent court constitutes prima facie evidence of ownership and right to possession, but is not conclusive against adverse claims.

15. The failure to redeem within the period allowed by law would have destroyed the right of redemption and made the tax adjudicatee's title indefeasible under the provisions of Article X, § 11, of the Constitution and R.S. 47:2228.

16. In *John T. Moore Planting Co. v. Morgan's Louisiana & Texas R. & S.S. Co.*, 126 La. 840, 866, 53 So. 22, 31 (1910), Justice Provosty said: "All doubt that may have ever existed since the enactment of Act No. 274 of 1855, now Article 2266 [of the Civil Code] as to the utter nullity for any purpose of an unrecorded title to real estate in so far as the rights of third persons are concerned, must be considered as having been set at rest by the decision of this court in the case of *McDuffie v. Walker*."

17. Here the issue is: what rights does the possessor without valid title have? If he is in good faith he is entitled to the fruits of the land during his possession and he may acquire a valid title by ten-year acquisitive prescription. If he is in bad faith, he must return the fruits to the true owner and can acquire title only of so much as he has possessed for thirty years. Obviously good faith is all important in these cases and is determined by whether or not the possessor had notice that his title was bad and that another was the true owner. *Meraux & Nunez v. Guidry*, 171 La. 852, 132 So. 401 (1931), 12 *TUL. L. REV.* 608; *Harang v. Bowie Lumber Co.*, 145 La. 96, 81 So. 769 (1919); *Larido v. Perkins*, 10 *Orl. App.* 19 (1912). See also LA. CIVIL CODE arts. 503, 3453, 3473-3482 (1870).

constructive notice thereof and is bound thereby, although he has no actual notice of it.¹⁸ On the other hand, if the defect is outside of the records, it does not affect the purchaser unless he was a party to it, even though he possesses actual notice of its existence.¹⁹ It thus seems only logical that where there appears in the records some irregularity which could lead to a defect, if traced, that evidence should operate to defeat the title only where the defect itself is a matter of record and traceable through the records.²⁰ Application of the notice rule to cases where, although an irregularity is reflected in the records, the defect itself, if not a matter of record, will emasculate the public records doctrine and create an impossible situation for the purchaser who has only the records at his disposal.

The notice concept is properly applied only where the public records doctrine is ineffective because the purchaser's title is defective on the records or because of some exception to the public records doctrine which protects an interest not recorded. In such a case the issue is the good or bad faith of the purchaser, which fixes the proper period for acquisitive prescription, or determines the purchaser's rights relative to the property's fruits, or to constructions placed on the property by him.²¹ Constructive knowledge and actual knowledge in this area are considerations that differ materially in their nature and effect from any considerations connected with the public records doctrine. Thus the possessor claiming title under a deed which is on its face translative of title is accorded the more favorable position of a good faith possessor if he has never looked at the public records, even though there is reflected therein a valid title in one other than his vendor.²² Constructive notice of what is on the public records can be found, so as to place the purchaser of an invalid title in the unfavorable position of a bad faith possessor, *only* if he has looked at the records to examine title.²³ Again, con-

18. *Brown v. Johnson*, 11 So.2d 713, 716 (La. App. 1942) held "all persons have constructive notice of the existence and contents of a recorded instrument affecting immovable property."

19. See note 3 *supra*.

20. An example of such an evidence of record was the "Barber" map in *McDuffie v. Walker*, where the tract sold to Walker by the unrecorded deed was laid out in his name as having been sold off of the original tract. This was held not to put purchaser on notice and was of no effect against third parties' title.

21. See note 17 *supra*.

22. *Smith v. Southern Kraft Corp.*, 202 La. 1019, 13 So.2d 355 (1943); *Wells v. Goss*, 110 La. 347, 34 So. 470 (1903); *Franz v. Mohr*, 4 So.2d 584 (La. App. 1941).

23. *Heirs of Dohan v. Murdock*, 41 La. Ann. 494, 6 So. 131 (1889), where it was held that a title examination which failed to turn up defects existing in the

trary to the public records doctrine, one may be a bad faith purchaser or possessor if he has actual knowledge of an adverse title even though he does not examine the records.²⁴ Thus the notice rule is operative only where the purchaser holds a defective title²⁵ and a determination must be made of the nature of his possession.²⁶ The law of registry protects the purchaser where there is no adverse title of record (or an unrecorded claim which need not be recorded to be effective), giving immediate ownership to the purchaser.²⁷

As mentioned before, frequently the cases involving notice concern an unrecorded interest of an heir, a well-recognized exception to the public records doctrine.²⁸ There, since the purchaser cannot depend on registry to perfect title, he turns to prescription, requiring a determination of whether his possession was in good or bad faith. In one of the three cases cited by the court to sustain its position relative to an application of the notice rule in the instant case, this was the situation.²⁹ In the second case cited by the court the records on their face showed no interest in the plaintiff's vendor and notice was not even urged.³⁰ In the third case the court went into a discussion of

records nevertheless gave the possessor notice of the defects and put him in bad faith. One is bound, when he causes an examination of the records, by what is found or should have been found. See also *Dinwiddie v. Cox*, 9 So.2d 68 (La. App. 1942).

24. *Juneau v. Laborde*, 219 La. 921, 54 So.2d 325 (1951); *Victoria Lumber Co. v. Dawson*, 159 La. 848, 106 So. 327 (1925); *Walling Heirs v. Morefield*, 33 La. Ann. 1174 (1881); *Calmes v. Duplantier*, 14 La. Ann. 814 (1859); *Roberson v. Reed*, 190 So. 153 (La. App. 1939); *Lafleur v. Fontenot*, 93 So.2d 285 (La. App. 1957).

25. *Martin v. Schwing Lumber & Shingle Co.*, 228 La. 175, 81 So.2d 852 (1955); *Vestal v. Producer's Oil Co.*, 135 La. 984, 66 So. 334 (1914); *Knight v. Berwick Lumber Co.*, 130 La. 233, 57 So. 900 (1912).

26. Without notice of the valid adverse title the purchaser would be considered in good faith and entitled to acquire in ten years by prescription and in case of eviction to the fruits produced during his possession. Notice chargeable to him would give him a bad faith status and he could acquire only after thirty years and if evicted would be required to return the fruits to the true owner. See notes 17, 21, 22, 23, 24 *supra* for text and cases.

27. See note 3 *supra*.

28. *Long v. Chailan*, 187 La. 507, 175 So. 42 (1937).

29. *Arnold v. Sun Oil Co.*, 218 La. 50, 48 So.2d 369 (1950), where the plaintiff, while a minor, inherited an undivided one-half interest in property, all of which the owner of the other one-half later purported to sell. The latter's vendee lost the property by mortgage foreclosure. There followed other conveyances in this chain in the course of which the outstanding interest was discovered. To correct this defect a simulated tax sale was made, designed to divest plaintiff of her interest. The defendants set up this tax sale and pleaded prescription of ten and thirty years. The purchasers were held in bad faith and the prescription of ten years was overruled while the court found that thirty years had not yet run. The public records doctrine was not available here because there was fraud disclosed by the records.

30. *Wise v. Watkins*, 222 La. 493, 62 So.2d 653 (1952). The public records

notice, presumably in reference to its applicability to a public records situation, but found for the purchaser since the records indicated that his title chain was valid.³¹ Thus none of the three cases cited by the court in the instant case supports the finding of the court that the concept of notice applies to the public records doctrine.

The ingrafting of the rule of notice onto the law of registry as done by the court in the instant case might vitally affect the assurance heretofore afforded the purchaser relying on the public records. There are many situations which are reflected on the public records which in themselves do not constitute a defect, but which if investigated beyond the records might lead to the discovery of a defect. If a third party purchaser could ignore an adverse sell-off to another person which occurs subsequent to a sale to his vendor's ancestor in title, it would seem that he can ignore a subsequent judgment of possession in the same context. Although the legal import of an *ex parte* judgment of possession vacillates according to the context in which it is urged, it would seem clear that it is not translativ of ownership where there is no ownership in the deceased. Apparently from the indications in this case, the title examiner must now inquire *dehors* the records to determine if there has been a timely redemption, even though such redemption is not recorded.

The instant case seems to be a further illustration of the public policy of interpreting redemption law liberally,³² and the

showed a mineral servitude had been executed, but was extinguished by ten years non-user and thus the purchaser of that servitude could not claim reliance on the public records to establish ownership of the servitude. The court stated that one must be bound by all the public records reveal, not just so much as suits him, adding that: "The records as a whole must be taken into consideration and they are bound by what they reveal. That being true, the defendants cannot say that they have been misled because they purchased their mineral rights which the public record showed had expired before the lease was executed, unless interrupted by means *dehors* the record." *Id.* at 501, 62 So.2d at 656. Here the public records showed no interest in the defendant's vendor and thus nothing of record on which the vendee could rely. Notice was not used in this case and properly so because no acquisitive prescription was involved.

31. *Brown v. Johnson*, 11 So.2d 713 (La. App. 1942). A third party purchaser was upheld even though an examination of the recorded instruments would have revealed possible defects between his vendor and the prior owner. The court found that on the face of the records there was nothing to show that vendor did not perform his contract.

This case contains some discussion about good faith and notice, but it is submitted that this is a confusion of prescription and the public records doctrine. The cases cited to support the discussion are all prescription cases. This appears to be erroneous because this case clearly involved the public records doctrine, while prescription was not in issue.

32. *Alter v. Shepherd*, 27 La. Ann. 207, 208 (1875). The court said: "It is a rule of general jurisprudence, as well as being a principle of public policy, to

court appears to be protecting the tax debtor from speculation such as apparently existed here. Plaintiff paid only \$425 for the property, while the conveyances derived from the debtor's heir involved sums of \$4000. Nevertheless, it is submitted that the instant case presents a situation of conflict between the above-mentioned public policy and the public records doctrine. It would appear that the better result would have been to let the latter prevail.³³

Charles A. Traylor II

TORTS — DUTY OF INSURER TO INVESTIGATE INSURABLE INTEREST

The plaintiffs sued three insurers for the wrongful death of the plaintiffs' young child. The plaintiffs charged that the defendants were negligent in issuing without proper investigation life insurance policies on the child's life to one having no insurable interest. Each of the insurers had insured the life of the child upon application of the child's aunt by marriage, who was named as beneficiary. The defendants made no effort to ascertain whether the aunt had an insurable interest in the life of the child, although agents of the defendants knew that the child and the aunt lived apart and neither depended on the other for support. The aunt subsequently killed the child,¹ hoping to collect on the three policies. The trial court rendered a judgment for the plaintiffs. On appeal, *held*, affirmed. When a policy of life insurance is unsupported by an insurable interest, a risk to the life of the insured person is created; and because of this risk, the insurer is under a duty to take reasonable care in ascertaining the existence of such an interest before issuing a policy. *Liberty National Life Insurance Co. v. Weldon*, 100 So.2d 696 (Ala. 1957).

In the early history of life insurance, it was common practice for insurers to issue policies of life insurance to persons with little or no personal connection with the person whose life was insured.² Such policies were and are still socially undesirable in two respects. A contract of this nature is considered an un-

construe redemption laws liberally. The object of the state is to collect its revenues, and not to deprive its citizens of any rights."

33. *Wells v. Joseph*, 95 So.2d 843 (La. App. 1957).

1. This fact was determined by the jury in the instant case and there had been a prior criminal conviction.

2. PATTERSON, *ESSENTIALS OF INSURANCE LAW* 156 (1957).