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# Tax Deeds and Lis Pendens

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concern to these days which will test our very national existence. Even the humblest law enforcement officer may feel that the faithful discharge of his duties not only helps to preserve peace, and order in his community, but is a real contribution to the cause of democracy.

The lawyers of this state can furnish leadership in this essential undertaking. In every municipality and county they can encourage cooperation with its officers to the end that we may go forward to a higher degree of law observance and law enforcement, and thus make our contribution toward the advance and preservation of Democracy in North Dakota and in the United States.

SEC'Y.

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## TAX DEEDS AND LIS PENDENS

In an action to quiet title to land where the defendant was the assignee of a purchaser of a tax lien who had filed a lis pendens, the plaintiff was the purchaser of a subsequent tax deed. In 1926 the assignor of the defendant, purchased the land in question at a tax sale for the delinquent taxes embracing the years 1920 through 1924 and he made a payment for the taxes of 1925 and 1926. In November, 1928, the land was sold for the taxes of 1927, and the plaintiff purchased the tax deeds at this sale. In 1929 Cowels, the assignor of the defendant, filed a lis pendens in regard to this land, and in the same month at a tax foreclosure proceedings he received a first lien on the property, no mention being made about or in regard to plaintiff's tax deed. Cowels then assigned his decree of foreclosure to the defendant. Plaintiff became the owner of the land in 1932 by a sheriff's deed that was subsequently recorded in 1933. Held for the plaintiff, that the purchaser of a tax certificate does not purchase pendente lite. "A sale for taxes is based on grounds which are adverse to all parties to an action involving title, and which are not in any way involved in the action, and hence the filing of a lis pendens does not make the purchaser at a tax sale a purchaser pendente lite." H. J. Coffin v. Old Line Life Ins. Co., 295 N. W. 884 (Neb. 1941).

This rule seems to be generally followed by the courts. Tax liens are paramount to all other liens and the lien of the state for taxes cannot be ousted by pending litigation. Security Trust Co. v. Root, 72 Ohio St. 535, 74 N. E. 1077 (1905). "Tax title is not a title of a person failing to pay taxes, but is a new title, in nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly excepted." Warren v. Blackman, 62 S. D. 26, 250 N. W. 681 (1933). The general weight of authority seems to be that a tax sale is based on grounds adverse to all parties to an action. See note, Annotated Cases, 1918C 78.

Some courts on the other hand hold the opposite view. In an action for ejectment, the Wisconsin court stated: "The purchaser of a tax certificate or tax title, is not a bona fide purchaser, he buys under the rule of caveat emptor. He takes title subject to its infirmities. He knows that such a title grows out of proceedings hostile to the real owner, by which it is sought to divest him, in invitum, of his title, and that such a title is liable to be defeated by whatever irregularities or commissions may be in the proceedings . . . lis pendens binds both parties and privies. A purchaser pendente lite is assumed to have notice of the proceedings, because he is bound to take notice of the proceedings of the court. Bell v. Peterson, 105 Wis. 607, 81 N. W. 279 (1899) followed in 139 Wis. 398, 121 N. W. 255 (1909). Any person purchasing land at a sheriff's sale during the pendency of an action for the recovery of the land, takes subject to the pending action. Brinkley v. Sanford, 99 Ga. 130, 25 S. E. 32 (1896). A purchaser at a tax sale with the knowledge of a pending action in regard to the land in question is held to be a purchaser pendente lite. Hicks v. Port et al., 38 Tex. Civ. App. 334, 85 S. W. 437 (1905). The Federal Circuit Court seems to follow this same theory, holding the tax deed void and capable of being set aside, where an action had been commenced for the foreclosure of a mortgage and the taxes subquently became delinquent, and the purchaser of such tax certificate (who afterwards received a tax deed), was brought in as a party by the mortgagee. Cohen et al. v. Solomon et al., 66 Fed. 411 (1905). In an Iowa case where there was an action against a city claiming assessments were irregular on a street improvement project and where the land in question was sold for these taxes, the court ruled that the tax sale was held after the action to cancel the assessments had commenced, and that the purchaser of the tax deed purchased pendente lite, taking the land with constructive notice and subject to the result of the litigation. Comstock v. City of Eagle Grove, 133 Iowa 589, 111 N. W. 51 (1907).

North Dakota has not ruled on this same problem, but the court said in Nelson v. Kloster et al., 68 N. D. 108, 277 N. W. 390 (1928): "Under a tax deed, purchaser acquired not merely the title of the person who had been assessed for the taxes and neglected to pay them, but a new and complete title, an independent grant from the sovereign authority and which was independent of previous chain of title." It did not have to decide in the above case on any question relating to lis pendens or other litigation, but it did hold that a tax deed is a paramount deed, and therefore from this holding it would be possible to assume that North Dakota would follow Nebraska in holding that any person purchasing land and receiving a sheriff's deed would have a clear title, regardless of pending litigation. The filing of a lis pendens would be of no avail to any party in an action involving the title to land, the burden being on them to see that the taxes were paid.

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