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Official Records as Affecting Liens

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in deciding whether a particular exemption contract is valid. The test actually seems to be: Were the parties dealing at arm's length? Obviously in cases involving common carriers or public utilities they are not; the same is true of employees in dealings with their employers, and with most members of the public when dealing with warehouses, parking lots, automobile repairmen, banks, and even landlords in certain areas and periods. Perhaps the courts would reach the same result by applying the public interest test, since presumably it is in the public interest that no one be held to an agreement not freely made; but it certainly seems to make better sense to approach the problem by the more direct route.

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LEGISLATIVE NOTE

OFFICIAL RECORDS AS AFFECTING LIENS

Florida Laws 1953, c. 28033

Chapter 28033 of the Florida Session Laws of 1953, appearing as Section 28.221 in the Florida Statutes of 1953, contains discrepancies between the title and the body of the act; consequently, a constitutional question is raised as to the validity of the law. The Florida Constitution provides:[1]

> "Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title . . . ."

The title of chapter 28033 sets forth the subject matter of the legislation as follows:

> "An Act relating to the records kept by the clerks of the Circuit courts; providing for an alternative system of one general book and one index thereto; providing that certified copies

[1]Art. III, §16.

> of this one 'Official Records' book become a lien or notice in the same manner as other records now kept."

Sections 1 and 2 of the act authorize the clerks of the circuit courts, for the purpose of recording instruments required by law to be recorded, to keep one general series of books known as "Official Records" and an index thereto. Section 3 provides that the "recording of instruments in 'Official Records' imparts notice in like manner and effect as if the instruments were recorded in separate books." Section 4 provides:

> "Certified transcripts of judgments and decrees recorded in the 'Official Records' shall become liens on the real estate of the defendants in the county where the same are recorded in the same manner as if said certified transcripts had been recorded in the judgment lien record."

Careful examination reveals that the title provision that *certified copies* of the records become a lien or notice "in the same manner as other records now kept" is not representative of the content of section 4 quoted in the preceding paragraph. For, although *recordation* did create some liens under prior law, in no instance – even in the case of judgments and decrees – did a *certified copy* of these records become a lien under prior law. Accordingly, it seems apparent that section 4 is not embraced in the title.

The Florida Supreme Court has stated that, although the title of a statute need not be an index to or a synopsis of its contents, nevertheless it must fairly set forth the subject of the legislation;[2] further, that the title is in the nature of a label, the purpose of which is to give notice of the subject matter of the act.[3] The Court has held that a title must be sufficiently clear to give notice of the legislative intent and the purposes of the act to those interested in, or affected by, the statute.[4]

It is well settled that title defects of general and permanent session laws are cured by a subsequent legislative enactment of the revised

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[2]State *ex rel.* Cochran v. Lewis, 118 Fla. 536, 159 So. 792 (1935); Gray v. Central Fla. Lumber Co., 104 Fla. 446, 140 So. 320, *cert. denied*, 287 U.S. 634 (1932).

[3]*Cf.* Freeman v. Simmons, 107 Fla. 438, 145 So. 187 (1932); State *ex rel.* Grodin v. Barns, 119 Fla. 405, 413, 161 So. 568, 570 (1935) (dictum).

[4]Orlando v. Johnson, 160 Fla. 622, 36 So.2d 209 (1948); Orlando v. Natural Gas & Appliance Co., 57 So.2d 853, 855 (Fla. 1952) (dictum).

statutes.[5] Enactment of the revision,[6] however, does not affect laws passed during that legislative session. Therefore the defects pertaining to chapter 28033 will not be cured until the 1955 legislative adoption of the revision.

A vital question is thus raised by the proviso in the law under discussion. It purportedly relates to all records kept by the clerks of the circuit courts, including recordation of such instruments as mortgages and deeds as well as the recording of judgments and decrees. The recording of a deed or mortgage does not create a lien. Recordation of a certified copy of a deed gives constructive notice of ownership,[7] while that of a mortgage merely gives notice of an encumbrance upon property.

The provisions of sections 28.21 and 28.22 of Florida Statutes 1953 appear to be merely directory as to the books in which the clerk shall record various instruments. On the other hand, sections 55.08, 55.09, and 55.10 appear to be mandatory in requiring certified copies of judgments and decrees of all courts to be recorded in the judgment lien book prior to becoming a lien on real property within the county of recordation. Section 55.10 provides:[8]

> "No judgment or decree . . . shall be or become a lien . . . until . . . recorded on the *judgment lien record* . . . ."

To alter this clear mandate, an equally clear provision should be embodied not only in the provisions of chapter 28033 but also in the title.

It is clear, therefore, that in no instance will certified copies of "Official Records" become liens. It is extremely probable, also, that no lien will be created, prior to the 1955 legislative enactment of the revised statutes, by the recording of a judgment or decree in "Official Records." If this conclusion is correct, such recordings will become effective as liens only as of the date of the revision's adoption. They

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[5]State *ex rel.* Badgett v. Lee, 156 Fla. 291, 22 So.2d 804 (1945); McConville v. Ft. Pierce Bank & Trust Co., 101 Fla. 727, 135 So. 392 (1931); Rodriguez v. Jones, 64 So.2d 278, 280 (Fla. 1953) (dictum); Christopher v. Mungen, 61 Fla. 513, 532, 55 So. 273, 280 (1911) (dictum).

[6]See FLA. STAT. §16.44 (1953).

[7]Moyer v. Clark, 72 So.2d 905, 906 (Fla. 1954) (dictum).

[8]Emphasis supplied. See FLA. STAT. §28.11 (11) (1953) for the procedure of recordation.

will not apply retrospectively[9] to the interim between the original passage of the act and the effective date of its re-enactment, at least in the absence of a clear expression of legislative intent;[10] this is especially true when to do so would result in impairment of vested rights.[11]

Assuming, then, that some recordations are erroneously placed in "Official Records," the materiality of such an error becomes important. In 1930, the Florida Court held that a chattel mortgage gave constructive notice from the time it was deposited with the clerk, even though it was mistakenly recorded in the deed book.[12] This decision was based upon the predecessor of present section 695.11, which provided, in substance, that every instrument eligible for record was deemed to be recorded from the time it was filed with the officer charged with recording it.[13] The statute was subsequently amended in 1935 by the addition of the clause "and as so recorded and transcribed upon the record shall be notice to all persons."[14] Whether the recording of an instrument in the wrong book continues to have the same effect as at the time of the 1930 decision depends upon whether the instrument so recorded is "transcribed upon the records." In view of the noted mandatory nature of the statute relating to judgment recordation,[15] it is doubtful that this rationale will apply to judgments and decrees as opposed to other instruments.

The statute under consideration is illustrative of the fact that society can occasionally be deprived of beneficial legislation by defects in the drafting of titles.[16]

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[9]*Cf.* Thompson v. Intercounty Tel. & Tel. Co., 62 So.2d 16 (Fla. 1952).

[10]*E.g.*, State *ex rel.* Bayless v. Lee, 23 So.2d 575 (Fla. 1945); McCarthy v. Havis & Perry, 23 Fla. 508, 2 So. 819 (1887); Cragin v. Ocean Lake Realty Co., 101 Fla. 1324, 1341, 135 So. 795, 796 (1931) (dictum).

[11]*In re* Seven Barrels of Wine, 79 Fla. 1, 17, 83 So. 627, 632 (1920) (dictum).

[12]George MacKay & Co. v. Marion Hdw. Co., 100 Fla. 1532, 131 So. 366 (1930).

[13]FLA. COMP. GEN. LAWS ANN. §5708 (1927).

[14]FLA. STAT. §695.11 (1953).

[15]See note 8 *supra*.

[16]*E.g.*, see Copeland v. State, 76 So.2d 137 (Fla. 1954) (Child Molester Act declared unconstitutional because of insufficient title).