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Deed Reformation

Relation Back Doctrine

Deed reformation poses complex legal problems. An earlier article, "Drafting Mistakes and Deed Reformation" (*Law Letter*, Vol. 10, No. 3), considers whether one or both parties to the transaction are bound by a scrivener's (person drafting the deed) mistake.

Drafting errors also raise other pertinent questions. If both parties to the deed agree that a mutual mistake was made and agree to enter a correction deed, when is the correction deed effective? On the day the correction deed is signed or does it relate back to the date of the original deed?

If the mistake is in the legal description, is a subsequent purchaser, without notice of the misdescription, bound by the mistake? In other words, if the grantee later corrects the legal description, how does it affect the present owner?

In Texas, a defective description may be corrected voluntarily by entering a correction deed (*Hodges v. Moore*, 186 S.W. 415). The correction deed with the proper description is effective between the parties on the date of the earlier deed, according to the *doctrine of relation back* (*Parker v. McKinnon*, 353 S.W. 2d 954).

The description in the corrected deed binds the grantor and all subsequent purchasers **with notice** of the defective description (*Polk v. Carey*, 247 S.W. 568). However, a subsequent innocent purchaser of the land without notice of the error takes title according to the description in his or her deed.

If the corrected deed relates back to the original transaction date between the parties, can the doctrine cut off the rights of intervening parties, such as creditors, without notice?

For example, Al contracts and sells 200 acres of land to Bob. The legal description mistakenly describes only 100 acres. Subsequently, creditors obtain a judgment against Al and record an abstract of judgment in the deed records. Bob, after discovering the mistake, asks Al for a correction deed to all the acreage. If the correction deed relates back to the original transaction, would this eliminate the judgment lien against the 100 acres left out of the original description?

The few cases addressing this issue are old. It could be argued that each case is distinguishable on its facts. In each case, however, the court clearly applied the doctrine of relation back to cut off the intervening party's interest.

A synopsis of the three most significant cases follows. Two were decided by the Texas courts of civil appeal, one by the Texas Supreme Court. One case involved a purchaser at a foreclosure sale, another a judgment creditor and the last a lienholder. The cases are discussed in chronological order. The civil court of appeals rendered *Silliman v. Taylor*, 80 S.W. 651, in 1904 . The defendant (Taylor) owned two lots in a subdivision. Lot 7 contained his residence, Lot 8 was vacant.

Taylor contracted with Freeman for improvements to his dwelling on Lot 7. When not paid, Freeman placed a mechanic's lien on the property. He eventually foreclosed. Silliman purchased the property at the sale.

The problem stemmed from Freeman's mistakenly describing Lot 8 in the mechanic's lien. The trustee's deed to Silliman also described Lot 8. When Taylor discovered the error, he repossessed his home on Lot 7 from Silliman.

Silliman offered to convey Taylor title to Lot 8 in return for a deed for Lot 7 to correct the error. Taylor refused. Silliman and Freeman sued to correct the deed.

The court ordered the deed corrected even though it meant setting aside all events following the misdescription in the

mechanic's lien. The court stated, "The fact that an incumbrance has been foreclosed and the properties sold will not prevent the correction of a mutual mistake in the description of the instrument creating the lien; the foreclosure judgment (on Lot 8) being set aside, and a new foreclosure ordered (on Lot 7)."

This case illustrates how far the courts will go when applying the relation back doctrine. Here, it set aside a foreclosure sale, cutting off the purchaser's interest.

The Texas Supreme Court decided *First State Bank of Amarillo v. Jones*, 183 S.W. 874, in 1916. It is the leading case on the relation back doctrine. It contains some startling rulings regarding judgment liens and the recording statutes. The facts and dates are a bit complex. The following synopsis shows the sequence of events, but the dates are not necessarily accurate.

In 1911, Roberts borrowed $5,500 from the First State Bank of Amarillo. To secure the loan, Roberts gave the bank a deed of trust on five tracts as collateral: two lots, a 103.2-acre tract, a 50-acre tract and a five-acre tract.

In 1912, Roberts paid the bank $900 to release the liens on the 50-acre and the five-acre tracts. The bank mistakenly relinquished "all debts" stemming from the deed of trust, not just the $900. However, as the collateral, only the 50- and five-acre tracts were released.

In 1913, Jones, a creditor of Roberts, filed an abstract of judgment against Roberts for $12,986.74. It covered all land owned by Roberts at that time.

Six days after the abstract of judgment was filed, the bank discovered the mistaken release of "all debts" listed in the 1911 deed of trust. Roberts executed a corrected deed of trust when asked by the bank. The corrected deed was filed of record.

In 1914, Jones attempted to execute (sell) Roberts' property to satisfy the abstract of judgment. Jones claimed that when the abstract of judgment was filed, not only the 50 and five-acre tracts were owned by Roberts but also the three other tracts listed as collateral in the 1911 deed of trust.

"A unilateral mistake is insufficient to apply the doctrine of relation back."

The bank contended that it had a superior interest in the three unreleased tracts. The bank claimed the corrected deed of trust executed in 1913 related back to the original deed of trust in 1911, cutting off Jones' interest in the tracts.

The high court ruled in favor of the bank based on the doctrine of relation back. Three crucial rulings in the case are still binding.

First, a judgment lienholder is not in the same legal position as an innocent purchaser for value and without notice. A purchaser expends money in good faith and is justly entitled to be held harmless. The judgment lienholder, on the other hand, does not expend money. If the lien fails to attach to specific property, the lienholder loses nothing. The judgment remains unimpaired to its full extent.

Note. While the judgment may remain unimpaired, the lienholder's security is jeopardized.

Second, the rules of equity outweigh the force and effect of the recording statutes. According to the court, "If the recital of the full payment of the note held by the bank against Roberts was occasioned by a mutual mistake, its correction was an equitable right to which the bank is entitled. **This equitable right was not controlled by our registration laws but was superior thereto"** *Hawkins v. Willard*, 38 S.W. 365 [emphasis added].

In the Hawkins case, a mother transferred land to her son (basically in trust). The son used the property for collateral to borrow money to discharge his mother's debts. He then reconveyed the land back.

Before the return deed was recorded, one of the son's creditors seized the land under a writ of execution similar to the *Jones* case. The court ruled the creditor had no interest in the property. The son held the land in trust for his mother. Her *equitable rights*, not subject to either of the statutes of fraud or registration (recording statutes), were superior to those of the creditor.

Third, the rules of equity may protect someone from his or her own mistakes. "If the release was in fact a mistake, then the bank should not, and would not,

lose its lien by reason thereof. In such circumstances, equity would reform the release so as to correct the mistakes and speak the truth." The court later stated that this rule applies to *mutual mistakes*, not when collusion is involved or a unilateral mistake is made. (See *Poulter v. Miller*, 221 S.W. 965.)

This principle was recently applied by a Texas appellate court in *Cadle Co. v. Caamano*, 930 S.W. 2d 917 (1996). The facts are similar to the *Jones* case.

In 1987, Coleman executed a deed of trust and security agreement to the bank. It was filed November 9, 1987, in Harris County. Approximately one year later, on September 28, 1988, the bank executed a "Full Release of Lien," releasing the 1987 deed of trust and the recited collateral. It was recorded October 18, 1988.

On November 13, 1989, the bank executed an ex parte "Affidavit of Mutual Mistake." In it, the bank stated that it intended to grant a partial, not full, release on September 28, 1988. During the 14-month interval, Coleman conveyed the land used for collateral to a third party.

The appellate court ruled that the ex parte affidavit had no effect on the released property. The affidavit is hearsay and not proof of any matters asserted. Had there been a correction deed by Coleman based on a **mutual mistake**, the facts would have paralleled the *Jones*' decision. However, a unilateral mistake is insufficient to apply the doctrine of relation back.

The court in the *Jones* case also emphasized the fact that Jones (the foreclosing creditor) was not necessarily innocent: "Under such circumstances, even a person claiming as an innocent purchaser would fail in his plea, since a mistake in the release is **apparent on its face** when read in connection with the deed of trust" [emphasis added].

Query: How can an instrument have an ***apparent mistake on its face*** when it must be read in connection with the initial deed of trust filed a year earlier?

The last case, *Frazier v. Hanlon Gasoline Co.*, 29 S.W. 2d 461, decided by the court of civil appeals in 1930, involved an innocent lienholder. In this case, Heatley sold Frazier land via owner financing. The note and vendor's lien retained by Heatley (the seller) was assigned (sold) to Green for value.

Heatley then discovered that, because of a mutual mistake in the deed to Frazier, he had conveyed too much land. However, to correct the mistake, Green's security interest in the assigned note and vendor's lien would be impaired. (Green was unaware of the mistake in the legal description when the note and lien were purchased.)

The court ordered the deed reformed in spite of the innocent intervening lienholder (Green). However, the court permitted the reformation only where ". . . it being practical for the court, by decree, to protect the defendant Green against loss of his security."

This opinion departed from the previous case in which the Texas Supreme Court did not recognize the impairment to the security as a limiting factor. However, the previous case involved an unsecured judgment creditor. This case involved a secured lienholder. Evidently, the distinction is important when applying the doctrine of relation back.

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