

Ongalk Ra Teblak v. Santos, 7 ROP Intrm. 1 (1998)
ONGALK RA TEBLAK, represented by Rimat Sebal,
Appellant,

v.

BENJAMIN SANTOS,
Appellee.

CIVIL APPEAL NO. 35-95
Civil Action No. 204-91

Supreme Court, Appellate Division
Republic of Palau

Argued: October 31, 1997
Decided: January 9, 1998

Counsel for Appellant: Oldiais Ngiraikelau, Esq.

Counsel for Appellee: Kevin N. Kirk, Esq.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

BEATTIE, Justice:

In this appeal we consider the application of the real estate recording statute as it affects the rights of the parties, each of whom received a deed purporting to convey the same property.

I.

The property involved in this case is a portion of Tochi Daicho lot 425, known as Ngermalk, located in Ngardmau.¹ Reklai Lomisang is registered as the owner of the property in the Tochi Daicho. By a deed dated March 20, 1967, Lomisang conveyed the property to appellee Ben Santos and his father, Ngodrii Santos. The deed was not recorded until March 22, 1990, some 23 years after its execution. Ngodrii is now deceased, and Ben Santos claims sole ownership of the property through inheritance of his father's interest.

In 1976, Reklai Lomisang sold the same property to Masako Kumangai and executed a deed dated October 27, 1976 which purported to convey the property to Kumangai. This deed

¹ The entire lot 425 was at issue in the Trial Division. As will be seen, Masako Kumangai, received a deed to the entire lot and then gave appellant herein a deed purporting to convey a portion of it to appellant. Kumangai did not appeal the trial court's decision, so only the portion claimed by appellant is involved in this appeal.

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was recorded on October 27, 1976. Subsequently, by deed dated December 13, 1983, Kumangai purported to convey a portion of the property to Ongalk ra Teblak. This deed was recorded on February 21, 1984.

The LCHO issued a determination in favor of Kumangai and Ongalk ra Teblak, finding that, since Kumangai and Ongalk ra Teblak each recorded their deeds before Santos, they took title free of Santos' claim. The trial court found that Kumangai had notice of the earlier deed to Santos at the time she received her deed and that, therefore, the recording statute did not prevent the Santos deed from prevailing over hers, despite the fact that she was the first to record. The recording statute, 39 PNC §402, provides that

No transfer of ... title to real estate or any interest therein, 12 . . . shall be valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer . . . or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded.

Clearly, the statute requires that, in order for a transferee of real property to prevail over an earlier transferee of the same property, he must do more than simply record his deed first. He must also pay valuable consideration for the property in good faith and without notice of the prior transfer. In other words, he must be a bona fide purchaser of the property. *Ueki v. Alik*, 5 ROP Intrm. 74, 77 (1995) (to establish status as bona fide purchaser, one must show acquisition of real property interest in good faith, for value, and without notice of prior transfer). Thus, the trial court correctly applied the law with respect to Kumangai's claim.

Appellant argues that the finding that Kumangai had notice of the Santos deed was clearly erroneous. Although there was conflicting testimony on the issue, there was sufficient evidence from which a reasonable trier of fact could find that Kumangai had notice of the prior deed, and we therefore uphold the finding. *See Umedib v. Smau*, 4 ROP Intrm. 257 (1994). Accordingly, the trial court correctly determined that Santos' deed prevailed over Kumangai's notwithstanding that Kumangai was the first to record.

II.

Turning to the claim of Ongalk ra Teblak, the trial court held that, because Santos' deed prevailed over Kumangai's, it also necessarily prevails over the deed to Ongalk ra Teblak because the claim of Ongalk ra Teblak is "entirely derivative of and dependent upon Kumangai's claim and thus requires no separate analysis."² The trial court based its holding on the common law principle that one cannot sell what one does not own.

The recording statute, however, changed the common law and under certain circumstances allows a person who qualifies under the statute to receive good title to real property from one who does not hold actual title but who has record title. For example, if a person conveys real property to another, he no longer owns it. Yet, we have held that if he makes

² Decision and Order, August 19, 1993 at n. 1.

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a second conveyance of the same property to a bona fide purchaser who records his deed before the first transferee records, the second purchaser still takes good title even though the seller no longer owned the property when the conveyance to the second purchaser was made. *See Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 43 (1993).

It is apparent from the trial court's findings that Ongalk ra Teblak recorded its deed before Santos recorded. Thus, if we analyze the respective interests of the parties under the recording statute rather than the common law, the recording statute provides that the Santos deed is invalid against the Ongalk ra Teblak deed if Ongalk ra Teblak was a bona fide purchaser for value without notice of the Santos deed.

We review the trial court's conclusions of law *de novo*. The trial court erred in holding, that Ongalk ra Teblak's rights were **L3** entirely derivative of and dependent upon Kumangai's claim. Were that rule to prevail, it would defeat the purpose of the recording statute. Its purpose is to change the common law to protect subsequent purchasers from secret liens and previous unrecorded conveyances by providing that such purchasers without notice of prior conveyances can rely upon recorded documents within the record owner's chain of title.³ Thus, the owner of record is deemed the true owner insofar as subsequent purchasers without notice are concerned⁴, notwithstanding any unrecorded previous conveyances.

The protection of the recording statute is not limited by its terms to a subsequent purchaser from the same grantor who made the unrecorded conveyance. Thus, it is generally held under similar statutes that a transferee is "entitled to protection as a bona fide purchaser as against a prior interest in the property, although the transferor or any prior transferor in the chain of title is not entitled to such protection." 77 Am. Jur. 2d *Vendor and Purchaser*, § 510 at 464 (1997); and *see Hallett v. Alexander*, 114 P. 490 (Colo. 1911). The question whether such transferee is entitled to such protection depends on whether he has fulfilled the requirements of the recording statute.⁵

³ A purchaser has constructive notice only of recorded instruments that are within his "chain of title". This is because, for example, if a grantor makes a conveyance of property before he acquires record title, and his grantee records his deed prior to the grantor's acquisition of record title, a second grantee who diligently examines all recorded conveyances under the grantor's name from the date that the grantor obtained record title will not discover the prior conveyance. *See Sabo v. Horvath*, 559 P.2d 1038 (Alaska 1976).

⁴ It is generally held that the rule does not prevail where the record owner's deed is absolutely void ab initio, as where he obtains a forged deed. *Rasmussen v. Olsen*, 583 P.2d 50 (Utah 1978). On the other hand, where the record owner's deed is merely voidable, as where he obtains it by fraud, he can still pass good title to a bona fide purchaser without notice of the fraud who first records. *See W.T. Rawleigh Co. v. Groseclose*, 49 P.2d 1085 (Okla. 1935); *Hendricks v. Lake*, 528 P.2d 491 (Wash. Ct. App. 1974). Thus, our holding today is not inconsistent with *Aquon v. Aquon*, 5 ROP Intrm. 122 (1995), in which we held that where a quiet title judgment was absolutely void ab initio due to lack of jurisdiction, a bona fide lessee from the party named as owner in the void judgment took nothing because the void judgment gave nothing to the lessor.

⁵ Paradoxically, it is generally held that, a bona fide purchaser who fulfills the

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The recording statute thus promotes certainty in title transactions in two ways. First, it affords transferees of real property the ability to preserve their rights against subsequent purchasers by promptly recording their deeds. Second, it protects purchasers of real property against unrecorded prior conveyances and encumbrances concerning 14 the property of which they have no knowledge.

CONCLUSION

Under 39 PNC § 402, Ongalk ra Teblak's claim was not wholly dependent upon Kumangai's claim, but rather it was entitled to the protection of the statute if it fulfilled the requirements of the statute. Accordingly, we REVERSE the trial court's judgment regarding the claim of Ongalk ra Teblak and REMAND this matter to the trial court for further proceedings consistent with this Opinion.

requirements of the recording statute can convey good title to a person who has knowledge of the prior unrecorded conveyance. *W.W. Planning, Inc. v. Clark*, 456 P.2d 406 (Ariz. Ct. App. 1969); *Hendricks*, 528 P.2d at 496; 77 Am. Jur. 2d *Vendor and Purchaser*, § 513 (1997). This is because, a different rule would vitiate the benefits given a bona fide purchaser under the recording statute by rendering impossible for him to sell the property for full value. But a different rule obtains, of course, where the bona fide purchaser reconveys the property back to a party guilty of a violation of duty regarding the land, such as the grantor who sold the same property twice. *Id.* at §§ 511 and 512.