IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DAVID CARPENTER, Appellant, v. DAVID GLENN and REBECCA GLENN, husband and wife, Respondents.	)))))))))))	NO. 64905-1-I DIVISION ONE UNPUBLISHED OPINION FILED: June 1, 2010

Lau, J. — Actual notice of a prior recorded or unrecorded real property interest defeats bona fide purchaser status under Washington's recording act, RCW 65.08.070. After David Carpenter purchased residential real property in Centralia, Washington by quitclaim deed, David and Rebecca Glenn secured and recorded quitclaim deeds to the same property despite actual notice of Carpenter's prior unrecorded deed. The trial court granted summary judgment quieting title to the property in the Glenns' favor. Carpenter appeals, arguing that the Glenns were not bona fide purchasers for value and their interest is therefore subordinate to his. Because there is no material fact

dispute over the Glenns' actual notice of Carpenter's prior unrecorded interest, they are not bona fide purchasers. The trial court erred by entering summary judgment in their favor. We reverse and remand with instructions to enter judgment quieting title to the property in Carpenter's favor.

FACTS

The essential facts are undisputed. On February 21, 2001, Gary Green conveyed his interest in Centralia real property to his sister, Yvonne Griffith, by quitclaim deed. Griffith then conveyed the property by quitclaim deed to David Carpenter on March 21, 2001. For reasons not apparent in this record, the quitclaim deed was in the possession of Carpenter's brother, Kim, for some time until Carpenter retrieved it and recorded it on September 26, 2008.

In 2005, Carpenter rented the property to David and Rebecca Glenn. They signed a residential rental agreement, rental rules, a landlord-tenant checklist, lead-based paint disclosure, and a pet agreement. Later, in March 2006, the Glenns learned about Carpenter's unrecorded deed to the property and asked him about it.[1] Carpenter told David Glenn that "his brother Kim had a Deed (or Deed of Trust—I don't recall exactly which), then said maybe it was a tax deed." And several months later, David Glenn called Carpenter to ask about the deed and Carpenter told him "he had still not recorded a deed," but "he would clear it up—his brother was not returning his

[1] The Glenns learned that Carpenter had not recorded the deed after the property was damaged by a flood and they discussed compensation with a City of Centralia insurance adjuster. The adjuster stated that the City would only compensate the record owner and that Carpenter was not the record owner.

calls, etc., etc."

In October 2007, the Glenns consulted attorney Michael Mittge, who conducted an investigation to determine title to the property. Mittge told the Glenns that Green's mother, Alice Green,[2] was still the record owner of the property and that the Department of Social and Health Services (DSHS) had filed a $74,681.90 lien against the property for Medicaid care. He also discovered a deed of trust from Alice Green to Kim Carpenter for $500.

When Mittge determined that Carpenter had no recorded deed to the property, he advised the Glenns to stop paying rent. Mittge then sent a letter to Carpenter notifying him that the Glenns would no longer pay rent because Carpenter did not own the property. At this point, the Glenns had been making monthly rental payments for over two and a half years. When the Glenns failed to pay rent in September, October, and November 2007, Carpenter issued a three-day notice to pay rent or vacate. But the Glenns paid the past due rent because they "didn't feel [they] could afford to move forward against Carpenter at that time, and took the line of least resistance and paid up the rent." David Glenn also called Carpenter around that time, who again "told him that [he] had an unrecorded quit claim deed to the property, but that it was in [his] brother's possession." The Glenns paid rent to Carpenter for the next eight months.[3]

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[2] When Alice Green died intestate in July 2000, the real property passed to her two adult children, Gary Green and Yvonne Griffith.

[3] The Glenns paid rent in May 2008, but only after receiving a three-day notice because of late payment.

In July 2008, the Glenns "received papers from the State that they were re-filing the foreclosure lawsuit on the Medicaid lien." David Glenn spoke to Green, who "had also been served with DSHS medicaid lawsuit and was concerned about liability." David Glenn "told him if he wanted to quit claim the property to [the Glenns], he would be 'off the hook' for the DSHS suit." So Green quitclaimed the property to the Glenns on August 23, 2008. Two days later, the Glenns recorded the deed. The deed recites that the conveyance was "for and in consideration of Gift." And Mittge secured a quitclaim deed from Yvonne Griffith to the Glenns in exchange for $1,000.[4] That deed was recorded on September 17, 2008. Carpenter finally recovered his deed from his brother in September 2008 and recorded it on September 26.

Meanwhile, the Glenns again stopped paying rent in August and September 2008. In response, Carpenter issued another three-day notice to pay rent or vacate on September 17, 2008. When they failed to pay, Carpenter filed an unlawful detainer action. In their answer, the Glenns alleged as an affirmative defense that they owned the property. By stipulated order, the parties agreed to convert the unlawful detainer action to a quiet title and ejectment action.

Carpenter moved for summary judgment on March 18, 2009, arguing that the Glenns' deeds did not take priority over his later recorded deed because the Glenns (1) had actual and inquiry notice of his prior interest and (2) did not pay valuable consideration for their deeds. The Glenns filed a response and cross-moved for

[4] That deed lists the consideration as "Ten dollars and other good and valuable consideration."

summary judgment to quiet title in their favor. The trial court granted summary judgment in the Glenns' favor and denied Carpenter's subsequent motion for reconsideration. This appeal followed.

ANALYSIS

Standard of Review

When reviewing an order granting summary judgment, we engage in the same inquiry as the trial court, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 501, 115 P.3d 262 (2005). Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c); Hearst, 154 Wn.2d at 501. And summary judgment is proper if, in view of all the evidence, reasonable persons could reach only one conclusion. Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

Bona Fide Purchaser Status

This case turns on whether the Glenns qualify as bona fide purchasers under Washington's recording act. Carpenter asserts that they cannot establish bona fide purchaser status because they had actual or inquiry notice of his prior interest in the property and because they did not pay value for their deeds. The Glenns respond that they are bona fide purchasers because they conducted a reasonable inquiry and they paid sufficient consideration for their deeds. Under Washington's recording act,

> [a] conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion
> thereof whose conveyance is first duly recorded. An instrument is deemed

recorded the minute it is filed for record.

RCW 65.08.070

The bona fide purchaser doctrine provides that a good faith purchaser for value who is without actual, constructive, or inquiry notice of another's interest in real property has a superior interest in the property. Tomlinson v. Clarke, 118 Wn.2d 498, 500, 825 P.2d 706 (1992); see also Miebach v. Colasurdo, 102 Wn.2d 170, 175, 685 P.2d 1074 (1984) ("'A bona fide purchaser for value is one who without notice of another's claim of right to, or equity in, the property prior to his acquisition of title, has paid the vender a valuable consideration.'") (quoting Glaser v. Holdorf, 56 Wn.2d 204, 209, 352 P.2d 212 (1960)). "Good faith" "means [a subsequent purchaser] shall not have knowledge or notice of the other party's interest in some way outside the recording of the instrument that creates that interest." William B. Stoebuck & John W. Weaver, Washington Practice: Real Estate: Transactions § 14.10, at 150 (2d ed. 2004). And a bona fide purchaser of an interest is entitled to rely on record title. Lind v. City of Bellingham, 139 Wash. 143, 147, 245 P. 925 (1926); Levien v. Fiala, 79 Wn. App. 294, 299, 902 P.2d 170 (1995). Conversely, a subsequent purchaser who does not have bona fide purchaser status cannot simply rely on title records. The determination of a buyer's status as a bona fide purchaser is a mixed question of law and fact because what a purchaser knew is a factual question, but the legal significance of that knowledge is a legal question. Peoples Nat'l Bank of Wash. v. Birney's Enters., Inc., 54 Wn. App. 668, 674, 775 P.2d 466 (1989); Steward v. Good, 51 Wn. App. 509, 512, 754 P.2d 150 (1988).

There is no Washington case

authority on what constitutes "actual notice" or "actual knowledge." Stoebuck & Weaver, supra, at 150. But Stoebuck and Weaver explain,

> It means that the subsequent party has received a direct communication that some prior interest exists: nothing is left to inference, but is directly stated. The subsequent party may see the unrecorded instrument that created the interest. A grantor may tell his grantee about an unrecorded interest or the holder of that interest may tell the grantee. The grantee may learn of it by his other business dealings or from someone in the community. However the information is received, the content of the message is that the prior interest exists.

Stoebuck & Weaver, supra, at 150.

Carpenter argues that "[David] Glenn admits to notice of Carpenter's interest in the property and makes no claim that he paid Green anything for his quit claim deed." Br. of Appellant at 14. The Glenns do not dispute they had actual notice of Carpenter's prior unrecorded deed. They argue instead that they were only on inquiry notice and once they conducted a reasonable inquiry that showed no recorded prior interest, they were entitled to rely on record title.

But as long as there is a direct communication that a prior unrecorded interest exists, the subsequent purchaser has actual knowledge. At that point, any subsequent inquiry would be fruitless because the interest is unrecorded. Accordingly, a direct communication regarding "'another's claim of right to, or equity in, the property prior to his acquisition of title'" defeats bona fide purchaser status. Miebach, 102 Wn.2d at 175 (quoting Glaser, 56 Wn.2d at 209).

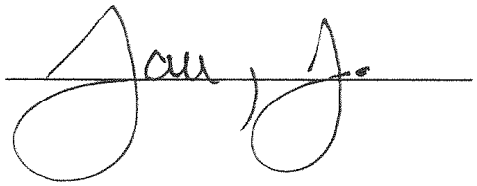
This rule comports with the purpose of recording statutes, which is "to secure subsequent purchasers against prior secret conveyances and encumbrances." 1 Joyce

Titles, § 12, at 57–58 (3d ed. 2003); see also Pioneer Nat'l Title Ins. Co. v. County of Spokane, 52 Wn. App. 869, 765 P.2d 36 (1988). And because "[a] person who has knowledge or notice of a prior conveyance is not prejudiced by its not appearing in the public record . . . most states' recording acts
do not protect purchasers with knowledge or notice against the prior conveyance." 1 Palomar, supra, § 12, at 58. The same is true of Washington's recording act jurisprudence, which specifically exempts subsequent purchasers with actual knowledge from protection. See Miebach, 102 Wn.2d at 175

Here, Carpenter's undisputed declaration testimony states that around November 2007, "I received a call from [David] Glenn asking me about my ownership and I told him that I had an unrecorded quit claim deed to the property, but that it was in my brother's possession." After this telephone conversation with Carpenter, the Glenns continued to pay rent to Carpenter for eight months until August 2008. And our review of the record shows that the Glenns presented no evidence that raises a material fact question on whether they had actual notice of Carpenter's prior unrecorded interest in the property. Because no material issues of fact exist that the Glenns had actual notice of Carpenter's prior, unrecorded interest in the property, Carpenter is entitled to judgment as a matter of law quieting title to the property in his favor.[5]

[5] Given our decision, we do not address Carpenter's remaining contentions.

We reverse and remand with instructions for the trial court to enter summary judgment quieting title in Carpenter's favor.



WE CONCUR: