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Estoppel by Deed - Application Against a Tenant by the Entirety - Columbian Carbon Company v. Kight

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Estoppel By Deed — Application Against A Tenant By The Entirety

Columbian Carbon Company v. Kight[1]

Appellant, the Columbian Carbon Company, a Delaware Corporation, filed a bill of complaint in the Circuit Court of Garrett County against the appellees, Edward G. Kight and wife, Evelyn Kight Warsaw, divorced wife of Pierce H. Warsaw, and Ray Kight, to obtain a decree declaring that an oil and gas lease of a tract of land, which was executed by a husband alone during coverture and which pertained to land held with the wife by the entireties, be valid and enforceable as to husband's interest after divorce. The bill alleged in substance that Pierce H. Warsaw and his wife, Evelyn Kight Warsaw, acquired the land in question in 1946 as tenants by the entireties. On February 24, 1953, Warsaw alone executed a lease to the appellant wherein he warranted generally his title to the land, expressly agreeing to defend the title, and covenanted that appellant should have quiet possession of the land. The lease was duly recorded on March 6, 1953. On June 22, 1953, the Warsaws were divorced. In December of 1953, Warsaw and his divorced wife conveyed the land to Edward G. Kight; and

[1] 207 Md. 203, 114 A. 2d 28 (1955).

in January, 1954, Edward G. Kight and his wife conveyed one-half interest in the land to the aforesaid Evelyn Kight Warsaw. In July, 1954, Edward G. Kight and wife and Evelyn Kight Warsaw leased the land to Ray Kight. The lower court sustained a demurrer filed by the appellees on the ground that the lease executed by Warsaw alone was void. The Court of Appeals reversed the decision of the lower court and held that where a lease of real estate is made by a person who has no present *assignable* interest therein, but who acquires an *assignable* interest during the term, the lease by the doctrine of estoppel inures to the benefit of the lessee by operation of law.

This case with its peculiar facts warrants a discussion of the nature and origin of the doctrine of estoppel by deed. The modern doctrine of estoppel is an outgrowth of the common law doctrine of warranty which originated under the feudal system.[2] By that system an overlord was bound to protect and defend the fee which his vassal had derived from him; and in case he failed to do so and the vassal was evicted because of a superior title, the overlord was under an implied obligation to give him another feud of equal value. This implied obligation was known as the doctrine of warranty. This same obligation is now imposed where a common law conveyance is accompanied by a covenant of warranty.[3] If one without title purports to convey a designated estate, the title that he subsequently acquires will inure to the benefit of his grantee without the need of judicial aid in order to prevent circuity of action.

The principle of estoppel based on warranties has long been followed in Maryland. As far back as 1856, the Court of Appeals held that:

> ". . . a grantor is estopped from denying the title of his grantee; a title acquired by the grantor, after he has conveyed, by warranty, land to which he had no title, enures to the grantee by estoppel."[4]

Dictum in the present case[5] elaborated the principle by declaring that a title acquired by a grantor subsequent to a conveyance normally inures by estoppel to the benefit of his grantee by operation of law, although the deed does not contain any covenant of warranty. Since the Maryland

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[2] Doe d. Potts v. Dowdall, 3 Houst., (Del.) 369, 11 Am. Rep. 757 (1873).

[3] Armour Realty Co. v. Carboy, 124 N. J. L. 205, 11 A. 2d 243 (1940); Donohue v. Vosper, 189 Mich. 78, 155 N. W. 407 (1915); Breen v. Morehead, 126 S. W. 650 (Tex. Civ. App., 1910).

[4] Funk v. Newcomer, 10 Md. 301, 316 (1856).

[5] *Supra*, n. 1, 210.

courts recognize that title actually passes to the grantee without court action and without delay, it would logically follow that the obligation of estoppel binds not only the grantor in such a case but his heirs and assigns. It can be said that the estoppel adheres to the land and is transmitted with the estate, whether the same passes by descent or purchase. And the estoppel becomes, and forever after remains, a muniment of the title so acquired; and when the party so estopped conveys it, his grantee takes it subject to such estoppel.

Maryland stands with the majority of the jurisdictions in saying that title passes to the grantee without judicial aid and without delay. In a minority of the jurisdictions the cases indicate that it does not pass automatically, though the grantor will personally be estopped to deny that it has passed, and title can be quieted as against him.[6] But what of the majority rule — if title automatically passes by estoppel, is the doctrine of estoppel really equitable? Suppose O owned Blackacre, vacant land. A conveyed Blackacre to B, a bona fide purchaser. B, believing A owned the land, accepted and recorded the deed. Subsequently O conveyed Blackacre to A. A recorded his deed. A then conveyed to C, a bona fide purchaser. C accepted and recorded his deed without actual knowledge of B's prior deed. B claims under estoppel by deed; C claims under a clear record title. Should priority of title be given to B, who from his negligent failure to examine the records has purchased Blackacre from A having no title, over that of C, who without negligence, in good faith, for value, and in reliance upon the chain of title has purchased after A has acquired the record title from O?

The leading case which recognized this problem is *Wheeler v. Young*,[7] a Connecticut case. In that case, the court said:

> "The doctrine of estoppel is one which, when properly applied, 'concludes the truth in order to prevent fraud and falsehood, and imposes silence on a party, only when, in conscience and honesty, he should not be allowed to speak'. . . . 'As understood and applied in modern times, there is nothing harsh or unjust in the law of estoppel. It cannot be used but to subserve the cause of justice and right.' . . . 'To allow a title to pass by conveyance executed and recorded before it is acquired may therefore be a surprise on subsequent purchasers, against which it is not in their power to guard,

[6] 3 AMERICAN LAW OF PROPERTY (1952), Sec. 15.21, 847; 25 A. L. R. 83.
[7] 76 Conn. 44, 55 A. 670 (1903).

> and is contrary to the equity which is the chief aim of the doctrine of estoppel as molded by the liberality of the modern times'."[8]

The court further stated:

> "It may be said that such estoppel by deed is not an equitable doctrine, but is a rule of the common law, based upon the recitals or covenants of the deed. We reply that as a rule of law it has been so far modified by the registry laws as to be no longer applicable to cases where its enforcement would work such an injustice as to give priority to the title of one who negligently failed to examine the records before purchasing of a grantor having no title, or who purchased at the risk that his grantor might thereafter acquire title over that of a subsequent purchaser in good faith, and in reliance upon the title as it appeared of record. 'The whole system of registering deeds of land would become of no value if a purchaser could not rely upon the records as he finds them'."[9]

Several other jurisdictions have followed the doctrine laid down in the *Wheeler* case.[10] The cases[11] in those jurisdictions indicate that a purchaser of land is not required to examine the records for prior conveyances executed and recorded by his grantor prior to the time the latter acquired the record title, and that such purchaser is not, therefore, charged with notice of the record of such a prior deed or mortgage. In tracing the logic and reasoning in these decisions, it seems to be an inescapable conclusion that these jurisdictions rely mainly upon the alphabetical index system, which is incorporated in their registry laws. The same situation arises in the State of Maryland, for Section 67 of Article 17 in Flack's 1951 Annotated Code provides that the official land record index for all record offices in Maryland shall be the alphabetical index. However; the public local laws of Baltimore City provide an additional index commonly known as the "Block Index" or "Geographical Index" for the purpose of aiding one searching title in that city.[12] Under this type of index all conveyances affecting

[8] *Ibid*, 672.
[9] *Ibid.*
[10] *Ibid.*
[11] Breen v. Morehead, 104 Tex. 254, 136 S. W. 1047 (1911); Richardson v. Atlantic Coast Lumber Corporation, 93 S. C. 254, 75 S. E. 371 (1912); Anderson v. Farmer, 189 S. W. 508 (Tex. Civ. App., 1916).
[12] Charter and Public Local Laws of Baltimore City, Sec. 995, *et seq.* (1938).

the same tract of land are indexed together irrespective of the name of the grantor, so that in searching the index one automatically covers any conveyance executed and recorded prior to the date at which the grantor acquired the record title. Such a type of index greatly relieves the burden placed upon the examiner in searching the records at large, and consequently the recognition of the doctrine of estoppel by deed as a hard and fast rule of law, applicable against a subsequent purchaser from the common grantor, would not lead to an inequitable result in Baltimore City.

Upon a close examination of the facts in the instant case, it becomes evident that the rule laid down in those cases following the *Wheeler* case[13] would not apply. The appellant's lease was recorded and it was in the appellees' chain of title. Warsaw did have an interest of record in the land when he executed the lease to the appellant, but it was non-assignable, because when a husband and wife own an estate by the entireties, each is entitled to the whole estate by reason of their legal unity, but neither can convey any interest without the assent of the other.[14] When the appellees acquired their conveyance, a careful examination of their chain of title would have disclosed the conveyance to the appellant which was executed and recorded subsequent to the time at which the deed to Warsaw and his wife was recorded.

The instant case should be distinguished from those Maryland cases[15] that treat the conveyance of the grantor as a contract to convey, enforceable by an action for specific performance upon the grantor's subsequent acquisition of title. In those cases the present consideration paid to the grantor at the time of the execution of the deed permitted equity to decree specific performance without relying upon the doctrine of estoppel by deed, while in the instant case no present consideration was paid by appellant for the lease. Also if a deed purports to convey merely the grantor's interest in property, as distinguished from a designated estate, the doctrine of estoppel will not apply.[16] In other words, an after-acquired title will not inure to the benefit of a grantee under a deed which merely purports to release or quit claim the grantor's then existing interest in the land. Like-

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[13] *Supra*, n. 7.

[14] McCubbin v. Stanford, 85 Md. 378, 390, 37 A. 214 (1897); Tizer v. Tizer, 162 Md. 489, 496, 160 A. 163, *dis. op.*, 161 A. 510 (1932).

[15] Schapiro v. Howard, 113 Md. 360, 78 A. 58 (1910); Keys v. Keys, 148 Md. 397, 129 A. 504 (1925); Bishop v. Horney, 177 Md. 353, 9 A. 2d 597 (1939).

[16] Schapiro v. Howard, Bishop v. Horney, both *ibid.*

wise, the doctrine will not apply if a deed purports to convey or transfer a possibility of acquiring property; but the transfer may be enforced as a contract to convey by the transferee and all persons claiming through him, provided a present consideration had been paid.[17]

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[17] Keys v. Keys, *supra*, n. 15.