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Property

Edward G. Menzie

PROPERTY

Property law was an infrequent source of appellate litigation in South Carolina during the survey period. Aside from some problems concerning misrepresentation and mechanic's liens there was little opportunity for the court to do more than reiterate established principles of South Carolina law.

A case which ran the gamut from The Rule in Shelly's Case and fee simple conditionals to color of title and constructive adverse possession was *Woodle v. Tilghman.*[1] Here the court affirmed a lower court decision holding that an 1889 will,[2] finally interpreted in 1959 litigation as granting to the plaintiffs no interest in a certain tract,[3] could still provide color of title for the constructive adverse possession of that tract.[4] This decision was based on the general view that color of title "is anything which shows the extent of [an] occupant's claim."[5]

The court concluded by saying:

> The principal purpose of color of title in adverse possession proceedings is not to show actual grant of land or interest therein, but to designate the boundary of possessor's claim. It constructively extends possession to the boundaries described in the instrument under which color of title is claimed.[6]

1. 165 S.E.2d 702 (S.C. 1969).
2. The pertinent section of which read as follows:
   I give and devise to Della Moneyham . . . for life only and then unto the lawful issue of her body . . . all that tract of the James Godbolt land North of a line run . . . from the Great Pee Dee River in the direction of Bear Branch. *Id.* at 703.
3. Woodle v. Tilghman, 234 S.C. 123, 107 S.E.2d 4 (1959). Here the court reluctantly held that since The Rule in Shelly's Case was still in operation prior to 1924, Della Moneyham (Woodle) was holder of a fee simple conditional estate and a 1903 deed to Philip Dew after the birth of issue did serve to transfer title out of her lineage, the plaintiffs in this action.
4. Della Moneyham (Woodle) remained in possession of the property after her conveyance until her death in 1931. From 1931 the plaintiffs occupied the property believing they were entitled to it as the issue of Della Moneyham (Woodle). In 1948 after a series of conveyances a deed to the tract was recorded under the chain of title of Philip Dew and the plaintiffs sought to have this cloud removed from their title. After the decision honoring Dew's chain of title in 1959 (*see* note 3 *supra*), the plaintiffs filed a supplemental complaint claiming a right to the property by adverse possession under color of title. The defendants demurred.
5. 165 S.E.2d at 705, *quoting* Sprott v. Sprott, 114 S.C. 62, 72, 96 S.E. 617, 619 (1918). For a statement of the law concerning color of title, *see* Mullis v. Winchester, 237 S.C. 487, 118 S.E.2d 61 (1961) (cited by the court).
6. 165 S.E.2d at 705. *See also* Comment, *Constructive Adverse Possession Under Color of Title in South Carolina,* 10 S.C.L. REV. 279 at 287 (1958).

This seems to mean that even though the will vested no interest in the plaintiffs, their reliance on the instrument while in adverse possession could extend their claim beyond what was actually occupied to all the land described in the will.

Belue v. Fetner[7] was another case decided on basic property law principles. It concerned a remainderman who requested partition and sale of a forty-eight acre tract of land in Union County. In denying defendant's claim of fee simple title to the property the supreme court noted that it had been agreed in the lower court[8] that the defendant's interest derived from an owner of only an undivided one-half interest for life.[9] Since a life tenant can convey no more than he owns,[10] even a master's deed at a subsequent foreclosure sale could convey no more than a life estate. The remainderman, therefore, took the property free and clear of any claim made through the original life tenant who died in 1963. The defendant's claim to a fee simple by adverse possession was also quickly dismissed by the court's statement that an adverse possessor cannot hold adversely to a remainderman until the life estate terminates.[11]

A case of some interest is *Hardin v. Horger*,[12] an action commenced by the Bishop of The Methodist Church to restrain a seceding congregation from making use of certain church property. The property had been granted in trust to The Methodist Church in 1879[13] and had been under its control until sometime

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7. 164 S.E.2d 753 (S.C. 1969).
8. Both attorneys stipulated certain facts as a basis for decision. The court will not go beyond such agreed stipulations. Forbes v. Kingan & Co., 174 S.C. 24, 176 S.E. 880 (1934).
9. The property in question was originally devised to Ola Belue and his two brothers "for and during the term of their natural lives" with the remainder given to their children respectively, each child taking only that to which his parent had been entitled. One brother died in 1927 leaving no children. His death left Ola Belue and his brother with undivided one-half life interests in the property. In 1915, Ola had conveyed his life interest in forty-eight acres of the property to his wife. She in turn mortgaged the life estate *pur autre vie* thus acquired. When the mortgage was foreclosed in 1928, the master gave a deed at the foreclosure sale which seemed to convey a fee simple to the property. Record at 52. After another foreclosure the property changed hands four more times and ultimately came into the possession of the defendant, Jack Greene, who claimed a fee simple to the property.
10. Hutto v. Ray, 192 S.C. 364, 6 S.E.2d 747 (1940).
11. Moseley v. Hankinson, 25 S.C. 519 (1886).
12. 166 S.E.2d 215 (S.C. 1969).
13. The trust deed contained the following clause:
> In trust that said premises shall be used, kept, maintained and disposed of as a place of divine worship for the use of the ministry and membership of The Methodist Episcopal Church, South, subject to the Discipline, usage and ministerial appointments of said

in 1963 when the congregation voted almost unanimously to secede following The Methodist Church's failure to take action concerning the immoral conduct of their minister.[14]

The primary contention of the seceding congregation was that the failure to take any action after numerous complaints operated as a forfeiture of the right to possession and beneficial use of the property. The court, however, stated that even assuming there had been a failure to act properly upon the congregation's complaints as provided in the Church's Discipline, no legal significance could be attached thereto.

The argument of the congregation was defective in two respects. First, a forfeiture will lie only where a condition precedent or condition subsequent has been created by clear and unambiguous words in the deed.[15] In the trust deed no such words were present.[16] Second, even if there were to be a forfeiture, the property would revert to the heirs of the original grantor,[17] not the congregation. The court concluded that the congregation had no legal right to occupy the premises except as members of The Methodist Church and therefore affirmed the circuit court's decision to grant an injunction.

VENDOR - PURCHASER

Finley v. Dalton[18] was one of the few challenging property cases that faced the court during the survey period. It involved an action brought by a vendor to rescind a deed for false representations made by an undisclosed real estate agent. The purchaser had stated that he was buying the land as a long range timber investment, when in reality he was obtaining it for a new hydro-electric project.[19] In sustaining a demurrer the court con-

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Church, as from time to time authorized and declared by the General Conference of said Church . . . . 166 S.E.2d at 217.

In Turbeville v. Morris, 203 S.C. 287, 26 S.E.2d 821 (1943) it was decided that The Methodist Church was the legal successor to The Methodist Episcopal Church, South, and that it had a centralized form of government, not a congregational or independent one.

14. In 1962 representatives of the congregation went to the District Superintendent with accusations of immoral conduct on the part of the minister. Action was promised but the following year the individual was returned to the same parsonage. He was arrested three months later by civil authorities.

15. McManaway v. Clapp, 150 S. C. 249, 148 S.E. 18 (1929); Furman Univ. v. Glover, 226 S.C. 1, 83 S.E.2d 559 (1954).

16. *See* note 13 *supra.*

17. Rhodes v. Black, 170 S.C. 193, 170 S.E. 158 (1933).

18. 164 S.E.2d 763 (S.C. 1969).

19. Duke Power Company was secretly obtaining property for its Keowee-Toxaway project in Pickens and Oconee Counties.

cluded that "the complaint fails to allege facts sufficient to show that the alleged misrepresentation or concealment was a material one and that plaintiff was induced to sell because thereof."[20]

This decision relies heavily on *Warr v. Carolina Power & Light Co.*[21] which quoted from 55 AM. JUR. *Vendor and Purchaser* § 95 (1946):

> A misstatement or misrepresentation made in the negotiations for the purchase of land as to the use which the purchaser intends to make of the land . . . does not necessarily constitute fraud, especially where the use for a different purpose . . . does not injuriously affect the vendor by reason of his ownership of other land in the vicinity. [Such a] false statement . . . is of no consequence unless it appears that the statement or representation made was material, and that the vendor relied upon it and was induced to enter into contract thereby.[22]

Finley v. Dalton is important because it clears up South Carolina law on two points. First, *Warr v. Carolina Power & Light Co.* was an action at law for damages and the language of the court in that case[23] was uncertain authority for those seeking a more liberal remedy in equity such as recission. In fact, the plaintiff in *Finley* persuasively argued that the wording in the *Warr* decision implied that while no law actions were available, equity could always step in to remedy willful and deliberate misrepresentations.[24] The court decided, however, that even in equity the essential requirement of materiality must still be met before a remedy is available.

In examining the allegations in the complaint the court noted that the plaintiff had retained no land in the vicinity. There was no allegation that he had not received a fair price for his

20. 164 S.E.2d at 765.
21. 237 S.C. 121, 115 S.E.2d 799 (1960). The fact situation is *Warr* was very similar to that in the case at hand in that an agent had represented that a purchaser was paying sixty dollars an acre for land to be used as a tree farm when in reality he was paying up to two hundred dollars an acre for hydroelectric property.
22. *Id.* at 128-29, 115 S.E.2d at 803. The court in *Warr* avoided deciding whether the alleged facts showed the misrepresentation to be a material one by noting that no actual damages had been alleged. The plaintiff's claim was said to consist of no more than a charge that he possibly could have received more money, which did not satisfy the requirement of actual damage.
23. "We should point out that this is not an action for recission of the deed . . . but is an action at law for damages . . . ." Warr v. Carolina Power & Light Co., 237 S.C. 121, 125, 115 S.E.2d 799, 801 (1960).
24. Brief of Appellant at 10-12.

property, since the allegation that the power company was paying up to two hundred dollars an acre only meant that he would have held out for more money had he known. Finally there was no allegation that the misrepresentation operated in any way to induce the sale. Therefore, without anything to establish materiality, the defendant's conduct amounted to no more than a failure to disclose the fact that Duke Power was the real purchaser of the property. This behavior, without some special or fiduciary relationship, could not ground a cause of action even in equity.

A second point clarified by the court in *Finley v. Dalton* concerned a statement made in *Holly Hill Lumber Co. v. McCoy*[25] that where an inquiry is made, a duty arises on the part of an informed purchaser either to remain silent or give the whole truth. The court remarked that while this is a sound principle it only applies to material representations and therefore is not applicable to the present fact situation.

In this decision the supreme court has more clearly defined the necessary policy that not every untrue remark or delusive action made in the course of arm's-length business dealings gives rise to a cause of action. The laws of misrepresentation were intended only to insure that a man receives substantially what he bargained for. The requirement of materiality prevents a party from avoiding ventures simply because they later prove unsatisfactory.[26]

LANDLORD AND TENANT

Piggy Park Enterprises, Inc. v. Schofield[27] deals with a landlord who breached his convenant to obtain an easement for ingress and egress to the leased premises.[28] In affirming a lower court decision granting the tenant $15,600 in damages, the supreme court stated that the measure of damages usually laid down is the difference in the rental value of the property with and without adherence to the convenant.[29] The court continued by saying that the rental value should be determined at the time

25. 201 S.C. 427, 23 S.E.2d 372 (1942).
26. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 103 (3d ed. 1964).
27. 251 S.C. 385, 162 S.E.2d 705 (1968).
28. The lessee signed a ten year lease with options to renew and made a $50,000 investment in the premises for the operation of a drive-in restaurant. In the lease the landlord promised to secure an easement to provide access to the restaurant from an adjacent highway.
29. 51C C.J.S. *Landlord and Tenant* § 247 (1968).

of breach[30] and if the lease is made for a particular purpose the rental value for that purpose should be the standard by which damages are awarded.[31] Since the breach of the convenant rendered the tenant's restaurant inaccessible from a main highway, the amount of the award was not considered excessive.[32]

A second landlord-tenant case was *Blanford v. Mauterer*,[33] an action brought to set aside two leases made by a lessor who, ten months after their execution, was declared mentally incompetent. The lessor was a property owner who had been legally separated from his wife and thereafter entered into the two long term leases at very low rentals[34] in an effort to defeat his wife's dower interest.[35] In denying relief the supreme court stated that "[i]t is not sufficient to show that the lessor's mental powers were impaired. . . . In order to void a transaction it must be shown that the lessor did not have sufficient capacity to understand in a reasonable manner the nature and effect of the act he was performing."[36]

As for the grossly unreasonable and unconscionable terms of the lease, it was stated that inadequacy of consideration alone is not sufficient to invalidate a transaction. Instead there must

30. *See* Brummitt Tire Co. v. Sinclair Refining Co., 18 Tenn. App. 270, 75 S.W.2d 1022 (1934) (cited by the court).

31. 51C C.J.S. *Landlord and Tenant* § 247 (1968).

32. At the trial there was undisputed testimony that the landlord had been informed of the importance of obtaining a second entrance to the property and that the success of the location depended heavily on such access. Three years after the lease was signed the lessee ceased to operate on the premises and two years later sold all his equipment for $7,500.

33. 165 S.E.2d 633 (S.C. 1969).

34. One lease, covering a large parking lot, gas station, and some rental trailers near the main gate of Fort Jackson, had been executed for thirty years at $4,000 a year. A second lease, for five years with three options to renew, covered a boarding house and photographic studio which together rented for $130 a month.

35. The lessor was very concerned about his wife's retaining dower rights in his property and was told that he could defeat her interest by executing long term leases at very low rentals. While there are no South Carolina cases specifically concerning leases and the priority of dower, it is generally stated that leases entered into by a husband after marriage will have no effect on a wife's dower. 2 H. TIFFANY, REAL PROPERTY § 507 (3d ed. 1939). The case of Elder v. McIntosh, 88 S.C. 286, 70 S.E. 807 (1911) gives a general statement of South Carolina law by saying: "When the right of dower attaches to land, it is paramount to the right of any other person claiming the land, or any interest therein under the husband by any subsequent act of his." *Id.* at 292, 70 S.E. at 809.

36. Blanford v. Mauterer, 165 S.E.2d 633, 638 (S.C. 1969). One problem the plaintiffs never overcame was the fact that the first psychiatric examination took place more than four and one-half months after the leases were executed, which meant that any expert testimony was only conjecture and speculation. *See* DuBose v. Kell, 90 S.C. 196, 71 S.E. 371 (1911), a leading case on invalidation of documents for incompetence.

be some showing of undue influence before even equitable remedies are available. Often inadequacy may imply undue pressure but in the case at hand this inference was rebutted by circumstances suggesting that the lessor was simply not interested in monetary rewards.[37]

MECHANIC'S LIENS

Fulmer Building Supplies, Inc. v. Martin[38] is a unique mechanic's lien case for an already unusual mechanic's lien state. The majority of states have tended to emphasize the need to protect the mechanic and have done this primarily by employing a relation-back theory which gives the mechanic priority for his lien from the time any construction work is started on a particular project.[39] South Carolina takes a slightly more conservative approach to the problem and grants the mechanic priority only from the time of perfection of his interest. Perfection is accomplished by written notice to the owner as provided by Section 45-254[40] of the 1962 Code and recordation according to Section 45-259 which makes priority of all lien attachments a matter of public record.[41] As for priority of interests between a mortgagee and a mechanic, Section 45-55 seems to grant protection for construction loans which are normally paid in installments.

The court in *Fulmer* pointed out, however, that while the mortgagee is protected, he does not have an absolute right to first priority. In this case the owner of real estate obtained a $15,400 construction loan, payable in four installments as the work progressed. After three installments were paid directly to the contractor, a mechanic's lien was filed by a subcontractor with notice sent to the lending institution as well as to the owner and prime contractor. Thereafter, in disregard of the lien, the fourth installment was paid to several parties at the direction of

37. Aside from lessening his wife's dower interest the court pointed to friendship and relief from business worries as factors the lessor may have considered in making the agreement.

38. 251 S.C. 353, 162 S.E.2d 541 (1968).

39. There are two other views concerning the time to which the lien relates back. Nebraska is said to give priority only from the time the mechanic begins his particular work. R. KRATOVIL, REAL ESTATE LAW 266 (4th ed. 1964). Illinois and Maine, on the other hand, relate priority all the way back to the date of contracting. ILL. ANN. STAT. ch. 82, § 16 (1966); ME. REV. STAT. ch. 178, § 34 (1954).

40. *See* Lowndes Hill Realty Co. v. Greenville Concrete Co., 229 S.C. 619, 93 S.E.2d 855 (1956) for a discussion of the notice requirement.

41. *See* Williamson v. Hotel Melrose, 110 S.C. 1, 96 S.E. 407 (1918) which states that priority of interests relates to the time of recording.

the contractor, with the subcontractor receiving only about 20% of the amount owed him. In a consolidated foreclosure action the issue of priority between the mechanic and the mortgagee was raised. The lower court held that the lending institution had priority in the amount of the first three installments, with the subcontractor's lien having priority over the fourth installment.

On appeal the lending institution strenuously urged the application of Section 45-55 which gives prior recorded mortgages priority for all future advances made under the recorded instrument.[42] The court, however, pointed to Section 45-255 which states:

> Any person claiming a lien . . . who shall have given notice provided for herein shall be entitled to be paid in preference to the contractor at whose instance the labor was performed . . . and no payment by the owner to the contractor thereafter shall operate to lessen the amount recoverable by the person so giving the notice.

The conflict between Sections 45-55 and 45-255 was the real issue in the case. Resolution came when the court decided that since the lending institution took it upon itself to pay the final installment as the contractor directed, it occupied the position of the owner and therefore was bound by the owner's statutory duties and obligations. Since the lending institution disregarded the mechanic's lien after notice, the fourth installment could not operate to lessen the priority of the lien, which at that time stood next in line to the first three installments. Consequently all subsequent advances made in disregard of the mechanic's lien were subordinated thereto.

The holding in this case, in reality, does not present a significant threat to the security of construction mortgages in South Carolina, although it will require a greater involvement on the part of lending institutions, especially in the dispersal of funds. Once notice of a lien is received by the mortgagee his safest course of action is to stop all future payments and contact the contractor to appraise the entire financial situation. With small liens a simple way to protect the mortgagee's priority and still permit needed funds to go to the contractor so work can continue is to make a check for the amount of the lien payable jointly to

42. South Carolina is unique in the fact that it grants priority for all future advances, even optional ones. Almost every other state limits the grant of priority relating back to the time of recording to *obligatory* future advances. *See generally* Annot., 80 A.L.R.2d 179 (1961).

the mechanic and the contractor. The balance of the installment can go to the contractor and the two parties can settle their own differences without hindering completion of the project.

One question mortgagees still need answered concerns the payment of funds directly to the owner after receiving notice of a mechanic's lien. In *Fulmer*, the court applied Section 45-255 to the mortgagee because he made dispersals at his own discretion in disregard of the lien. While it would be difficult to extend this theory by placing an affirmative duty on the mortgagee to see that the lien is paid, it is not at all impossible for the court to see this as a logical extention of *Fulmer* for the protection of the mechanic in South Carolina. For the time being many lending institutions seem more content to stop all payments rather than risk losing priority by paying even the owner.

In *Gantt v. Van der Hoek*[43] a supplier of building materials was denied a mechanic's lien under Section 45-251 when the court observed that the agreement by which the owner promised to pay the supplier contained a condition precedent which had not been met. It was vital for the supplier to establish his claim under Section 45-251, since the owner had already overpaid the contractor for the work that had been done. This overpayment meant that under Section 45-254, the *normal* subcontractor's remedy, there would be no further liability on the part of the owner.[44]

Originally the supplier had agreed to provide materials to the contractor only if he secured a promise from the owner personally guaranteeing payment. The contractor drafted an agreement which read as follows:

> I, William A. Gantt, [agree] with [Atlas Lumber Co.] to pay at completion of contract a part of the total sum to Atlas Lumber Co., Inc., and Van Builders Inc. jointly for the amount of Six Thousand Dollars ($6,000.00).[45]

After obtaining the owner's signature, the paper was received by the supplier and filed without ever being read. Thereafter over

43. 251 S.C. 307, 162 S.E.2d 267 (1968).
44. S.C. CODE ANN. § 45-254 (1962) reads in part: "[I]n no event shall the aggregate amount of liens set up hereby exceed the amount due by the owner on the contract price of the improvements made." *See* Wood v. Hardy, 235 S.C. 131, 110 S.E.2d 157 (1959).
45. Gantt v. Van der Hoek, 251 S.C. 307, 311, 162 S.E.2d 267, 269 (1968).

$3,000 worth of materials were furnished before the contractor defaulted without any payments having been made to the supplier.

Examining Section 45-251,[46] the court noted that an essential requirement was an "agreement with, or consent of, the owner" to any furnishing of materials. Such an agreement must be present before a mechanic's lien under this section is available. Since the supplier relied on the signed agreement of the owner to establish consent, the court bound the owner only according to the terms of that consent. The supplier actually made a unilateral mistake in thinking that he was getting an unconditional promise to pay, but this misconception could not serve to enlarge the owner's liability. Through his own negligence the supplier was left with only one agreement and, failing to comply with its terms, could not demand a lien under Section 45-251.

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46. S.C. CODE ANN. § 45-251 (1962) provides:
Any person to whom a debt is due for . . . materials furnished . . . in the erection . . . of any building, by virtue of an agreement with, or by consent of, the owner . . . or any person having authority from . . . such owner . . . shall have a lien upon such building . . . .