

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT NASHVILLE

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CYNTHIA C. LEES, Individually  
and as Trustee and Next of  
Friend of CAROLYN HOLDER  
GLASGOW, and R. H. PURSELL,  
Executor for the Estate of WAYNE  
B. GLASGOW, SR.,

Plaintiffs-Appellees,

Vs.

HICKORY POINTE LIMITED  
PARTNERSHIP, NATIONSBANK  
OF TENNESSEE, N.A., and ROBERT  
E. WOOD,

Defendants-Appellants.

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**FILED**

**February 28, 1996**

**Cecil W. Crowson**  
**Appellate Court Clerk**

Sumner Chancery No. 94C-414  
C.A. No. 01A01-9507-CH-00305

FROM THE SUMNER COUNTY CHANCERY COURT

THE HONORABLE TOM E. GRAY, CHANCELLOR

Phillip North and David Kimbrough of  
North, Pursell & Ramos of Nashville  
For Appellees

Randal S. Mashburn and Darwin A. Hindman, III, of  
Baker, Donelson, Bearman & Caldwell of Nashville  
For Appellants

*AFFIRMED AND REMANDED*

Opinion filed:

W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.

CONCUR:

ALAN E. HIGHERS, JUDGE

WILLIAM H. WILLIAMS, SENIOR JUDGE

This case involves the validity of two judgment liens on real estate. Plaintiffs, Cynthia Lees and R H. Pursell, obtained judgments against Wayne B. Glasgow, Jr., in Maury County, Tennessee and Williamson County, Tennessee, respectively. Both judgments were recorded in the Register's Office of Sumner County, Tennessee, on December 18, 1992.

On December 9, 1994, plaintiffs filed the complaint in this case seeking to enforce the liens to satisfy the judgments. The complaint sets out in detail the nature and extent of the respective judgments and alleges that certified copies of the judgments were duly recorded in the Register's Office of Sumner County, Tennessee, on December 18, 1992. The complaint further alleges that at the time the judgments were recorded, the subject real estate was titled in the name of Condor Properties, a sole proprietorship owned by the debtor, Wayne B. Glasgow, Jr.

The complaint avers that by deed recorded May 3, 1993, in the Register's Office of Sumner County, Tennessee, Condor Properties conveyed the subject real estate to Julian Hayden and Jack R. Hamm by an instrument titled "Deed Transferring Property in Satisfaction of Non-Recourse First Mortgage Obligation." The plaintiffs aver that at the time this conveyance took place, their judgment liens were duly recorded in the Sumner County Register's Office, and that also recorded in Sumner County was a certified copy of an order from the Probate Court for Williamson County, Tennessee, restraining the transfer of any property by Wayne B. Glasgow, Jr., including any property held by Glasgow in the name of Condor Properties. Condor Properties' deed to Hayden and Hamm was signed by Wayne B. Glasgow, Jr., as the sole owner of Condor Properties.

The complaint further avers that Hayden and Hamm conveyed the property to J. D. Eatherly by warranty deed recorded December 13, 1993, in the

Register's Office of Sumner County, and that Eatherly subsequently conveyed the property to defendant Hickory Pointe Limited Partnership by warranty deed recorded on December 13, 1993, in said Register's Office. By trust deed recorded on April 28, 1994, in the Register's Office of Sumner County, Hickory Pointe conveyed the property to defendant, Robert E. Wood, trustee, to secure an indebtedness in favor of defendant, NationsBank of Tennessee. The complaint avers that plaintiffs' executions on both the Maury County and Williamson County judgments were returned "nulla bona" in November, 1994. Plaintiffs aver that the liens of their judgments are superior to the title of Hickory Pointe and to the trust deed to Wood securing the indebtedness to NationsBank. The plaintiffs contend that the liens should be enforced by the sale of the property to satisfy their judgments against Glasgow.

Defendants' answer admits the recording of the various documents set out in the complaint, but denies the authenticity of these documents. The answer also specifically denies that Condor Properties was a legal entity entitled to own property, denies that Condor Properties was the legal owner of the real estate, denies that Condor Properties had the power to convey the real estate, and denies that Glasgow had title to the property at the time of, or following, the attachment of the judgment liens. The answer further denies that plaintiffs have liens on the property and alternatively asserts that any of plaintiffs' liens would be inferior to the defendants' interest in the property.

The trial court granted plaintiffs' motion for judgment on the pleadings and subsequently granted plaintiffs' motion for summary judgment. The order granting summary judgment reaffirmed the court's prior ruling on the judgment on the pleadings that plaintiffs' judgment liens were valid and superior to defendants' rights in the property. It appears that the trial court, in acting on the

motion for judgment on the pleadings, considered documents not filed as part of the pleadings. Therefore, we will consider this as an appeal from the order granting summary judgment.

Defendants' appeal presents two issues for our review:

1. Whether the trial court erred in finding that the deed to "Condor Properties" was a valid deed.
2. Whether the trial court erred in finding that the validity of the deed and judgment liens could be determined from parol evidence in the form of subsequently filed documents.

The facts are virtually undisputed, and defendants do not assert that this was not a proper case for summary judgment. Defendants' position is that plaintiffs' judgment liens did not attach to the subject property, because the debtor, Glasgow, did not have title to the property at the time the liens were filed or any time thereafter.

It is undisputed that in 1987, fee simple title to the subject property was vested in Julian Hayden and Jack R. Hamm (hereinafter Hayden and Hamm). The history of the subject property subsequent to that time is reflected in the following documents duly recorded in the Register's Office of Sumner County, Tennessee:

Filed:

November 10, 1987	Warranty Deed from Hayden and Hamm to Wayne B. Glasgow, Jr., Trustee, Recorded in Deed Book 548, Page 381.
November 10, 1987	Trust Deed from Wayne B. Glasgow, Jr., Trustee, securing purchase money note to Hayden and Hamm, Recorded in Trust Deed Book 559, Page 786.
October 2, 1989	Quit Claim Deed from Wayne

	B. Glasgow, Jr., Trustee, to C. Don Tyner, Recorded in Trust Deed Book 102, Page 694.
October 2, 1989	Warranty Deed from C. Don Tyner, Trustee, and C. Don Tyner to Condor Properties, Recorded in Record Book 102, Page 698 (This conveyance was subject, among other things, to Trust Deed Recorded in Trust Deed Book 559, Page 786, as modified through Amendment and Modification Agreement in Record Book 102, Page 684).
December 18, 1992	Certified copies of judgments from Maury County and Williamson County Recorded in Record Book 299, Page 428, and Record Book 299, page 425, respectively.
December 18, 1992	Certified copies of judgments for attorney fees entered in Probate Court for Williamson County, Recorded in Record Book 299, page 432.
March 3, 1993	Certified copy of Order entered in Probate Court for Williamson County, Tennessee, restraining transfer of any property of Wayne B. Glasgow, Jr., (including but not limited to property held by Wayne Glasgow, Jr., in the name of Condor Properties), Recorded in Record Book 313, Page 14.
May 3, 1993	Warranty Deed from Condor Properties, a sole proprietorship to Hayden and Hamm Recorded in Record Book 325, Page 830
December 13, 1993	Quit Claim Deed from C. Don Tyner, Trustee, to Hayden and Hamm Recorded in Record Book 385, Page 573.
December 13, 1993	Warranty Deed from Hayden and

Hamm to J. D. Eatherly,  
Recorded in Record Book 385,  
Page 580.

December 13, 1993      Warranty Deed from Eatherly to  
Hickory Pointe Limited Partner-  
ship, Recorded in Record Book 385,  
Page 599.

April 24, 1994      Trust Deed from Hickory Pointe  
Limited Partnership to Robert  
Wood, Trustee for NationsBank  
of Tennessee, N.A., Recorded in  
Book 419, Page 116.

The chancellor found that the deed from Tyner to Condor was valid and that Glasgow owned the property at the time the liens attached, because Condor Properties was an assumed name of Glasgow, Condor's sole proprietor. Defendants argue that the chancellor erred in finding this deed to be valid, because "Condor Properties" is a fictitious grantee. Relying on *Weihl v. Robertson*, 97 Tenn. 458, 37 S.W. 274 (1896), defendants assert that Condor Properties is a fictitious grantee, and therefore, the deed from Tyner to Condor conveyed no legal title. In *Weihl*, defendant Robertson deeded property to a fictitious name and in effect was deeding the property to himself. The court found that the deed was void, and that title remained with the grantor. We agree with defendants that a deed to a fictitious grantee conveys no title. However, in the case before us, we are dealing with a somewhat different situation. In this case, Condor Properties is in the nature of a "trade name," rather than a fictitious grantee. 23 Am.Jur.2d *Deeds*, § 38 (1983), states:

§ 38. - Grantee.

The rule that a deed which names as grantee a nonexistent person is void applies only when the named grantee does not in fact exist, and not to the situation where a person in existence is described by a fictitious or assumed name. If a living or legal person is identifiable as the grantee named in the deed, the deed is valid. If the grantee is an existing person, capable of taking title to real estate, and the delivery

of the deed is made to him or to someone in his behalf, the title will pass to him although the name by which he is described in the deed is a fictitious or assumed one. In other words, if a living or legal person is intended as the grantee and identifiable, the deed is valid however he may be named in the deed. The name is merely a means of identification, and it is sufficient to designate him by his customary name even though that is not his true name.

In this case, Condor Properties was the named grantee in a deed dated October 2, 1989, which conveyed the property subject to the trust deed in favor of Hayden and Hamm. In July of 1990, Hayden and Hamm, the holder of the trust deed on the property, accepted a deed from Condor Properties executed by Wayne Glasgow, Jr., the sole proprietor. This deed stated that the terms of the trust deed held by Hayden and Hamm were modified and amended by agreement between Hayden, Hamm, and Condor Properties. The consideration for this deed to Hayden and Hamm was the satisfaction and cancellation of the indebtedness owed and secured by the November 10, 1987, deed of trust to Hayden and Hamm. The instruments of record establish that Hayden and Hamm knew that Condor Properties was an assumed or trade name and accepted the deed from Glasgow acting as Condor Properties. Under the instruments in the record, the trial court correctly found that the deed to Condor Properties was not invalid.

The deed from Condor Properties to Hayden and Hamm was a deed in satisfaction of the trust deed held by Hayden and Hamm and essentially a deed in lieu of foreclosure. While a foreclosure of Hayden and Hamm's trust deed would have extinguished the subsequently filed judgment liens, the deed in lieu of foreclosure is subject to validly acquired intervening rights. See *Budensiek v. Williams*, 1988 WL 102774, at \*5 (Tenn. App. W.S. at Knoxville, Oct. 6, 1988). Although the deed from Condor Properties to Hayden and Hamm is dated in

July, 1990, which is prior to the time the judgment liens were recorded in Sumner County, the deed was not recorded until May of 1993. Under these circumstances, the judgment liens encumbered Glasgow's property prior to the transfer of the property to Hayden and Hamm. See *Hames v. Archer Paper Co.*, 45 Tenn. App. 1, 319 S.W.2d 252 (1958).

Defendants also assert that the chancellor erred in considering evidence concerning the validity of the deed from Tyner to Condor Properties, because the evidence came into existence after the deed was executed and delivered. Defendants assert that the trial court should not have considered later deeds (particularly the deed from Condor to Hayden and Hamm) in ruling that the chain of title to the subject property sufficiently notified subsequent purchasers that Condor Properties was a sole proprietorship owned by Glasgow. Defendants argue that this is parol evidence in the form of subsequently filed documents and is subject to the rule that parol evidence is inadmissible to vary the terms of an unambiguous deed.

We do not view this proof as varying the terms of the deed. In this case, the proof shows that Hayden and Hamm held a valid deed of trust on the property in question and recognized Glasgow, the sole proprietor of Condor Properties, as the owner of the property. Hayden and Hamm took a deed from Glasgow as sole proprietor of Condor Properties rather than foreclose on the trust deed, thereby subjecting themselves and their grantees to possible claims of parties with intervening rights. Hayden and Hamm certainly recognized the validity of the conveyance from Tyner to Condor Properties and from Condor Properties to them when they executed a warranty deed to Eatherly. The trial court properly considered proof of Hayden and Hamm's recognition of title.

Where one recognizes another's title, he is estopped to afterwards deny



that title and his privies are estopped to the same extent as the original parties. *Spicer v. Kimes*, 25 Tenn. App. 247, 156 S.W.2d 334 (1941). In *Duke v. Hopper*, 486 S.W.2d 744 (Tenn. App. 1972), this Court stated:

Ordinary, recitals of matters of fact contained in a deed are binding on both the grantor and the grantee, such as the date of the instrument, the existence of prior agreements, and the nature or status of either grantor or grantee. See 31 C.J.S. Estoppel, § 37, page 330 and § 38, pages 333-334. Also, *Henderson v. Overton* (1830) 10 Tenn. (2 Yerg.) 394-397; *Denny v. Wilson, County*, supra.

*Id.* at 748.

As stated above, Hayden and Hamm recognized that Condor Properties owned the subject property, and this recognition is in the chain of title. The defendants' interest in the subject property can rise no higher than the interest of their grantor, Eatherly, whose interest was, in turn, limited to the title conveyed to him by Hayden and Hamm.

Accordingly, the judgment of the trial court is affirmed and the case is remanded to the trial court for such further proceedings as may be necessary. Costs of the appeal are assessed against the appellant.

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W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.

CONCUR:

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ALAN E. HIGHERS, JUDGE

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WILLIAM H. WILLIAMS,  
SENIOR JUDGE