NEW ENGLAND SECURITIES COMPANY *v.* WEST HELENA CONSOLIDATED COMPANY.

Opinion delivered July 2, 1928.

1. MORTGAGES—DESCRIPTION OF LAND.—A description of land in a mortgage which describes it with sufficient certainty to identify it, as where it makes reference to something tangible by which the land can be located, *held* sufficient.
2. MORTGAGES—INNOCENT PURCHASER—BURDEN OF PROOF.—In suits for foreclosure of mortgages, one who had purchased the equity of redemption in the lands subject to the mortgages has the burden of proving that he is an innocent purchaser of the lands, as against the mortgagee's right to reform the mortgages.
3. JUDICIAL SALES—RULE OF CAVEAT EMPTOR.—The rule *caveat emptor* applies to judicial sales, and a purchaser at such sale takes only such title as the debtor had, his purchase being subject to claims of which he had actual or constructive notice.
4. JUDICIAL SALES—WHEN PURCHASER CHARGED WITH NOTICE OF LIENS. —A purchaser at judicial sale of a mortgagor's equity of redemp-

tion, with both constructive and actual notice of existing mortgages, was not an innocent purchaser, but took subject thereto.

Appeal from Phillips Chancery Court; *A. L. Hutchins,* Chancellor; reversed.

STATEMENT BY THE COURT.

These three suits, consolidated for this hearing, were brought for the foreclosure of certain mortgages given by the West Helena Consolidated Company for the security of notes for money borrowed, aggregating the sum of $50,000. The amount was divided into four separate loans; No. 1 for $12,000, secured by a mortgage on 480 acres of land, is not involved in this appeal.

Case No. 509 is for foreclosure of the deed of trust on loan No. 2 for $15,000, upon the land described as follows: "The south half of the northeast quarter and the east half of the southeast quarter (except portions platted as a part of West Helena), and all that part fractional northwest quarter lying north of corporation of section 1; also all that part of the fractional north half of section 2 lying north and west of corporation line, all in township 2 south, range 4 east of the 5th principal meridian, containing 497 acres, more or less, as shown by the United States Government survey."

Case No. 510 is for foreclosure of the deed of trust securing loan No. 4 for $10,000, the lands described in the deed being as follows: "All that part of the north half of section 11 lying north of Little Rock Road and south of corporation line; all that part of Spanish Grant No. 4232 lying north of Little Rock road (forty acres) and all that part of north half of section 12 south of corporation line, township 2 south, range 4 east; also the east half of the southwest quarter and the south 48 acres of the west half of the southwest quarter, section 6, township 2 south, range 5 east of the fifth principal meridian, containing 644 acres more or less, as shown by United States Government survey."

Case No. 511 for foreclosure of a second deed of trust securing the payment of loan No. 3 by the land described therein as follows: "All that part of the

southwest quarter of section 2 lying west of corporation line (57.8 acres), also fractional north half and all that part of southeast quarter and of the east half of the southwest quarter lying north of Little Rock road, section 3, all in township 2 south, range 4 east of the 5th principal meridian, containing 580.17 acres, more or less, as shown by the United States Government survey."

Demurrers were filed to the complaints of foreclosure of the lands, it being claimed that the descriptions thereof were void for uncertainty, and were sustained in the final decree.

It appears from the testimony of E. C. Hornor and John S. Hornor, president and secretary of the West Helena Consolidated Company, and the minutes of the directors' meeting, that the lands intended to be mortgaged for the security of the loans were those belonging to the company outside of the platted portion of West Helena, as shown by the two dedication deeds filed and recorded, one in June, 1910, and the other in 1913, adding some additional territory.

The deeds of trust were executed on the 15th day of July, 1916, and the town of West Helena was not incorporated until about eleven months thereafter. There was no town or corporation at, near or contiguous to the lands described in the trust deeds, but only the platted portions of West Helena, as shown by the dedication deeds and plats of record, and in the chain of title, afterwards incorporated as the town of West Helena, the platted portions thereof being the same as shown in the dedication deeds, and carved out of the sections and parts of sections of land, tracts of same being described in the deeds of trust.

The proof showed it was the intention to convey the lands owned by the company lying outside of the platted portions of West Helena, and the amendment prayed a reformation of the descriptions in the deeds of trust, inserting or substituting for the words "corporation line," "platted portions of West Helena." In the description of the land in the deed of trust securing loan

No. 2 for $15,000, case No. 509, it is stated "the south half of the northeast quarter and the east half of the southeast quarter (except portions platted as a part of West Helena)" and certain other lands lying "north of corporation in section 1," and others lying "north and west of corporation line."

The proof was also undisputed that the Spanish Grant referred to was in fact No. 2412 instead of No. 4232, as written in the deed by mistake, there being no such grant as the latter in Phillips County, and that the resolution of the board of directors showed the company owned and intended to convey part of Spanish Grant No. 2412, north of the Little Rock road.

An engineer testified that the lands described in the trust deeds could be located from the descriptions therein, and that he had made correct plats thereof, having used some data or facts as disclosed by the petition for the incorporation of the town.

Afflick was made a defendant in the cases because of some interest claimed by him, and is the only party in interest, appellee herein, claiming to be an innocent purchaser of the land, and that the court could not reform the deeds as against his claim.

It appears that, in a suit of E. S. Ready v. West Helena Consolidated Co., wherein a receiver had been appointed for the company after the execution of the deeds of trust herein, appellants filed interventions asking foreclosure of their several deeds of trust, and a decree was entered authorizing it, but before the sale of the property, appellants filed a petition, had the foreclosure decree vacated, and did not appear further therein. A sale of the property of the West Helena Consolidated Company was ordered to be made by the receiver, which, not being satisfactory, was not confirmed, and later another sale was ordered, there being different pieces of property embraced in the order of sale, which was had and the sales confirmed by the court. In the second sale no bids were received for the equity of redemption in the property described in the trust

deeds and complaints in these cases, and, when the receiver made his report of the sale, Afflick made a written bid in open court, offering to pay $5,000, which included the equities of redemption in the deeds of trust on the property involved in these cases. Clause No. 3 of the bid reads: "For all the right, title and interest, including the equity of redemption, which the West Helena Consolidated Company, on the 1st day of November, 1923, owned, had and could assert at law or in equity, in and to all and singular all real, personal and mixed property." His bid expressly provides that all judgments, liens and incumbrances against all property covered by the bid or embraced in it "shall be fully paid off" * * * "save and except, however, what may be legally due under or by virtue of the mortgages or deeds of trust executed by the West Helena Consolidated Company in favor of (a) the New England Securities Company" * * * "but none other." The bid stated that the offer is made with a distinct reservation or understanding that the bidder does not, under any circumstances, directly or indirectly, agree to pay all or any part of the indebtedness evidenced by the mortgage liens, or bind himself, directly or indirectly, to redeem from such liens all or any part of the property covered by them or either of them, and "provided, however, that the bidder further reserves the right to make and assert in any legal manner possible any defense or offset to all or any part of the indebtedness evidenced by such four mortgage liens, which he may conceive that either the West Helena Consolidated Company or the bidder himself could or may lawfully make or assert either at law or in equity."

It appears this bid was accepted by the court, and is the only indication of the interest of Afflick in the property involved in these foreclosure suits, there being no record or proof of any receiver's deed having been made to Afflick, nor any deed filed by him showing any title to any of the lands involved in this suit.

The chancellor sustained the demurrer to the complaints for foreclosure, and denied the appellant's right to reformation of the deeds of trust showing the descriptions of the lands intended to be conveyed, held the deeds of trust void as to certain of the lands attempted to be described therein, and quieted the title of appellee thereto in accordance with a correct description of such lands as shown by appellant's proof, and from this judgment the appeal is prosecuted.

Bowersock, Fizzell & Rhodes, Roy D. Campbell and *Moore, Walker & Moore,* for appellant.

W. R. Satterfield and *J. G. Burke,* for appellee.

KIRBY, J., (after stating the facts). It is insisted, first, that the court erred in sustaining the demurrer to the complaints, and also in holding that the deeds of trust could not be reformed to show the correct description of the lands intended to be conveyed as against appellee Afflick, who claims to be an innocent purchaser, and both of these contentions are correct.

The descriptions appearing in the deeds of trust were not so indefinite as to be void, as shown from the exhibits themselves and the allegations of the complaints, and, so far as the description of the Spanish Grant is concerned, although the number of the grant was incorrect, it could be located by being north of the Little Rock road and other landmarks and the only land within any Spanish Grant belonging to the mortgagor company. In *Snyder* v. *Bridewell,* 167 Ark. 8, 267 S. W. 561, the court said:

"The general rule as to the sufficiency of a description to pass title to land under deed or mortgage in this State is that it shall be described with sufficient certainty to identify it. If not particularly and certainly described in the deed, the deed itself must make reference to something tangible by which the land can be located. *Doe ex dem. Phillips Heirs* v. *Porter,* 3 Ark. 18; *Tolle* v. *Curley,* 159 Ark. 175, 251 S. W. 377. The deed itself must furnish a key by which the land sought to be conveyed may be identified." See also *Darnell* v. *Bibb,* 143 Ark. 580, 221 S. W. 1061.

It is true that the words "corporation line" were used in some of the descriptions, indicating some municipal corporation, and that the town of West Helena had not been incorporated when the deeds of trust were executed, but the dedication deeds had been made and recorded, showing the lands platted, which were later incorporated as the town of West Helena, and the description in the trust deed in case No. 509 expressly states "except portions platted as a part of West Helena." Then, too, the town had been incorporated, including virtually the platted lands, as shown by the dedication deeds, long before appellee had acquired any interest therein. They were described with sufficient certainty, the deed itself making reference to tangible landmarks and to portions of the lands "platted as a part of West Helena;" the dedication deeds and plats of West Helena within the sections of lands described therein being of record, thus furnishing a key by which the lands conveyed could be identified.

The burden of proof was upon appellee to show himself an innocent purchaser of the lands under the pleadings herein, and no testimony was introduced on his part conducing to prove it. He purchased at a judicial sale only the equity of redemption in the lands, expressly recognizing in his bid his knowledge that they were mortgaged to secure the loans of $50,000, made by appellant company, and could not have acquired any right as an innocent purchaser. The rule *caveat emptor* applies to judicial sales, and a purchaser at such sales takes only such title as the debtor had, his purchase being subject to claims of which he had actual or constructive notice. Rorer, Judicial Sales, § 50; *Guynn* v. *McCauley,* 32 Ark. 112; and *Black* v. *Walston,* 32 Ark. 324.

Appellee had actual notice of the description of the land in the deeds of trust and constructive notice by their record, as well as constructive notice of the dedication deeds and plats of the lands as West Helena, made before the execution of the mortgages, and of the incorporation of the town of West Helena virtually as platted

in the dedication deeds, long before his attempted purchase of any interest in these lands. He could not therefore claim to be such an innocent purchaser as would prevent the court from reforming the deeds to more exactly describe the lands conveyed by the deeds of trust to conform to the intention of the parties in the making thereof, as shown by the undisputed testimony. *Tanner* v. *Manos*, 160 Ark. 293, 254 S. W. 676. The chancellor erred in holding otherwise.

There was no dispute as to the correctness of the amounts due as claimed in the several suits for foreclosure of the deeds of trust, nor of the right of appellants to recover such sums.

The decree is accordingly reversed, and the cause remanded with directions to overrule the demurrer and order a reformation of the deeds of trust in accordance with the prayer of the complaint, and for foreclosure thereof for the amounts claimed to be due, and for other necessary proceedings in accordance with the principles of equity and not inconsistent with this opinion.