



Bank Learns the Hard Way About After Acquired Title and Priority

10.01.2015

Note: This article was first published in the October 2015 issue of Hampton Roads REALTOR® Magazine. To read the issue, click [here](#).

What happens when a person signs a deed or deed of trust purporting to convey property that he does not own? The Virginia Supreme Court considered that question in the complicated case of Deutsche Bank National Trust Company v. Arrington, decided on June 4, 2015.

Lynore Arrington divorced her husband William Plucky on November 17, 2004. During the marriage, Arrington and Plucky had acquired a home in Moneta, Virginia as tenants by the entirety. As part of the divorce settlement, Arrington agreed to convey her interest in the Moneta home to Plucky, and Plucky agreed to pay Arrington \$11,000.00 per year for a period of ten years beginning in January of 2006. Arrington fulfilled her part of the bargain by signing a deed conveying the home to Plucky, which was recorded on July 29, 2004.

Roughly a year later, Plucky conveyed the home to Donald Riemenschneider by a general warranty deed that was recorded on July 12, 2005. On August 22, 2006, Plucky signed a deed of trust (the "Deutsche Bank Deed of Trust") conveying the Moneta property to secure a \$675,000.000 note held by Deutsche Bank National Trust Company. For some reason, the Deutsche Bank Deed of Trust was not recorded until May 21, 2008. Also on August 22, 2006, Riemenschneider executed a quit claim deed re-conveying the Moneta property to Plucky, but the deed was never recorded, the original was lost and no evidence existed that it had been delivered, so it failed to transfer title back from Riemenschneider to Plucky. Because the quit claim deed failed to transfer title, Plucky had no interest in the Moneta property at the time he placed the Deutsche Bank Deed of Trust on it.

After obtaining the Deutsche Bank loan, Plucky apparently fell behind in his payments to Arrington pursuant to the divorce decree, and she obtained a contempt of court order against him in the Circuit Court of Franklin County. The contempt order required Plucky to sign a deed of trust on the Moneta property in favor of Arrington, to secure his obligations in the divorce settlement, including the original divorce decree on November 17, 2004. In compliance with the contempt order, Plucky signed the deed of trust (the "Arrington Deed of Trust") on March 19, 2009 securing his divorce order obligations to Arrington.

By that time, one of the parties (the decision does not say which one) had figured out that the quit claim deed from Riemenschneider was ineffective, because on July 6, 2009 Riemenschneider executed a general warranty deed re-conveying the Moneta house to Plucky. That deed was recorded on July 17, 2009 at 1:10 p.m., and the Arrington Deed of Trust was recorded one minute later, along with copies of

the final divorce decree and the various orders requiring Plucky to pay Arrington for the home.

As of July 17, 2009, therefore, Plucky had signed the Deutsche Bank Deed of Trust conveying property he did not own, and (pursuant to the court's order) also signed the Arrington Deed of Trust when he did not own the Moneta property. The Arrington Deed of Trust, however, was recorded one minute after the deed from Riemenschneider placed the Moneta property back in Plucky's hands. Deutsche Bank sued Arrington in the circuit court of Bedford County, Virginia to determine whether the Deutsche Bank Deed of Trust or the Arrington Deed of Trust had priority. The Circuit Court held that the Arrington Deed of Trust had priority over the Deutsche Bank Deed of Trust, and Deutsche Bank appealed to the Virginia Supreme Court.

The first question the Supreme Court faced was whether either deed of trust was valid, because Plucky signed them both when he did not have title to the Moneta house. The court answered that question by referring to the "after acquired title" doctrine, which appears in Section 55-52 of the Virginia Code. That section states that when a deed (including a deed of trust) purports to convey real estate which the grantor does not own at the time of the execution of the deed of trust, but subsequently acquires, the deed of trust shall, as between the parties thereto, have the same effect as if the title that the grantor subsequently acquired were his at the time of execution of the deed of trust. In other words, Plucky signed two deeds of trust on property he did not own, but when he finally did re-acquire title from Riemenschneider, then as between Plucky and the beneficiaries of the two deeds of trust, the title he acquired was subject to both of the deeds of trust.

Both of the deeds of trust attached as liens to Plucky's interest in the Moneta property as soon as he re-acquired it. The Supreme Court noted, however, that the statute only validated the deeds of trust "as between the parties thereto." While the after acquired property statute made both the Arrington Deed of Trust and the Deutsche Bank Deed of Trust valid against Plucky, therefore, it did not answer the question of whether those two deeds of trust were valid with respect to each other. In order to answer that question, the court turned to Section 55-96 of the Code, Virginia's statute on the priority of liens. That statute provides in part that every deed of trust conveying real estate is void as to lien creditors until and except from the time it is duly admitted to record in the county where the property described in the deed of trust is located. According to the court, the Deutsche Bank Deed of Trust would be void as to Arrington if she were a lien creditor and the Deutsche Bank Deed of Trust was not duly admitted to record at the time she became a lien creditor. That is so even if Arrington knew of the existence of the Deutsche Bank Deed of Trust. As long as Arrington won the race to the courthouse (i.e. the Arrington Deed of Trust was duly recorded before the Deutsche Bank Deed of Trust) she would have priority. The Supreme Court had no trouble finding that Arrington was a lien creditor, because she had the divorce decree and various court orders requiring Plucky to pay her money, and a deed of trust securing those orders recorded one minute after the reconveyance from Riemenschneider.

Because Arrington was a lien creditor, the only remaining question was whether the Deutsche Bank Deed of Trust was duly admitted to record before she became a lien creditor. In answering that question, the court focused on the word "duly" which in the court's interpretation meant properly or sufficiently. The court decided that the Deutsche Bank Deed of Trust was not duly recorded, because it was outside of Arrington's chain of title. According to the Court, because the Deutsche Bank Deed of Trust was recorded when Riemenschneider, not Plucky, owned the Moneta property, the Deutsche Bank Deed of Trust was outside of Arrington's chain of title, and was not duly admitted to record even though it was recorded before Arrington became a lien creditor. Arrington won the race to the courthouse and was the first to become "duly admitted to record", so the Arrington Deed of Trust took priority even though Arrington knew of the Deutsche Bank Deed of Trust.

Although the case turned against Deutsche Bank on a technicality, Deutsche Bank was really in the best position to avoid the mess in the first place. It could have and should have obtained a title insurance policy when it made the loan ensuring that the Deutsche Bank Deed of Trust was granted by the proper party (i.e. that Plucky owned the property when he signed the deed of trust), and that the Deutsche

Bank Deed of Trust was first in priority.

Related People