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MORTGAGES, CHATTEL; CANCELLATION — AUTHORITY, PROOF OF BY MORTGAGEE'S AGENT—COUNTY RECORDER; LIABILITY TO MORTGAGEE FOR CANCELLATION—§1319.02, R. C.

SYLLABUS:

1. In the cancellation of chattel mortgages pursuant to Section 1319.02, Revised Code, the county recorder may require such proof of authority of the agent of the mortgagee presenting a cancellation of such mortgages as he deems necessary for the proper conduct of the duties of his office.

2. A county recorder who acts in good faith and pursuant to Section 1319.02, Revised Code, in cancelling a chattel mortgage deposited for record, is not liable to such mortgagee for the cancellation of such chattel mortgage even though the communication of cancellation was not authorized by the mortgagee.

Columbus, Ohio, Nov. 6, 1958

Hon. Gale B. Weller, Prosecuting Attorney
Morrow County, Mount Gilead, Ohio

Dear Sir :

I have your request for my opinion as follows :

“The County Recorder of Morrow County, Ohio, requests that I submit to you, for your formal opinion, the question of the formalities required to accomplish the cancellation and release of record of a chattel mortgage.

“The Recorder has encountered considerable difficulty with business firms and corporations who insist upon submitting cancellations without properly identifying the office of the person undertaking to sign the release, or in any other way indicating that authority to execute such a release is actually vested in the person over whose signature the release is submitted.

“The Recorder is interested in rendering prompt and courteous service to out-of-town lien holders who desire to cancel by mail but, at the same time, is apprehensive that she should quite probably be responsible for affecting an unauthorized or improperly authorized release.

“I have advised the Recorder that the statutes, to my knowledge, fail to provide any standards of formality with relation to this problem. That, in the absence of such provisions, she is within her authority to establish any reasonable conditions incident to the cancellation of such lien.”

From the facts stated in your inquiry I am assuming for the purpose of answer that you refer to chattel mortgages *deposited* for record pursuant to Section 1319.02, Revised Code, and not chattel mortgages filed for recording pursuant to Section 1319.03, Revised Code, the latter section dealing only with mortgages of real and personal property which may be filed and recorded as provided in that section.

It is to be noted that the duty of the county recorder in filing and indexing chattel mortgages is not clear with regard to the procedure for cancellations of such mortgages. In an opinion of one of my predecessors, the following language is pertinent, Opinion No. 6545, Opinions of the Attorney General for 1943, p. 682, at pages 683, 684 :

“It will be noted therefore a duty is imposed upon the county recorder to enter the date of such cancellation upon the margin of

the chattel mortgage index. However, there is no language in this section that specifies the form of or indicates what shall be contained in a cancellation. And I am not aware of any other statutory enactment that attempts to prescribe the form of cancellation. It would seem, therefore, that any instrument that clearly evidences the intention of the holder of a chattel mortgage to extinguish or terminate the rights of the parties thereto would be sufficient to serve as a cancellation. * * *

Upon further reasearch I find myself in agreement with this statement of my predecessor and with the views expressed in your query.

However, such a conclusion is of little value to the county recorder from an administrative point of view. The county recorder is required to cancel chattel mortgages deposited with him pursuant to Section 1319.02, Revised Code. However, I do not find contained in Chapter 317., Revised Code, providing for the liability of the county recorder, any provision for liability of the county recorder for the cancellation of a chattel mortgage upon the basis that you have presented. Section 317.33, Revised Code, provides :

“If a county recorder refuses to receive a deed or other instrument of writing presented to him for record, the legal fee for recording it being paid or tendered; or refused to give a receipt therefor, when required; or fails to number consecutively all deeds or other instruments of writing upon receipt thereof; or fails to index a deed or other instrument of writing, by the morning of the day next after it is filed for record; or neglects, without good excuse, to record a deed or other instrument of writing within twenty days after it is received for record; or demands and receives a greater fee for his services than that allowed by law; or knowingly indorses on a deed or other instrument of writing a different date from that on which it was presented for record, or a different date from that on which it was recorded; or refuses to make out and certify a copy of any record in his office, when demanded, his legal fee therefor being paid or tendered; or purposely destroys, defaces, or injures any book, record, or seal belonging to his office, or any deed or other instrument of writing deposited therein for record, or negligently suffers it to be destroyed, defaced, or injured; or does or omits any other act, contrary to sections 317.01 to 317.33, inclusive, of the Revised Code, he shall be liable to a suit on his bond, at the instance and for the use of the party injured by such improper conduct.”

It is a well established principle of law that public officials acting pursuant to statutory authority and in good faith are not personally liable for injury or damage caused to the person or property of members of the public. The rule is stated in 32 Ohio Jurisprudence, pp. 961, 962:

“It is well settled that a public officer acting within the scope of his authority is not liable individually, in the absence of bad faith or a corrupt motive, for failure properly to perform a duty involving judgment and discretion. This rule applies equally to ministerial officers and to criminal duties of officers. To create a personal liability for mere failure to perform a duty, the duty devolving upon the officer must be ‘entire, absolute and perfect.’ Matters in general that are committed to the pure discretion of a public officer involving loss to the public in funds or character of service cannot be availed of in a suit against the public officer.”

Section 317.33, *supra*, is the only section, to my knowledge, which imposes liability upon the county recorder and his surety for actions contrary to statute. It is incumbent upon a person dealing with an agent to inquire as to the nature and scope of such agent’s authority. However, where the county recorder, having reasonable grounds to believe and believing in good faith that a cancellation of a chattel mortgage forwarded to him by a purported agent of the mortgagee is authorized, cancels such mortgage on the index of such mortgage as provided in Chapter 1319., Revised Code, he is not liable for his action when such purported agent was acting beyond the scope of his authority or was not in fact the agent of the mortgagee. Therefore, it would appear that the county recorder is not liable for cancelling a chattel mortgage deposited with him as provided in Section 1319.02 Revised Code, when a purported agent of the mortgagee acting outside the scope of his agency has forwarded to the county recorder the cancellation of such mortgage and the county recorder, acting pursuant to the contents of such communication of such cancellation, has cancelled the mortgage as provided in Section 1319.02.

To this degree, I find myself in agreement with your advice already given the county recorder that it is within the authority of the recorder to establish reasonable conditions for the contents of communications of cancellation of chattel mortgages deposited with him pursuant to Section 1319.02, Revised Code.

Therefore, it is my opinion and you are accordingly advised that :

1. In the cancellation of chattel mortgages pursuant to Section 1319.02, Revised Code, the county recorder may require such proof of authority of the agent of the mortgagee presenting a cancellation of such mortgages as he deems necessary for the proper conduct of the duties of his office.

2. A county recorder who acts in good faith and pursuant to Section 1319.02, Revised Code, in cancelling a chattel mortgage deposited for

record, is not liable to such mortgagee for the cancellation of such chattel mortgage even though the communication of cancellation was not authorized by the mortgagee.

Respectfully,
WILLIAM SAXBE
Attorney General