

650

APPROVAL—WARRANTY DEED, CONTRACT ENCUMBRANCE RECORD, ETC., RELATING TO LAND IN McCUE'S LITTLE FARMS ALLOTMENT, GREEN TOWNSHIP, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, May 25, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: Under date of May 13, 1937, I directed to you Opinion No. 588 relating to the title of a parcel of land owned of record by Bunyan C. Martin and Gladys V. Martin in Green Township, Summit County, Ohio, which is more particularly described in the certificate of title and in the warranty deed tendered to the State of Ohio, as being Lot No. 4 in C. C. McCue's Little Farms Allotment in the west half of the northwest quarter of Section 19 in said township, as surveyed by S. G. Swigart and Son, and recorded in Plat Book 36, page 7, Summit County Records, together with all the hereditaments and appurtenances thereof, but subject to all legal highways, and excepting and reserving from the above described parcel of land a certain right of way of The Canton, Massillon and Akron Railroad Company extending through said property, as recorded in Vol. 285, page 613 of the Deed Records in the office of the County Recorder of Summit County, Ohio.

Upon examination of the certificate of title submitted to me, I found in said opinion that Bunyan C. Martin and Gladys V. Martin had a good merchantable title to the above described parcel of land mentioned which included, among other things, two mortgages executed by Bunyan C. Martin and Gladys V. Martin on this property, one a mortgage in the sum of \$1,000.00 with interest at six per cent executed to Elizabeth E. Stepfield, and the other a mortgage in the sum of \$682.50 executed to one Virginia N. Hancock. Neither of these mortgages is canceled of record and, as pointed out in said opinion, each of them is a lien upon this property to the extent of the amount of money remaining unpaid upon the obligation secured by the mortgage. In this opinion I likewise set out the taxes and assessments which are liens upon this property, as the same are set out in the certificate of title.

In the opinion above referred to, your attention was called to two judgments rendered against Augusta M. McCue who succeeded

to the title of the above described and other property of C. C. McCue at the time of his death. One of these judgments was rendered in favor of The Real Estate Mortgage Company under date of March 19, 1932, in the sum of \$971.88, upon which execution was issued upon this property under date of August 25, 1934. The other judgment referred to was one rendered prior to March 28, 1934, in favor of the Brown-Graves Company against C. C. McCue and Augusta McCue in and for the sum of \$368.00, upon which judgment an execution was issued to the Sheriff of Summit County, Ohio, who levied same on the above described property on said date, to wit, March 28, 1934. Upon the facts appearing in the certificate of title, I was unable to state whether these judgments and the executions respectively issued thereon were liens upon the property here in question or not; and for this reason I returned the certificate of title to you for further information with respect to the mesne conveyances through which Bunyan C. Martin and Gladys V. Martin obtained title to this property.

From further information which has been presented to me as to these matters, it appears that on September 18, 1935, Augusta M. McCue, as executrix of the estate of C. C. McCue, executed and delivered to George M. McEwen and Alice M. McEwen a deed in and by which she conveyed to said grantees the above described property, which deed was executed pursuant to a sale of the property to said grantees on order of the Probate Court of Summit County in an action then and theretofore pending in that court to sell this and other property to pay the debts of the estate of C. C. McCue; and that on the same day, to wit, September 18, 1935, George M. McEwen and Alice M. McEwen conveyed this property by deed to Bunyan C. Martin and Gladys V. Martin, who now own and hold the same.

Inasmuch as the proceeding above referred to in the Probate Court of Summit County to sell this and other property owned by C. C. McCue at the time of his death for the purpose of paying the debts of his estate, was filed in said court before either of the judgments above mentioned was rendered, and was a pending proceeding at the time of the rendition of such judgment, I have no difficulty in reaching the conclusion that this proceeding in the Probate Court of Summit County was a *lis pendens* with respect to said judgments and the respective executions issued thereon and levied on this property; and that for this reason the judgments and executions are not liens upon this property. *Stewart, Admr., vs. Railroad Company*, 53 O. S., 151; *Stone vs. Equitable Mortgage Company*, 25 O. App., 382.

Moreover, as I have been advised by the further information submitted to me in connection with this matter, releases have been

executed by both of the judgment creditors above referred to which release the above described property from the operation of the respective liens which the judgment creditors apparently theretofore claimed to have been effected by these judgments and executions.

In this situation, these judgments which are set out in the certificate of title as apparent encumbrances on the title to this property are not now liens or encumbrances thereon. I am of the opinion, therefore, upon the certificate of title submitted to me, together with the additional information which appears by a letter which I have attached to this certificate of title, that Bunyan C. Martin and Gladys V. Martin have a good merchantable title to this property subject only to the liens and encumbrances specifically pointed out in Opinion No. 588 hereinabove referred to.

Upon examination of the warranty deed tendered to the State of Ohio by Bunyan C. Martin and Gladys V. Martin, I find that said deed has been properly executed and acknowledged by said grantors and that the form of this deed is sufficient to convey the above described property to the State of Ohio by fee simple title free and clear of the respective inchoate dower interests which each of these grantors has in the undivided estate of the other, with a covenant of warranty in said deed contained that the property is conveyed to the State of Ohio free and clear of all encumbrances whatsoever.

Contract encumbrance Record No. 23, which has been submitted to me as a part of the files relating to the purchase of this property, has been properly executed and the same shows a sufficient balance, otherwise unencumbered, in the appropriation account to the credit of your department to pay the purchase price of the above described property, which purchase price is the sum of \$4600.00. It likewise appears from this contract encumbrance record and from other information at hand that the purchase of this property has been duly approved by the Controlling Board. Said warranty deed and contract encumbrance Record No. 23 are hereby approved and the same, together with the certificate of title, are herewith returned to you for your further attention in closing the transaction for the purchase of the property.

Respectfully,

HERBERT S. DUFFY.

Attorney General.