

SUPREME COURT OF LOUISIANA

Hans Wede v. Niche Marketing USA, LLC and Rodney C. Whitney, Jr.

52 So. 3d 60 (La. 2010) · No. 2010-C-0243 · Decided November 30, 2010

SUMMARY

The Louisiana Supreme Court held that a money judgment mistakenly recorded as a conveyance document rather than a mortgage document could not operate as a judicial mortgage against subsequent third-party purchasers. Applying Louisiana Civil Code articles 3338 and 3347, the court concluded that a judicial mortgage must be recorded in the appropriate mortgage records to affect third persons. The court affirmed the court of appeal's judgment in favor of the purchasers.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Justice Weimer; Retired Judge Philip C. Ciacchio, Justice ad hoc
JURISDICTION	Louisiana
DECIDED	November 30, 2010
DOCKET	2010-C-0243
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Supreme Court of Louisiana granted Wede's writ application to review the court of appeal's reversal of a trial-court order authorizing seizure of property owned by third-party purchasers. The issue was whether Wede's money judgment operated as a judicial mortgage despite being electronically designated and recorded as a conveyance document rather than a mortgage document.
STANDARD OF REVIEW	De novo review of the legal issue concerning the effect of recordation under the Louisiana Civil Code.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; binding precedent in Louisiana.
PARTIES	Hans Wede v. Niche Marketing USA, LLC, Rodney C. Whitney, Jr., Robert James, Deborah James

TOPICS

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PRACTICE AREAS

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Judgment enforcement

QUESTIONS PRESENTED

1. Whether a money judgment recorded in the parish's conveyance records rather than its mortgage records creates an enforceable judicial mortgage against third-party purchasers of the affected immovable property.
2. Whether Louisiana Civil Code article 3347, providing that the effect of recordation arises upon filing and is unaffected by subsequent recorder errors or omissions, preserves the judgment's effect against third persons despite its erroneous recordation location.
3. Whether the clerk's erroneous electronic designation was merely an indexing error or instead meant that the judgment was not recorded in the appropriate mortgage records.

HOLDINGS

1. A money judgment recorded in the parish's conveyance records rather than the appropriate mortgage records cannot operate as a judicial mortgage against third-party purchasers under the facts of this case.
2. Articles 3338 and 3347 must be read together so that article 3347 governs when the effect of recordation arises, while article 3338 governs where an instrument must be recorded to affect third persons.

KEY QUOTATIONS

“When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” (52 So. 3d at 64)

“In Article 3338, therefore, there is an emphatic, clear, and absolute imperative that a judicial mortgage is “without effect as to a third person unless the instrument is registered by recording it in the appropriate mortgage ... records.”” (52 So. 3d at 65)

“The Jameses purchased the property in question from the Whitneys unencumbered by a judicial mortgage.” (52 So. 3d at 68)

FACTUAL BACKGROUND

Wede obtained a money judgment against Rodney Whitney, Jr. and Niche Marketing USA, LLC, which was made executory in Louisiana. The parish clerk's office received the judgment for recordation but electronically designated it as a conveyance document, marked "CO," instead of a mortgage document, marked "MO."

Whitney and his wife later sold their home to Robert and Deborah James, who purchased it without notice appearing in a mortgage-only search of the parish's computerized records. After the error was discovered, the clerk changed the designation to "MO," but did not rescan the judgment or assign a new instrument number.

PROCEDURAL HISTORY

A North Carolina court entered a money judgment for Wede against Whitney and Niche Marketing, and the Fortieth Judicial District Court for St. John the Baptist Parish made that judgment executory in Louisiana. The clerk's office processed the judgment in its electronic system as a conveyance record rather than a mortgage record. After Whitney and his wife sold the property to Robert and Deborah James, the trial court authorized Wede to seize it, but the court of appeal reversed, holding that the judgment could not be enforced as a judicial mortgage. The Louisiana Supreme Court granted review and affirmed the court of appeal.

DISPOSITION

affirmed

CASES CITED

- Dumas v. State, Department of Culture, Recreation & Tourism, 828 So. 2d 530, 536 (La. 2002)
- Kinnebrew v. Tri-Con Production Corp., 244 La. 879, 154 So. 2d 433, 435 (1963)
- Lewis v. Klotz, 39 La. Ann. 259, 1 So. 539, 542 (1887)
- McDuffie v. Walker, 125 La. 152, 51 So. 100, 105-06 (1909)
- Pumphrey v. City of New Orleans, 925 So. 2d 1202, 1209-10 (La. 2006)
- Estate of Patrick v. Board of Supervisors, Louisiana State University, 836 So. 2d 1 (La. 2002)