

A seller owned property in fee simple, as the land records showed, when he contracted to sell the property to a buyer. Two weeks later, the buyer paid the agreed price and received a warranty deed. A week thereafter, when neither the contract nor the deed had been recorded and while the seller remained in possession of the property, a creditor properly filed a money judgment against the seller. The creditor knew nothing of the buyer's interest.

A statute in the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

The creditor brought an appropriate action to enforce her lien against the property in the buyer's hands.

If the court decides for the buyer, what will be the most likely reason?

- A. The buyer was a purchaser without notice.
- B. The doctrine of equitable conversion applies.
- C. The jurisdiction's recording act does not protect creditors.
- D. The seller's possession gave the creditor constructive notice of the buyer's interest.

Explanation:

Payment of value

(bona fide purchaser)

Value	Release of existing debt Substantial amount not grossly inadequate in relation to property interest's value
No value	Security for existing debt Nominal payment (eg, \$1) Recital of consideration in deed Gift, devise, or inheritance

Recording acts determine the priority of competing property interests. A **notice statute** (as seen here) only protects subsequent purchasers for value who lack **notice** of an earlier property interest. **Judgment creditors** are **not purchasers for value** since the attachment of a judgment lien to a debtor's property is merely **security for an existing debt**—not payment of valuable consideration. Therefore, judgment creditors are not protected under the notice statute, and the creditor here cannot enforce her judgment lien.

But even if the recording act did apply, the creditor could not enforce her judgment lien against the property. That is because a judgment creditor can only enforce an interest in property that is owned by the debtor. Here, the property had already been conveyed to the buyer (ie, the seller no longer owned it) when the creditor recorded her judgment lien. Therefore, the creditor never acquired an interest in the property.

(Choice A) Whether the buyer lacked notice would only matter if the buyer were trying to establish priority over an earlier property interest. Since the buyer has the earlier interest here, this information is irrelevant.

(Choice B) Under the doctrine of equitable conversion, the buyer receives *equitable* title after the parties enter a land sales contract. But this doctrine does not apply when, as here, the buyer acquired *legal* title—eg, by paying the purchase price and receiving the deed—before the judgment lien was obtained.

(Choice D) Inquiry notice (a form of constructive notice) exists when a buyer knows, or should know, of circumstances that would prompt a reasonable person to investigate—eg, visible use of the property. But here, whether the creditor had notice is irrelevant since she is not a buyer for value and the recording act does not apply.

Educational objective:

Judgment creditors are not purchasers for value since the attachment of a judgment lien to a debtor's property is merely security for an existing debt—not payment of valuable

consideration. Additionally, a judgment creditor can only enforce an interest in property that is owned by the debtor.

References

46 Am. Jur. 2d Judgments § 352 (2018) (priority of judgment liens).

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