



North Dakota Supreme Court Issues "Stranger to Title" Decision

By: [Dante Tomassoni](#)

As our esteemed colleague Betsy Odell put it, "Why we always list strangers to title..."

In Swanson v. Swanson, 2001 ND 74, the North Dakota Supreme Court quieted title in favor of a "Stranger to Title" against persons that, of record, appeared to be the owners of the property.

The Court stressed the Caveat Section to N.D. Title Standard 2-01, pointing out:

Conveyances by strangers to the chain of title may be disregarded, unless a title examiner has actual notice or knowledge (through sources other than the record) of the interest of the grantor, or unless subsequent to such conveyance there is recorded a deed or other conveyance vesting title in such stranger.

...

Caveat: In order to ignore conveyances from a "stranger" the "good faith" test of the Recording Act (NDCC 47-19-41) must be met. Any circumstances which should cause further inquiry to be made as to the status of the "stranger" which inquiry would disclose the unrecorded interest of the "stranger", preclude ignoring the "stranger's" conveyance.

The Court held that a person cannot claim to be a Good Faith Purchaser under the protection of N.D.C.C. § 47-19-41 which states "[e]very conveyance of real estate not recorded shall be void as against any subsequent purchaser in

good faith, and for a valuable consideration . . .” when that person has actual notice of circumstances sufficient to put a prudent person on inquiry and fails to make a reasonably diligent inquiry. To comply with the requirement for a reasonably diligent inquiry, a prospective purchaser with actual notice of circumstances sufficient to put a prudent person on inquiry must, at the very least, conduct a record search. If a purchaser fails to make a reasonably diligent inquiry, the purchaser cannot claim the protection of a good-faith purchaser status.

The ruling against the record title holders was based primarily on facts outside of the record. In this case, William Swanson owned 100% of the property at issue. Then, by Warranty Deed in 1963, William and Lorraine Swanson conveyed the 100% to William and Glenn Swanson as Joint Tenants. Lorraine was William’s wife and only on the deed for Homestead purposes. Glenn Swanson kept the deed but did not record it. Glenn as Mortgagor, executed and recorded a mortgage on the property in favor of his brother in 1969. William then died in 1999. Glenn approached Lorraine and her children at the funeral and asserted ownership through the 1963 deed; Glenn could not produce the deed at that time. Lorraine ignored him. Then as the Personal Representative of William’s estate, granted the property to herself as trustee for her own trust. In 2003, Lorraine, as Trustee, granted the interest to her 4 children. Glenn finally found the deed in his home files in 2005 and recorded it. He then approached the 4 children again with a recorded copy asserting his interest. The Supreme Court held that Glenn Swanson’s verbal assertion to Lorraine and the family that he owned the property constituted actual notice and because none of the 4 children made any inquiry, they could not be considered good faith purchasers.

The Court stated, the information sufficient to put a prudent person on inquiry may consist of a statement made by the claimant of the adverse ownership right. The information need not be so full or detailed as to communicate a complete description of the adverse interest if it creates a reasonable belief a conflict right exists as a fact.

For more information, please contact [Dante Tomassoni](#).