

1. Workman's rights pertaining to Greenacre stem from his affidavit and mechanic's lien. The lien is against the property itself, not personally against Gail, whom he contracted with. Workman's rights are for his time, labor, materials, and workmanship on Greenacre (the facts stipulate that it is a proper affidavit and mechanic's lien, so for the sake of time I won't go into the requirement of a proper, enforceable mechanic's lien). Therefore, for Workman to enforce his rights, he needs to send notice to Mona to pay for the work or threaten a **Foreclosure** process through the court (a **judicial foreclosure**, not a power of sale foreclosure since there is no deed of trust). Mona will argue that she's a bona fide purchaser and not subject to the lien-she bought & recorded the deed to Greenacre on Dec. 1<sup>st</sup>, and the Workman didn't file his mechanic's lien until Dec. 4<sup>th</sup>. However, her argument will fail because she is **not** a bona fide purchaser-she may not have seen anything recorded in the deed records, but the facts stipulate that she was aware that the Workmen hadn't finished the addition to the cabin on Greenacre - that knowledge meant she had a duty to inquire, which she did not do, and which thus means she didn't buy without notice (she's not a bona fide purchaser). Therefore, again, to assert his rights, Workman needs to send notice to Mona and if necessary, begin the process of a **judicial foreclosure** on his lien.
2. Ben has no rights in Greenacre. Aside from the issue of the forged deed and improper land description in the deed ("two acres on the river side out of Greenacre" is not a sufficient property description according to the Texas Property code [it's not specific, it's too vague]). Ben can't even claim that he's a bona fide purchaser. Mona filed her deed of record on Dec. 1. Gail only forged the deed to Whiteacre, according to the facts given, which means Mona would've still been the record owner of Greenacre on Dec. 14 when Ben purportedly bought it - it doesn't matter that he didn't "know" Gail sold it to Mona, he was on constructive notice from the deed records. Aside from the fact that he's not a bona fide purchaser, Ben was also on constructive notice that Gail had no interest to convey to him in Greenacre. You can't convey something that you don't own, so even his asserted claims as a bona fide purchaser means absolutely nothing because he bought nothing. So, since Gail had no interest to convey, Ben has no right to Greenacre.
3. Mona owns Whiteacre. Ben has no claim to this, either. Once again, because it was a forged deed (let alone improperly acknowledged by the notary, but we don't need to go into that), Gail had void (not just void able) title. She had no interest to convey to Ben. The argument that the forged deed was properly recorded on Dec. 7, so he gave value, without notice to competing claims, in good Faith and thus is a bona fide purchaser doesn't help you when what you purchased is a void title. Mona retains her interest in Whiteacre, and Ben can pursue action against Gail for fraud and breach of title warranties (breaches of the covenant of good title since the forged deed was a warranty deed-if Gail was smart she should've sold Ben a quit-claim deed instead of a warranty deed - under a quit-claim deed, she wouldn't have even had to forge a deed-Ben would've taken a risk buying the quit-claim deed for any interest Gail had in Whiteacre, which was none, and she wouldn't have any breach of warranty claims). However, I digress, so in summary, Mona owns Whiteacre because, even though Ben was a bona fide purchaser of Whiteacre, he bought void title from Gail, which is a defense and defeats his bona fide purchaser status.

**END OF EXAM**

11)

1. Workman has a mechanic's lien on Greenacre, and it was properly filed in the county records. A mechanic's lien on property is superior to other liens and interests, and Workman will be paid first in the event of a foreclosure. A good faith purchaser takes free of previous unrecorded interests and liens of which he has no notice. At the time Mona purchased the property, Workman had not recorded his lien in the deed records. Therefore, there was no record notice. However, Mona knew that Workman was building on the property. What's more is Mona lived next door and could see the improvements being made that would put any reasonable person on notice as to the existence of a superior lien. Knowledge is not the same thing as notice, and Mona had actual notice, or at the very least, inquiry notice of the mechanic's lien. Inquiry notice exists when the facts indicate to a reasonable person that there may be a superior interest that the person should inquire about.

In order to enforce his rights, Workman must go through the judicial foreclosure process if he is not paid by Mona. This would require Workman to file a notice of foreclosure and send it to all interest holders in Greenacre. The court would enter a judgment and issue the sheriff a writ of execution to levy on the property. Notice of the sale would be published in a newspaper of general circulation, and a public sale would be held. Proceeds of the sale would first be used to pay Workman, as a mechanic's lien is superior to other interests in Greenacre.

2. Ben has no rights in Greenacre, because his deed is void. A deed must be in writing, signed by the grantor, and contain an adequate legal description of the property conveyed. A deed is void if any of these requirements are not met. The property does not have to be described in metes and bounds. A general description is okay as long as the property can be identified. In this case, the property being conveyed to Ben cannot be identified. The description is inadequate because we don't know which two acres are being conveyed. Greenacre is a ten-acre tract with presumably more than two acres of river frontage. This is indicated in the language itself, which says, "two acres on the river side...", implying that there are more than two river side acres. Since we have no legal description of the land being conveyed, the deed is void.

In addition to the deed being void, Ben is not a bona fide purchaser of Greenacre. The facts state that Ben did not know Gail had sold Greenacre to Mona, but lack of actual knowledge is not enough. Record notice will serve to defeat one who seeks status as a bona fide purchaser.

Gail deeded Greenacre to Mona in November, and the facts state that the deed was immediately and properly recorded. A title search by Ben would have revealed that Gail was not the owner, and in fact Mona was.

3. Mona owns Whiteacre. Whiteacre was never transferred to Gail because the deed was not signed by the grantor--it was a forgery. The forgery of a third party cannot operate to take title from the rightful owner. Although Ben had no actual notice that Gail was not the rightful owner and record notice would indicate that Gail was the owner, forgery is an exception to the rights of a bona fide purchaser. Gail could not transfer anything to Ben, because she had nothing to transfer.

**END OF EXAM**

11)

1. Workman has a valid, perfected mechanic's lien on Greenacre. Because Workman timely filed a proper affidavit for the mechanic's lien with the County Clerk, his lien relates back to the commencement of his work in September 2009. Even though he sent a copy of the affidavit to Gail instead of Mona, the current owner of the property, the lien is still perfected because neither Gail nor Mona notified him of the sale of the property. Because Mona knew that Workman had been building improvements to the property, she had notice of Workman's lien when she took Greenacre and therefore took Greenacre subject to the lien.

To enforce the lien, Workman should demand payment from Mona. If she fails to pay, he should file an action to foreclose on Greenacre, whereby he will be paid out of the proceeds of the sale.

2. Ben has no rights in Greenacre because the deed purporting to convey part of Greenacre to Ben was void and Ben's interest is not protected by the recording act.

The deed is void for two reasons. First, of course, the deed conveys no interest in Greenacre because Gail had no interest to convey. Mona owns Greenacre, not Gail. The conveyance of Greenacre from Gail to Mona is valid against Ben because Mona properly recorded the deed. Ben has record notice of Mona's ownership, and therefore has no protection as a bona fide purchaser. The deed conveyed no more interest in Greenacre than Gail had, which was nothing.

The deed is also void on its face, because it inadequately describes the portion of Greenacre it purports to convey. The description, "two acres on the river side out of Greenacre" is patently ambiguous and invalid. A valid description of the property from which the location and boundaries of the property can be ascertained with reasonable certainty is an essential element of a valid deed.

Because the deed to Ben was void, because Gail had no interest to convey to him, and because he was not protected by the recording act as a bona fide purchaser, Ben owns no interest in Greenacre.

3. Mona owns Whiteacre. Gail's forgery of the warranty deed from Mona to Gail was in no way an effective conveyance of Whiteacre to Gail. The recording of a void deed does not give

Gail any rights in Whiteacre to sell to Ben. Ben does not own Whiteacre by virtue of being a bona fide purchaser. The recording act only protects bona fide purchasers from prior unrecorded conveyances - it does not allow them to enforce void conveyances.

**END OF EXAM**