

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-CA-00376

TENNESSEE PROPERTIES INCORPORATED

Plaintiff/Appellant

v.

SOUTHERN PILOT INSURANCE COMPANY
AND LARRY GILLENLINE

Defendants/Appellees

APPEAL FROM THE CHANCERY COURT OF LEE COUNTY, MISSISSIPPI.
CIVIL ACTION NO. 08-0942-41-H

BRIEF OF THE APPELLANTS

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ORAL ARGUMENT REQUESTED

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I. CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

Tennessee Properties, Inc.
Herbert Brewer
Larry Gillentine
Southern Pilot Insurance Company
Renasant Bank

Respectfully submitted,



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III. TABLE OF CASES AND AUTHORITIES

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IV. STATEMENT REGARDING ORAL ARGUMENT

Appellants request oral argument.

V. STATEMENT OF ISSUES

1. In an action to adjudicate title to real property in which Plaintiff, who had been dispossessed of the property after a Substituted Trustee's sale, alleges prior satisfaction of the debt obligation underlying the Deed of Trust through which the Substituted Trustee claims authority and right to sell the property, did the trial court err in applying the general three-year statute of limitations found Miss. Code Ann. § 15-1-49, rather than the ten year period found in Miss. Code Ann. § 15-1-7, Limitations applicable to actions to recover land, and further err in granting Defendant's Motion to Dismiss where the action was filed less than ten years after the Substituted Trustee's sale?
2. In an action to adjudicate title to real property in which Plaintiff, who had been dispossessed of the property after a Substituted Trustee's sale, alleges that the Substituted Trustee did not conduct the sale in compliance with the terms of the Deed of Trust, did the trial court err in applying the general three-year statute of limitations found Miss. Code Ann. § 15-1-49, rather than the ten year period found in Miss. Code Ann. § 15-1-7, Limitations applicable to actions to recover land or Miss. Code Ann. § 15-1-11, Limitations applicable to actions to recover land for defect in the instrument, and further err in granting Defendant's Motion to Dismiss where the action was filed less than ten years after recording of the Substituted Trustee's Deed?
3. In an action to adjudicate title to real property in which Plaintiff, who had been dispossessed of the property after a Substituted Trustee's sale, challenges the chain of title of the party in possession of the property based upon a concealed defect in the manner of sale of that property under a Substituted Trustee's Deed, did the trial court err in finding that the three year general statute of limitations found at Miss. Code Ann. § 15-

1-49, was not tolled where the defect in the manner of the purported sale was not discovered until less than a year before Plaintiff filed suit, and where the defect in the manner of the purported sale would not have been discoverable earlier even in the exercise of reasonable diligence, and did the trial court further err in granting Defendant's Motion to Dismiss premised upon the expiration of the statute of limitations?

VI. STATEMENT OF THE CASE

A. Nature of the case, course of proceedings, and disposition below.

Plaintiff claims a possessory interest in certain property that was subject of a substituted trustee's sale on June 12, 1998. Plaintiff filed a Complaint to Adjudicate Title on June 12, 2008, claiming that the substituted trustee's sale was ineffective for either or both of the following reasons: 1) Plaintiff had satisfied the underlying debt obligation which had been secured by the Deed of Trust through which the substituted trustee claim the authority and the right to sell the Property, and 2) substitute trustee's sale was not done in accordance with the Deed of Trust in that it was not conducted a public outcry, rendering the sale ineffective and creating a concealed defect in the chain of title of Defendant.

Defendant responded with an Answer containing a Motion to Dismiss as his First Affirmative Defense. Defendant followed that with a separate motion to dismiss, arguing that the three year general statute of limitations found at Miss. Code Ann. § 15-1-49, was applicable to this case.

This is an appeal from the Trial Court's Judgment of Dismissal in favor of Defendants, premised upon the applicability of the three year general statute of limitation found at Miss. Code Ann. § 15-1-49.

B. Relevant Facts

This appeal stems from the trial court's grant of Defendant's Motion to Dismiss; therefore in reviewing the trial court's decision, the allegations of the Complaint must be taken as true (Fidelity & Deposit Company of Maryland v. Ralph McKnight & Construction, Inc., 28 So.3d 1282, 1284 (Miss. 2010)). The recitation of "Relevant Facts" herein will be from that perspective.

Plaintiff obtained the property at issue (hereinafter the "Property") by virtue of Warranty Deeds filed for record in the office of the Chancery Clerk of Lee County, Mississippi, at Book 1213, Page 114 and 118, from Herbert Brewer. Complaint, ¶ 7, Record 006.

Southern Pilot Insurance Company claimed title to the Property by virtue of a Substituted Trustee's Deed filed for record in the office of the Chancery Clerk of Lee County, Mississippi, on July 28, 1998, at Book 1781, Page 532. Said title is defective in one or both of the following particulars: a) the underlying obligation of the Deed of Trust through which the Substitute Trustee claimed right to sell the Property had been satisfied, rendering the Deed of Trust null and void; b) the purported sale by the Substitute Trustee to Southern Pilot did not comply with the terms of the Deed of Trust in that the sale was not by public outcry. Complaint, ¶ 8, Record 006.

Defendant Larry Gillentine claims title to the Property by virtue of a Warranty Deed from Southern Pilot Insurance Company filed for record in the office of the Chancery Clerk of Lee County, Mississippi, at Book 1801, Page 173. Said the Warranty Deed is ineffective based on the defect(s) in the Substituted Trustee's Deed as set forth above. Complaint, ¶ 9, Record 006. Defendant Larry Gillentine admits claiming ownership of the Property by virtue of the Warranty Deed described above (Record 016, ¶ 9), and attached a copy of said Warranty Deed to his Answer to the Complaint. The Warranty Deed specifically excepts from the warranty the Deed of

Trust under which Plaintiff claims title, and accepts from the warranty the Deed of Trust under which Southern Pilot Insurance Company claimed the title. Record 022, ¶¶ 8-10.

At no time prior to August 1, 2007, did any agent of Tennessee Properties, Inc., have any knowledge of the fact that the sale of the Property, on June 12, 1998, was not done in strict compliance with the terms of the Deed of Trust, specifically that there was no sale at public outcry. Affidavit of Herbert Brewer, Record 048-49 (The Affidavit contained a typographical error and incorrectly made reference to August 1, 2008. Appellate has filed a Motion for Correction and Modification of the Record on Appeal contemporaneous with the filing of this Brief. That this is not simply a recent assertion of convenience is evidenced by the fact that in its Response to Defendant's Motion to Dismiss, Plaintiff asserted it "was not aware of this fraudulent concealment until just under one year from the date this lawsuit was filed." Record 045.)

Plaintiff filed the Complaint to Adjudicate Title on June 12, 2008. Record 005.

Defendant responded with an Answer containing a Motion to Dismiss as his First Affirmative Defense. Record 014. Defendant followed that with a separate motion to dismiss, arguing that the three year general statute of limitations found at Miss. Code Ann. § 15-1-49, was applicable to this case. Record 042.

This is an appeal from the Trial Court's Judgment of Dismissal in favor of Defendants, premised upon the applicability of the three year general statute of limitation found at Miss. Code Ann. § 15-1-49. Record 052.

VII. SUMMARY OF ARGUMENT

Plaintiff claims that possessory interest in the Property, and filed this action to be restored to the Property within the 10 year time period prescribed in Miss. Code Ann. § 15-1-7 and/or 15-1-11. Plaintiff's occupation, use, and enjoyment of the Property was interrupted because of a purported sale by a Substitute Trustee to Southern Pilot Insurance Company, with the Substituted Trustee's Deed filed for record on July 28, 1998. In its Complaint, Plaintiff states two alternate bases under which the purported sale by the Substitute Trustee was ineffective, both of which must be taken as true in evaluating a motion to dismiss: first, satisfaction of the underlying debt obligations contained in the Deed of Trust through which the Substitute Trustee claimed authority to sell, and second, a defect in the verity of the facts recited in the Substituted Trustee's Deed through which Southern Pilot Insurance Company claimed ownership, specifically that the Substituted Trustee had complied with all terms of the Deed of Trust by offering the Property for sale at public outcry. Under Plaintiff's first contention, the ten-year limitation period prescribed in Miss. Code Ann. § 15-1-7 for recovery of land applies. Under Plaintiff's second contention, the ten-year limitation period prescribed in Miss. Code Ann. § 15-1-7 for recovery of land applies and/or Miss. Code Ann. § 15-1-11 for recovery of land for defect in instrument applies. Plaintiff brought this suit less than 10 years after the recording of the Substituted Trustee's Deed; therefore Plaintiff's claim was timely filed and it was inappropriate for the trial court to grant Defendant's Motion to Dismiss based on a statute of limitations defense.

The trial court erred in its implicit finding that Plaintiff's claim had to be premised upon fraud, that McWilliams v. McWilliams, 970 So.2d 200 (Miss. Ct. App. 2007) was controlling in this case, and that the general three-year statute of limitations was applicable to this action. The

facts of the case herein are distinguishable from McWilliams and are also distinguishable from the authority cited within that decision. Further, even if the general three-year statute of limitations is applicable to this action, the fraud was concealed and was not apparent on the face of the recorded instrument. In McWilliams and the authority cited therein, the allegedly concealed fraud could have been discovered through the exercise of reasonable diligence upon the part of the plaintiffs. In the case at bar, the concealed defect in the procedure of the purported sale by the Substituted Trustee could not have been later discovered even with the exercise of reasonable diligence on the part of Plaintiff. Because of the type of concealment, the general rule that concealed fraud will not toll the statute limitations where the instrument is recorded as a matter of public record should not apply. Because Plaintiff brought suit less than three years after discovery of the concealed defect in the procedure of the purported sale by the Substituted Trustee, Plaintiff's claim was brought within the period prescribed by Miss. Code Ann. § 15-1-49 and it was inappropriate for the trial court to grant Defendant's Motion to Dismiss premised upon the running of the statute of limitations.

VIII. ARGUMENT

A. Taking the allegations contained in Plaintiff's Complaint as true, it cannot be said beyond a reasonable doubt that Plaintiff could prove no set of facts to support Plaintiff's claim.

1. Legal Standard for Review of the trial court's action.

"This Court uses a de novo standard of review when considering the grant or denial of a motion to dismiss." Fidelity & Deposit Company of Maryland v. Ralph McKnight & Construction, Inc., 28 So.3d 1282, 1284 (Miss. 2010) (quoting Harris v. Miss. Valley State Univ., 873 So.2d 970, 988 (Miss. 2004)). Further, in evaluating such motions, the allegations of

the complaint must be taken as true and the motion is denied unless it appears beyond a reasonable doubt that plaintiff cannot prove any set of facts to support his claim. *Id.*

2. Taking as true Plaintiff's contention that the debt obligation underlying the Deed of Trust through which the Substituted Trustee claimed authority to sell had been satisfied, the purported sale to Southern Pilot was ineffective rather than fraudulent and Plaintiff's claim was filed within the ten-year period prescribed in Miss. Code Ann. § 15-1-7.

Taking the first contention in paragraph 8 of Plaintiff's Complaint as true, Plaintiff's claim is one for recovery of land as provided for in Miss. Code Ann. § 15-1-7. The trial court failed to consider this aspect of Plaintiff's claim in arriving at its conclusion that the three year statute of limitations precluded this matter from going forward.

Plaintiff had been in possession of the Property since the early part of December, 1986. Record 010–11. Plaintiff's claim of title was not challenged and Plaintiff was in no way excluded from possession, use, or enjoyment of the Property until the execution of the Substituted Trustee's Deed on July 27, 1998 and its recording on July 28, 1998. Record 006. Plaintiff instituted this lawsuit on June 12, 2008, less than 10 years after the recording of the Substituted Trustee's Deed. Record 005.

Taking as true Plaintiff's contention that the debt obligation secured by the Deed of Trust had been satisfied, there was no authority or right for the Substitute Trustee to sell the Property. The purported sale by the Substitute Trustee was not a fraud perpetrated upon Plaintiff, but rather a fraud perpetrated upon Defendant's predecessor in interest. Accordingly, the appropriate limitations period for Plaintiff to bring an action to recover the Property is the ten-year period set forth in Miss. Code Ann. § 15-1-7.

Under that statute, “[a] person may not make an entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or to bring the action shall have first accrued” Miss. Code Ann. § 15-1-7. As set forth above, Plaintiff’s claim the title and/or possession, use, and enjoyment of the Property was not infringed until July 27, 1998, and Plaintiff instituted this action within 10 years of that date. Accordingly, it was inappropriate for the trial court to dismiss Plaintiff’s claim as barred by a statute of limitations.

3. Taking as true Plaintiff’s contention that the purported sale by the Substituted Trustee was not made at public outcry as required by the terms of the Deed of Trust, then the purported sale is defective and ineffective to transfer title and the Substituted Trustee’s Deed, which recites that the sale was made a public outcry, is defective in terms of the veracity of the statements contained therein.

Taking the second contention in paragraph 8 of Plaintiff’s Complaint as true, Plaintiff’s claim is either one for recovery of land as provided for in Miss. Code Ann. § 15-1-7 and/or one for recovery of land based on a defect in instrument as provided for in Miss. Code Ann. § 15-1-11. Plaintiff has alleged that the Substituted Trustee failed to comply with the terms of the Deed of Trust in failing to conduct the purported sale at public outcry. Record 006. This allegation must be taken as true. It must be further taken is true that this failure was not in compliance with the terms of the Deed of Trust. Record 006.

By failing to comply with the terms of the Deed of Trust in the mechanics of the purported sale, the Substituted Trustee’s sale is defective and ineffective to transfer title. As set forth above, Plaintiff’s claim the title and/or possession, use, and enjoyment of the Property was not infringed until July 27, 1998, and Plaintiff instituted this action within 10 years of that date. Accordingly, it was inappropriate for the trial court to dismiss Plaintiff’s claim as barred by a

statute of limitations.

Alternatively, pursuant to Miss. Code Ann. § 15-1-11, Plaintiff was required to "institute [its] suit therefor not later than 10 years next after the date when such instrument has been actually recorded in the office of the clerk of the chancery court of the county in which such real estate is situated and not afterwards." As alleged in Plaintiff's Complaint (and admitted by Defendant in his Answer), the Substituted Trustee's Deed was filed for record in the office of the Chancery Clerk of Lee County, Mississippi, on July 28, 1998. Record 006 and 015. The record clearly reflects that Plaintiff's Complaint was filed on June 12, 2008, less than 10 years later. Record 005. Clearly, if Miss. Code Ann. § 15-1-11 applies, Plaintiff's Complaint was timely filed.

In addition, Plaintiff has filed a Motion for Correction and Modification of the Record on Appeal to include the Substituted Trustee's Deed. Should this Honorable Court grant the motion and allow inclusion of the Substituted Trustee's Deed, that deed would reflect an assertion by the Substitute Trustee of strict compliance with all terms of the Deed of Trust. It would also reflect that nowhere within the deed does the Substitute Trustee assert to the veracity of the facts contained therein, and that the notary's certification only attests that the person signing the instrument is who he says he is and that he signed up for the purposes stated therein. This is an additional basis for finding that the Substituted Trustee's Deed is a defective instrument as contemplated by Miss. Code Ann. § 15-1-11.

4. Even if Plaintiff's claim is found to be based on fraud and is subject to the general three year statute of limitations, under the specific facts of this case the concealed nature of the fraud tolled the running of the statute of limitations and Plaintiff's claim was timely filed.

The trial court agreed with Defendant in concluding that Plaintiff's claim was grounded in fraud and that McWilliams v. McWilliams, 970 So.2d 200 (Miss. Ct. App. 2007) was controlling in this case. However, there are important factual differences between McWilliams and the case at bar, which argue that this case should be an exception to the general rule that concealed fraud will not prevent the running of the statute of limitations where an instrument is recorded as a matter of public record.

In McWilliams, Chancellor Jane Weathersby, mother of D. Rials McWilliams, and acting in defense of the D. Rials McWilliams Trust, defended a lawsuit brought by Frank McWilliams, the boy's father, to set aside a warranty deed transfer. 970 So.2d at 201. While incarcerated for burglary, Frank McWilliams, an attorney, had signed an irrevocable trust and a warranty deed prepared by his brother, attorney John H. McWilliams. *Id.* at 202. Both documents were filed the same day they were executed as public records in the chancery clerk's office of Sunflower County. *Id.* More than six years later, Frank McWilliams sought to set aside the warranty deed of trust, claiming that his brother John McWilliams "fraudulently presented the deed transfer and trust documents for execution under the guise that the documents were actually intended to facilitate his release from jail and admittance into a drug rehabilitation center." *Id.*

In addressing Frank McWilliams's argument that concealed fraud tolled the statute of limitations, our Court of Appeals looked to its prior decision in Carder v. BASF Corp., 919 So.2d 258 (Miss. Ct. App. 2005), reciting its holding that "when the information is placed in the public domain, the doctrine of fraudulent concealment ceases to be applicable." McWilliams, 970

So.2d at 203 (¶ 9) (citing to 919 So.2d at 262 (¶ 14)).

The McWilliams Court also relied upon this Honorable Court's decision in O'Neal Steel, Inc. v. Millette, 797 So.2d 869 (Miss. 2001). The Court of Appeals cited O'Neal Steel for the proposition that the three-year statute of limitations for actions to set aside fraudulent conveyances begins to run when the "complainant either discovers, or should have discovered with due diligence, the property transfer." 970 So.2d at 203 (¶ 8)(citing to O'Neal Steel, 979 So.2d 869, 875-76 (¶¶ 24-26). Between these two propositions, the Court of Appeals found that concealed fraud did not toll the statute of limitations for Frank McWilliams's claim.

A close reading of the O'Neal Steel decision reveals critical differences from the case at bar that have a direct impact on its applicability to the case at bar, and one point in particular argues against the way it was applied in McWilliams.

In O'Neal Steel, a judgment creditor **with no possessory interest in the property**, sought to set aside a fraudulent conveyance of real property judgment debtor to his son. O'Neal Steel, 979 So.2d 869, 871 (Miss. 2001)(¶ 6). The transfer from judgment debtor to his son was clearly undertaken after O'Neal brought suit, and appears to have been after judgment was rendered. *Id.* This Honorable Court found that because O'Neal had no possessory interest in the subject property, it's claim could not be an action to recover land and that the ten year limitations of Miss. Code Ann. § 15-1-7 could not apply to its claim of fraudulent conveyance. 979 So.2d at 873.¹

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This critical difference suggests that our Court of Appeals was not directly on point when it suggested that O'Neal Steel "directly addressed the issue" presented in McWilliams, and suggests that the decision in McWilliams should perhaps be limited to its particular facts.

This Honorable Court then looked at whether or not concealed fraud would toll the three-year statute of limitations of Miss. Code Ann. §15-1-49. After noting that conceal fraud is an exception to the applicable statute of limitations and is not applicable "where the alleged fraudulent conveyance is recorded, the circumstances are public and the means of finding out the character of the transaction is available" (979 So.2d at 875 (*quoting Aultman v. Kelly*, 109 So.2d 344, 347 (Miss. 1959))), this Honorable Court pointed out that had O'Neill exercised reasonable diligence by simply checking the land records of the county where the judgment debtor resided, it would have easily discovered the filing of the deed, which would have on its face revealed the fraudulent transfer from judgment debtor to his son. 979 So.2d at 875.

Unlike McWilliams, Plaintiff in the case at bar was neither a party to the transaction question nor was an attorney (nor did it have an attorney acting on its behalf in relation to the challenged transaction). Further, the information Frank McWilliams argued was fraudulently concealed from him was information "placed in the public domain," which he, as an attorney, clearly would have understood were not "documents intended to facilitate his release from jail and admittance into a drug rehabilitation center." In the case at bar, the concealed defect was not apparent at all on the face of the document, nor would it have been immediately apparent in looking at the chain of title. The concealed defect was in the failure of the substituted trustee to have complied with the terms of the deed of trust.

Unlike O'Neal Steel, Plaintiff in the case at bar claims a possessory interest in the property. Unlike the plaintiff in O'Neal Steel, Plaintiff herein could not have discovered the failure of the substitute trustee to satisfy the terms and conditions of the Deed of Trust by simply going down and checking the land records in Lee County. As stated above, the concealed defect was not apparent at all on the face of the document.

Because the factual background of the case at bar can be distinguished from both McWilliams and O'Neal Steel in several critical respects, Plaintiff respectfully submits that the general rule set forth in those cases, that concealed fraud will not toll the statute of limitations where the instrument is recorded as a matter of public record, should not apply, and the concealed fraud should toll the statute of limitations.

Plaintiff did not discover defect in the mechanics of the purported substituted trustee's sale prior to August 1, 2007. Record 048 (consistent with requested correction to the Record, and consistent with Plaintiff's argument at Record 045). Plaintiff filed suit on June 12, 2008, well under three years later Records 006. Even under the general three-year statute of limitations contained in Miss. Code Ann. § 15-1-49, Plaintiff's lawsuit was timely filed and it was inappropriate for the trial court to grant Defendant's Motion to Dismiss premised upon a statute of limitations defense.

IX. CONCLUSION

For all the reasons stated above, Plaintiffs pray this Court reverse the trial court's Judgment of Dismissal in favor of Defendants, and remand this action to the Chancery Court for further proceedings and trial.

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of the foregoing document has been served upon:

Hon. John A. Hatcher, Chancellor
P.O. Box 118
Booneville, MS 38829

Hon. Dennis W. Voge
P.O. Box 7120
Tupelo, MS 38802

Southern Pilot Insurance Company
c/o CT Corporation System of Mississippi
645 Lakeland Drive, Ste 101
Flowood, MS 39232

by mailing the same, via United States mail, postage prepaid, on this the 27th day of July, 2010.



William R. Bruce

ADDENDUM
RELEVANT SECTIONS OF THE MISSISSIPPI CODE

§§ 15-1-7. Limitations applicable to actions to recover land

A person may not make an entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or to bring the action shall have first accrued to some person through whom he claims, or, if the right shall not have accrued to any person through whom he claims, then except within ten years next after the time at which the right to make the entry or bring the action shall have first accrued to the person making or bringing the same. However, if, at the time at which the right of any person to make an entry or to bring an action to recover land shall have first accrued, such person shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of ten years hereinbefore limited shall have expired, make an entry or bring an action to recover the land at any time within ten years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed, by reason of the disability of any other person, to make an entry or to bring an action to recover the land beyond the period of ten years next after the time at which such person shall have died.

§§ 15-1-11. Limitations applicable to actions to recover land for defect in instrument

Any person who has a right of action for the recovery of land because of any one or more of the following enumerated defects in any instrument, shall institute his suit therefor not later than 10 years next after the date when such instrument has been actually recorded in the office of the clerk of the chancery court of the county in which such real estate is situated and not afterwards:

- (1) where it has not been signed by the proper officer of any corporation;
- (2) where the corporate seal of the corporation has not been impressed on such instrument;
- (3) where the record does not show such corporate seal;
- (4) because the record does not show authority therefor by the board of directors and stockholders (or either of them) of a corporation;
- (5) where such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been cancelled, withdrawn or forfeited;
- (6) where the executor, administrator, guardian, assignee, receiver, master in chancery, agent or trustee, or other agency making such instrument, signed or acknowledged the same individually instead of in his representative or official capacity;

(7) where such instrument is executed by a trustee without record of judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited;

(8) where the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment;

(9) where the notarial seal is not shown of record;

(10) where the wording of the consideration may or might create an implied lien in favor of the grantor (by this is not meant an express vendor's lien retained).

If, at the time at which the right of any person to bring an action for the recovery of land because of any such defects, shall have first accrued, such persons shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him, may, notwithstanding that the period of limitations hereinbefore provided for shall have expired, bring an action to recover the land at any time within the period of limitations provided herein next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability no time to bring an action to recover the land beyond the period of limitations provided herein next after the time at which such persons shall have died, shall be allowed by reason of the disability of any other person. Moreover, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one years.

This section shall not, however, apply to forged instruments.