

NO. 07-08-0384-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
SEPTEMBER 25, 2009

DAVID SAVAGE and LYNDA J. SAVAGE,

Appellants

v.

TEXSTAR BANK, BRANCH OF FIRST NATIONAL
BANK OF MONAHANS,

Appellee

FROM THE 72ND DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2007-541,311; HON. RUBEN REYES, PRESIDING

Memorandum Opinion

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

David and Lynda Savage appeal from a summary judgment granted in favor of TexStar Bank. TexStar sued the Savages to recover a deficiency on a note once the realty securing the instrument's payment was sold at foreclosure. The Savages assert various grounds on appeal all of which are premised on their purported affirmative defense of mitigation and the presence of a material question of fact regarding that defense. We affirm the judgment.

A creditor attempting to collect upon a note secured by a deed of trust has no duty to mitigate his damages under Texas law. *Cocke v. Meridian Sav. Assoc.*, 778 S.W.2d 516, 520 (Tex. App.–Corpus Christi 1989, no writ) (stating there is no duty to mitigate in property law). Thus, there can be no material issue of fact relating to the Savages' mitigation defense since their purported defense is inapplicable here as a matter of law.

Accordingly, the judgment is affirmed.

Brian Quinn
Chief Justice