



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-20-00017-CV

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**ROSALBA VELOZ AND ALL OTHER OCCUPANTS  
OF 5120 CRESTLINE ROAD, FORT WORTH, TEXAS 76107, APPELLANTS**

**V.**

**WILMINGTON SAVINGS FUND SOCIETY, FSB D/B/A CHRISTINA TRUST,  
NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM  
MORTGAGE ACQUISITION TRUST, APPELLEE**

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**On Appeal from the County Court at Law Number 1  
Tarrant County, Texas  
Trial Court No. 2019-002930-1; Honorable Don Pierson, Presiding**

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November 15, 2021

**MEMORANDUM OPINION**

**Before QUINN, C.J., and PIRTLE and PARKER, JJ.**

Appellants, Rosalba Veloz and all other occupants of 5120 Crestline Road, Fort Worth, Texas 76107, appeal the judgment of the Tarrant County Court at Law Number 1, granting possession of the residential premises located at that address to Appellee,

Wilmington Savings Fund Society, FSB d/b/a Christina Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust. Raising a single issue, Veloz maintains that the evidence is legally insufficient to sustain a forcible detainer action because the *Substitute Trustee's Deed*, through which Wilmington Savings claims its right to possession, is defective because neither the *Notice of Trustee's Sale* nor the *Appointment of Substitute Trustee* include the street address of the substitute trustee, as required by law.<sup>1</sup> While we agree that the notice was defective, we find Veloz did not preserve that complaint for appellate review. Furthermore, even if preserved for review, the defect did not render the transfer of title void. Accordingly, we affirm the judgment of the trial court.

#### **BACKGROUND**

In 2006, Veloz borrowed money from Mortgage Electronic Registration Systems, Inc., as nominee for Plaza Home Mortgage, Inc., secured by a deed of trust lien in favor of Gregory S. Graham, trustee, encumbering the residential property located at 5120 Crestline Road, Fort Worth, Texas 76107. That deed of trust was recorded in the Official Public Records of Tarrant County, Texas at Clerk's File Number D206357775. Wilmington Savings, the owner and holder of that indebtedness, contends that Veloz defaulted in her obligations under the terms of that deed of trust. As a result of that alleged default, Wilmington Savings caused an *Appointment of Substitute Trustee* to be executed on August 9, 2018, naming Brent Graves, among others, as a Successor

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<sup>1</sup> Originally appealed to the Second Court of Appeals, sitting in Fort Worth, this appeal was transferred to this court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001 (West 2013). Should a conflict exist between precedent of the Second Court of Appeals and this court on any relevant issue, this appeal will be decided in accordance with the precedent of the transferor court. TEX. R. APP. P. 41.3.

Substitute Trustee.<sup>2</sup> Similarly, Wilmington Savings caused a *Notice of Trustee's Sale* to be posted, advertising the property for a non-judicial foreclosure sale on the first Tuesday of September 2018 (September 4, 2018) in accordance with the terms and conditions of the deed of trust recorded at Clerk's File Number D206357775.

On September 4, 2018, Brent Graves, acting as substitute trustee, foreclosed the subject property by auctioning it off to Wilmington Savings. A *2nd Correction Substitute Trustee's Deed* was signed and executed by Graves on the 7th day of January 2019 and that deed was recorded in the Official Public Records of Tarrant County at Clerk's File Number D219004150. Neither the *Appointment of Substitute Trustee*, the *Notice of Trustee's Sale*, nor the *2nd Correction Substitute Trustee's Deed* included the street address of either the original or substitute trustee.<sup>3</sup>

Demand was made that Veloz vacate the premises located at 5120 Crestline Road, Fort Worth, Texas. When Veloz did not vacate the premises, a forcible detainer proceeding was filed in Justice Court, Precinct 4. A judgment for possession was entered in favor of Wilmington Savings on April 4, 2019. Veloz posted an appeal bond and the cause was appealed to the County Court at Law Number 1 of Tarrant County. At a hearing conducted on October 24, 2019, Veloz appeared by counsel, where it was announced to the court that the parties were appearing on a "post-foreclosure eviction, and the property is 5120 Crestline Road, Fort Worth, Texas. We have reached an

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<sup>2</sup> The *Appointment of Substitute Trustee* named twenty-six substitute or successor trustees.

<sup>3</sup> The *Notice of Trustee's Sale* did provide the name and street address of the "Mortgage Servicer": "Rushmore Loan Management Services, LLC . . . 15480 Laguna Canyon Road, Suite 100, Irvine CA 92618," as well as the name and street address of the law firm providing notice on behalf of the substitute trustee: "Codilis & Stawiariski, P.C., 400 N. Sam Houston Pkwy E, Suite 900A, Houston, TX 77060."

agreement of a supersedeas bond amount . . . .” Thereafter, the attorney for Wilmington Savings offered into evidence the *2nd Correction Substitute Trustee’s Deed, Deed of Trust, and Notice of Trustee’s Sale*. The only objections made to evidence presented were that the trustee’s deed was “hearsay” and that the notice to vacate was not properly served. Both objections were overruled and the exhibits were admitted. No evidence, arguments, or objections were presented concerning the validity of the notice of trustee’s sale. The trial court granted Wilmington Savings judgment for possession of the premises in question.

In a single issue, Veloz contends the trial court erred in awarding immediate possession to Wilmington Savings because “the evidence was legally insufficient to sustain a forcible detainer action” because the *Notice of Trustee’s Sale* was “void on its face” for failing to contain the street address of the substitute trustee. We disagree.

#### **PRESERVATION OF ERROR**

Proper preservation of a complaint for appellate review requires that the record show the complaint was made known to the trial court by a timely request, objection, or motion that sufficiently specifies the grounds for the complaint, unless the grounds for the complaint are apparent from the context of the evidence or the record. See TEX. R. APP. P. 33.1(a)(1)(A). In addition, the complaining party must either obtain a ruling from the court or object to the court’s refusal to rule on the request, objection, or motion. *Id.* at 33.1(a)(2)(A), (B).

## **LEGAL SUFFICIENCY—STANDARD OF REVIEW**

We will sustain a legal sufficiency challenge only if (a) there is a complete absence of evidence of a vital fact; (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (c) the evidence offered to prove a vital fact is no more than a mere scintilla; or (d) the evidence establishes conclusively the opposite of a vital fact. *Dallas Nat'l Ins. Co. v. De La Cruz*, 470 S.W.3d 56, 57-58 (Tex. 2015) (per curiam). In our review, we credit favorable evidence if a reasonable fact finder could do so and disregard contrary evidence unless a reasonable fact finder could not. See *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We consider the evidence in the light most favorable to the finding under review, and we indulge every reasonable inference that would support the finding. *Id.* at 822.

## **TEXAS PROPERTY CODE SECTIONS 51.002 AND 51.0075**

For the sale of real property under a deed of trust lien, section 51.002 of the Texas Property Code requires that notice be given, not less than twenty-one days prior to the date of sale, by “serving written notice of sale by certified mail on each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt.” TEX. PROP. CODE ANN. § 51.002(b)(3) (West Supp. 2021). Another section of the Property Code, section 51.0075(e), added in 2005, requires that a section 51.002(b) notice of foreclosure sale disclose “the name and a street address for a trustee or substitute trustee.” See § 51.0075(e), Act of May 25, 2005, 79th Leg., R.S., ch. 1231, § 1, 2005 Tex. Gen. Laws 3980.

## **STRICT COMPLIANCE**

As a general principle, strict compliance with the notice requirements in a deed of trust is necessary for a trustee or substitute trustee to invoke the authority to conduct a non-judicial foreclosure sale. See *Univ. Sav. Ass'n v. Springwood Shopping Ctr.*, 644 S.W.2d 705, 706 (Tex. 1982) (holding "Texas Courts have consistently held that the terms set out in a deed of trust must be strictly followed"); *G4 Trust, Grover Gibson v. Consol. Gasoline, Inc.*, No. 02-10-00404-CV, 2011 Tex. App. LEXIS 7158, \*9-10 (Tex. App.—Fort Worth Aug. 31, 2011, pet. denied) (holding same); *Myrad Props., Inc. v. LaSalle Bank Nat'l Ass'n*, 252 S.W.3d 605, 615 (Tex. App.—Austin 2008), *rev'd on other grounds*, 300 S.W.3d 746 (Tex. 2009) (stating "[b]ecause a trustee's power to sell the property is derived from the deed of trust and statute, strict compliance with these requirements is considered a prerequisite to the trustee's right to make the sale"). See also *Houston First Am. Sav v. Musick*, 650 S.W.2d 764, 768 (Tex. 1983) (holding "[c]ompliance with the notice condition contained in the deed of trust and as prescribed by law is a prerequisite to the right of the trustee to make the sale"). But see *Powell v. Stacy*, 117 S.W.3d 70, 75 (Tex. App.—Fort Worth 2003, no pet.) (finding notice to be valid when the defect contained in the notice (misinformation concerning the principal and interest due and owing) did not adversely impact the purpose of the notice requirements and did not cause a sale at a grossly inadequate price).

## **ANALYSIS**

Here, Veloz did not preserve any complaint for appellate review. No complaint concerning the validity of the *Notice of Trustee's Sale*, much less the validity of the *2nd Correction Substitute Trustee's Deed* was ever made. Furthermore, Veloz never spoke

a word to the trial court about any alleged irregularities in the notice of trustee's sale or final trustee's sale and no such irregularity appears on the face of either document. As such, Veloz failed to preserve any complaint concerning the validity of either instrument. See TEX. R. APP. P. 33.1.

Additionally, the general purpose of notice under section 51.002 is to provide a minimum level of protection to the debtor, while providing constructive notice of the foreclosure to potential third-party purchasers. See *Senger Creek Dev. v. Fuqua*, No. 01-15-01098-CV, 2017 Tex. App. LEXIS 5076, at \*14 (Tex. App.—Houston [1st Dist.] June 1, 2017, no pet.); *Onwuteaka v. Cohen*, 846 S.W.2d 889, 892 (Tex. App.—Houston [1st Dist.] 1993, writ denied). While the *Notice of Trustee's Sale* in this case did not specifically identify the *street address* of the substitute trustee, it did include the street address of both the mortgage servicer and the law firm providing the notice of substitute trustee's sale on behalf of the substitute trustee. It also included under the heading: "**For information:**" the street address of "Auction.com." The record is silent as to whether any of those addresses is a "street address" for the substitute trustee who conducted the foreclosure in question. Because sufficient information was available to the debtor, and to the public, through which the substitute trustee could be contacted—thereby providing a minimum level of protection to the debtor should anyone had chosen to contact the substitute trustee prior to the foreclosure sale—we find the purpose of the statute was met. As such, the *Notice of Trustee's Sale* appears valid on its face.

Courts of this State have previously held that similar "technical" deficiencies in a notice render a foreclosure sale voidable rather than void. See *WMC Mortg. Corp. v. Moss*, No. 01-10-00948-CV, 2011 Tex. App. LEXIS 3853, at \*19-20 (Tex. App.—Houston

[1st Dist.] May 19, 2011, no pet.) (finding notice deficiencies in a tax sale (the failure to send notice to “the last known mailing address”) may “render the foreclosure sale voidable but does not, alone, render the foreclosure sale void”) *See also Hemyari v. Stephens*, 355 S.W.3d 623, 628 (Tex. 2011) (finding that minor deficiencies in an otherwise valid notice of substitute trustee’s sale (the failure to identify the debtor’s capacity in both the grantor line and signature line of the deed of trust) did not void the sale, but instead rendered it merely voidable). When a foreclosure sale is only voidable, it still passes title, subject to the right of another party to have the sale set aside on proof that the sale was improperly made. *See Slaughter v. Qualls*, 139 Tex. 340, 162 S.W.2d 671, 674 (1942).

In light of *Senger*, *Slaughter*, and these other authorities, we find that the defect, if any, in failing to clearly specify the street address of the substitute trustee as required by section 51.0075(e) in the *Notice of Trustee’s Sale*, under these circumstances, renders that sale voidable, rather than void. As such, unlike a void sale, the sale operated to pass the debtor’s title to the purchaser, subject to being set aside. *Slaughter*, 162 S.W.2d at 674 (stating “[t]hat which is voidable operates to accomplish the thing sought to be accomplished, until the fatal vice in the transaction has been judicially ascertained and declared”) (quoting *Smith v. Thornhill*, 25 S.W.2d 597, 598 (Tex. Comm’n App. 1930, judgment adopted), *judgment vacated on other grounds on reh’g*, 34 S.W.2d 803 (Tex. Comm’n App. 1931, holding approved)).

Restated, Veloz never challenged the validity of the substitute trustee’s notice of trustee’s sale, the sale itself, nor the substitute trustee’s deed. Wilmington Savings offered into evidence a certified copy of the *2nd Correction Substitute Trustee’s Deed*. Attached to that deed were a sworn affidavit concerning the filing of the notice of sale, the



*Notice of Trustee's Sale*, and the *Appointment of Substitute Trustee*. The only objection Veloz made was an objection that the documents offered into evidence were "hearsay." That objection was overruled, and the documents were admitted. No arguments were ever presented that the notice of sale was defective or that the trustee's deed was subject to being set aside. As such, the trial court had before it sufficient evidence on which it could determine that Wilmington Savings was the rightful owner of the property in question and entitled to rightful possession. No issue being raised as to the validity of the *Notice of Trustee's Sale* or the adequacy of the foreclosure sales price, there was sufficient evidence on which the trial court could base its judgment granting immediate possession of the premises in question to Wilmington Savings. Veloz's sole issue concerning the sufficiency of the evidence is overruled.

#### **CONCLUSION**

Accordingly, the trial court's judgment is affirmed.

Patrick A. Pirtle  
Justice