REVERSE and RENDER; and Opinion Filed March 3, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-00835-CV

BAYVIEW LOAN SERVICING, LLC, Appellant
V.
ESTELA MARTINEZ, Appellee

On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-12-00711

MEMORANDUM OPINION

Before Justices Fillmore, Stoddart, and Richter[1]
Opinion by Justice Richter

Appellant Bayview Loan Servicing, LLC (Bayview) appeals from the trial court's final judgment in favor of appellee Estela Martinez (Martinez). In nine issues on appeal, Bayview challenges the sufficiency of the evidence to support Martinez's claims for wrongful foreclosure, breach of contract, and usury. Bayview contends Martinez failed to prove two elements of her wrongful foreclosure claim, and her breach of contract claim is barred by the statute of limitations. Bayview also contends the trial court did not have authority to rescind the contract for deed between the parties. Because all dispositive issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.2(a), 47.4. We reverse the trial court's judgment and render judgment that Martinez take nothing in her claims against Bayview.

[1] The Honorable Martin Richter, Justice of the Court of Appeals for the Fifth District of Texas—Dallas, Retired, sitting by assignment.

FACTUAL AND PROCEDURAL BACKGROUND

On June 23, 2000, Jim Johnson and Mark Johnson (the Sellers), and Martinez, the buyer, entered into a contract for deed pertaining to certain real property identified as 14277 Preston Road, Apartment #713, Dallas, Texas 75254 (the Property). The contract required Martinez to make a $2,500 down payment and 180 equal monthly installments of amortized principal and accrued interest in the amount of $602.50 before obtaining the deed. The contract provided for an interest rate of 10.50%. Martinez also agreed to pay for homeowners' insurance, property taxes, and homeowners' association dues and assessments. According to the contract, past due principal and interest would be subject to a $75.00 late fee.

On January 31, 2002, the Sellers sold the Property to First Union National Bank, as Indenture Trustee, by Special Warranty Deed which conveyed the Property and all rights of the Sellers under their contract for deed with Martinez. Martinez testified that she was not notified of the sale so she continued making monthly payments to the Sellers. She eventually learned of the sale four to six months later when the property management company notified her that the Sellers had not forwarded her payments for homeowners' association dues. Martinez also learned that the Sellers had not forwarded her monthly payments of principal and interest to the new owner.

There is nothing in the record to explain how Bayview became involved; however, the record contains an undated Allonge to Note referencing Martinez as the borrower and stating "pay to the order of . . . Wachovia Bank, N.A. as Trustee, Successor by Merger to First Union National Bank by its attorney-in-fact Bayview Loan Servicing, LLC."

In 2009, Bayview's account activity history for Martinez reflected that she was behind on her payments. In August 2009, Bayview sent Martinez a notice of default and formal demand for payment. Martinez was told that Bayview would not foreclosure on the Property if she

would sign a stipulation agreement and comply with the payment schedule set forth in that agreement. On December 10, 2009, Martinez signed the stipulation agreement. On the same date, she also signed a separate modification agreement that increased the amount of the unpaid principal balance due, decreased the amount of her monthly payments, decreased the interest rate to 6%, and extended the maturity date under the contract for deed. At trial, Martinez testified that she wanted to work something out so she signed the stipulation agreement and the modification agreement under duress. Martinez made her last payment in February 2010. She did not make the payments required by the stipulation agreement and to date, she has made no attempt to pay the balance due.

Bayview hired the firm of Hughes Watters & Askanase, L.L.P. to foreclose on the Property. The firm provided Martinez with a notice of acceleration, enclosing a notice of substitute trustee's sale on the Property initially scheduled for September 7, 2010. The firm later sent a second notice of acceleration enclosing a notice of substitute trustee's sale, rescheduling the foreclosure sale for October 5, 2010. At trial, Demetris Dansby, Manager of Asset Management for Bayview, testified that the foreclosure sale occurred and Bayview is the current holder of Martinez's contract for deed.

On January 19, 2012, Martinez filed a lawsuit against Bayview. In her Fourth Amended Petition for Declaratory Judgment and to Quiet Title, Martinez sought a declaratory judgment regarding ownership of the Property, and alleged claims against Bayview for wrongful foreclosure, breach of contract, unjust enrichment, quiet title, violation of Texas Property Code section 5.077, and usury. Following a bench trial on April 17, 2014, the trial court signed a final judgment in favor of Martinez, granting actual damages in the amount of $72,440.49, what the trial court called a "usurious penalty" of $11,400, pre-judgment and post-judgment interest of 5%, attorney's fees, and costs. At Bayview's request, the trial court issued Findings of Fact and

Conclusions of Law. Bayview filed a Motion to Modify Judgment, requesting that the trial court modify its Final Judgment to identify the cause of action under which Martinez was entitled to recover damages. Bayview's motion was denied by operation of law and this appeal followed.

STANDARDS OF REVIEW

A trial court's findings of fact after a bench trial have the same force and effect as a jury verdict. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991); *Naik v. Naik*, 438 S.W.3d 166, 172 (Tex. App.—Dallas 2014, no pet.). We review a trial court's findings of fact under the same legal and factual sufficiency of the evidence standards used when determining if sufficient evidence exists to support an answer to a jury question. *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994); *Compass Bank v. Goodman*, 416 S.W.3d 715, 718 (Tex. App.—Dallas 2013, pet. denied). The trial court judges the credibility of the witnesses, determines the weight of testimony, and resolves conflicts and inconsistencies in the testimony. *Merry Homes, Inc. v. Luu*, 312 S.W.3d 938, 943 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (citing *Sw. Bell Media, Inc. v. Lyles*, 825 S.W.2d 488, 493 (Tex. App.—Houston [1st Dist.] 1992, writ denied)). As long as the evidence falls within the "zone of reasonable disagreement," we will not substitute our judgment for that of the fact-finder. *See City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005).

In a legal sufficiency review, we view the evidence in the light most favorable to the fact-finding, crediting favorable evidence if a reasonable factfinder could do so and disregarding contrary evidence unless a reasonable factfinder could not. *Id.* at 822, 827. In a factual sufficiency review, we view all of the evidence in a neutral light and set aside the finding only if the finding is so contrary to the overwhelming weight of the evidence such that the finding is clearly wrong and unjust. *Plas-Tex, Inc. v. U.S. Steel Corp.*, 772 S.W.2d 442, 445 (Tex. 1989); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam).

We review a trial court's conclusions of law de novo. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). If we determine that the trial court made an erroneous conclusion of law, we will not reverse if the trial court rendered the proper judgment. *See id*. We uphold conclusions of law if the judgment can be sustained on any legal theory supported by the evidence. *Merry Homes*, 312 S.W.3d at 943.

We review a trial court's construction of an unambiguous contract de novo. *MCI Telecomm. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 650–51 (Tex. 1999). Our primary concern in construing a written contract is to ascertain the true intent of the parties as expressed in the instrument. *Seagull Energy E & P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 345 (Tex. 2006). Contract terms will be given their plain, ordinary, and generally accepted meanings, unless the contract indicates a technical or different sense. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005).

DISCUSSION

In nine issues on appeal, Bayview challenges the trial court's judgment, findings of fact, and conclusions of law with respect to Martinez's claims for wrongful foreclosure, breach of contract, and usury, the trial court's conclusion that the contract for deed should be rescinded, and the damages awarded in the final judgment.[2]

A. WRONGFUL FORECLOSURE

Bayview's first and second issues pertain to Martinez's wrongful foreclosure claim. Bayview first asserts that the trial court erred by concluding that Martinez was not required to prove two elements of her wrongful foreclosure cause of action. In its second issue, Bayview contends the evidence is legally and factually insufficient to support Martinez's wrongful

[2] Although the trial court's findings and conclusions purport to address Martinez's claims for quiet title and declaratory judgment, there are no findings or conclusions with respect to either claim. Likewise, the judgment is silent with respect to these claims. Because Martinez failed to object or file a post-judgment motion, these issues have not been preserved for appeal. TEX. R. APP. P. 33; *see In re C.O.S.*, 988 S.W.2d 760, 765–66 (Tex. 1999).

foreclosure cause of action. The elements of a wrongful foreclosure claim are: (1) a defect in the foreclosure sale proceedings; (2) a grossly inadequate selling price; and (3) a causal connection between the defect and the grossly inadequate selling price. *Montenegro v. Ocwen Loan Servicing, LLC*, 419 S.W.3d 561, 569 (Tex. App.—Amarillo 2013, pet. denied).

With respect to the first element of her cause of action, Martinez alleged numerous defects in the foreclosure sale proceeding of the Property. In her live pleading, Martinez first alleged the Sellers violated the terms of the contract for deed by transferring ownership of the Property to First Union National Bank. Martinez reasoned that due to the Sellers' violation, Bayview was unlawfully appointed as trustee, was not the note holder or beneficiary, and had no legal right to declare default, issue notices of default, or foreclose on her property. Martinez also asserted that Bayview "engaged in a fraudulent foreclosure of the property in that the defendant did not have the legal authority to foreclose on the property." At trial, counsel for Martinez argued that the foreclosure was wrongful because the terms of the contract for deed provided that the only recourse in the event of Martinez's default was eviction, not foreclosure. In its findings of fact, the trial court found "[t]he Contract for Deed clearly states that the seller's recourse for a default is the eviction of the buyer not the foreclosure of buyer's interest in the property."

With respect to the second and third elements of Martinez's wrongful foreclosure cause of action, Bayview asserts that Martinez failed to present any evidence at trial. Bayview contends, and Martinez concedes, that Martinez presented no evidence that the Property was sold for a grossly inadequate selling price and no evidence of any causal connection between the alleged defect and the selling price. When the trial court asked whether Martinez had evidence in support of these elements, Martinez's attorney informed the trial court that it was his understanding that the Property had never been sold and therefore, Martinez did not have to

show that the price was inadequate. It is unclear why Martinez would have asserted a claim for wrongful foreclosure if the Property had not yet been sold.

Martinez testified at trial that she is still living at the Property. Other than the notices of acceleration and notices of substitute trustee's sale and Dansby's testimony that the sale occurred, there is no evidence in the record regarding the sale of the Property. We cannot ascertain when the Property was sold, to whom the Property was sold, or the price for which the Property was sold. There is no evidence that the price for which the Property was sold was grossly inadequate. And there is no evidence that there was a causal connection between the defect in the foreclosure proceeding and the grossly inadequate selling price.

In its findings of fact, the trial court determined: "Martinez is not seeking the return of the property only damages for the foreclosure under her claim for wrongful foreclosure and breach of contract." In its conclusions of law, the trial court stated:

> As to part (b) and (c) of the elements for wrongful foreclosure, both Federal Courts and State Courts in Texas have held that there is no need to prove elements (b) and (c) if the plaintiff is not asking for the property but is only asking for damages.

In support of its conclusion, the trial court cited *Charter National Bank–Houston v. Stevens*, 781 S.W.2d 368, 374 (Tex. App.—Houston [14th Dist.] 1989, writ denied) ("When the mortgagor elects damages as his remedy he confirms the act of sale and he has no further interest in the property. . . . Under such facts there seems to be no rational ground for requiring a finding that the foreclosure selling price was 'grossly inadequate.'"). However, in this case, Martinez did not ask only for damages—she also asked for title to the Property.

In her Fourth Amended Petition for Declaratory Judgment and To Quiet Title, her live pleading at trial, Martinez sought a declaration that she owned the Property and further asked that she be given quiet title in the Property. There is nothing in the record to suggest that Martinez abandoned these claims during trial. Accordingly, we conclude the trial court's finding

that Martinez was only asking for damages is so contrary to the overwhelming weight of the evidence such that the finding is clearly wrong. *See Merry Homes*, 312 S.W.3d at 943. We further conclude the trial court's conclusion that Martinez was not required to prove the second and third elements of her wrongful foreclosure claim is erroneous. *See BMC Software*, 83 S.W.3d at 794. Bayview's first issue is sustained.

As discussed above, the evidence to support the second and third elements of Martinez's wrongful foreclosure claim is not merely insufficient, it is nonexistent. If more than a scintilla of evidence supports a finding, the legal sufficiency challenge fails. *Thornton v. Dobbs*, 355 S.W.3d 312, 316 (Tex. App.—Dallas 2011, no pet.). "Evidence does not exceed a scintilla if it is 'so weak as to do no more than create a mere surmise or suspicion' that the fact exists." *Kroger Tex. Ltd. P'ship v. Suberu*, 216 S.W.3d 788, 793 (Tex. 2006) (quoting *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004)). At trial and in oral argument to this Court, counsel for Martinez conceded the record contains no evidence to support the second and third element of Martinez's wrongful foreclosure claim. Accordingly, we conclude the evidence is legally and factually insufficient to support Martinez's wrongful foreclosure claim. We sustain Bayview's second issue.

B. BREACH OF CONTRACT

Bayview's third, fourth, and fifth issues pertain to Martinez's claims that Bayview breached the contract for deed. In its third issue, Bayview challenges the factual sufficiency of the evidence to support the trial court's findings of fact regarding Martinez's breach of contract cause of action. In its fourth issue, Bayview asserts that Martinez's breach of contract cause of action is barred by the statute of limitations. And in its fifth issue, Bayview contends that Martinez's breach of contract claim fails because of her own prior breach of the contract.

Bayview miscasts its third issue as a factual sufficiency challenge; Bayview's concerns regarding the trial court's findings are resolved as a matter of contract interpretation. The trial court issued two findings of fact with respect to Bayview's alleged breach of the contract for deed.[3] The trial court found, "The Contract for Deed clearly states that the seller's recourse for a default is the eviction of the buyer not the foreclosure of buyer's interest in the property." However, contrary to the trial court's finding, the contract actually provided Bayview with two options in the event of a default by Martinez:

> Fourth: In the event Buyer shall default in the prompt payment of said indebtedness or shall violate or omit to perform any of the provisions of this said agreement and such default, violation or omission shall continue for a period of ten (10) days, then in any of such event Seller may elect, Buyer expressly waiving demand and notice, to declare the entire unpaid indebtedness, Together with all interest then accrued thereon, immediately due and payable and enforce the collection thereof, ***or*** to declare this contract cancelled and of no further force and effect (emphasis added).

The contract then provides that if the contract is cancelled due to default by Martinez, Martinez agrees to immediately surrender and deliver possession of the property to Seller, and if Martinez fails to do so, Seller is entitled to institute and maintain an action for forcible detainer of the Property. So according to the terms of the contract, eviction only followed if the Seller elected the option of contract cancellation.

There is no language in the contract for deed to indicate that the parties intended that eviction be the exclusive remedy in the event of Martinez's default. *See Seagull Energy*, 207 S.W.3d at 345. And the specific terms of the contract clearly indicate that Seller had the option to declare the entire unpaid indebtedness, together with interest, immediately due and payable. *See Valence Operating*, 164 S.W.3d at 662 (contract terms given their plain, ordinary, and

[3] In her live pleading and at trial, Martinez alleged Bayview breached the contract for deed in a variety of ways. The trial court issued two findings of fact pertaining to Martinez's breach of contract claim. Martinez did not request additional or supplemental findings of fact on the other breaches she alleged and has therefore waived those claims. *See* TEX. R. CIV. P. 299; *Briggs Equip. Trust v. Harris Cty. Appraisal Dist.*, 294 S.W.3d 667, 674 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

generally accepted meanings, unless contract indicates differently). Viewing all of the evidence in a neutral light, we conclude that the trial court's finding is contrary to the overwhelming weight of the evidence and is clearly wrong and unjust. *See Plas-Tex*, 772 S.W.2d at 445; *Cain*, 709 S.W.2d at 176.

The trial court also found, "Bayview was assigned the Contract for Deed in January of 2002 from the original seller in violation of the Contract for Deed." The only provision in the contract that restricts assignment states as follows:

> Sixth: Neither this contract nor the property herein described may be assigned, sold, pledged or mortgaged by the Buyer without first obtaining the written consent of Seller thereto, which consent shall not be unreasonably withheld.

Clearly this provision restricted Martinez from assigning the contract without the consent of the Sellers; however, it places no assignment restriction on the Sellers. In the contract provisions setting forth the Sellers' representations and warranties, the contract states:

> Seller warrants and represents as follows:
> . . .
>
> 7. That Seller shall not incur either voluntary or by operation of law any obligations that shall or may create a lien against said property subsequent to the execution of this contract.

Martinez attempts to argue that this provision is a restriction on the Sellers' assignment to Bayview. However, there is no evidence in the record that the Sellers' conveyance of the Property by Special Warranty Deed to First Union National Bank, as Indenture Trustee, created a lien against the Property.

We review the trial court's construction of an unambiguous contract de novo. *MCI Telecomm.*, 995 S.W.2d at 650–51. The express terms of the contract do not support the trial court's finding that the assignment of the contract of deed to Bayview violated the terms of the contract. We conclude that the trial court's finding is contrary to the overwhelming weight of the evidence and is clearly wrong. *See Plas-Tex*, 772 S.W.2d at 445; *Cain*, 709 S.W.2d at 176.

We sustain Bayview's third issue. In light of our conclusions with respect to Bayview's third issue, we need not consider Bayview's fourth and fifth issues.[4]

C. USURY

Bayview's sixth and seventh issues pertain to Martinez's usury claims. In its sixth issue, Bayview challenges the trial court's conclusion of law that late fees charged by Bayview violated section 302.001(d) of the Texas Finance Code. In its seventh issue, Bayview asserts the evidence is legally and factually insufficient to support the trial court's findings of fact supporting Martinez's usury cause of action.

To establish usury, Martinez was required to prove: (1) a loan of money; (2) an absolute obligation to repay the principal; and (3) the exaction of a greater compensation than is allowed by law for the use of the money by the borrower. *Holley v. Watts*, 629 S.W.2d 694, 696 (Tex. 1982); *Domizio v. Progressive Cty. Mut. Ins. Co.*, 54 S.W.3d 867, 872 (Tex. App.—Austin 2001, pet. denied). Because usury statutes are penal in nature, they are strictly construed. *First Bank v. Tony's Tortilla Factory, Inc*., 877 S.W.2d 285, 287 (Tex. 1994); *Steves Sash & Door Co., Inc. v. Ceco Corp*., 751 S.W.2d 473, 476 (Tex. 1988). The finance code defines "loan" as "an advance of money that is made to or on behalf of an obligor, the principal amount of which the obligor has an obligation to pay the creditor." TEX. FIN. CODE ANN. § 301.002(a)(10) (West 2006).

Under the terms of the contract for deed, there was neither a loan of money to Martinez, nor an absolute obligation that Martinez repay the principal. Furthermore, the assignment of the contract for deed from the original Sellers of the Property to Bayview was the sale of a note at a discount and not a loan. *See Ravkind v. Mortgage Funding Corp*., 881 S.W.2d 203, 206 (Tex. App.—Houston [1st Dist.] 1994, no writ) ("The sale of a note at a discount does not constitute a

[4] In its final judgment, the trial court awarded $19,402.50 in attorney's fees to Martinez based on chapter 38 of the Texas Civil Practice & Remedies Code. Because we sustain Bayview's third issue as to Martinez's breach of contract claim, chapter 38 is not available as a basis upon which attorney's fees may be awarded. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) (West 2015).

loan, and usury laws are not applicable to such a transaction."). Because there was no loan to Martinez and no absolute obligation that Martinez repay the principal, we conclude the usury laws do not apply to this transaction. *See id.*

We also conclude the trial court's conclusion that the seventy five ($75.00) dollars charged for late fees violated section 302.001(d) of the finance code was erroneous. Section 302.001(d) applies to loans charging an interest rate of 10 percent a year or less, and provides that such a loan may also provide for a late fee in an amount not to exceed the greater of five percent of the amount of the payment or $7.50. *See* TEX. FIN. CODE ANN. § 302.001(d) (West 2006). Because the contract for deed was not a loan, the restrictions on late fee amounts set forth in section 302.001(d) do not apply in this case. *Id.* We resolve Bayview's sixth and seventh issues in its favor.

D. RESCISSION

Bayview asserts in its eighth issue that the trial court's conclusion of law that the contract for deed is rescinded is erroneous and inconsistent with the trial court's findings of fact. In her live pleading, Martinez did not seek rescission of the contract for deed. At trial, Martinez's counsel suggested in his opening statement that they might ask the court for the rescission of the contract, stating:

> And one of the things that we will ask the Court is to quiet the title and use the funds and the damages that she is entitled to against the remainder of the balance or for the rescission of the contract completely.

But according to the record, rescission was never mentioned again—by either party or the trial court. The final judgment does not mention rescission of the contract for deed. Nevertheless, in its conclusions of law, the trial court concluded that the contract for deed should be rescinded, stating: "Bayview and Martinez both breached the Contract for Deed and therefore the Contract for Deed is rescinded."

"Rescission is an equitable remedy that operates to extinguish a contract that is legally valid but must be set aside due to fraud, mistake, or for some other reason to avoid unjust enrichment." *Gentry v. Squires Constr., Inc.*, 188 S.W.3d 396, 410 (Tex. App.—Dallas 2006, no pet.). The decision to allow rescission lies strictly within the sound discretion of trial courts. *Texas Capital Sec., Inc. v. Sandefer*, 58 S.W.3d 760, 774 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). We will not disturb a trial court's decision to grant the equitable remedy of rescission absent a showing that the court abused its discretion. *See State, Acting By and Through Tex. Dep't of Mental Health & Mental Retardation v. Ellison*, 914 S.W.2d 679, 682 (Tex. App.—Austin 1996, no writ). Under the abuse of discretion standard, we must determine whether the trial court acted without reference to any guiding rules or principles; in other words, whether the trial court's decision was arbitrary and unreasonable. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). We must view the evidence in the light most favorable to the action of the trial court and indulge every legal presumption in favor of the judgment. *Holley v. Holley*, 864 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1993, writ denied). There is no abuse of discretion as long as some evidence of substantive and probative character exists to support the trial court's decision. *Id*. The mere fact that we might have decided the question differently does not demonstrate such an abuse. *Downer*, 701 S.W.2d at 242. However, in this case, we conclude there is no evidence to support the trial court's conclusion to rescind the contract for deed.

To be entitled to rescission, a party must plead and prove the absence of an adequate remedy at law. *See Davis v. Estridge*, 85 S.W.3d 308, 310 (Tex. App.—Tyler 2001, pet. denied). While a trial court may not grant relief to a party in the absence of pleadings to support that relief, Texas courts have traditionally construed pleadings liberally, and in the case of rescission, at least one court has held that "factual allegations in the petition, coupled with a prayer for

general relief, are sufficient to support a decree granting rescission." *Green Tree Acceptance, Inc. v. Pierce*, 768 S.W.2d 416, 421 (Tex. App.—Tyler 1989, no writ); *see* TEX. R. CIV. P. 301. Martinez's live pleading does not seek rescission, and Martinez did not plead, or attempt to prove, there was no adequate remedy at law. Even in her claim for unjust enrichment, Martinez sought restitution from Bayview and asked the trial court to disgorge all profits, benefits and any other compensation obtained by Bayview from its wrongful conduct. Clearly Martinez sought monetary relief, not rescission of the contract. In its final judgment, the trial court apparently agreed that there was an adequate remedy at law because it awarded Martinez actual damages, damages for usury, interest, attorney's fees, and costs.

Viewing the evidence in the light most favorable to the action of the trial court and indulging every legal presumption in favor of the judgment, we conclude there is no evidence to support the trial court's decision to rescind the contract. *See Holley*, 864 S.W.2d at 706. Because the trial court acted without reference to any guiding rules or principles in concluding that the contract for deed should be rescinded, we further conclude that the trial court's conclusion of law is erroneous. *See Downer*, 701 S.W.2d at 241–42. We resolve this issue in Bayview's favor.

E. DAMAGES

In its ninth issue, Bayview challenges the legal and factual sufficiency of the evidence to support the trial court's award of damages to Martinez. Martinez's live pleading does not state the amount of actual damages sought. And at trial, Martinez did not testify regarding the amount of actual damages sought or incurred. Nevertheless, in its final judgment, the trial court ordered that Martinez recover damages from Bayview in the sum of $72,440.49. The judgment did not specify the cause of action for which such damages were awarded.

The trial court did not issue findings of fact as to the amount of damages sought or incurred by Martinez in connection with any of her claims against Bayview. Likewise, the trial court's conclusions of law are silent with respect to the amount damages. We find nothing in the record to indicate the basis for the trial court's judgment that Martinez recover damages from Bayview in the amount of $72,440.49.

When a plaintiff's petition contains alternative theories for recovery, the court cannot render a judgment awarding relief on all the theories. *See Waite Hill Servs., Inc. v. World Class Metal Works, Inc.*, 959 S.W.2d 182, 184 (Tex. 1998). A judgment on multiple theories would result in an impermissible double recovery for the same injury. *See id.* Regardless, because we have sustained all of Bayview's issues with respect to Martinez's claims for wrongful foreclosure, breach of contract, and usury, we conclude Martinez is not entitled to damages on any of her theories of recovery. We sustain Bayview's ninth issue.

CONCLUSION

Having sustained all of Bayview's issues, we reverse the trial court's judgment and render judgment that Martinez take nothing in her claims against Bayview.

/Martin Richter/
MARTIN RICHTER
JUSTICE, ASSIGNED

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

BAYVIEW LOAN SERVICING, LLC,
Appellant

No. 05-14-00835-CV V.

ESTELA MARTINEZ, Appellee

On Appeal from the 44th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-12-00711.
Opinion delivered by Justice Richter.
Justices Fillmore and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and judgment is **RENDERED** that:

Appellee Estela Martinez take nothing in her claims against appellant Bayview Loan Servicing, LLC.

It is **ORDERED** that appellant BAYVIEW LOAN SERVICING, LLC recover its costs of this appeal from appellee ESTELA MARTINEZ.

Judgment entered this 3rd day of March, 2016.