

AFFIRMED; Opinion Filed September 6, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00616-CV

**TIMOTHY BROOKS, Appellant
V.
WELLS FARGO BANK, N.A., Appellee**

**On Appeal from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-15-05401-E**

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Stoddart
Opinion by Justice Fillmore

Timothy Brooks, *pro se*, appeals the county court’s judgment awarding possession of certain residential real property to Wells Fargo Bank, N.A. (Wells Fargo). In five issues, Brooks asserts the county court erred by granting judgment in this forcible-detainer suit because (1) the justice court did not have jurisdiction since the forcible-detainer suit was based on a deed executed in violation of section 21A.002(a) of the business and commerce code, (2) the forcible-detainer suit against Brooks as a third-party violated rule of civil procedure 510.3(e), (3) the county court abused its discretion by excluding evidence concerning title to the property, (4) the county court did not have jurisdiction since the issue of possession of the real property was intertwined with the issue of title to the property, and (5) he did not have any “lien/contract” with Wells Fargo rendering him a tenant at sufferance. We affirm the county court’s judgment.

Background

Wells Fargo filed a forcible-detainer suit in justice court against Brooks, Allen Sheffield, and “all other occupants” seeking to evict them from the residential real property located at 1842 Huntingdon Avenue, Dallas, Texas (the Property).¹ Brooks appeared for trial in the justice court, but Sheffield did not. The justice court signed a judgment in favor of Brooks on September 29, 2015.

Wells Fargo filed an appeal of the justice court judgment in county court.² Wells Fargo’s forcible-detainer suit was heard by the county court on November 5, 2015. Brooks appeared *pro se* at that trial. The county court signed a partial default judgment against Sheffield on November 9, 2015, ordering that, as between Sheffield and Wells Fargo, Wells Fargo had a superior right of possession of the Property. As between Brooks and Wells Fargo, the county court found issues related to title to the Property were too intertwined with issues related to possession for the court to determine at that time which party had a superior right to possession of the Property. The county court abated the case for a period of approximately six months or until May 5, 2016, in order for the parties to seek relief from a court of competent jurisdiction as to issues related to title to the Property. *See Kassim v. Carlisle Interests, Inc.* 308 S.W.3d 537, 541 (Tex. App.—Dallas 2010, no pet.) (forcible-detainer suit may run concurrently with another action in another court; matters relating to possession may overlap in the two proceedings because judgment of possession in forcible-detainer action is determination only of right to immediate possession and does not determine ultimate rights of the parties concerning any other issue in controversy relating to the real property).

¹ A justice court in the precinct in which real property is located has jurisdiction over a forcible-detainer suit concerning that property. *See* TEX. PROP. CODE ANN. § 24.004(a) (West, 2014); TEX. GOV’T CODE ANN. § 27.031(a)(2) (West Supp. 2016).

² A justice court judgment in a forcible-detainer suit may be appealed to the county court for a de novo review. TEX. R. CIV. P. 510.9–10; *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 433–34 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

Any unresolved title dispute involving Brooks, Sheffield, and Wells Fargo and the Property, was resolved in the 162nd Judicial District Court of Dallas County, Texas, during the abatement of the forcible-detainer suit in county court. *See Brooks v. Wells Fargo Bank, N.A.*, No. 05-16-00550-CV, 2017 WL 1550043 (Tex. App.—Dallas Apr. 28, 2017, pet. filed) (mem. op.) (the suit to quiet title).³ In that case, Brooks, *pro se*, filed suit to quiet title on November 21, 2014. On January 7, 2016, Wells Fargo moved for summary judgment on Brooks’s claim *Id.* at *1, 2. On March 14, 2016, the district court granted Wells Fargo’s motion for summary judgment and ordered that all claims Brooks asserted or could have asserted in the suit to quiet title were dismissed with prejudice. *Id.* at *2.⁴

³ We judicially note Brooks’s suit to quiet title was resolved in the district court in favor of Wells Fargo and was affirmed by this Court on appeal. *See State ex. rel. City of Colleyville v. City of Hurst*, 519 S.W.2d 698, 701 (Tex. Civ. App.—Fort Worth 1975, writ ref’d n.r.e.) (appellate court may take notice judicially of judgment in prior appeal and judgment in a connected or related case); *Morris v. Smiley*, 378 S.W.2d 149, 151 (Tex. Civ. App.—Austin 1964, writ ref’d n.r.e.) (appellate court judicially “knew” appellant’s bill of discovery resulted in unfavorable rulings in district and appellate courts) (citing *Morris v. Smiley*, 368 S.W.2d 640 (Tex. Civ. App.—Austin 1963, writ ref’d n.r.e.)).

⁴ In the *Brooks* opinion, this Court stated:

The record before this Court establishes the following. At one time, Brooks’ parents co-owned the Property. Brooks’ father died in 1974, at which point, Brooks’ mother became the sole owner of the Property. On January 15, 1983, Brooks’ mother conveyed the Property to Brooks. The public records include the filing on July 26, 1989, of a quitclaim deed by which Brooks conveyed all of his right, title, and interest in and to the Property back to his mother. That deed bears a notary acknowledgment on July 12, 1989, and a signature date of July 15, 1983.

On February 22, 2000, Brooks’ mother obtained a home-equity loan on the Property from New Century Mortgage by which she granted it a security interest in the Property and the power to sell the Property following a default on the loan. In 2003, she defaulted on the loan, and the Property was sold at foreclosure to T.R. Taylor, Inc.

On July 29, 2004, T.R. Taylor, Inc. sold the Property to Allen R. Sheffield. In connection with the sale, Sheffield executed a deed of trust, which granted Summit Mortgage Corporation a security interest in the Property. The deed of trust included the power to sell the Property following a default on the loan.

Thereafter, Brooks filed an eviction against Sheffield and obtained a judgment from the justice court on November 14, 2005, awarding him possession of the Property as against Sheffield. On July 26, 2006, Brooks obtained a home-equity loan from Beneficial Texas, Inc., which was purported to be secured by a lien on the Property.

Sheffield defaulted on his 2004 loan with Summit Mortgage Corporation, which had subsequently been transferred and assigned to Washington Mutual Bank (“WAMU”), and WAMU purchased the Property at a foreclosure sale on November 7, 2006.

...

On September 25, 2014, the [Federal Deposit Insurance Corporation] as receiver for WAMU, assigned Sheffield’s deed of trust to Wells Fargo. And on October 13, 2014, JP Morgan Chase Bank, as attorney-in-fact for the [Federal Deposit Insurance Corporation], conveyed the Property to Wells Fargo. . . .

Brooks, 2017 WL 1550043, at *1–2. In support of its motion for summary judgment, Wells Fargo relied upon certified copies of:

(1) the warranty deed conveying the Property to Brooks; (2) the quitclaim deed conveying any right, title, and interest Brooks had in the Property back to Brooks’ mother; (3) the home equity security instrument executed by Brooks’ mother; (4) the corrected substitute trustee’s deed conveying the Property to T.R. Taylor, Inc.; (5) the warranty deed from T.R. Taylor, Inc. to Sheffield; (6) the deed of trust executed by Sheffield in connection with his purchase of the Property; (7) the

The period of abatement in Wells Fargo’s appeal of the forcible-detainer suit to the county court expired on May 5, 2012, and the case proceeded to trial before the county court on May 12, 2016. Brooks was represented by counsel at the trial. Wells Fargo’s evidence consisted of a July 29, 2004 “FHA Deed of Trust,” a November 7, 2006 Substitute Trustee’s Deed, an October 13, 2014 Special Warranty Deed, and three June 24, 2015 notices to vacate the premises sent to “occupant and/or tenant,” Sheffield, and Brooks. The FHA Deed of Trust secured a loan from Summit Mortgage Corporation (Summit) to Sheffield. Sheffield agreed in the deed of trust that, if he failed to make all required payments on the loan, Summit had the right to foreclose on the Property. The Substitute Trustee’s Deed references Sheffield’s obligation to make loan payments to Summit pursuant to the note secured by the FHA Deed of Trust; the transfer and assignment of the note, together with the lien securing the note, to Washington Mutual Bank (WAMU); and Sheffield’s default on the note. The Substitute Trustee’s Deed also reflects WAMU purchased the Property at a non-judicial foreclosure sale following Sheffield’s default on the note. The Special Warranty Deed reflects Wells Fargo acquired the Property from JPMorgan Chase Bank, N.A., as attorney-in-fact for the Federal Deposit Insurance Corporation (FDIC) as receiver of WAMU.

Brooks testified he occupied the premises located on the Property. Brooks introduced into evidence a January 15, 1983 warranty deed whereby Brooks’s mother conveyed her interest in the Property to Brooks; a November 14, 2005 judgment of a justice court in favor of Brooks in

justice court’s judgment awarding Brooks possession of the property; (8) the mortgage executed by Brooks after he obtained the judgment of possession; (9) the substituted trustee’s deed conveying the Property to WAMU; (10) the justice Court’s judgment awarding WAMU possession of the Property; (11) the appeal bond Brooks filed to appeal the justice court’s decision; (12) the register of actions for the appeal of the justice court’s judgment in favor of WAMU to the county court at law; (13) the docket sheet for the suit WAMU filed against Brooks in the district court; (14) the corporate assignment of deed of trust conveying the deed of trust executed by Sheffield in favor of Summit Mortgage Corporation, that was subsequently transferred and assigned to WAMU [and then] to Wells Fargo; and (15) the warranty deed conveying the Property to Wells Fargo.

Id. at * 3. This Court further stated in the appeal of the suit to quiet title, “Wells Fargo established it holds a valid interest in the Property through competent evidence of the succession of title from Brooks’ mother to T.R. Taylor, Inc., via foreclosure sale, to Sheffield, via sale by T.R. Taylor, Inc., to WAMU, via foreclosure, to Wells Fargo, by sale following the [Federal Deposit Insurance Corporation]’s seizure of WAMU’s assets.” *Id.* at *5.

connection with a forcible-detainer suit he filed against Sheffield;⁵ and a home equity mortgage entered into between Brooks and Beneficial Texas Inc. on July 26, 2006, in which Brooks purported to grant Beneficial Texas a deed of trust for the Property.⁶

The county court signed a final judgment on May 17, 2016, in which it found that, as between Brooks and Wells Fargo, Wells Fargo had a superior right to possession of the Property and ordered Wells Fargo was entitled to possession of the Property.⁷ Brooks filed this appeal of the county court's forcible-detainer judgment in favor of Wells Fargo.

Law Applicable to a Forcible-Detainer Action

Forcible detainer occurs when a person, who is a tenant at sufferance, refuses to surrender possession of real property. *See* TEX. PROP. CODE ANN. § 24.002(a)(2) (West 2014). A forcible-detainer action is a special proceeding created to provide a speedy, simple, and inexpensive means for resolving the question of right to immediate possession of real property. *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). In a forcible-detainer action, “[t]he court must adjudicate the right to actual possession and not title.” TEX. R. CIV. P. 510.3(e).

Neither a justice court, nor a county court in a de novo appeal, is deprived of jurisdiction to resolve questions regarding the immediate right to possession of real property in a forcible-detainer suit merely by the existence of a title dispute; rather, they are only deprived of jurisdiction if the right to immediate possession necessarily requires the resolution of a title dispute. *Rice*, 51 S.W.3d 713. If an independent basis exists on which to award immediate

⁵ “[J]udgments of suits brought by private parties are binding only on parties thereto[.]” *Alexander Oil Co. v. City of Seguin*, 825 S.W.2d 434, 437 (Tex. 1991), or those in privity with them, *Benson v. Wanda Petroleum Co.* 468 S.W.2d 361, 363 (Tex. 1971). There was no evidence admitted at trial, and no argument on appeal, that Wells Fargo was in privity with Sheffield.

⁶ In *Brooks*, this Court stated, “On July 26, 2006, Brooks obtained a home-equity loan from Beneficial Texas, Inc., which was purported to be secured by a lien on the Property.” *Brooks*, 2017 WL 1550043, at *1.

⁷ The county court's final judgment specifically states the partial default judgment against Sheffield was incorporated into the final judgment.

possession that would not require resolution of a title dispute, a justice court, and the county court on appeal from the justice court, has jurisdiction to do so. *Garza v. Wells Fargo Bank, N.A.*, No. 05-14-01578-CV, 2016 WL 3136150, at *2 (Tex. App.—Dallas June 2, 2016, no pet.) (mem. op.); *see Rice*, 51 S.W.3d 712.

Section 24.004(b) of the Property Code

Relying on section 24.004(b) of the property code, Brooks asserts in his first issue that the county court erred by failing to dismiss the forcible-detainer suit because the justice court did not have jurisdiction over that suit. *See Ward v. Malone*, 115 S.W.3d 267, 269 (Tex. App.—Corpus Christi 2003, pet. denied) (appellate jurisdiction of statutory county court is confined to jurisdictional limits of justice court, and county court does not have appellate jurisdiction if justice court did not have jurisdiction). Wells Fargo responds that Brooks’s reliance on section 24.004(b) is misplaced and section 24.004(b) is inapplicable in this case. Whether a court has subject-matter jurisdiction is a question of law, subject to de novo review. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

Section 24.004(b) of the property code provides:

A justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21A, Business & Commerce Code.

TEX. PROP. CODE ANN. § 24.004(b). Section 21A.002(a) of the business and commerce code provides:

A seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate may not, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, request or require the purchaser or borrower to execute and deliver to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit.

TEX. BUS. & COM. CODE ANN. § 21A.002(a) (West 2015).⁸

The appellate record contains an affidavit filed by Brooks in justice court stating, “Attached hereto are true and correct copies of the following documents, with their attachments AND alleging the suit is based on a deed executed in violation of Chapter 21A, Business & Commerce Code.” Brooks attached an assortment of documentation to his affidavit. However, in his affidavit, he provided no explanation as to why the documents attached to his affidavit substantiate his “allegation.” On appeal, other than establishing the Property is residential real estate to which section 21A.002(a) of the business and commerce code would apply, Brooks provides no information to substantiate the conclusory statement in his affidavit that the forcible-detainer suit by Wells Fargo against him was based on a deed executed in violation of section 21A.002(a). *See Haynes v. City of Beaumont*, 35 S.W.3d 166, 178 (Tex. App.—Texarkana 2000, no pet). (conclusory statement is one that does not provide underlying facts to support conclusion).

The Substitute Trustee’s Deed upon which Wells Fargo relies in support of its forcible-detainer suit references both Sheffield’s obligation to make loan payments to Summit pursuant to a note secured by a deed of trust on the Property and the transfer and assignment of the note,

⁸ The statement of intent in the legislative history of section 21A.002(a) of the business and commerce code indicates:

Over the years, the Texas Legislature has sought to remedy the existence of substandard housing and prevent additional substandard housing from being created by addressing the financial mechanism that was predominantly used to create the colonias. Due to the dire financial circumstances of many low-income people who could not qualify for traditional financing mechanisms, unscrupulous developers and land sellers preyed upon their need for affordable housing by using contracts for deeds in their land or home transactions.

. . . Using traditional mortgage financing, these sellers provide title to the property at closing, however, they now require buyers to execute a “deed-in-lieu of foreclosure” at the closing table. This document is usually not explained to would-be buyers since, in essence, it gives title back to the seller or lender the same day the property is purchased. Additionally, this makes Texans sign-away the foreclosure rights that the legislature has provided to them over the years.

In practice, the seller-financer holds the deed-in-lieu until they decide that a buyer has defaulted. In the event of a dispute, the seller-financer has the upper hand and can simply record the deed, file an eviction case, and bypass all the foreclosure procedure and consumer homeowner protections provided by law.

[Section 21A.002(a) of the business and commerce code] would make the requirement of having to execute a “deed-in-lieu of foreclosure” at closing an unlawful practice. . . .

Senate Comm. on Bus. & Commerce, Bill Analysis, Tex. S.B. 1320, 82nd Leg., R.S. (2011).

together with the liens securing the note, to WAMU, upon Sheffield's default on the note. The Substitute Trustee's Deed further reflects WAMU's purchase of the Property at a non-judicial foreclosure sale following Sheffield's default on the note. Wells Fargo acquired the Property by Special Warranty Deed on October 13, 2014, from JPMorgan Chase Bank, N.A., as attorney-in-fact for the FDIC as receiver of WAMU.

The record on appeal supports neither the allegation in Brooks's affidavit that Wells Fargo's forcible-detainer suit was based on a deed executed in violation of chapter 21A of the business and commerce code nor that the sale of the Property to Sheffield required Sheffield's execution of a deed conveying the Property to the lender, Summit, in lieu of foreclosure. We resolve Brook's first issue in which he contends the justice court did not have jurisdiction over Wells Fargo's forcible-detainer suit under section 24.004(b) of the property code against him.

Joinder of Suit Against Third Parties

In his second issue, Brooks asserts the county court erred because the forcible-detainer suit against him as a "third party" violated rule of civil procedure 510.3(e). According to Brooks, because he "was not a party to deed and a third party," his "joinder" in the forcible-detainer suit filed by Wells Fargo was not permitted under rule 510.3(e). In support of this argument, Brooks specifically relies on the Substitute Trustee's Deed which references Sheffield's obligation to make loan payments to Summit pursuant to a note secured by a deed of trust on the Property and WAMU's purchase of the Property at a non-judicial foreclosure sale following Sheffield's default on the loan. Brooks argues that, because he was not a party referenced in the Substitute Trustee's Deed, he is a "third party" in this forcible-detainer suit as contemplated by rule 510.3(e).

Rule 510.3(e) provides that in an eviction or forcible-detainer suit, "[t]he court must adjudicate the right to actual possession and not title. Counterclaims and the joinder of suits

against third parties are not permitted in eviction cases.” A “‘third party claim’ is a claim brought by a party being sued against someone who is not yet a party to the case.” TEX. R. CIV. P. 500.2(z); *see also In re CVR Energy, Inc.*, 500 S.W.3d 67, 75 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding [mand. denied]) (op. on reh’g) (citing BLACK’S LAW DICTIONARY 1708 (10th ed. 2014)). Further, “[a] third-party plaintiff is a party defending a claim who files a pleading to bring a third party into the lawsuit in an effort to pass on or share any liability.” *In re Ford Motor Co.*, 442 S.W.3d 265, 271 (Tex. 2014, orig. proceeding) (citing BLACK’S LAW DICTIONARY 1708 (10th ed. 2014)). Here, the forcible-detainer suit was brought by plaintiff Wells Fargo against defendant Brooks as an alleged occupant of the Property. Accordingly, Brooks was neither a third-party plaintiff nor a third-party defendant as contemplated by rule of civil procedure 510.3(e) prohibiting the joinder of third-party actions in an eviction case. *See* TEX. R. CIV. P. 510.3(e). We resolve Brooks’s second issue against him.

Excluded Evidence

In his third issue, Brooks contends the trial court abused its discretion by excluding evidence regarding title to the Property. According to Brooks, he “produced all evidence to show the ownership of the property in issue of the suit” and the county court abused its discretion by “excluding the evidence of title produced by” Brooks. Specifically, Brooks complains in his appellate brief that the following evidence of title was not admitted at trial:

Warranty Deed January 15 1983 recorded in thereat property records of Dallas County, Texas under instrument Number 198300128577. [Supp.C.R.5, Exhibit A at Supp.CR.8-11][;]

. . . Designation of Homestead recorded at Dallas County records January 23, 2006 No. 200600025165 the Dallas Central Appraisal District July 8, 2015 and Residential Homestead Exemption May 1, 2006. [Supp.C.R.5, Exhibit C at Supp.C.R.15-18][;]

. . . [H]ome equity mortgage, Deed of Trust to Defendant Timothy Brooks. The home equity mortgage, Deed of Trust, Voluntary Designation of Homestead, Affidavit and Agreement (Home Equity) was filed of record in the real property

records at Dallas County, Texas on August 4, 2006 under document number 200600287017. [Supp.C.R.5, Exhibit D at Supp.C.R.19-35].

We review a trial court's rulings on the admission or exclusion of evidence under an abuse of discretion standard. *Gharda USA, Inc. v. Control Solutions, Inc.*, 464 S.W.3d 338, 347 (Tex. 2015). A trial court abuses its discretion when it acts in an unreasonable or arbitrary manner, or without reference to any guiding rules and principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). A person seeking to reverse a judgment based on evidentiary error need not prove that but for the error a different judgment would necessarily have been rendered, but that the error probably resulted in an improper judgment. TEX. R. APP. P. 44.1; see *Nissan Motor Co. Ltd. v. Armstrong*, 145 S.W.3d 131, 144 (Tex. 2004). A successful challenge to evidentiary rulings usually requires the complaining party to show that the judgment turns on the particular evidence excluded or admitted. See *GT & MC, Inc. v. Tex. City Ref., Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied).

At the November 2015 county court trial on the merits of Wells Fargo's forcible-detainer suit, Brooks appeared *pro se*. At that proceeding, the county court advised Brooks to provide to the court the documents Brooks desired to be part of the record and those records would "be part of the record in this case. They'll be admitted into evidence." After Brooks tendered documents to the court he requested be admitted as evidence, those documents, identified as exhibits 1 through 6, were admitted into evidence.

Brooks was represented by counsel at the May 2016 county court trial on the merits of Wells Fargo's forcible-detainer suit. At that trial, Brooks's counsel offered five exhibits. Wells Fargo objected to two exhibits the county court did not admit into evidence—what purported to be a judgment from a case in the 95th Judicial District Court, Dallas County, Texas, and a 2005 "title report, title insurance" document. However, in his appellate brief, Brooks has not argued

the county court abused its discretion by failing to admit the judgment from the Dallas County district court or the “title report, title insurance” document.

On this record, we cannot conclude the trial court abused its discretion by failing to admit into evidence exhibits proffered by Brooks at the November 2015 or May 2016 trial on the merits of Wells Fargo’s forcible-detainer suit. We resolve Brooks’s third issue against him.

Issue of Title to the Property

In his fourth issue, Brooks asserts that, because the issue of superior right to possession of the Property was intertwined with the issue of title to the Property, the county court lacked jurisdiction to grant judgment in favor of Wells Fargo on its forcible-detainer suit. Brooks argues he raised title to the Property as an issue in the justice court and county court by asserting the Substitute Trustee’s Deed was void and by specifically giving notice the suit to quiet title was pending in the district court. Wells Fargo responds that the issue of title to the Property was decided in Wells Fargo’s favor by the district court during the abatement of this forcible-detainer suit, *see Brooks*, 2017 WL 1550043, at *5, and further, as between Brooks and Wells Fargo, Wells Fargo introduced sufficient evidence in the forcible-detainer suit to demonstrate a superior right to immediate possession of the Property.

With regard to Brooks’s argument that he specifically gave the county court notice of the suit to quiet title pending in the district court, Brooks ignores the procedural history of the county court forcible-detainer suit and the district court suit to quiet title. The county court abated the forcible-detainer suit in order for the parties to seek relief from a court of competent jurisdiction as to issues related to title to the Property. *See Kassim*, 308 S.W.3d 541. Wells Fargo moved for summary judgment in Brooks’s suit to quiet title brought in district court, asserting (1) the suit was time-barred, (2) Brooks could not demonstrate an ownership interest in the Property because the documents upon which he relied did not establish he has an ownership interest in the

Property, and (3) Wells Fargo has superior title to the Property. *Brooks*, 2017 WL 1550043, at *2. The district court resolved the title dispute in Brooks’s suit to quiet title in favor of Wells Fargo, *id.*, and the May 2016 trial in county court of the forcible-detainer suit did not take place until after the district court resolved the issue of superior title to the Property.

Further, based on the evidence in the forcible-detainer action, it was unnecessary for the county court to determine the issue of title to the Property. *See Rice*, 51 S.W.3d 711. Wells Fargo proved its right to possession of the Property by presenting evidence of the FHA Deed of Trust, the Substitute Trustee’s Deed, the Special warranty Deed, and the notices to vacate the Property.⁹ The county court determined Wells Fargo was entitled to immediate possession of the Property. *See Shutter v. Wells Fargo Bank, N.A.*, 318 S.W.3d 467, 471 (Tex. App.—Dallas 2010, pet. dismiss’d w.o.j.); *Rice*, 51 S.W.3d 711; *Black v. Wash. Mut. Bank*, 318 S.W.3d 414, 418 (Tex. App.—Houston [1st Dist.] 2010, pet. dismiss’d w.o.j.) (court had evidence before it, including the deed of trust, the substitute trustee’s foreclosure sale deed and related documents establishing default on the note, a notice of eviction, the foreclosure pursuant to deed of trust, and the sale of the property to party pursuing forcible-detainer action).

In conclusion, by the time of trial on May 12, 2016, the issue of title to the Property had been resolved by the district court, and the county court’s adjudication of Wells Fargo’s right to immediate possession of the Property, therefore, was not intertwined with a determination of title to the Property. *See* TEX. R. CIV. P. 510.3(e). Further, Wells Fargo produced sufficient evidence of ownership of the Property to demonstrate a superior right to immediate possession. *See Shutter*, 318 S.W.3d 471. We resolve Brooks’s fourth issue against him.

⁹ As to Brooks’s assertion in his fourth issue that the Substitute Trustee’s Deed was void, we note that, in support of its motion for summary judgment in the district court suit to quiet title, Wells Fargo relied upon a certified copy of the Substitute Trustee’s Deed, which references Sheffield’s obligation to make loan payments to Summit pursuant to a note secured by the FHA Deed of Trust, and the transfer and assignment of the note, together with the liens securing the note, to WAMU, upon Sheffield’s default on the note. The Substitute Trustee’s Deed reflects WAMU’s purchase of the Property at a non-judicial foreclosure sale following Sheffield’s default on the note. *See Brooks*, 2017 WL 1550043, at *3. This Court stated in Brooks’s appeal of the suit to quiet title that “Wells Fargo established it holds a valid interest in the Property through competent evidence of the succession of title” to the Property, which included the Substitute Trustee’s Deed. *Id.* at *5.

Tenant-at-Sufferance

In his fifth issue, Brooks argues he did not have a “lien/contract” with Wells Fargo that rendered him a tenant-at-sufferance and, therefore, the trial court erred by concluding Wells Fargo had a superior right to immediate possession of the Property. Wells Fargo responds that the FHA Deed of Trust executed by Sheffield contained the following provision which made Brooks a tenant-at-sufferance:

If the property is sold pursuant to this [foreclosure procedure] paragraph . . . , Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not immediately surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession.

The provision of the FHA Deed of Trust made Sheffield, as the borrower, a tenant-at-sufferance upon default resulting in foreclosure. Further, if Sheffield defaulted on the loan and the Property was sold at a foreclosure sale, this provision also made any person holding possession of the Property “through” Sheffield a tenant-at-sufferance.

“Generally, a deed of trust’s tenant-at-sufferance clause binds subsequent occupants whose interests are junior to the deed of trust.” *Maxwell v. U.S. Bank Nat’l Ass’n*, No. 14-12-00209-CV, 2013 WL 3580621, at *4 (Tex. App.—Houston [14th Dist.] July 11, 2013, pet. dism’d w.o.j.) (mem. op.). The district court resolved the issue of title to the Property in Wells Fargo’s favor. Accordingly, Brooks’s interest in the Property, as an occupant, is junior to Wells Fargo’s rights under the FHA Deed of Trust, and Brooks is bound by the tenant-at-sufferance clause in that document. *See id.*; *see also U.S. Bank Nat’l Ass’n v. Farhi*, No. 05-07-01539-CV, 2009 WL 2414484, at *3 (Tex. App.—Dallas Aug. 7, 2009, no pet.) (mem. op.) (“occupant” of property subject to deed of trust executed by purchaser of property).

Section 24.002(a)(2) of the property code provides that a person who refuses to surrender possession of real property on demand commits a forcible detainer if the person is a tenant at will

or by sufferance. TEX. PROP. CODE ANN. § 24.002(a)(2). “A tenant at sufferance does not have privity with the landlord but is merely an occupant in naked possession after his right to possession has ceased.” *Goggins v. Leo*, 849 S.W.2d 373, 377 (Tex. App.—Houston [14th Dist.] 1993, no writ); *see also Williams v. Deutsche Bank Nat’l Trust Co.*, No. 05-11-00434-CV, 2012 WL 1899156, at *2 (Tex. App.—Dallas Apr. 27, 2012, no pet.) (mem. op.) (tenancy at sufferance is created when one wrongfully continues in “naked possession of property” after his right to possession has ceased) (citing *ICM Mortg. Corp. v. Jacob*, 902 S.W.2d 527, 530 (Tex. App.—El Paso 1994, writ denied)); *Stroman v. Martinez*, No. 14-13-01143-CV, 2015 WL 2090497, at *4 (Tex. App.—Houston [14th Dist.] May 5, 2015, no pet.) (mem. op.); *Johnson v. Mohammed*, No. 03-10-00763-CV, 2013 WL 1955862, at *7 (Tex. App.—Austin May 10, 2013, pet. dism’d w.o.j.) (mem. op.).

However, Brooks argues he is not in privity of contract with Wells Fargo and is not, therefore, a tenant-at-sufferance. A contract is not required for a party to be subject to a forcible-detainer action. “In the absence of a legally enforceable agreement, such as a lease or rental agreement or a contract to sell, an occupier of premises is at best a tenant at sufferance and at worst a trespasser.” *Fandey v. Lee*, 880 S.W.2d 164, 169 (Tex. App.—El Paso 1994, writ denied) (op. on reh’g). “Under such circumstances, the record title owner of the premises would be entitled to possession, after notice and demand, by merely showing ‘sufficient evidence of ownership to demonstrate a superior right to immediate possession.’” *Id.* (quoting *Goggins*, 849 S.W.2d 377). Wells Fargo, which was found by the district court in Brooks’s suit to quiet title to be the titleholder of the Property, had provided occupant Brooks with written notice to vacate the Property, but Brooks refused. Brooks is a tenant at sufferance despite not having a “lien/contract” with Wells Fargo.

We conclude the trial court did not err in finding Wells Fargo had a superior right to possession of the Property based on Brooks's status as a tenant-at-sufferance. We resolve Brooks's fifth issue against him.

Conclusion

We resolve Brooks's issues against him, and we affirm the county court's judgment.

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/Robert M. Fillmore/
ROBERT M. FILLMORE
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

TIMOTHY BROOKS, Appellant

No. 05-16-00616-CV V.

WELLS FARGO BANK, N.A., Appellee

On Appeal from the County Court at Law
No. 5, Dallas County, Texas,

Trial Court Cause No. CC-15-05401-E.

Opinion delivered by Justice Fillmore,

Justices Bridges and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee Wells Fargo Bank, N.A., recover its costs of this appeal from appellant Timothy Brooks.

Judgment entered this 6th day of September, 2017.