

Conditionally granted and Opinion Filed December 19, 2017.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00937-CV

IN RE AMERICAN NATIONAL INVESTORS, CORP., Relator

Original Proceeding from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-17-00413-D

MEMORANDUM OPINION

Before Justices Lang, Myers, and Boatright
Opinion by Justice Myers

The underlying proceeding involves real party in interest Bessie Scott's appeal of an adverse forcible detainer judgment. The county court at law abated the underlying proceeding so Scott's title dispute, which is pending concurrently in the district court, could be determined first. Relator American National Investors, Corp. (ANI) filed a motion to lift the abatement, and the county court at law denied the motion. In this original proceeding, ANI seeks a writ of mandamus directing the trial judge to vacate the order denying ANI's motion to lift the abatement and to issue an order lifting the abatement so that the county court at law can proceed to trial on Scott's appeal. To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). ANI has established both requirements here and we, therefore, conditionally grant the writ.

Background

ANI bought the property at issue at foreclosure and later initiated a forcible detainer action to evict Scott from the property. ANI obtained a favorable forcible detainer judgment, and Scott appealed to the county court at law. Scott also filed a lawsuit to determine title in the district court. She then moved to abate the appeal of the eviction matter in the county court at law pending the district court's resolution of the title dispute. Scott maintains that the issue of title is intertwined with possession and must be decided first because ANI's agent obtained the foreclosure by fraud. ANI contends the county court at law has jurisdiction to determine the right to immediate possession regardless of the title dispute because the deed of trust included the following tenant-at-sufferance provision that removed questions of possession from questions of title as a matter of law:

Any sale of the Mortgaged Premises under this Deed of Trust shall, without further notice, create the relation of landlord and tenant at sufferance between the purchaser and Grantor or any person holding possession of the Mortgaged Premises through Grantor, and upon failure of Grantor or such person to surrender possession thereof immediately, Grantor or such person may be removed by a writ of possession of the purchaser, either in the Justice Court having venue or in any other Court hereafter having venue.

The county court at law granted the motion to abate and later denied ANI's motion to lift the abatement. This original proceeding followed.

Applicable Law

A forcible detainer occurs when a person, who is a tenant at sufferance, refuses to surrender possession of real property after his right to possession has ceased. TEX. PROP. CODE ANN. § 24.002(a)(2); *Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 915–16 (Tex. 2013); *Smith v. Beneficial Fin. I Inc.*, No. 05-14-00497-CV, 2015 WL 6777828, at *1 (Tex. App.—Dallas Nov. 6, 2015, no pet.) (mem. op.). A forcible detainer action is “a summary, speedy, and inexpensive” procedure for determining the right to immediate possession of real

property where no claim of unlawful entry exists. *Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 926–27 (Tex. App.—Dallas 2010, no pet.). The only issue to be determined in a forcible detainer action is the right to actual possession of the premises; the trial court may not adjudicate questions of title. TEX. R. CIV. P. 510.3(e); *Shutter v. Wells Fargo Bank, N.A.*, 318 S.W.3d 467, 471 (Tex. App.—Dallas 2010, pet. dismissed w.o.j.) (defects in foreclosure process or with purchaser’s title to property may not be considered in forcible detainer action).

The jurisdiction of forcible detainer actions is expressly given to the justice court of the precinct where the property is located and, on appeal, to county courts for a trial de novo. TEX. PROP. CODE § 24.004; TEX. R. CIV. P. 510.3(b); *Perry v. Fed. Nat’l Mortg. Ass’n*, No. 05–14–00022–CV, 2015 WL 3961941, at *3 (Tex. App.—Dallas June 30, 2015, no pet.) (mem. op.). Forcible detainer actions are cumulative of any other remedy a party may have in the courts of this state, and the displaced party is entitled to bring a separate suit in the district court to determine questions of title. *Salaymeh v. Plaza Centro, LLC*, 264 S.W.3d 431, 436 (Tex. App.—Houston [14th Dist.] 2008, no pet.). A foreclosure sale transforms the borrower into a tenant at sufferance who must immediately relinquish possession to the foreclosure sale purchaser. *Smith*, 2015 WL 6777828, at *2 (citing *Pinnacle Premier Props., Inc. v. Breton*, 447 S.W.3d 558, 564 (Tex. App.—Houston [14th Dist.] 2014, no pet.)). Under such circumstances, a party’s complaints about defects in the foreclosure process generally do not require the justice court to resolve a title dispute before determining the right to immediate possession, and the justice court has jurisdiction. *Id.*

A question of title may be so intertwined with the issue of possession, however, as to preclude adjudication of the right to possession without first determining title. *Williams v. VRM-Vendor Res. Mgmt.*, No. 01-14-00272-CV, 2015 WL 3915636, at *2 (Tex. App.—Houston [1st Dist.] June 25, 2015, no pet.) (citing *Chinyere v. Wells Fargo Bank, N.A.*, 440 S.W.3d 80, 83

(Tex. App.—Houston [1st Dist.] 2012, no pet.). In such cases, the county court is deprived of jurisdiction if resolution of a title dispute is a prerequisite to the determination of the right to immediate possession. *In re Gallegos*, No. 13-13-00504-CV, 2013 WL 6056666, at *5 (Tex. App.—Corpus Christi Nov. 13, 2013, orig. proceeding) (citing *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet). “Whether an existing title dispute in another court deprives the justice and county courts of jurisdiction to adjudicate possession in forcible-detainer actions generally turns on whether there is a basis— independent of the claimed right to title—for the plaintiff’s claim of superior possession rights in the property.” *Chinyere*, 440 S.W.3d at 83.

On the other hand, if the issues of title and possession are not so intertwined, “a forcible-detainer suit in justice court may run concurrently with another action in another court—even if the other action adjudicates matters that could result in a different determination of possession from that rendered in the forcible-detainer suit.” *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 437 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Matters relating to possession may even overlap in the two proceedings without affecting a county court’s jurisdiction to determine immediate possession because “a judgment of possession in a forcible detainer action is a determination only of the right to *immediate possession* and does not determine the *ultimate* rights of the parties to *any* other issue in controversy relating to the realty in question.” *Id.* (emphasis added in original) (quoting *Lopez v. Sulak*, 76 S.W.3d 597, 605 (Tex. App.—Corpus Christi 2002, no pet.).

When a deed of trust establishes a landlord-tenant relationship between the borrower and the purchaser of the property at the foreclosure sale, the county court has a basis to resolve rights to possession without resolving the ultimate title dispute. *Smith*, 2015 WL 6777828, at *2 (“Tenant-at-sufferance clauses separate the issue of possession from the issue of title.”); *Bruce v. Fed. Nat’l Mortg. Ass’n*, 352 S.W.3d 891, 893–94 (Tex. App.—Dallas 2011, pet. denied) (title

determination was not required to determine the right to possession because deed of trust included provision that created a landlord-tenant relationship that provided an independent basis for the trial court to determine the issue of immediate possession). Where the deed of trust includes a tenant-at-sufferance clause, the county court has jurisdiction over the claim for immediate possession of the property and does not have discretion to abate or continue the forcible detainer action. *Meridien Hotels v. Lho Fin. P'ship I, L.P.*, 97 S.W.3d 731, 738 (Tex. App.—Dallas 2003, no pet.) (justice court's abatement of forcible detainer action until finalization of district court's decision regarding right to possession was abuse of discretion because district court case did not deprive justice court of jurisdiction in forcible detainer action).

Discussion

Here, paragraph 19 of the Deed of Trust between Scott and ANI contains a tenant-at-sufferance clause that created a landlord-tenant relationship when the property was sold at foreclosure. *See, e.g., Smith*, 2015 WL 6777828, at *2 (similar provision constituted tenant-at-sufferance clause). Scott is subject to a valid tenant-at-sufferance clause and, therefore, the title dispute is not intertwined with the right to immediate possession. The county court at law, therefore, had jurisdiction to determine the forcible detainer action and lacked discretion to abate the case pending determination of the title dispute. *See Meridien Hotels*, 97 S.W.3d at 738 (court abused discretion by abating forcible detainer action until finalization of district court's decision regarding right to possession).

The county court abused its discretion by abating the case and denying ANI's motion to lift the abatement. Accordingly, we conditionally grant the writ of mandamus and direct the trial court to make written rulings, within fifteen (15) days of the date of this opinion, vacating the trial court's May 4, 2017 order denying ANI's motion to lift abatement, granting ANI's motion

to lift abatement, and reinstating the case to the trial court's docket. A writ will issue only if the trial court fails to comply with this opinion and the order of this date.

/Lana Myers/

LANA MYERS
JUSTICE

170937F.P05