

REVERSE and RENDER; and Opinion Filed April 30, 2018.



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

No. 05-17-00777-CV

**COMPASS BANK, AN ALABAMA BANKING CORPORATION, AUTHORIZED TO
DO BUSINESS AS BBVA COMPASS, Appellant**

V.

RECILLIA JOHNSON AND ALL OTHER OCCUPANTS, Appellee

**On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-17-01501-A**

MEMORANDUM OPINION

Before Justices Francis, Brown, and Stoddart
Opinion by Justice Brown

Appellant Compass Bank purchased the property at 3420 Detonte Street, Dallas, Texas 75223 at a foreclosure sale and thereafter filed this forcible detainer action against appellee Recillia Johnson and all other occupants (Johnson) of the property. In a single issue, Compass Bank maintains the trial court erred in awarding Johnson possession of the premises.

BACKGROUND

In 2006, Johnson borrowed money secured by a deed of trust on the Detonte Street property. The deed of trust provides that, if the property is sold at a foreclosure sale,

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 surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding.

In January 2017, Compass Bank bought the property at a foreclosure sale, and a substitute trustee's deed reflecting the sale was executed. Counsel for Compass Bank sent a letter to Johnson demanding that she vacate the property within three days. When Johnson failed to vacate, Compass Bank filed this action against her in justice court, seeking possession of the property. Johnson did not file an answer, and the justice court entered judgment that Compass Bank recover the property from Johnson. Johnson appealed that judgment to the county court for a trial de novo.

At trial, Compass Bank again requested that it be awarded possession of the property and offered into evidence without objection the deed of trust, the substitute trustee's deed showing Compass Bank bought the property at the foreclosure sale, and the notice to vacate Compass Bank sent to Johnson. Johnson testified to receiving the notice. She further testified that she still resided at the property.

The county court judge then asked Compass Bank's counsel for the designation of substitute trustee. Counsel did not have a hard copy with him, and the judge announced she was going to find in favor of Johnson in the absence of evidence the substitute trustee was authorized to sell the property. The judge, however, stated that Compass Bank could submit documentation showing the substitute trustee's designation if Compass Bank wanted her to reconsider. Counsel clarified with the judge that she wanted the documentation in the form of a motion to reconsider.

Compass Bank then filed a motion to reconsider, attaching a certified copy of the Removal of Trustee and Appointment of Substitute Trustee, as well as a certified copy of the Notice of Trustee Sale signed by the substitute trustee. Compass Bank sent a copy of the motion with its attachments to Johnson, and she acknowledged receiving them. During a hearing on the motion to reconsider, Compass Bank presented the certified copy of the Removal of Trustee and Appointment of Substitute Trustee to the judge. She advised that she would take the motion under advisement.

A few days later, the judge entered judgment that Johnson have possession of the property. Compass Bank requested findings of fact and conclusions of law. The judge entered findings of fact and conclusions of law, including that Compass Bank produced a copy of the deed of trust, a substitute trustee's deed and a demand to vacate the premises at trial. She further found that the trial court heard Compass Bank's motion to reconsider, to which it had attached the designation of substitute trustee. However, the judge found that Compass Bank "did not offer into evidence the Designation of Substitute Trustee nor did [it] request that the Court take Judicial Notice of the contents of its file."

APPLICABLE LAW

A party challenging the legal sufficiency of an adverse finding on an issue on which it had the burden of proof must demonstrate the evidence conclusively established, as a matter of law, all vital facts in support of the issue. *U.S. Bank Nat'l Ass'n v. Freeney*, 266 S.W.3d 623, 625 (Tex. App.—Dallas 2008, no pet.) (citing *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001)). In reviewing the challenge, we must examine the record for evidence supporting the adverse finding, while ignoring all evidence to the contrary. *Id.* We indulge every reasonable inference to support the finding, crediting favorable evidence if a reasonable jury could and disregarding contrary evidence unless a reasonable jury could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). If there is no evidence to support the adverse finding, we then examine the entire record to determine if the contrary proposition is established as a matter of law. *Dow Chem. Co.*, 46 S.W.3d at 241. We sustain the issue only if the contrary proposition is conclusively established. *Id.*

A tenant at will or by sufferance refusing to surrender possession of real property on demand commits a forcible detainer. *See* TEX. PROP. CODE ANN. § 24.002(a)(2) (West 2014). To prevail and obtain possession in this forcible detainer action, Compass Bank was required to show:

(1) the substitute trustee conveyed the property by deed to Compass Bank after the foreclosure sale; (2) Johnson became a tenant-at-sufferance when the property was sold under the deed of trust; (3) Compass Bank gave proper notice to Johnson requiring her to vacate the premises; and (4) Johnson refused to vacate the premises. TEX. PROP. CODE ANN. § 24.002(a)(2), (b), § 24.005 (West Supp. 2017); *see also Freeney*, 266 S.W.3d at 625.

The only issue in a forcible detainer action is which party has the right to immediate possession of the property. *Shutter v. Wells Fargo Bank, N.A.*, 318 S.W.3d 467, 470 (Tex. App.—Dallas 2010, pet. dismiss'd w.o.j.). Whether the sale of the property under a deed of trust is invalid may not be determined in a forcible detainer and must be brought in a separate suit. *Id.* at 471; *see* TEX. R. CIV. P. 510.3(e) (“The court must adjudicate the right to actual possession and not title.”). Indeed, a forcible detainer action is meant to be “a speedy, simple, and inexpensive means to obtain possession without resorting to an action on the title.” *Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 926 (Tex. App.—Dallas 2010, no pet.); *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.).

ANALYSIS

At trial, Compass Bank offered into evidence the substitute trustee's deed establishing it bought the property at the foreclosure sale, the deed of trust setting up a tenancy by sufferance between it and Johnson after the sale, the notice to Johnson to vacate, and Johnson's testimony that she still resided at the property. Based on this unobjected-to evidence, Compass Bank established its superior right to immediate possession of the property as a matter of law. *See Shutter*, 318 S.W.3d at 471. It had no requirement to prove title in order to prevail; it needed only to show sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Rice*, 51 S.W.3d at 709. Thus, the trial court erred in sua sponte requiring a copy of the appointment of the substitute trustee. Accordingly, we reverse the trial court's judgment and render

judgment that Compass Bank is entitled to possession of 3420 Detonte Street, Dallas, Texas 75223.

See TEX. R. APP. P. 43.2.

/Ada Brown/
ADA BROWN
JUSTICE

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

JUDGMENT

COMPASS BANK, AN ALABAMA
BANKING CORPORATION,
AUTHORIZED TO DO BUSINESS AS
BBVA COMPASS, Appellant

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No. 1, Dallas County, Texas
Trial Court Cause No. CC-17-01501-A.
Opinion delivered by Justice Brown;
Justices Francis and Stoddart participating.

No. 05-17-00777-CV V.

RECILLIA JOHNSON AND ALL OTHER
OCCUPANTS, Appellee

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

appellant COMPASS BANK, AN ALABAMA BANKING CORPORATION,
AUTHORIZED TO DO BUSINESS AS BBVA COMPASS is entitled to
possession of 3420 Detonte Street, Dallas, Texas 75223.

It is **ORDERED** that appellant COMPASS BANK, AN ALABAMA BANKING
CORPORATION, AUTHORIZED TO DO BUSINESS AS BBVA COMPASS recover its costs
of this appeal from appellee RECILLIA JOHNSON AND ALL OTHER OCCUPANTS.

Judgment entered this 30th day of April, 2018.