

**Opinion issued March 24, 2011**



**In The  
Court of Appeals  
For The  
First District of Texas**

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**NO. 01-10-00937-CV**

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**ALETHA B. RAY, Appellant**

**V.**

**CASTILIAN VILLAGE TOWNHOUSE ASSOCIATION, INC., Appellee**

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**On Appeal from the 234th District Court  
Harris County, Texas  
Trial Court Cause Nos. 2009-14325**

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**MEMORANDUM OPINION**

Appellant, Aletha B. Ray, who appears pro se,<sup>1</sup> challenges the trial court's rendition of summary judgment in favor of appellee, Castilian Village Townhouse Association, Inc., in Ray's suit against Castilian Village for failure to provide her notice regarding the foreclosure sale of her townhome. In six issues, Ray contends that the trial court erred in granting Castilian Village summary judgment, disregarding her third amended petition, concluding that Castilian Village "was not obligated to provide [her] with her expected due process rights of notice and opportunity to prevent seizure," allowing Castilian Village "to use unverified interrogatories" in support of its summary-judgment motion, and finding, in its order, that Castilian Village "did not owe [her] expected notice" that is statutorily required.

We affirm.

### **Background**

On January 5, 2005, in a prior lawsuit brought by Castilian Village in County Civil Court at Law Number Two against Ray to recover unpaid maintenance assessments and late fees, the county court entered a final judgment in

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<sup>1</sup> We note that parties who appear pro se must comply with all applicable laws and rules of procedure and are held to the same standards as are licensed attorneys. *See Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184 (Tex. 1978); *Kanow v. Brownshadel*, 691 S.W.2d 804, 806 (Tex. App.—Houston [1st Dist.] 1985, no writ). We have endeavored to address all issues that can be said to have been "fairly included" by Ray in her brief. *See* TEX. R. APP. P. 38.1(f).

favor of Castilian Village, awarding Castilian Village actual damages of \$5,092.37, \$1,000 in attorney’s fees, costs, interest at 8% per annum, a lien against Ray’s townhome in the amount of the judgment, and \$2,500 in appellate attorney’s fees if Ray pursued an unsuccessful appeal.<sup>2</sup> The county court, in its judgment, noted that Castilian Village could request a Harris County Constable to foreclose on its lien if Ray failed to pay the judgment within thirty days of the judgment becoming final. To effectuate this, the county court entered an “order of sale [] allowing the Harris County Constable to post [Ray’s] property for foreclosure, and to sell the same to the highest bidder at such foreclosure sale.” On March 18, 2005, the county court entered a modified final judgment, ordering that Castilian Village recover from Ray actual damages in the amount of \$4,843.81. The trial court’s modified judgment included all the other terms of the prior judgment, including the lien and order of sale.<sup>3</sup> Ray appealed the county court’s judgment, arguing, in part, that Castilian Village was not authorized to assess late fees. On May 3, 2006, we affirmed the trial court’s judgment.<sup>4</sup> The Texas Supreme Court denied Ray’s

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<sup>2</sup> *Castilian Village Townhouse Ass’n, Inc v. Ray*, No. 802,908, in the County Court at Law No. 2 of Harris County, Texas.

<sup>3</sup> *See id.* Our prior opinion also refers to another lawsuit brought by Castilian Village against Ray in 2001 to collect maintenance assessments. *Ray v. Castilian Village Townhouse Ass’n, Inc.*, No. 01-05-00370-CV, 2006 WL 907445, at \*2 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (mem. op.).

<sup>4</sup> *Id.* at \*6.

petition for review and motion for rehearing.

Ray, in December 2006, made two payments totaling \$5,117.37 to Castilian Village. Castilian Village deposited these checks, which, on their face, were insufficient to satisfy the prior judgment. On February 6, 2007, counsel for Castilian Village sent to a Harris County Constable a copy of a writ of execution and order of sale for Ray's townhome and requested that the Constable serve Ray with the writ and execute it by conducting a foreclosure sale of Ray's townhome. Castilian Village instructed the Constable to "start the bidding at the judgment amount plus all court costs and attorney's fees." The writ of execution and order of sale referred to the modified judgment entered by the county court on March 18, 2005, identified the "judgment awarded" to include an "amount" of \$4,843.81, attorney's fees of \$1,000, court costs of \$150, pre-judgment interest of 8%, and \$2,500 in appellate fees. The writ also referred to "total credits" and an "amount" of \$2,357.<sup>5</sup>

Although the Constable conducted a foreclosure sale on March 6, 2007, Ray alleged in the instant case that she did not receive notice of the sale. Instead,

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<sup>5</sup> Although the parties do not clearly explain these amounts in their briefing, the record establishes that there remained outstanding amounts owed to Castilian Village on the county court's judgment.

according to Ray, on March 8, 2007, she visited her townhome<sup>6</sup> and discovered that her locks had been changed, met the “new owner,” Jose Gonzales, and was denied access to retrieve her personal property. On March 14, 2007, Ray sent Castilian Village a letter, in which she complained that she had not received notice of the sale, stated that the only notice of the foreclosure sale had been “via publication,” and asked why no notice was sent to her personal address of 9722 Seeker Street, Houston, Texas. Ray also complained that she had tendered \$5,117.37 in good faith as the “amount owed after unsuccessful litigation,” and she asked about the status of her payment. Finally, Ray demanded that Castilian Village provide her with a redemption notice.<sup>7</sup>

On May 1, 2007, Harris County Constable Glen Cheek filed an affidavit, in which he testified that he had received a writ directing him to post Ray’s townhome for sale, he had executed the writ by holding the foreclosure sale on

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<sup>6</sup> The townhome was not Ray’s primary residence.

<sup>7</sup> *See* TEX. PROP. CODE ANN. § 209.010 (Vernon Supp. 2010) (requiring property owners’ association that conducts foreclosure to send “to the lot owner and to each lienholder of record, not later than the 30th day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of record of the right of the lot owner and lienholder to redeem the property” under section 209.011 of the Texas Property Code; stating that notice “must be sent by certified mail, return receipt requested” to “lot owner’s last known mailing address, as reflected in the records of the property owners’ association”; and noting that notice requirements “apply to the sale of an owner’s lot by a sheriff or constable conducted as provided by a judgment obtained by the property owners’ association”).

March 6, 2007, “all parties were notified” of the sale “by certified and first class mail,” there “were three bidders at the sale,” and the property was “struck off to high bidder,” Jose Gonzales. Cheek explained that, after the sale, Gonzales and another party had a dispute about whose name should appear on the deed, the county court held a hearing on the dispute and ordered Gonzales to pay \$8,300 to the Constable, Gonzales paid this amount on April 4, 2007, and the property had been “struck off” to Gonzales. Cheek further stated that the amount collected was applied to costs in the amount of \$538 and a “credit to the judgment in the amount of \$7,267.32.” And an “overage” of \$319.07 was paid to Ray.

On May 14, 2007, counsel for Castilian Village sent, by certified mail, addressed to Ray at 9722 Seeker Street, a letter notifying her that her townhome had been “foreclosed and sold at a Constable sale on Tuesday, March 6, 2007.”<sup>8</sup> Counsel noted that there had been “a legal dispute between two bidders at the sale as to who actually had the right to purchase the property,” the dispute had “now been resolved,” the dispute was “the reason this notice was not sent . . . earlier,” “Jose R. Gonzales was the person who ultimately received title” to the townhome, the foreclosure sale was conducted by the Constable pursuant to the judgment that provided for foreclosure of the lien against the townhome, and Ray had the “right

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<sup>8</sup> *See id.*

to redeem the property by payments of the amounts required therein.”<sup>9</sup> There is no evidence in the record that Ray ever attempted to exercise her redemption rights.

In March 2009, Ray filed the instant suit against Castilian Village, and, in her third amended petition, alleged that she had purchased her townhome in 1995, she had been “denied her procedural due process right[s] and . . . notice after foreclosure,” she had paid \$5,117.36 to Castilian Village in December 2006, Castilian Village had cashed her checks and failed to notify her of any deficiencies, Castilian Village knew her address was 9722 Seeker Street, and she was denied access to her townhome beginning March 8, 2007 by the “new owner,” Jose Gonzales. Ray explained that she “should have received a letter by certifi[ed] mail” from Castilian Village, “or its agents,” informing her of “its intent to foreclose” and “the date of sale in 2007.” She also complained that she was entitled to “notice after foreclosure” and alleged that Castilian Village “did not

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<sup>9</sup> *See id.* § 209.011 (Vernon Supp. 2010) (setting forth lot owner’s right of redemption; providing that “property owners’ association or other person who purchases occupied property at a sale foreclosing a property owners’ association’s assessment lien must commence and prosecute a forcible entry and detainer action under Chapter 24 [of the Texas Property Code] to recover possession of the property”; providing that “owner of property in a residential subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a property owners’ association’s assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner and the lienholder under Section 209.010”; and detailing the items a lot owner must pay to the association and the purchaser of the property in order to redeem property purchased at foreclosure sale).

provide the minimum process of timely personal notice” by certified mail informing her of her procedural due process rights or the “required steps to pay any deficiencies prior to the Constable sale.” She asserted that Castilian Village “failed to follow the minimum [statutory] requirements” and Castilian Village’s conduct deprived her of “her home ownership and allowed her home to be occupied before the 30 day period” as Gonzales “obtain[ed] possession within a few days of the Constable sale.” She sought “damages” for her “huge lost” [sic] “in the amount of \$150,000.”<sup>10</sup>

Castilian Village filed its summary-judgment motion, contending that the foreclosure had been properly conducted and Ray had failed to “mitigate her damages” by not redeeming the property. In regard to Ray’s complaints about the lack of notice before the foreclosure sale, Castilian Village attached to its motion a copy of the county court’s judgment, which provided that Ray’s townhome was subject to foreclosure if the judgment was not paid.<sup>11</sup> Castilian Village acknowledged that Ray had made a payment after the conclusion of the appellate process in the prior lawsuit, but it noted that the payment was “insufficient to cover

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<sup>10</sup> Ray did not include a formal request to set aside the sale.

<sup>11</sup> Castilian Village attached a copy of the January 5, 2005 judgment, but our prior opinion establishes that the county court entered its modified judgment on March 18, 2005.



the judgment,” including attorney’s fees, costs, and interest. Castilian Village also attached to its motion a copy of the Constable’s calculation of the outstanding amount due and a copy of the Constable’s return, in which he stated that he had provided Ray notice by certified and first class mail about the foreclosure sale and Ray had failed to satisfy the judgment thereafter.<sup>12</sup> With this evidence, Castilian Village asserted that it had established, as a matter of law, that Ray had been provided “proper legal notice” of the pending foreclosure sale.

In regard to Ray’s complaints about the lack of notice after the foreclosure sale, Castilian Village cited the Constable’s return, in which the Constable stated that a dispute arose after the foreclosure sale about the identity of the rightful purchaser of the townhome. Castilian Village also asserted that Ray had been served with a copy of a motion, filed by the Harris County Attorney, to determine ownership, and a notice of a hearing on the matter. Castilian Village attached to its

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<sup>12</sup> Castilian Village also attached to its motion what it asserted were “deemed admissions” by Ray. However, Castilian Village only included a copy of its requests for admission as well as a trial court order on Castilian Village’s motion to compel Ray to respond to its requests. In its order, the trial court overruled Ray’s objections to the requests, but the trial court also specifically crossed out a proposed ruling that the requests would be “deemed admitted.” At the end of the order, the trial court stated that Ray would be provided an additional seven days to respond to the requests and then her answers would be deemed admitted if she failed to respond. However, there is no further order in the record indicating that Ray failed to respond or that her answers to these requests were ever deemed admitted. Additionally, the trial court, in its extremely detailed summary-judgment order, did not state that it was relying upon deemed admissions. Thus, we do not consider the “deemed admissions” in determining whether the trial court erred in granting Castilian Village summary judgment.

summary-judgment motion copies of these documents reflecting that they had been served upon Ray at her townhome address. Castilian Village also cited the Constable's return for establishing that the foreclosure sale was concluded on May 1, 2007 with the filing of the Constable's "return of sale." Castilian Village attached to its motion a copy of its May 14, 2007 letter to Ray in which it outlined Ray's redemption rights. Castilian Village argued that this evidence established, as a matter of law, that it had provided "proper legal notice" to Ray after the conclusion of the foreclosure sale.

In regard to the alleged due-process violations, Castilian Village argued that the summary-judgment evidence established that Ray was provided with "notice and the opportunity to be heard," the county court's final judgment disclosed that Ray's townhome was subject to foreclosure, and the Constable provided Ray notice of the foreclosure sale as well as the resulting dispute in ownership. Castilian Village asserted that Ray was "not entitled to damages" for her "injury to reputation" or "inconvenience" and she had failed to mitigate her damages by failing to redeem her townhome.

In her response, Ray contended that Castilian Village was obligated to provide her "actual notice" before executing the writ and seizing her property, Castilian Village had "constructive knowledge" of her mailing address on Seeker Street when it "ordered the execution of the writ," the pertinent "30 day notice

calculation began on March 6, 2007 after the foreclosure or on April 4, 2007” after the county court determined that Jose Gonzales was the new owner of the property, Castilian Village was “obligated to provide actual notice” “regarding her debt obligation” before executing the writ, Castilian Village failed to comply “with the three step foreclosure process,” and she was not “afforded her procedural due process rights of actual notice and opportunity to cure” before the foreclosure of her townhome. Ray stated that she was not challenging “the right to foreclosure,” but rather Castilian Village’s failure to provide her the statutorily required “actual notice.” Ray also suggested that any notice provided to her at her townhome address was not actually received because she lived at another address and Castilian Village was aware of this fact.

The trial court granted Castilian Village’s summary-judgment motion on the “two causes of action” in Ray’s “latest petition,” which the trial court referred to as “failure to provide notice” and “failure to provide procedural due process rights.” The trial court then outlined the possible factual basis for Ray’s complaints, explaining that Ray’s suit concerned (1) Castilian Village’s alleged failure to provide her notice that the \$5,117.37 payment did not satisfy the entire judgment, (2) Castilian Village’s failure to provide her notice that it intended to foreclose on Ray’s townhome to satisfy the judgment by foreclosure sale, (3) Castilian Village’s failure to provide notice to the county that Ray preferred to receive mail at 9722

Seeker Street rather than at her townhome, which was the address cited in the court records to which the Constable sent notice, and (4) Castilian Village's failure to provide her notice within 30 days of the foreclosure sale of her right to redemption.

The trial court noted that Ray had provided "no authority" and "little evidence" regarding these complaints and then explained why it rejected each of Ray's factual complaints. First, the trial court stated that the summary-judgment evidence established that Ray had failed to satisfy the entire judgment and there was no authority requiring Castilian Village to notify Ray that her partial payment failed to satisfy the county court's judgment and lien. Second, the trial court stated that the prior judgment provided that Castilian Village could request foreclosure in the event that Ray failed to satisfy the judgment, the statutory provision requiring a foreclosing party to provide an owner with notice of a non-judicial foreclosure did not apply because the case involved a judicial foreclosure, and "only the foreclosing authority" was obligated to provide Ray notice. Third, the trial court stated that the summary-judgment evidence established that the Constable provided Ray notice of the foreclosure sale to her townhome address, there was no evidence that Ray provided "change of address information" to the county clerk, the Constable sent Ray a notice to the only address that it had in its official records, Ray had the affirmative obligation to ensure that the county clerk had current address information, and Castilian Village did not have any obligation to advise the

Constable of Ray's additional or preferred addresses. Fourth, the trial court found that Castilian Village had sent Ray the required redemption notice within 30 days of the filing of the return of sale, the notice was timely, and Ray had been provided with the full 180-day redemption period and was not harmed. The trial court, based upon these reasons, granted Castilian Village's summary-judgment motion on Ray's causes of action for failure to provide notice and violation of due process rights.<sup>13</sup>

### **Standard of Review**

To prevail on a summary-judgment motion, a movant has the burden of proving that it is entitled to judgment as a matter of law and there is no genuine issue of material fact. TEX. R. CIV. P. 166a(c); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). When a defendant moves for summary judgment, it must either (1) disprove at least one essential element of the plaintiff's cause of action or (2) plead and conclusively establish each essential element of its affirmative defense, thereby defeating the plaintiff's cause of action. *Cathey*, 900 S.W.2d at 341; *Yazdchi v. Bank One, Tex., N.A.*, 177 S.W.3d 399, 404 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). When deciding whether there is a disputed, material fact

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<sup>13</sup> Castilian Village had requested sanctions against Ray and sought summary judgment on its damages. However, the trial court denied Castilian Village summary judgment on its claims for sanctions, and Castilian Village subsequently non-suited those claims.

issue precluding summary judgment, evidence favorable to the non-movant will be taken as true. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548–49 (Tex. 1985). Every reasonable inference must be indulged in favor of the non-movant and any doubts must be resolved in her favor. *Id.* at 549.

### **Summary Judgment**

In her six issues, Ray argues that the trial court erred in granting Castilian Village summary judgment because there are disputed material fact issues, the trial court “undermined the statutory and constitutional requirement of notice and opportunity,” the trial court disregarded her third amended petition and, instead, “ruled on creative and inventive issues,” the trial court incorrectly determined that Castilian Village “was not obligated to provide [her] with her expected due process rights of notice and opportunity to prevent seizure,” Castilian Village was improperly allowed “to use unverified interrogatories” in support of its summary-judgment motion, and the trial court incorrectly stated that Castilian Village “did not owe [her] expected notice.” *See* TEX. PROP. CODE ANN. § 51.002 (Vernon Supp. 2010) (applying to sale of real property under contract lien).

We construe Ray’s appellate briefing, and her trial court pleadings, as presenting two distinct notice complaints: (1) Castilian Village did not provide her proper notice prior to the foreclosure sale and (2) Castilian Village did not provide her proper and timely notice of her redemption rights after the sale. We also

construe Ray's appellate briefing to present two procedural complaints about the summary-judgment proceedings: (1) the trial court erroneously disregarded her live petition and (2) the trial court relied on improper summary-judgment evidence in rendering summary judgment in favor of Castilian Village.<sup>14</sup>

***Ray's notice complaints***

In the prior lawsuit, the county court entered a judgment in favor of Castilian Village, awarding it damages, imposing a lien on Ray's townhome, and authorizing Castilian Village to request that a Harris County Constable foreclose on this lien if Ray failed to pay the judgment within 30 days of it becoming final. The trial court also expressly stated that its judgment constituted an "order of sale." The summary-judgment evidence establishes that, despite Ray's attempt at a partial payment after the conclusion of her appeal of the county court's judgment, the judgment remained unsatisfied with a remaining balance. Thus, the only question is whether, in addition to the notice of the foreclosure sale that had already been provided by the county court judgment, Ray was afforded notice as required by any governing rules or statutes.

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<sup>14</sup> Ray also makes reference to the fact that her townhome was located in a precinct of Harris County different than that of the precinct of the Constable that conducted the sale. However, Ray has provided no legal argument or authorities that this fact, even if true, would void the sale or allow her to recover her pleaded damages. Thus, any potential issue arising from this complaint has been waived. *See* TEX. R. APP. P. 38.1(i).

“Compliance with the notice requirements for execution, whether contained in a deed of trust or as required by statute, is a prerequisite to the right of the trustee” or officer to conduct a foreclosure sale. *McCoy v. Rogers*, 240 S.W.3d 267, 275 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (citing *Houston First Am. Sav. v. Musick*, 650 S.W.2d 764, 768 (Tex. 1983)). Texas Rule of Civil Procedure 647 requires the officer conducting the sale in a judicial foreclosure to provide notice of the sale by publishing an advertisement once a week for three consecutive weeks preceding such sale in some newspaper published in said county. TEX. R. CIV. P. 647; *see also Apex Fin. Corp. v. Brown*, 7 S.W.3d 820, 828 (Tex. App.—Texarkana 1999, no pet.). The first advertisement must be published “not less than twenty days immediately preceding the day of sale” and “shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale” and also “a brief description of the property to be sold.” TEX. R. CIV. P. 647. Additionally, rule 647 requires the officer to give a judgment debtor or his attorney written notice of the officer’s sale, “either in person or by mail, which notice shall substantially conform to the foregoing requirements.” *Id.* Although rule 647 speaks of “regular mail,” courts have noted that Texas Rule of Civil Procedure 21a, which applies to “[e]very notice” required to be served by the Texas Rules of Civil Procedure, “imposes the requirement of registered mail upon the general provisions for ‘mail’” in rule 647.



*Collum v. DeLoughter*, 535 S.W.2d 390, 392 (Tex. Civ. App.—Texarkana 1976, writ ref'd n.r.e); TEX. R. CIV. P. 21a. Mailing notice of the foreclosure sale to “the correct address will be sufficient, even if the notice was never received by the judgment debtor, but mailing notice to the wrong address results in an irregularity.” *Apex Fin. Corp.*, 7 S.W.3d at 828. “The levying officer shall make due return of the execution, in writing and signed by him officially, stating concisely what such officer has done in pursuance of the requirements of the writ and of the law” and shall file the return with the clerk of the court. TEX. R. CIV. P. 654.

Here, although Ray does not formally complain about the lack of notice through advertisement, we note that the record contains a copy of the published advertisement of the foreclosure sale. The advertisement identifies the county court’s order authorizing the foreclosure sale, states the amount of the judgment, provides the time and place of sale, and describes the property to be sold. The record also contains Constable Cheek’s return, which was filed with the county clerk on May 1, 2007 and in which he states,

Came to hand 2-08-07 at 9:58 a.m. and executed 3-06-07 by having a constable’s sale at 1115 Congress, Houston, Harris County, Texas between the hours of 10:00 a.m. and 4:00 p.m. I was directed under court order to post real estate for sale. All parties were notified by certified and first class mail. On 3-06-07 the sale was read. There were three bidders. The property was struck off to the high bidder,  
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Constable Cheek further stated in the return that, following a legal dispute between bidders, on April 4, 2007, Gonzales paid the high bid. We conclude that the return demonstrates, as a matter of law, that the Constable afforded Ray notice of the sale as required by the Texas Rules of Civil Procedure. TEX. R. CIV. P. 647.

In her brief, Ray's complaints about the notice provided prior to the foreclosure sale appear to arise from her unsupported assertion that Castilian Village had certain obligations that it did not fulfill. First, Ray appears to suggest that Castilian Village breached an obligation to ensure that the Constable had on file her preferred address and that the Constable send notice to this address rather than her townhome. However, as the trial court noted, the law imposes no such obligation on Castilian Village. In his return, Constable Cheek states that he provided Ray notice, and he refers to the address contained in the court records, which was her townhome address. Second, Ray asserts that, in addition to the Constable's notice, Castilian Village, under section 51.002 of the Texas Property Code, was independently required to provide her notice of the sale. However, as also noted by the trial court, Castilian Village was not required to provide notice under section 51.002. We conclude that Castilian Village established that the required notice was provided prior to the foreclosure sale and, thus, any claim that Ray asserts arising from the alleged deficient notice prior to the foreclosure sale fails as a matter of law.

In regard to the redemption notice after the completion of the foreclosure sale, the Constable's return and the other documentary evidence establish that, because of a legal dispute, the foreclosure sale was not completed until early May 2007, when the Constable filed his return stating that the funds had been deposited and the property had been "struck off." Thus, Castilian Village's redemption notice, provided on May 14, 2007, was timely. *See* TEX. PROP. CODE ANN. § 209.010 (Vernon Supp. 2010). Moreover, we note that it is undisputed that Ray's redemption period was calculated from the date of this notice. We conclude that Castilian Village established that the required redemption notice was provided after the foreclosure sale, and any claim that Ray asserts arising from the alleged deficient notice after the foreclosure sale fails as a matter of law. Accordingly, we hold that the trial court did not err in granting summary judgment in favor of Castilian Village on both of Ray's "causes of action," which arise from her allegations related to receiving allegedly-deficient notice both before and after the foreclosure sale.

***Procedural complaints***

Finally, we address Ray's procedural complaints. The trial court's summary judgment refers to Ray's "latest petition" and specifically identifies the two "causes of action" pleaded by Ray in her third amended petition. Thus, the record indicates that the trial court expressly considered, rather than disregarded, her third

amended petition. The record also indicates that the trial court did not necessarily rely upon the “deemed admissions” or “verified interrogatories” cited by Castilian Village in its summary-judgment motion. As explained above, setting aside any consideration of this challenged evidence, Castilian Village established that Ray’s claims failed as a matter of law. Accordingly, we hold that Castilian Village established its entitlement to summary judgment without the challenged evidence.

We overrule Ray’s first through sixth issues.

### **Conclusion**

We affirm the judgment of the trial court.

Terry Jennings  
Justice

Panel consists of Justices Jennings, Higley, and Brown.