

Reversed and Remanded and Memorandum Opinion filed February 17, 2011



In The

Fourteenth Court of Appeals

NO. 14-09-01043-CV

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR LONG
BEACH MORTGAGE TRUST 2006-9, Appellant**

V.

**G.P. MATHERNE, DAMPKRING LLC, BRIEN WEST, ALLEN GROVES, AND
NICK TRAN, Appellees**

**On Appeal from the 55th District Court
Harris County, Texas
Trial Court Cause No. 2007-60103**

M E M O R A N D U M O P I N I O N

Appellant Deutsche Bank National Trust Company (Deutsche Bank) appeals the trial court's order granting summary judgment in favor of defendant Nick Tran. Because the court erroneously granted judgment on claims not raised in the motion, we reverse and remand to the trial court.

Background

Deutsche Bank filed suit against appellees G.P. Matherne and Dampkring, seeking an injunction to prevent an improper foreclosure. Deutsche Bank amended its petition to add Nick Tran as a defendant because it discovered that Tran purchased the real property made the basis of this suit at a wrongful foreclosure sale.

Tran subsequently filed a motion for partial no-evidence summary judgment in which he alleged that he purchased the property from Dampkring at a foreclosure sale. At the time of the sale a temporary restraining order (TRO) had been issued enjoining Dampkring from foreclosing on the property. Tran alleged in his motion for summary judgment that Deutsche Bank had produced no evidence that Dampkring was served with notice of the TRO; therefore, no evidence that Dampkring was bound by the TRO.

On September 14, 2009, the trial court granted Tran's motion for partial summary judgment, but went beyond Tran's motion and dismissed all of Deutsche Bank's claims. The judgment recited that it "finally disposes of all Plaintiff's claims and is appealable." Deutsche Bank timely filed a motion for new trial, which was overruled by operation of law 75 days after the judgment was signed, on November 28, 2009. The trial court's plenary power expired 30 days later on December 28, 2009. *See* Tex. R. Civ. P.329b. On March 11, 2010, after its plenary power expired, the trial court signed an order granting Tran's motion for partial summary judgment and only dismissing Deutsche Bank's claims against Tran, not the other defendants.

Discussion

In its second issue, Deutsche Bank contends the trial court erred in granting relief in the summary judgment that was not requested in the motion. We agree. Tran filed a motion for partial summary judgment seeking dismissal of Deutsche Bank's claims against him. The other defendants did not file motions, nor did Tran purport to file a motion on their behalf. Deutsche Bank non-suited Matherne, but the other defendants remained in the case.

An order may be a final judgment for appeal purposes even though it does not purport to be if it actually disposes of all claims still pending in the case. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 204 (Tex. 2001). Although the trial court purported to grant a partial summary judgment, because it disposed of all of Deutsche Bank's pending claims, the order is final and appealable. *See id.* Granting more relief than the movant is entitled to makes the order reversible, but not interlocutory. *Id.* Because a trial court cannot grant more relief than was requested by a motion for summary judgment, we find the trial court erred in granting summary judgment as to all of Deutsche Bank's claims. *See Scence. Spectrum v. Martinez*, 941 S.W.2d 910, 912 (Tex. 1997). We sustain Deutsche Bank's second issue. We need not address Deutsche Bank's remaining issues.

We reverse the trial court's judgment and remand for further proceedings consistent with this opinion.

PER CURIAM

Panel consists of Justices Anderson, Seymore, and McCally.