Reversed and Remanded and Memorandum Opinion filed June 23, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00096-CV

LA FLECHA HOLDINGS, INC., Appellant

V.

FIND A HOME, LLC, Appellee

On Appeal from the 129th District Court
Harris County, Texas
Trial Court Cause No. 2013-50859

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

Appellant La Flecha Holdings, Inc. appeals the trial court's judgment granting summary judgment in favor of appellee Find A Home, LLC (FAH) in its suit seeking declaratory judgment. On appeal, La Flecha contends the trial court erred in granting summary judgment in favor of FAH and issuing a declaratory judgment. We reverse the trial court's judgment and remand for further proceedings.

BACKGROUND

La Flecha owned real property known as 538 Smith Avenue, Pasadena, Texas, but failed to pay ad valorem taxes owed on it. The taxing authorities filed a delinquent tax suit against La Flecha, and the trial court entered a judgment. The sheriff conducted a foreclosure tax sale pursuant to the judgment on March 5, 2013. At that sale, FAH bought the property for $14,387.91.

On May 16, 2013, La Flecha notified FAH that it intended to exercise its right of redemption and asked for a written itemization of amounts owed. On May 30, FAH sent La Flecha the itemization, which included taxes paid on the property as well as various other costs. On June 19, La Flecha filed a redemption affidavit and cashier's check for $17,984.88 at the assessor-collector's office and received a receipt for redemption. La Flecha's redemption amount included only the purchase price plus twenty-five percent, but not taxes or any other costs.

On August 29, 2013, FAH filed suit seeking a declaratory judgment that La Flecha had not properly redeemed the property. FAH alleged that La Flecha's attempted redemption was invalid because the tendered redemption payment did not include the taxes paid on the property.[1] La Flecha answered and counterclaimed for a declaratory judgment that it had properly redeemed the property.

FAH moved for summary judgment. As evidence for its motion, FAH offered an affidavit from its account supervisor, Milade Abugattas, in which she testified that FAH had paid the taxes on the property prior to La Flecha's attempted redemption. Attached to the affidavit were photocopies of checks from SWE

[1] While FAH's original itemization demanded reimbursement for other various costs, FAH did not include those claims in this suit. The only amount FAH raises in its petition, motion for summary judgment, and appellate brief is the amount of taxes paid, plus twenty-five percent.

Homes, LP to the taxing authorities and receipts reflecting that the payments were attributed to the property.

La Flecha responded to FAH's summary judgment motion, arguing that there was a fact issue and that FAH's evidence showed that SWE Homes, rather than FAH, paid the taxes at issue. FAH replied, stating "[t]he undisputed summary judgment evidence is that [FAH] paid these taxes," and cited to the affidavit, checks, and receipts. On January 9, 2015, the trial court granted FAH's motion and signed a declaratory judgment that La Flecha had not redeemed the property.

ANALYSIS OF LA FLECHA'S ISSUE

La Flecha contends the trial court erred by granting FAH's motion for summary judgment. Construing La Flecha's brief liberally, we understand its complaint to be a challenge to the legal sufficiency of FAH's supporting evidence.

Standard of Review

We review declaratory judgments under the same standards as other judgments and decrees. Tex. Civ. Prac. & Rem. Code § 37.010; *Bluntson v. Wuensche Servs., Inc.*, 374 S.W.3d 503, 506 (Tex. App.—Houston [14th Dist.] 2012, no pet.). When a trial court resolves a declaratory action via summary judgment, we review the grant of summary judgment de novo. *Bluntson*, 374 S.W.3d at 506.

In a traditional motion for summary judgment, the movant must establish that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). The nonmovant has no burden to respond to a summary judgment motion unless the movant conclusively establishes each element of its cause of action as a matter of law.

M.D. Anderson Hosp. & Tumor Inst. v. Willrich, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam). In other words, the issue on appeal is not whether the nonmovant raised a material issue of fact precluding summary judgment; rather, the issue is whether the movant proved it was entitled to judgment as a matter of law. *Ramirez v. Transcon. Ins. Co.*, 881 S.W.2d 818, 822 (Tex. App.—Houston [14th Dist.] 1994, writ denied). If the appellate court finds that the movant has not met its burden, it must reverse and remand the case for further proceedings. *Id.*

When reviewing a summary judgment, we take as true all evidence favorable to the nonmovant and resolve any doubts in the nonmovant's favor. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). A fact is conclusively established if reasonable people could not differ as to the conclusion to be drawn from the evidence. *City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005). Conflicting or ambiguous evidence gives rise to genuine issues of fact. *Ellert v. Lutz*, 930 S.W.2d 152, 155 (Tex. App.—Dallas 1996, no writ).

Applicable Law

Texas Tax Code section 34.21 provides the requirements for an original owner to redeem property after it has been sold at a foreclosure tax sale. *See* Tex. Tax Code § 34.21. An original owner may redeem the property from the purchaser by paying the amount the purchaser bid for the property, the amount of the deed recording fee, and the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus a redemption premium of twenty-five percent. *Id.* § 34.21(a). Subsection (i) requires a purchaser to provide a written itemization "of all amounts spent on the property in costs" within ten days of receiving a request from the owner. *Id.* § 34.21(i). If the owner and the purchaser cannot agree on the amount due, the owner may redeem by submitting the required amount and a redemption affidavit to the county assessor-collector within the redemption period.

Id. § 34.21(f). An act of redemption under section 34.21 is presumptively effective. *Gonzalez v. Razi*, 338 S.W.3d 167, 170 (Tex. App.—Houston [1st Dist.] 2011, pet. denied).

Analysis

Here, La Flecha requested and FAH provided a written itemization of the amount FAH claimed was due for La Flecha to redeem the property. Because La Flecha believed the itemization contained amounts FAH was not entitled to recover, La Flecha proceeded by the alternative method provided in the statute. La Flecha submitted an affidavit to the collector-assessor along with a check for what it claimed to be the required amount and received a redemption receipt. Accordingly, La Flecha's redemption was presumptively effective. *See id.* at 171.

To prevail in its suit for declaratory judgment, FAH needed to overcome the presumption that La Flecha's redemption was valid by proving that it did not comply with the statutory requirements laid out in section 34.21. *See* Tex. Tax Code § 34.21. It is undisputed that La Flecha's attempted redemption was timely and that it followed the proper procedure under subsection (f). The only issue is whether La Flecha's tender was of the "required amount." *See id.* § 34.21(f). La Flecha paid $17,984.88, exactly the purchase price plus twenty-five percent. While FAH originally provided La Flecha with a redemption amount that included various disputed costs, the only amount FAH now contends was missing from La Flecha's redemption payment is taxes paid in the amount of $4,206.88, plus twenty-five percent. The statute specifically provides that the redemption payment must include "the amount paid by the purchaser as taxes." *See id.* § 34.21(a). By the plain language of the statute, FAH needed to establish that it paid the taxes at issue in order for them to be included in the required amount. Because FAH did

not conclusively prove that it paid the taxes on the property, we find that a material fact issue exists that precludes summary judgment.

La Flecha concedes that it did not include the property taxes paid prior to its attempted redemption but disputes whether it was required to include such amount. La Flecha argues that because the statute specifies that amounts "paid by the purchaser" are to be included in the redemption price, amounts paid by a party other than the purchaser are not. La Flecha contends that because FAH's evidence shows that someone other than FAH actually paid the taxes on the property, FAH has failed to establish that La Flecha was required to include the taxes in the redemption price.

FAH counters that the trial court's summary judgment should be upheld because the "undisputed facts" and "uncontroverted evidence" show that FAH paid the taxes before La Flecha's attempted redemption. Specifically, FAH contends that "[a]lthough the checks paying the taxes were drawn on an account of SWE Homes, LP . . . , the unrefuted summary judgment evidence offered by affidavit testimony of FAH account supervisor Milade Abugattas was that the taxes were paid by [FAH]." We disagree. Because FAH did not first prove that the taxes paid were part of the required amount, La Flecha had no burden to produce controverting evidence in order to preclude summary judgment. Abugattas does state that FAH paid the taxes on the property on May 31. But attached to the Abugattas affidavit are copies of checks and receipts evidencing the tax payments and showing SWE Homes as the payor, not FAH. Thus, the affidavit testimony conflicts with the attached summary judgment evidence.

FAH offered no evidence to explain the inconsistency between the assertion in the affidavit that FAH paid the taxes and the implication in the attachments that SWE Homes paid the taxes, nor does FAH attempt to explain the inconsistency on

appeal. This inconsistency is sufficient to raise a material fact issue because the statute provides for repayment of taxes in the "amount paid by the purchaser." For the taxes paid to be established as an amount that should have been included in the required amount, FAH must prove it paid the taxes. Thus, the inconsistency between the affidavit and its attachments is sufficient to establish a genuine issue of material fact precluding summary judgment. *See FFP Mktg. Co., Inc. v. Long Lane Master Tr. IV*, 169 S.W.3d 402, 410–11 (Tex. App.—Fort Worth 2005, no pet.). Resolving all conflicts in the evidence in favor of La Flecha, we hold that a genuine issue of material fact exists as to the required amount for redemption. Consequently, FAH did not prove La Flecha's redemption was invalid as a matter of law. Accordingly, we sustain La Flecha's issue.

CONCLUSION

Having held that FAH failed to establish as a matter of law that La Flecha's redemption was not valid, we reverse the trial court's judgment and remand the case to the trial court for trial on the merits.

/s/ Ken Wise
Justice

Panel consists of Justices Jamison, McCally, and Wise.