

Vacated and Dismissed and Memorandum Opinion filed October 20, 2022.



In The

Fourteenth Court of Appeals

NO. 14-21-00136-CV

ANGELINA GUERRERO, Appellant

V.

EQUITY TRUST FBO JED SILVERMAN IRA, Appellee

**On Appeal from the County Civil Court at Law No. 3
Harris County, Texas
Trial Court Cause No. 1162968**

MEMORANDUM OPINION

Appellant Angelina Guerrero challenges the final summary judgment granted in favor of appellee Equity Trust FBO Jed Silverman IRA (“Equity Trust”). In five issues, Guerrero argues that: (1) there is “insufficient evidence to establish that Guerrero committed a forcible detainer”; (2) the underlying sale of the property in question (“the Property”) should be set aside because of an anti-assignment provision; (3) the county court adjudicated title, which it did not have jurisdiction to do; (4) the trial court should have recused itself because of campaign

contributions it had received from Equity Trust’s lawyer; and (5) the bond was excessive because there was no evidence offered at the bond hearing regarding the market value of the Property. We conclude that the justice court and county court at law did not have jurisdiction over the cause due to the parties’ lack of a landlord-tenant relationship, vacate the judgment as void, and dismiss Equity Trust’s forcible-detainer action for want of jurisdiction.

I. BACKGROUND

Equity Trust acknowledges that most of the underlying facts, as set forth in Guerrero’s original complaint, are undisputed.

Oralia Salinas (“Oralia”) was the owner of the Property at the time of her death. In 2015, Silvia Salinas initiated a probate action concerning Oralia’s will and sought letters testamentary. In May 2018, the probate court entered its order authorizing the sale of the Property. On December 2, 2019, the temporary administrator of Oralia’s estate—Edward Saucedo—filed a Report of Sale of Real Property in the probate court, indicating that the Property was to be sold at a private sale to “Latitude Capital Management, LLC or assigns.” On or about December 27, 2019 the probate court signed and entered an order confirming the sale, approving the sale of the Property and the report of the sale of the Property. On December 31, 2019, Latitude Capital Management, LLC (“Latitude”) and Equity Trust executed an “Agreement to Assign Contract for Sale and Purchase of the Property” for sale of the Property to Equity Trust. On January 3, 2020, Equity Trust closed on the Property, and Saucedo executed a general warranty deed, conveying ownership of the Property to Equity Trust.

Guerrero filed a petition for writ of mandamus with our sister court, seeking to set aside the sale of the Property, which was denied by the First Court of Appeals. *See In re Guerrero*, No. 01-20-00009-CV, 2020 WL 1681175, at *1 (Tex.

App.—Houston [1st Dist.] Apr. 7, 2020, no pet.).

On September 4, 2020, Equity Trust delivered to Guerrero, Silvester Salinas, and all other occupants at the Property a “Notice of Termination Effective October 31, 2020.” Despite receiving the notice, Guerrero did not leave the Property. On November 3, 2020, Equity Trust then delivered to Guerrero a ten-day notice to vacate. *See* Tex. Prop. Code Ann. § 24.005 (“If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days’ written notice to vacate the premises before the landlord files a forcible detainer suit. . . .”). When Guerrero failed to vacate the Property by November 16, 2020, Equity Trust filed a forcible detainer action in justice of the peace court, which awarded possession of the property to Equity Trust.

Guerrero appealed the justice of the peace court’s judgment to county court, where Equity Trust filed a traditional motion for summary judgment, alleging that it had provided prima facie evidence that it was the owner of the Property. Guerrero filed a competing no-evidence motion for summary judgment, arguing that there was no evidence that Equity Trust owned the Property. Guerrero argued that there was a material difference in the allegations between Equity Trust’s petition and summary judgment motion relating to ownership of the Property. Guerrero avers that in its original complaint, Equity Trust alleged that Latitude assigned its interest in the Property directly to Equity Trust, but in its motion for summary judgment, Equity Trust alleged that Latitude assigned its interest in the Property to Jed Silverman individually. Additionally, Guerrero also points to the Agreement to Assign Contract for Sale and Purchase attached to Equity Trust’s motion for summary judgment in support of his argument that Latitude assigned its interest to Jed Silverman individually, and not to Equity Trust. Guerrero argued

that the pleadings constituted a judicial admission by Equity Trust that it did not own the Property and is therefore not entitled to bring suit, and that there was no evidence that Silverman ever assigned his interest in the Property to Equity Trust.

On March 9, 2021, the county court granted summary judgment in favor of Equity Trust, awarding it possession of the property and reasonable attorney's fees, and additionally set a supersedeas bond at \$5,000. Guerrero filed a motion for new trial, which was overruled by operation of law. Guerrero filed a timely appeal.

II. FORCIBLE DETAINER

A. STANDARD OF REVIEW & APPLICABLE LAW

Whether a trial court has subject-matter jurisdiction is a question of law, which we review de novo. *Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468, 476 (Tex. 2012); *Trimble v. Fed. Nat'l Mortg. Ass'n*, 516 S.W.3d 24, 28 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (“If the trial court lacks subject matter jurisdiction, the appellate court can make no order other than reversing the judgment of the court below and dismissing the cause.”).

“A forcible detainer action is designed to be a speedy, simple, and inexpensive means to determine the right to immediate possession of real property where there is no claim of unlawful entry.” *Isaac v. CitiMortgage, Inc.*, 563 S.W.3d 305, 310 (Tex. App.—Houston [1st Dist.] 2018, pet. denied); see *Fed. Home Loan Mortg. Corp. v. Pham*, 449 S.W.3d 230, 233 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Jurisdiction to hear a forcible detainer action is expressly given to the justice court of the precinct where the property is located. *Jelinis, LLC v. Hiran*, 557 S.W.3d 159, 166 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). A justice court has exclusive jurisdiction to decide the issue of immediate possession, which may not be infringed upon as long as the justice court determines only possession. *Id.* The only issue to be resolved in a forcible detainer

action is the right to immediate possession of property; the merits of title are not adjudicated. *Id.*; see *Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277, 280 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

When there are issues concerning both title and possession, the issues may be litigated in separate proceedings in different courts with appropriate jurisdiction. See *Jelinis*, 557 S.W.3d at 166; *Yarbrough*, 455 S.W.3d at 280. But when a forcible detainer action presents a genuine issue of title so intertwined with the issue of possession that a trial court would be required to determine title before awarding possession, then a justice court lacks jurisdiction to resolve the matter. *Yarbrough*, 455 S.W.3d at 280. Thus, a justice court is not deprived of jurisdiction merely by the existence of a title dispute; it is deprived of jurisdiction only if resolution of a title dispute is a prerequisite to determination of the right to immediate possession. See *Espinoza v. Lopez*, 468 S.W.3d 692, 695–96 (Tex. App.—Houston [14th Dist.] 2015, no pet.); *Yarbrough*, 455 S.W.3d at 280.

To prevail in a forcible detainer action, a plaintiff need only show that he has a superior right to possession of the property over the tenant. See *Pham*, 449 S.W.3d at 233. To establish superior right to possession, the plaintiff has the burden to prove that: (1) he is the owner of the property; (2) the defendant is a tenant at will, tenant at sufferance, or a tenant or subtenant willfully holding over after the termination of the tenant’s right of possession; (3) he gave proper notice to the tenant to vacate the property; and (4) the tenant refused to leave the property. See Tex. Prop. Code Ann. § 24.002; *Shields Ltd. P’ship v. Bradberry*, 526 S.W.3d 471, 478 (Tex. 2017).

B. ANALYSIS

We address Guerrero’s third issue first because it is dispositive. In her third issue, Guerrero argues that the county court adjudicated title to the Property when it lacked jurisdiction to do so.

To prevail on its forcible detainer action, Equity Trust needed to prove that: (1) it owned the Property; (2) Guerrero is a tenant at will, a tenant at sufferance, or a tenant willfully holding over after the termination of her right of possession; (3) it gave proper notice to Guerrero to vacate the Property; and (4) Guerrero refused to leave the Property. *See* Tex. Prop. Code Ann. § 24.002; *Bradberry*, 526 S.W.3d at 478. On appeal, Guerrero does not dispute the third and fourth elements; rather, she claims that she had a superior right to immediate possession and that she was not a tenant at sufferance. And because she was not a tenant at sufferance, Guerrero asserts that there is a lack of a landlord-tenant relationship, which means that the issue of title was implicitly adjudicated. We agree with Guerrero.

Throughout the years, Texas courts have repeatedly observed that “[a] forcible detainer action is *dependent* on proof of a landlord-tenant relationship.” *Dent v. Pines*, 394 S.W.2d 266, 268 (Tex. App.—Houston [1st Dist.] 1965, no writ) (emphasis added); *see Goodman-Delaney v. Grantham*, 484 S.W.3d 171, 174 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (“[A]n action for forcible detainer requires evidence of a landlord-tenant relationship because the lack of such evidence would necessarily require a determination of who has title to the property.”); *Johnson v. Baty*, No. 01-86-00848-CV, 1987 WL 20005, at *2 (Tex. App.—Houston [1st Dist.] Nov. 19, 1987, no writ) (“[Appellant] is not entitled to the remedy of forcible detainer unless the landlord-tenant relationship is established.”); *Haith v. Drake*, 596 S.W.2d 194, 196 (Tex. App.—Houston [1st Dist.] 1980, writ ref’d n.r.e.) (same). In the present case, there is no evidence of a

landlord-tenant relationship between Equity Trust and Guerrero.

In its appellate brief, in addressing whether Guerrero is a tenant at sufferance, Equity Trust mentions that it attached to its motion for summary judgment the notice of termination given to Guerrero. But this is not evidence of a landlord-tenant relationship; it is merely evidence that Equity Trust sent Guerrero notice that her right to immediate possession was terminating. Equity Trust also alleges that Silverman's affidavit established the following uncontroverted evidence: "[Guerrero] ha[s] failed and refused to return possession of the Property to [Equity Trust] and is presently continuing in possession of the Property without [Equity Trust's] permission or consent." But this again fails to specifically demonstrate any sort of landlord-tenant relationship between the parties. The record reflects that Guerrero's grandmother was the deeded owner of the Property at the time of her death, that Guerrero is a beneficiary of her grandmother's estate, and that she was living on the Property when it was purchased. But there is no evidence that Equity Trust ever leased the Property to Guerrero or that Equity Trust and Guerrero ever established a landlord-tenant relationship.

In numerous cases, courts have concluded that a landlord-tenant relationship was created by specific language in the document transferring title of the property. *See, e.g., Isaac*, 563 S.W.3d at 312 (concluding that the defendant was a tenant at sufferance where the deed of trust contained the following provision: "If the Property is sold [as a remedy for default], Borrower [the Isaacs] 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*"); *Elwell v. Countrywide Home Loans, Inc.*, 267 S.W.3d 566, 568 (Tex. App.—Dallas 2008, pet. dism'd

w.o.j.) (concluding defendant was a tenant at sufferance where the deed of trust stated, “If the Property is sold [under the deed of trust], Borrower . . . shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower . . . shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding”); *Rice v. Pinney*, 51 S.W.3d 705, 707 (Tex. App.—Dallas 2001, no pet.) (noting that the deed of trust contained the following clause within its general provisions: “If any of the property is sold under this Deed of Trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer”). However, here, the general warranty deed conveying ownership to Equity Trust does not contain a provision that a person who refuses to surrender possession will be treated as a tenant at sufferance.

Accordingly, we conclude that Equity Trust failed to establish that Guerrero is a tenant at sufferance. *See* Tex. Prop. Code Ann. § 24.002; *Bradberry*, 526 S.W.3d at 478. Because of the lack of a landlord-tenant relationship between Equity Trust and Guerrero, the justice court and county court necessarily had to determine whether Equity trust had title to the Property before it could determine whether it had a superior right over Guerrero to possess the Property. *See Grantham*, 484 S.W.3d at 174–75. The justice court, and the county court on appeal, were without jurisdiction to make such a determination. *See id.*

We sustain Guerrero’s third issue.

III. CONCLUSION

“When a court’s void judgment is appealed, we have jurisdiction to declare the judgment void and render judgment dismissing the case.” *Id.*; *see Kilpatrick v. Potoczniak*, No. 14-13-00707-CV, 2014 WL 3778837, at *2 (Tex. App.—Houston [14th Dist.] July 31, 2014, no pet.) (mem. op.) (per curiam). We vacate the county

court's judgment as void and dismiss Equity Trust's forcible detainer action for want of jurisdiction. *See Grantham*, 484 S.W.3d at 175; *Aguilar*, 72 S.W.3d at 735.

/s/ Margaret "Meg" Poissant
Justice

Panel consists of Justices Wise, Poissant, and Wilson.