

**Affirmed and Memorandum Opinion filed August 17, 2023.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-22-00730-CV**

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**KAFI, INC., Appellant**

**V.**

**RAMON HERNANDEZ AND ALL OTHER OCCUPANTS, Appellees**

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**On Appeal from the County Civil Court at Law No. 3**  
**Harris County, Texas**  
**Trial Court Cause No. 1186390**

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**MEMORANDUM OPINION**

In this forcible detainer action, the question presented is whether the justice court had jurisdiction to determine the right of immediate possession, or whether the action had to be dismissed so that a district court could first resolve a genuine fact issue regarding title. The justice court determined that it had jurisdiction, but the county court on appeal disagreed with that ruling and granted a plea to the jurisdiction, implicitly finding that the issues of title and possession were so intertwined that resolution of the title question in district court was a prerequisite to

the determination of possession. For the reasons explained below, we conclude that the evidence supports the county court's finding, and we affirm that court's order granting the plea to the jurisdiction.

## **BACKGROUND**

A homeowner's association filed suit against Ramon Hernandez to collect delinquent maintenance fees assessed upon his property. Hernandez did not answer the suit, and a default judgment was entered against him. That judgment led to the foreclosure of the property, which was sold at auction to Kafi, Inc.

More than a year after the foreclosure auction, Kafi filed a forcible detainer action against Hernandez in justice court, seeking to evict Hernandez from the property. Hernandez responded by filing a plea to the jurisdiction, wherein he argued that jurisdiction rested in district court—not in justice court—because there was an issue of title that must be decided before the issue of immediate possession. More specifically, Hernandez alleged that he had equitable title to the property because he fully performed under an oral agreement with Kafi to repurchase the property. In the alternative, Hernandez also alleged that there was a title issue because he timely redeemed the property following the foreclosure.

The justice court rendered judgment for Kafi, implicitly overruling the plea to the jurisdiction. Hernandez then appealed that judgment to county court for a trial de novo, where the plea to the jurisdiction was litigated again.

The county court conducted an evidentiary hearing on the plea to the jurisdiction, and even though Hernandez was the moving party with regards to that plea, the county court heard evidence from Kafi first. Kafi presented testimony from its president, who said that Kafi purchased the property at a foreclosure sale for \$14,000. The president also testified that he personally met with Hernandez, and that

they orally agreed to enter into a landlord-tenant relationship, in which Hernandez would pay \$1,800 per month in rent to continue living on the property. The president denied that there was ever an agreement to sell the property back to Hernandez. The president also testified that Hernandez did not timely avail himself of his statutory redemption remedy.

Hernandez controverted the testimony from Kafi's president. Hernandez testified that he and the president entered into an oral agreement that Kafi would return title to Hernandez if Hernandez paid Kafi \$22,200.

The evidence was undisputed that Hernandez paid that sum over a series of several months, with individual checks ranging in value between \$400 on the low end and \$10,000 on the high end. The memo line for each of these checks was "House Payment."

Yet, after reaching the sum of \$22,200, Hernandez did not ask Kafi to return title to him. Instead, Hernandez began to pay Kafi \$1,800 per month for the next eleven months. The memo line for each of those checks also read "House Payment," with the exception of one check, which simply read "Payment." In total, Hernandez paid Kafi \$42,000, and then the payments ceased.

Hernandez explained that he made the eleven monthly payments of \$1,800 because Kafi had otherwise threatened to kick him and his family out of the house. Hernandez also explained that he is a truck driver who is frequently on the road, and that he made the payments to bide time until he could hire a lawyer. Hernandez testified that he still believed that he had equitable title in the house. In fact, he testified that he made valuable improvements to the house by renovating the kitchen and bathroom.

Hernandez also argued that his statutory redemption remedy was not time-barred because he never received written notice from his homeowner’s association regarding the forced sale of his home.

The county court took the matter under advisement, and then it signed an order granting the plea to the jurisdiction. The county court did not state the grounds upon which the order was based.

Kafi timely appealed the county court’s order.

### ANALYSIS

The focus of this appeal is the jurisdiction of the justice court—and, by extension, the county court, which has no greater appellate jurisdiction than the justice court. *See Tellez v. Rodriguez*, 612 S.W.3d 707, 710 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

A justice court has original jurisdiction in cases of forcible detainer. *See Tex. Gov’t Code* § 27.031(a)(2). Such cases are intended to be “speedy, simple, and inexpensive,” because their sole focus is to determine who has the right to immediate possession of the property. *See Marshall v. Housing Auth. of City of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006).

A justice court may not adjudicate questions of title in a forcible detainer action. *See Tex. R. Civ. P.* 510.3(e). Indeed, a justice court is statutorily deprived of jurisdiction in suits for the trial of title to land. *See Tex. Gov’t Code* § 27.031(b)(4).

The mere existence of a title dispute will not deprive a justice court of jurisdiction in a forcible detainer action; such actions can still be entertained even while a claim for title is pursued concurrently in district court. *See Wilhelm v. Fed. Nat’l Mortg. Ass’n*, 349 S.W.3d 766, 769 (Tex. App.—Houston [14th Dist.] 2011, no pet.). But when the question of title is intertwined with the question of possession,

such that possession cannot be adjudicated without first determining title, then the justice court lacks jurisdiction. *See Salaymeh v. Plaza Centro, LLC*, 264 S.W.3d 431, 435 (Tex. App.—Houston [14th Dist.] 2008, no pet.). As an example, a justice court may lack jurisdiction when the plaintiff and the defendant in a forcible detainer action do not have a landlord-tenant relationship, and the resolution of a title dispute is a prerequisite to deciding possession. *See Pinnacle Premier Props., Inc. v. Breton*, 447 S.W.3d 558, 564 n.9 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

In this case, Hernandez alleged in his plea to the jurisdiction that he did not have a landlord-tenant relationship with Kafi. Rather, Hernandez alleged that there was a buyer-seller relationship, and that the resulting title dispute was so intertwined with the issue of possession that the justice court was deprived of jurisdiction. Alternatively, Hernandez alleged that the justice court lacked jurisdiction because he redeemed the property after the foreclosure sale.

The county court did not identify which of these two grounds it credited when granting the plea to the jurisdiction. Now on appeal, Kafi challenges both grounds, arguing that there is legally insufficient evidence to support either of them. Kafi also argues in the alternative that even if there was an oral contract for the sale of property, there is no equitable reason to enforce it. Hernandez has not filed a brief in response to these arguments, but as the appellee, he also had no burden to do so.

We must uphold the county court's ruling if it is correct on any theory of law that finds support in the evidence. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam). We begin our analysis with the primary ground that Hernandez asserted in his plea to the jurisdiction, which concerned the oral agreement to repurchase the property. If the evidence under that ground raised a genuine fact issue regarding title to the property, and that fact issue must be resolved before possession can be determined, then we must conclude that that county court

was correct in deciding that it lacked jurisdiction in this forcible detainer action. *See Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277, 280 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

When deciding whether the evidence is legally sufficient to support the county court’s implied finding that there is such a fact issue, we review the record in the light most favorable to the county court’s ruling, crediting favorable evidence if a reasonable factfinder could, and disregarding contrary evidence unless a reasonable factfinder could not. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). The evidence is sufficient to support the county court’s implied finding if the evidence rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *Id.* at 822. The evidence is insufficient to support the finding only if (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact. *Id.* at 810.

In this case, there was ample evidence of a title dispute. On the one hand, Kafi produced evidence that it held legal title to the property. Kafi also produced evidence that it had entered into a landlord-tenant relationship with Hernandez. On the other hand, Hernandez controverted Kafi’s evidence regarding the existence of a landlord-tenant relationship. Hernandez testified instead that he fully performed under an oral agreement with Kafi to repurchase the property. In support of that testimony, there was evidence that Hernandez made several payments to Kafi by check, and the memo line for his checks read “House Payment”—not “rent.” Also, Hernandez testified that he made valuable improvements to the property, including renovations

to the kitchen and bathroom. This testimony supported the claim by Hernandez that he had equitable title to the property.

Altogether, the record contained sufficient evidence to raise a genuine fact issue regarding title. That fact issue required resolution before possession could be determined, which necessarily deprived the justice court and the county court of jurisdiction to rule on the forcible detainer action. *See Espinoza v. Lopez*, 468 S.W.3d 692, 697 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (vacating a judgment in a forcible detainer action for lack of jurisdiction because there was a genuine fact issue regarding title, with one side claiming a landlord-tenant relationship, and the other side claiming there was an oral contract to purchase the property).

Kafi responds on appeal that the oral contract theory from Hernandez cannot be given any weight because there was no evidence of mutual assent, which is necessary to the formation of a valid, enforceable contract. Kafi seems to believe that there is no evidence of mutual assent because the evidence from Kafi suggested the existence of a landlord-tenant relationship, whereas the testimony from Hernandez suggested the existence of a buyer-seller relationship. But this conflict does not conclusively show the absence of mutual assent. Rather, it shows the existence of a fact issue which requires resolution in a court of appropriate jurisdiction.

Kafi relatedly argues that there is no evidence of mutual assent because Hernandez never asked for title to the property after he made the aggregate payment of \$22,200. But this omission does not have any apparent bearing on whether a valid contract was formed, and thus, it does not show the absence of mutual assent. *See David J. Sacks, P.C. v. Haden*, 266 S.W.3d 447, 450 (Tex. 2008) (per curiam) (“A meeting of the minds is necessary to form a binding contract.”). Nor does this

omission, by itself, show that Hernandez waived any rights under the alleged oral contract.

Kafi also refers us to *Gutierrez v. Rios*, 621 S.W.3d 907 (Tex. App.—El Paso 2021, no pet.), which focused on questions of mutual assent. But that case was an appeal from a non-jury trial in district court, where a fact issue regarding title was litigated and resolved on the merits. *Id.* at 911–12 (discussing the competing versions of events and the district court’s findings of fact). That case does not have any obvious application in this appeal from county court, where the only question is whether there is a genuine fact issue regarding title that should be litigated and resolved in district court.

Kafi’s next argument focuses on the statute of frauds. During the hearing on the plea to the jurisdiction, the county court questioned whether the statute of frauds was an issue in the case. In response, counsel for Hernandez recognized that the case involved an oral contract for the sale of real property, which ordinarily triggers the statute of frauds, but counsel invoked an exception for partial performance. *See Boyert v. Tauber*, 834 S.W.2d 60, 63 (Tex. 1992). Kafi did not address that exception in the county court, but in this court, Kafi argues that the exception is inapplicable, citing two separate cases.

The first case is *Gutierrez*, which we previously addressed above. That case is not particularly helpful here because its entire discussion of the partial performance doctrine is dicta. *See Gutierrez*, 621 S.W.3d at 915–16 (recognizing that the appellant’s argument under the partial performance doctrine was flawed because the district court based its decision on the absence of mutual assent, which was “independent of the statute of frauds”).

The second case is *National Property Holdings, L.P. v. Westergren*, 453 S.W.3d 419 (Tex. 2015) (per curiam). That case is not particularly helpful either



because the Supreme Court rejected a party's argument under the partial performance exception "without adopting [the party's] description of the partial performance exception." *Id.* at 426.

In any event, Kafi's argument about the partial performance exception is not persuasive. Kafi believes that the exception is not available if the party who invokes the exception could have acted for some reason other than to fulfill the obligations of the alleged oral contract. And Kafi believes that this rule bars any relief to Hernandez because his performance—i.e., his remittances—could have been in satisfaction of an oral agreement to rent the property, rather than repurchase it. But this argument assumes that there was an oral agreement to rent, which is a fact issue that must be decided first by a district court. *See Espinoza*, 468 S.W.3d at 696–97 (concluding that a justice court lacked jurisdiction in a forcible detainer action where the defendant raised the issue of title under the partial performance exception to the statute of frauds).

Kafi lastly argues that even if there was an oral contract for the sale of the property, there is no equitable reason to enforce it because there is still a valid rental agreement. Kafi does not clearly explain how this argument establishes that the justice court had jurisdiction. And to the extent that Kafi continues to assert that it has legal title to the property, and that the property has been leased to Hernandez, we have already explained that the evidence has raised a fact issue on this point, which requires resolution in district court.

For all of the foregoing reasons, we conclude that there was sufficient evidence under the oral contract theory from Hernandez to raise a genuine fact issue regarding title, and that this issue of title was so intertwined with the issue of possession as to deprive the justice court of jurisdiction. In light of this conclusion,

we need not address Kafi's remaining arguments concerning redemption. *See* Tex. R. App. P. 47.1.

### **CONCLUSION**

The county court's order granting the plea to the jurisdiction is affirmed.

/s/ Tracy Christopher  
Chief Justice

Panel consists of Chief Justice Christopher and Justices Zimmerer and Poissant.