COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00390-CV

MIKE E. DEUBLER	APPELLANT

V.

THE BANK OF NEW YORK MELLON, AS SUCCESSOR TRUSTEE, UNDER NOVASTAR MORTGAGE FUNDING TRUST 2005-1	APPELLEE

FROM COUNTY COURT AT LAW NO. 1 OF TARRANT COUNTY
TRIAL COURT NO. 2016-003077-1

MEMORANDUM OPINION[1]

In three issues, Mike E. Deubler appeals from the trial court's judgment awarding possession of real property to Appellee The Bank of New York Mellon,

[1] *See* Tex. R. App. P. 47.4.

as successor trustee, under Novastar Mortgage Funding Trust 2005-1 (BONY). We affirm.

Background

In November 2004, Deubler executed a deed of trust in First Horizon Home Loan Corporation's favor to secure the repayment of a promissory note that he used to purchase the property. Deubler defaulted, and in November 2009, BONY—the then-holder of the note and deed of trust—foreclosed on the deed of trust and bought the property at the nonjudicial foreclosure sale. Deubler unsuccessfully challenged the foreclosure. *See Deubler v. The Bank of New York Mellon*, No. 07-13-00221-CV, 2015 WL 3750312, at *1–8 (Tex. App.—Amarillo June 15, 2015, pet. denied) (mem. op.).

In March 2016, BONY demanded that Deubler vacate the property. When he refused, BONY filed a forcible-detainer action in justice court. The justice court entered an order evicting Deubler, and he appealed to county court. After a trial de novo, the county court entered a judgment for possession of the property in BONY's favor.

Discussion

In his first issue, Deubler complains that BONY's live pleading was "not a valid pleading on which judgment could have been granted" because it was improperly verified by its attorney instead of by BONY, and the trial court therefore lacked jurisdiction to hear this case and render judgment in BONY's favor. *See* Tex. R. Civ. P. 510.3(a) (providing that "a petition in an eviction case

must be sworn to by the plaintiff”). We have previously considered this same issue on several occasions and have concluded every time that a party’s attorney may verify a petition in a forcible-detainer action as that party’s agent. *See Norvelle v. PNC Mortg.*, 472 S.W.3d 444, 447–49 (Tex. App.—Fort Worth 2015, no pet.) (considering relevant rules of civil procedure for forcible-detainer actions, acknowledging well-settled rule that corporations and other business entities generally may appear in court only through licensed counsel, and reasoning that appellant’s unsupported “strict” construction of rule of civil procedure 510.3(a) would “defy the reality that business entities operate through their agents” and “usurp the ability of these entities to have their day in court”); *see also Norvelle v. Beauly, LLC*, No. 02-15-00244-CV, 2016 WL 3452785, at *1 (Tex. App.—Fort Worth June 23, 2016, pet. dism’d w.o.j.) (mem. op.) (citing *PNC Mortgage* and holding same); *Jimenez v. Fed. Nat’l Mortg. Ass’n*, No. 02-15-00229-CV, 2016 WL 3661884, at *2 (Tex. App.—Fort Worth July 7, 2016, no pet.) (mem. op.) (citing *PNC Mortgage* and holding same); *Gaydos v. Fed. Nat’l Mortg. Ass’n*, No. 02-16-00003-CV, 2016 WL 7405809, at *1 (Tex. App.—Fort Worth Dec. 22, 2016, no pet.) (mem. op.) (citing *PNC Mortgage* and holding same). Moreover, even if the verification here were defective (it isn’t), the trial court still would have had jurisdiction. *See Fleming v. Fannie Mae*, No. 02-09-00445-CV, 2010 WL 4812983, at *2 (Tex. App.—Fort Worth Nov. 24, 2010, no pet.) (mem. op.) (holding that defective verification does not deprive county court of jurisdiction to hear a forcible-detainer action); *see also PNC Mortg.*, 472 S.W.3d at 446 (stating

same and citing *Fleming* and other cases holding same). We decline Deubler's invitation to reconsider or overrule our precedent, and we overrule his first issue.

In his second issue, Deubler argues that because BONY failed to prove title to the property, it lacked standing to bring a forcible-detainer action, and the trial court thus lacked jurisdiction to hear this case and render judgment in BONY's favor. Specifically, Deubler claims that BONY's pleading alleging that it is the "mortgagee" of the property as defined in property code section 51.0001(4) conflicts with its allegation later in its pleading that it is the property's owner. *See* Tex. Prop. Code Ann. § 51.0001(4) (West 2014) (defining "mortgagee" to include "the grantee, beneficiary, owner, or holder of a security instrument").

Deubler raised this issue in the trial court, but he failed to provide any evidence raising the existence of a title dispute sufficient to show that the trial court lacked jurisdiction.[2] *See Jaimes v. Fed. Nat'l Mortg. Ass'n*, No. 03-13-00290-CV, 2013 WL 7809741, at *5 (Tex. App.—Austin Dec. 4, 2013, no pet.) (mem. op.); *see also A Plus Invs., Inc. v. Rushton*, No. 2-03-174-CV, 2004 WL 868866, at *2 (Tex. App.—Fort Worth Apr. 22, 2004, no pet.) (mem. op.) ("The justice courts and the county courts at law are only deprived of jurisdiction to adjudicate a forcible detainer action if the question of title is so intertwined with the issue of possession that possession may not be adjudicated without first

[2]Presumably, any such title dispute was resolved in Deubler's suit challenging the foreclosure. *See Deubler*, 2015 WL 3750312, at *1–8.

determining title." (citing *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex. App.—Houston [1st Dist.] 1995, writ denied))). Moreover, "[t]o prevail in a forcible detainer action, a plaintiff is not required to prove title, but is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession." *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.); *see also* Tex. R. Civ. P. 510.3(e) (stating that in a forcible-detainer action, "[t]he court must adjudicate the right to actual possession and not title"); *Kaldis v. Aurora Loan Servs.*, No. 01-09-00270-CV, 2010 WL 2545614, at *3 (Tex. App.—Houston [1st Dist.] June 24, 2010, pet. dism'd w.o.j.) (mem. op.) (holding that plaintiff in forcible-detainer suit who purchased property in a nonjudicial foreclosure sale need not prove a clear chain of title to it to prove its superior right to possession in relation to the defendant).

Here, BONY presented as evidence (1) a deed of trust from Deubler to Jerry Baker—as trustee for the benefit of First Horizon Home Loan Corporation as lender—that included a provision that upon a nonjudicial foreclosure sale, Deubler would become a tenant at sufferance if he did not surrender possession of the property to the buyer; (2) a substitute trustee's deed reciting that the property secured by the deed of trust was sold to BONY at a nonjudicial foreclosure sale and conveying the property to BONY; and (3) evidence of the notice to vacate sent to Deubler. Deubler presented no evidence. Thus, the evidence was sufficient to support a judgment in BONY's favor on the issue of

possession. *See* Tex. Prop. Code Ann. § 24.002 (West 2014), § 24.005(b) (West Supp. 2016). We overrule Deubler's second issue.

In his final issue, Deubler asserts that BONY did not present evidence that it was entitled to rely on the tenancy-at-sufferance language in the deed of trust because BONY "was not in privity of contract with Deubler in regard to the claimed lien instrument." But because Deubler did not raise this issue in the trial court, he failed to preserve it our review. *See* Tex. R. App. P. 33.1(a)(1); *Gaydos*, 2016 WL 7405809, at *1 (holding same); *Beauly, LLC*, 2016 WL 3452785, at *2 (holding similarly). We overrule Deubler's third issue.

Conclusion

Having overruled Deubler's three issues, we affirm the trial court's judgment.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: WALKER, MEIER, and KERR, JJ.

DELIVERED: May 25, 2017