



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-15-00074-CV

DON A. WADE, Appellant

V.

HOUSEHOLD FINANCE CORP. III, Appellee

On Appeal from the County Court at Law
Caldwell County, Texas
Trial Court No. 5966

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Don A. Wade appeals from the trial court's judgment in a forcible detainer action awarding possession of certain real property located in Caldwell County, Texas,¹ to Household Finance Corporation III (HFC). On appeal, Wade maintains that (1) the trial court lacked subject-matter jurisdiction, (2) the trial court erred when it refused to address his claims against HFC for real estate fraud and unjust enrichment, and (3) HFC was barred from proceeding with a forcible detainer action based on the doctrine of laches. For the reasons below, we affirm the trial court's judgment.

I. Background

In March 2005, Don A. Wade and his wife borrowed \$57,999.72 from HFC in order to purchase two mobile homes (to which reference is sometimes made as "trailer houses") that were located on the realty at issue (the Property). In order to secure repayment of the loan, the Wades, as mortgagors, executed a first lien and deed of trust conveying the Property to HFC, the property given as the security for the loan (described in the deed of trust by metes and bounds as containing ninety acres²) apparently having been the Wade homestead.³ Due to an apparent default in the

¹Originally appealed to the Third Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013). We are unaware of any conflict between precedent of the Third Court of Appeals and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

²Wade disputes the amount of property at issue.

³The lien document, entitled "Mortgage Home Equity – First Lien," refers to the mortgagor(s) or grantor(s) as Don A. Wade and Shelley Wade (it appears that Shelley Wade was the wife of Don A. Wade at the time of the grant of this lien but is not a party to this action because Wade reported once that she was deceased and another time that she had left), the trustee as Robert Campbell, and the mortgagee or beneficiary as HFC. For the sake of simplicity and because a third party trustee was subsequently named, we refer to the original home equity loan document as a "deed of trust."

payment of the loan,⁴ HFC accelerated the loan and the Property was struck off to HFC at a non-judicial foreclosure (trustee) sale on December 2, 2014. Under the terms of the deed of trust, in the event of such a foreclosure sale, the mortgagors were required to surrender possession of the property to the purchaser at such a foreclosure immediately upon the sale of the property; if the borrower remained in possession, the borrower assumed the status of a tenant at sufferance of the purchaser at the sale.

By letter dated January 12, 2015, HFC gave written notice instructing Wade and “all other occupants” to vacate the Property within three days.⁵ The notice to Wade was sent by certified mail, return receipt requested. Wade ignored the notice and remained on the Property. HFC responded by filing an action for forcible detainer in a justice court of Caldwell County and serving Wade with citation. Wade replied by filing an answer and a plea to the jurisdiction of the justice court, arguing (among other things) that he had only “pledged a little over [three] acres as collateral at the time of the loan” and alleging that defects in the procedure of the foreclosure sale voided its effectiveness to deprive him of ownership of the property, that HFC failed to give him notice of default or notice of the foreclosure sale as prescribed in the lien instrument, and that the justice court lacked subject-matter jurisdiction. The justice court issued a judgment finding Wade guilty of forcible detainer and awarding possession of the Property to HFC. Wade appealed to the county

⁴In November 2009, the 207th Judicial District Court of Caldwell County, Texas, issued an order on HFC’s motion for expedited foreclosure proceeding. The district court found that (1) a debt existed between HFC and Wade, (2) the debt was secured by a loan that encumbered Wade’s property, (3) Wade was in default on the note, (4) HFC had given proper notice to cure the default and accelerate the maturity of the debt, and (5) HFC had given notice to Wade of the hearing on the motion for expedited foreclosure proceeding. The district court then ordered that HFC was authorized to proceed with the foreclosure notice requirements and the foreclosure sale of the Property.

⁵See TEX. PROP. CODE ANN. § 24.001 (West 2014).

court at law (trial court) and again lodged a challenge to the jurisdiction of that court in a forcible detainer action. Upon appeal of a judgment in a forcible detainer action, a trial de novo in the court to which the appeal was taken is required. TEX. R. CIV. P. 510.10(c). After conducting such a trial de novo, the trial court ruled in favor of HFC, denying Wade's plea to the jurisdiction and ordering Wade to be removed from the property.⁶ Wade then filed a motion for new trial, which was denied by operation of law. This appeal followed.

II. Issues Presented

On appeal, Wade claims (1) the trial court lacked subject-matter jurisdiction to award possession⁷ of ninety acres of land to HFC when Wade alleges that he only intended to grant a lien on (at least a portion of) the 34.6 acres of land he had remaining from his original ninety-acre

⁶On June 4, 2015, the trial court issued the following findings of fact:

- (1) [Wade and wife] executed a Home Equity – First Lien Mortgage (the “Mortgage”) in favor of [HFC] on March 26, 2005.
- (2) The Mortgage encumbered the 90.0 acres [to which reference is made above] (the “Property”).
- (3) A Substitute Trustee's Deed, dated December 12, 2014, was executed foreclosing the [Wade's interest in the title to the Property and conveying it to HFC].
- (4) A Notice to Vacate Premises was sent to [Wade], Shelley Wade and All Other Occupants by Certified Mail, return receipt requested, on January 12, 2015.
- (5) Judgment for Possession of the Property was rendered for [HFC] in the Caldwell County Court at Law on April 7, 2015. A formal judgment was signed and entered on May 5, 2015.

The trial court also entered the conclusion of law that HFC had the greater right to possession of the Property.

⁷In his brief, under the heading “Issues Presented,” Wade refers to the court's lack of subject-matter jurisdiction to *foreclose* on ninety acres; however, in the “Summary of the Argument” portion, Wade refers to the court's lack of jurisdiction to award *possession* of the Property to HFC. Because the district court entered the order finding that Wade had defaulted on the note and allowed HFC to proceed with the foreclosure process, we will assume that Wade is alleging that the trial court lacked subject-matter jurisdiction to award possession of the Property to HFC.

tract,⁸ and thus, he had placed the title to the property at issue, and it was the title to the Property (not its possession) that was the primary issue; (2) HFC committed real estate fraud and was unjustly enriched as a result of inadequate foreclosure proceedings; and (3) the doctrine of laches prevented HFC from prevailing because it failed to promptly act on its legal rights.

For the reasons below, we affirm the trial court's judgment.

III. Subject-Matter Jurisdiction

A. Standard of Review

In the courts below, the Plaintiff has the burden of alleging facts that affirmatively prove the trial court's subject-matter jurisdiction. *Gibson v. Dynegy Midstream Servs., L.P.*, 138 S.W.3d 518, 522 (Tex. App.—Fort Worth 2004, no pet.).⁹ The question of whether the trial court had subject-matter jurisdiction is a question of law that we review de novo. *Id.* (citing *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002)). When conducting a de novo review, because the question is of law and not of facts, the reviewing tribunal exercises its own judgment and “accords the original tribunal's decision absolutely no deference.” *Quick v. City of Austin*, 7 S.W.3d 109, 116 (Tex. 1998).

⁸In his verified petition filed in the district court on February 6, 2015, Wade previously claimed that “[t]he agreement between the parties was a lien on 3.4 acres of land, which [he] owned, and a lien on [two] trailer homes which [he] pledged as collateral.”

⁹Because of the special jurisdictional limitations imposed on the lower courts in a forcible detainer and eviction case, a plea to the jurisdiction may be based on an affirmative defense raised in the defendant's pleadings that the trial court could not resolve apart from determining title. In such cases, and as in the case before us, we must determine whether Wade is correct in asserting, in light of the defensive pleading, that questions of title and possession are so integrally linked that the trial court on appeal lacked subject-matter jurisdiction. *See Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex. App.—Houston [1st Dist.] 1995, writ denied).

B. Forcible Detainer Actions

A forcible detainer action is a procedure to determine the right to immediate possession of real property where there was no unlawful entry. *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). A forcible detainer action is designed to be a quick, simple, and inexpensive means to determine who is entitled to immediate possession to property without resorting to an action on the title. *McGlothlin v. Kliebert*, 672 S.W.2d 231, 232 (Tex. 1984) (citing *Scott v. Hewitt*, 90 S.W.2d 816 (Tex. 1936)). To prevail in a forcible detainer action, a plaintiff is required to show sufficient evidence of a superior right to possession. *Rice*, 51 S.W.3d at 709. In a forcible detainer action, the right to possession of the property is decided “without resorting to action upon the title.” *Id.* at 710 (quoting *Scott*, 90 S.W.2d at 818–19). In a forcible detainer action, “The court must adjudicate the right to actual possession and not title. Counterclaims and the joinder of suits against third parties are not permitted in eviction cases. A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.” TEX. R. CIV. P. 510.3(e).

Justice courts in the precinct in which the real property is located have original jurisdiction over forcible entry and detainer proceedings. TEX. GOV’T CODE ANN. § 27.031(a)(2) (West Supp. 2015); TEX. PROP. CODE ANN. § 24.004 (West 2014). The county court at law (statutory county court) has appellate jurisdiction in such matters, and its jurisdiction is confined to the jurisdictional limits of the justice court. *Rice*, 51 S.W.3d at 708. However, forcible detainer actions are not exclusive, and a displaced party is entitled to bring a separate suit in the district court to determine questions of title. *Scott v. Hewitt*, 90 S.W.2d 816, 818–19 (Tex. 1936); *Salaymeh v. Plaza Centro, LLC*, 264 S.W.3d 431, 436 (Tex. App.—Houston [14th Dist.] 2008, no pet.). In order “[f]or a

district court to enjoin the exercise of the justice court's exclusive jurisdiction in a forcible entry and detainer case, there must be a showing that the justice court [or the county court at law on appeal] is without jurisdiction to proceed in the cause or the defendant has no adequate remedy at law." *McGlothlin*, 672 S.W.2d at 232.¹⁰

C. Analysis

Wade asserts the trial court lacked subject-matter jurisdiction because the prevailing issue in the case concerned the title to the property, not the right of possession of it. Wade claims that HFC falsified the deed of trust in regard to the amount of acreage he pledged as security for repayment of the loan. Wade remains steadfast in his claim that he has not had title to ninety acres of property for some years preceding the signing of the deed of trust¹¹ and that he could not have pledged property he did not own as security for repayment on the loan. Wade also maintains that HFC failed to comply with many of the requirements of foreclosure proceedings, thereby resulting in a void substitute trustee's deed. Relying on those claims, Wade maintains that the genuine issue was the title to the property and that the issue of ownership had to be resolved before the trial court was able to determine the right of possession.

HFC responds that the terms of the deed of trust barred Wade's claim that the trial court lacked subject-matter jurisdiction. Specifically, HFC contends that under the terms of that deed of trust, once a foreclosure occurred, Wade's sole claim to the property was as a tenant at the

¹⁰In January 2015, Wade filed a separate suit in district court. However, there is nothing in the record that the district court enjoined the lower courts from proceeding with the forcible detainer action.

¹¹Wade states that he "noticed the Court that there were not [ninety] acres involved and hadn't been for over thirty years, therefore the Court did not have subject matter jurisdiction." (Footnote omitted).

sufferance of the owner, thereby giving the trial court subject-matter jurisdiction. Further, HFC maintains that Wade’s complaints relating to the underlying foreclosure proceedings were improper subjects in a forcible detainer action and that the trial court was correct in refusing to consider them.

A justice court is not deprived of jurisdiction simply because a title dispute exists. In *Rice*, the appellants argued that the issue of title and the issue of possession of property were inseparable and that it was unreasonable to determine possession of real estate without first determining who had title to the property. *Rice*, 51 S.W.3d 709–10. Because Rice (the Appellant) had filed a cause of action in district court to determine which party had the right to title to the property, they maintained that the county court at law did not have subject-matter jurisdiction to determine which party had the immediate right to possession. *Id.* at 709. The *Rice* court explained that the Texas Supreme Court had been asked by certified question to determine whether a provision contained in a deed of trust, which made a defaulted grantor a tenant-at-sufferance, was a provision that would support a forcible detainer action. *Id.* at 710 (citing *Scott*, 90 S.W.2d at 818). The Supreme Court stated:

“If [grantors] desire to attack the sale made under the deed of trust as being invalid, they may bring such suit in the district court for that purpose; but, in a suit for forcible detainer, such action is not permissible. The Legislature has expressly provided by forcible entry and detainer proceedings a summary, speedy, and inexpensive remedy for the determination of who is entitled to the possession of premises, *without resorting to an action upon the title*. This [forcible detainer] action allowed by law *is not exclusive, but cumulative*, of any other remedy that a party may have in the courts of this state.”

Id. (quoting *Scott*, 90 S.W.2d at 818–19). Thus, the Supreme Court expressly stated that in cases challenging the validity of a trustee deed, “the legislature contemplated concurrent action in the

district and justice courts to resolve issues of title and immediate possession, respectively.”¹² *Id.* Noting that the deed of trust contained a provision that a mortgagor who held over possession after a foreclosure was deemed a tenant at sufferance of the purchaser at the foreclosure sale, the *Rice* court held that the county court at law had subject-matter jurisdiction to issue the writ of possession “[b]ecause [it] was not required to determine the issue of title to resolve the right to immediate possession.” *Id.* at 713.

In this case, HFC’s claim of its right to immediate possession was based on its purchase of the Property at a foreclosure sale and the tenant-at-sufferance clause contained in the deed of trust. In support of its position, HFC offered evidence consisting of: (1) a certified copy of the deed of trust, which included a description of the Property as being ninety acres and provided that

[i]f the Property is sold pursuant to this paragraph 19, Borrower [mortgagor] or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession[;]

(2) a certified copy of the substitute trustee’s deed showing that HFC had purchased the Property at the foreclosure sale; and (3) a business records affidavit proving the requisite statutory notices were timely sent to Wade (and all other occupants) prior to the institution of the forcible detainer proceeding. Based on evidence that a landlord and tenant-at-sufferance relationship existed, HFC

¹²In February 2015, Wade filed a separate suit in district court alleging the following: (1) he did not receive proper notice(s); (2) HFC was estopped from foreclosing on the Property based on the statute of limitations; and (3) claims for breach of contract, misrepresentation “on a grand scale” and deceptive trade practices (HFC described the property as ninety acres when the agreement between the parties was for a lien on 3.4 acres of land). Wade asked the district court to “declare the mortgage transaction rescinded” and to declare that Wade had “complied with his obligation under the Truth in Lending Act and [had] no obligation under the properly rescinded transaction.” In his prayer for relief, Wade asked the district court to declare the foreclosure sale void, to assess statutory damages in the amount of \$19,727.28, plus applicable insurance since November 27, 2007, and to award attorney fees and costs.

contends the trial court had subject-matter jurisdiction and was correct when it found that it had greater right of possession to the property than Wade.

Wade claims HFC fraudulently falsified the amount of acreage described within the deed of trust, thereby making it void, and that the resolution of title was a necessary prerequisite to determining the identity of which party had the immediate right of possession. Wade claims the description of the Property that was originally attached to the deed of trust “reflected 90 acres of land” but that it was “filed into public record without [his] knowledge.” Wade also states that during the trial, he offered “evidence that HFC’s pleadings to obtain possession were a sham, as the original [m]ortgage was on 34.69 acres.”¹³

The record shows the trial court sustained HFC’s objections to Wade’s two proffered exhibits, in part, because they were not properly authenticated or certified and because Wade failed to lay a proper foundation for the admission of the documents. Moreover, Wade did not submit to the trial court evidence, such as a sworn affidavit, stating that he believed HFC fraudulently added incorrect information to the deed of trust or why he believed that to be true. Wade did, however, attach an affidavit to his motion for new trial, which stated, in part:

Years ago, I bought 90 acres in the Edward Brown survey. . . .

As years passed, I sold three parcels of land out of the 90 acres. 45 acres were purchased by Kenneth Hoffman, 5 acres were purchased by Larry and Darlene Mowrey, and 5.31 acres were bought by Mr. Rethwith, who later sold his 5.31 acres to Marlin and Jan Robins.

When I obtained a loan from Household Finance in 2005, I owned 34.69 acres. My agreement with HFC was to allow a lien on 10% of the remaining acreage, 3.4 acres, together with a lien in the form of a deed of trust on 2 trailer

¹³At different points in appellant’s brief, the acreage is alternatively described as 34.69 acres and 3.46 acres.

houses to be financed. The surveyor at the time was informed that the acreage to be financed was contained within a fenced area. I was specific as to how much acreage would be financed.

I was not given the complete package of paperwork at the closing and was not aware, and did not see the 90 acre description of property attached to the HFC Deed of Trust. When I became aware of the fraud, I tried everything to make the people at HFC correct the record, and when they would not, I rescinded the contract, as is my legal right, before three years had passed.

I did not own 90 acres in 2005 when the loan was consummated, and I do not own 90 acres now.

In further support of Wade's position that he had title to only 34.69 acres and that 34.69 acres of land was the amount of property he had pledged as security for the loan, Wade points to a "Voluntary Designation of Homestead," which shows the date of execution as March 26, 2005. Wade attached the document to a "Judicial Notice of Fraud on the Court" and filed it with the trial court on July 8, 2015.¹⁴ In that document, Wade certified "the Property contain[ed] 34.69 acres, according to the survey thereof" and that he was designating 34.69 acres as his homestead.

Wade maintains that this evidence is sufficient to show that (1) HFC fraudulently altered the deed of trust containing the Property's description, (2) Wade did not own ninety acres of land which he used to secure a loan from HFC, (3) the substitute trustee's deed was void and, (4) title to the property was a paramount issue to be decided before the issue of possession. Based on this evidence, Wade claims the trial court lacked subject-matter jurisdiction to decide the issue of possession of or title to ninety acres because he had possession of and title to only 34.69 acres.

¹⁴The record reflects that Wade's 2005 voluntary designation of homestead exemption was filed after the trial court found in HFC's favor, but before the trial court lost its plenary power due to Wade filing a motion for new trial.

Wade's line of reasoning is misguided. First, the voluntary designation of homestead states, "[Wade] hereby designates the property ('Property') described on page one of the Mortgage, attached hereto and incorporated herein by reference, as the homestead of [Wade]." Page one of the deed of trust in turn incorporated the attached Exhibit A (which describes the ninety acres) by reference.

In addition, section twenty of the deed of trust states, "Borrower represents *that the Property is the homestead of Borrower notwithstanding any voluntary designation of homestead* which may have been filed by Borrower to the contrary." (Emphasis added). As previously stated, the property used to secure Wade's loan was described as "[b]eing 90 acres of land situated in the Edward Brown Survey in Caldwell County, Texas,"¹⁵ and described fully by metes and bounds. There is no claim by Wade that the property he claims to now own is not within the ninety-acre tract described in the deed of trust.

In a similar case recently decided by the Houston Court of Appeals, HFC filed a complaint for forcible detainer in a Galveston County Justice Court to evict Ruby and Wilburn Yarbrough from their home. *Yarbrough v. Household Fin. Corp., III*, 455 S.W.3d 277, 278 (Tex. App.—Houston [14th Dist.] 2015, no pet.). In the *Yarbrough* case, the justice court record contained a

¹⁵Continuing along these same lines, Wade also maintains that the affidavit attached to his motion for new trial proved that he sold part of the ninety acres to at least three other individuals. Therefore, it would follow that HFC could not take from Wade what he did not own. Wade contends he has shown that he did not possess ninety acres, multiple other people did, and therefore, the substitute trustee's deed was ineffective to convey title to the Property to HFC. Issues with the purchaser's title to the property may not be considered in a forcible detainer action. *See Shutter v. Wells Fargo Bank, N.A.*, 318 S.W.3d 467, 471 (Tex. App.—Dallas 2010, pet. dismissed w.o.j.). However, because Wade has brought these issues to our attention and to the attention of the courts below us, we note that there were no sworn affidavits contained in the record nor was there any testimony from the alleged owners found in the transcript from the hearing before the trial court. The record does contain 2014–2015 property "searches" that reflect some information regarding the alleged owners of the parcels of land; however, with no additional information it is impossible to decipher if, when, or how the alleged owners gained title to or possession of the Property.

deed of trust allegedly signed by the Yarbroughs, as borrowers, as security for a loan from Ameriquest Mortgage Company. *Id.* The deed of trust allowed the trustee to foreclose on the property in the event of a default, and if that occurred, the Yarbroughs were required to surrender possession. *Id.* The deed of trust stated, “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.” *Id.* Subsequently, HFC purchased the property at a non-judicial foreclosure sale and acquired a substitute trustee’s deed conveying the property to it. *Id.* It then initiated a forcible detainer action in an attempt to gain possession of the property from the Yarbroughs, resulting in a judgment in favor of HFC, which was then appealed by the Yarbroughs to the county court at law. *Id.* at 278–79.

On appeal to the county court at law, the Yarbroughs filed a plea to the jurisdiction and an amended plea alleging that the foreclosure sale was void because they claimed that the deed of trust was a forgery. *Id.* at 279. The Yarbroughs filed an affidavit, which stated, “The deed of trust on which the purported foreclosure sale was based and that led to the eviction lawsuit was not signed by my husband or me, and was a forgery.” *Id.* It continued further, alleging, “I understand that the people associated with Ameriquest Mortgage forged signatures on many loans, and the Deed of Trust on which the foreclosure sale was based leading to this eviction would be one of them.” *Id.* The affidavit (signed by Mrs. Yarbrough) claimed that the deed of trust “was not signed by me or my husband.” *Id.* The county court at law denied the pleas, and the Yarbroughs’ further

claim of the affirmative defense of forgery, entering a final summary judgment awarding HFC possession of the property.¹⁶ *Id.*

Pointing to the inclusion of the tenancy-at-sufferance clause in the deed of trust, the Houston Court of Appeals stated that when the property was foreclosed, a landlord-tenant relationship was created between the Yarbroughs as tenants and HFC as landlord. *Id.* at 280. Following that reasoning, a defendant's complaints about defects in the foreclosure process generally do not require a justice court to resolve a title dispute before determining the right to immediate possession, and the justice court had jurisdiction to do so.

While the facts in *Yarbrough* are somewhat akin to the facts here, there exists at least one important distinction that supports a contrary result in this case. Similar to the Yarbrough's claim, Wade's contentions are based on HFC's alleged forgery of the deed of trust. However, the *Yarbrough* court stated, "When there is no dispute that the parties agreed to a tenancy relationship in the event of foreclosure, the tenancy relationship provides an independent basis for resolving the issue of possession." *Id.* at 282 (citing *Rice*, 51 S.W.3d at 712). Because the Yarbroughs offered evidence that they did not sign the original deed of trust and that their names were forged, the Houston Court of Appeals found that their case was more analogous to cases wherein the parties disputed the actual existence of a landlord-tenant relationship. *Id.* at 282. Therefore, the justice court and the county court at law on appeal lacked subject-matter jurisdiction to determine the issue of possession. *Id.* at 283. Even after its finding that the trial courts in the forcible detainer

¹⁶The Yarbroughs had also filed suit in district court seeking damages for eviction, slander of title, and other causes of action, as well as a judgment for title to the property. There is no evidence that they sought injunctive relief from the foreclosure proceeding.

action did not have the jurisdiction to determine the issue of title, the appellate court stated that under the circumstances of the *Yarbrough* case, “[a] prerequisite to determining the immediate right of possession will be [the] resolution of Yarbroughs’ title dispute concerning the forgery of the deed of trust.” *Id.* at 283.

In this case, Wade claims, among other things, that he “was not aware, and did not see the 90 acre description of property attached to the HFC Deed of Trust.”¹⁷ He has not denied, however, that he entered into an agreement with HFC to borrow \$57,999.72 from HFC or that he used his property to secure a loan from HFC. Wade does not now, and did not in the lower courts, challenge the validity of the tenant-at-sufferance clause contained in the deed of trust. Whether Wade had title to ninety acres or 34.69 acres (which is obviously subsumed within the description of the ninety acres), Wade has never claimed that his signature verifying the information contained within any of the documents was a forgery. Unlike the allegations of forgery contained in *Yarbrough*, Wade’s claims do not amount to an alleged title dispute so intertwined with the right of immediate possession that it would divest the trial court of subject-matter jurisdiction to decide the issue of who had superior right of possession to the property. When the issue of the superior right of possession of property can be determined separately from any existing title issues, the justice court and the trial court on appeal have jurisdiction to decide the case. *See Padilla v. NCJ Dev., Inc.*, 218 S.W.3d 811, 815 (Tex. App.—El Paso 2007, pet. dism’d w.o.j.).

¹⁷Wade claims he was not given the complete package of paperwork at the time of closing.

In this case, the trial court had subject-matter jurisdiction to decide the issue of immediate possession of the Property without addressing issues of title. Wade’s first point of error is overruled.¹⁸

IV. Doctrine of Laches

Wade also asserts the doctrine of laches as an affirmative defense. “[L]aches is an equitable remedy that prevents a plaintiff from asserting a claim due to a lapse of time.” *Bluebonnet Sav. Bank, F.S.B. v. Grayridge Apartment Homes, Inc.*, 907 S.W.2d 904, 912 (Tex. App.—Houston [1st Dist.] 1995, writ denied). Based on the doctrine of laches, a claim is described as being stale. *Id.* The elements of a laches defense are (1) an unreasonable delay in asserting a legal or equitable right, and (2) a good faith, detrimental change of position because of the delay. *Rogers v. Rican Enters., Inc.*, 772 S.W.2d 76, 80 (Tex. 1989). “Although a court applying the doctrine of laches is not bound by any particular statute of limitations, the statute of limitations [may be] one measure of whether a claim has become stale.” *Bluebonnet Sav. Bank*, 907 S.W.2d at 912.¹⁹

Wade contends that HFC abandoned the right to foreclose on the Property because although it obtained an order to proceed with foreclosure from the district court in November 2009, it did not begin the actual foreclosure sale and eviction process until years later. Because of this delay,

¹⁸Wade’s second point of error, which relates to claims against HFC for real estate fraud and unjust enrichment, is partially incorporated within his first point of error, which we overruled. To the extent Wade complains of HFC’s misconduct that allegedly occurred during the 2009 proceedings in district court as a predicate to the institution of extra-judicial foreclosure activities (such as HFC’s failure to provide adequate notice of the foreclosure sale), the trial court lacked subject-matter jurisdiction to address such issues during the forcible detainer action. The only issue in a forcible detainer action is the right of possession. *See Scott*, 90 S.W.2d at 818. For these reasons, we decline to address these claims any further. Wade’s second point of error is overruled.

¹⁹In Wade’s 2015 original petition filed in district court, he alleged that HFC was “estopped from foreclosing on the ‘Mortgage’ by the statute of limitations.”

Wade claims the doctrine of laches applies to his case. HFC responds that Wade failed to bring this particular claim to the attention of the lower courts and, therefore, he has waived his right to do so on appeal. Furthermore, HFC contends that Wade's laches claim relates to issues surrounding the validity of the foreclosure sale, which the trial court does not have jurisdiction to adjudicate. We agree with HFC.

To preserve a complaint for our review, a party must first present to the trial court a timely request, objection, or motion stating the specific grounds for the desired ruling if not apparent from the context. TEX. R. APP. P. 33.1(a)(1). Further, the trial court must have ruled on the request, objection, or motion, either expressly or implicitly, or the complaining party must have objected to the trial court's refusal to rule. TEX. R. APP. P. 33.1(a)(2). In this case, Wade has waived this particular issue on appeal because he failed to plead or otherwise raise it with the trial court, either at the trial before the county court at law or by submitting a motion.

Wade also filed a motion for new trial. In a civil case, the overruling by operation of law of a motion for new trial preserves for appellate review a complaint properly made in the motion, unless taking evidence was necessary to properly present the complaint in the trial court. TEX. R. APP. P. 33.1(b). Although Wade filed a motion for new trial, which was overruled by operation of law, he did not present the affirmative defense of laches as an issue. Therefore, his motion for new trial did not preserve his claim for our review on appeal. Wade's third point of error is overruled.²⁰

²⁰To the extent Wade's argument relates to issues surrounding the validity of the foreclosure sale, the trial court did not have jurisdiction to adjudicate his claims. Immediate possession of the property is the only issue the trial court may address in a forcible detainer action. *See Scott*, 90 S.W.2d at 818. We find no further discussion to be necessary.

V. Conclusion

We affirm the judgment of the trial court.

Bailey C. Moseley
Justice

Date Submitted: January 5, 2016
Date Decided: February 25, 2016