

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00625-CV

Sheryl Elizabeth Standiford and Blaine Martin Standiford, Appellants

v.

CitiMortgage, Inc., Appellee

**FROM THE COUNTY COURT AT LAW NO. 2 OF TRAVIS COUNTY
NO. C-1-CV-15-002447, HONORABLE ERIC SHEPPERD, JUDGE PRESIDING**

MEMORANDUM OPINION

In this appeal from a suit for forcible detainer, Sheryl Elizabeth Standiford and Blaine Martin Standiford appeal the trial court’s judgment awarding CitiMortgage, Inc. (CMI) possession of residential real property (the Property). In one issue, appellants contend that CMI’s suit for forcible detainer was barred by the applicable statutory limitations period of two years. *See* Tex. Civ. Prac. & Rem. Code § 16.003(a) (requiring, among other causes of action, that suit for forcible detainer be brought “not later than two years after the day the cause of action accrues”). Because we conclude that CMI’s action was not barred by limitations, we affirm the trial court’s judgment.

BACKGROUND¹

On September 29, 2014, CMI sent written notice to appellants informing them that CMI purchased the Property at a foreclosure sale in August 2012 and demanding that they vacate the premises within three days. *See* Tex. Prop. Code § 24.005(b) (requiring notice to vacate premises to be provided prior to filing forcible detainer suit). Appellants did not vacate the premises, and CMI filed suit for forcible detainer on November 21, 2014, in justice court. The justice court granted possession of the Property to CMI, and appellants appealed the judgment to the county court at law for a trial de novo. *See* Tex. R. Civ. P. 506.3. Following a bench trial, the trial court rendered judgment granting CMI possession of the Property. Appellants filed a motion for new trial, which was overruled by operation of law, and this appeal followed.

ANALYSIS

Before the justice court and the county court, appellants argued that CMI's suit for forcible detainer was barred by the applicable limitations period of two years. *See* Tex. Civ. Prac. & Rem. Code § 16.003(a). In their sole appellate issue, appellants argue that the trial court erred in concluding that the two-year limitations period did not bar CMI's suit for forcible detainer. Appellants rely on a previous action for forcible detainer brought by the Secretary of Veterans' Affairs against them on the Property. After CMI purchased the Property at the foreclosure in August 2012, it conveyed the Property to the Secretary of Veterans' Affairs, and the Secretary of Veterans'

¹ Because the parties are familiar with the facts of the case and its procedural history, we do not recite them in this opinion except as necessary to advise the parties of the Court's decision and the basic reasons for it. *See* Tex. R. App. P. 47.1, 47.4.

Affairs filed an action for forcible detainer against appellants in November 2012. The Secretary of Veterans' Affairs, however, non-suited and conveyed the Property back to CMI. Appellants argue that CMI, as successor in title to the Secretary of Veterans' Affairs, stands in the shoes of the Secretary of Veterans' Affairs for all purposes, including as to the suit that the Secretary of Veterans' Affairs filed for forcible detainer against appellants in November 2012.

Relying on the Property Code's two-year limitations period that is tied to the "day the cause of action accrues," the required notice to vacate before filing a forcible detainer suit, and cases addressing when a cause of action accrues for purposes of limitations, appellants argue that the limitations period began to run on CMI's claim at the latest on November 9, 2012, because the Secretary of Veterans' Affairs was required to provide notice to vacate before it filed suit for forcible detainer on November 13, 2012. *See* Tex. Civ. Prac. & Rem. Code §§ 16.003(a) (requiring suit to be brought "not later than two years after the day the cause of action accrues"), 24.005(b) (requiring notice to vacate premises to be provided prior to filing forcible detainer suit); *Herve v. Federal Home Loan Mortg. Corp.*, No. 03-13-00607-CV, 2014 Tex. App. LEXIS 11736, at *7–8 (Tex. App.—Austin Oct. 24, 2014, no pet.) (mem. op.) (discussing when cause of action accrues generally and, in context of suit for forcible detainer, concluding that statute of limitations in forcible detainer action does not begin to run "until possession has been demanded and refused"). At least by November 9, 2012, appellants had refused to vacate the Property after being noticed to do so. Thus, according to appellants, because CMI stood in the shoes of the Secretary of Veterans' Affairs, its cause of action for forcible detainer accrued at that point and its suit that was filed on November 21, 2014—more than two years later—was barred by limitations.

We are informed by this Court’s opinion in *Massaad v. Wells Fargo Bank N.A.*, No. 03-14-00202-CV, 2015 Tex. App. LEXIS 896 (Tex. App.—Austin Jan. 30, 2015, no pet.) (mem. op.). In that appeal from a judgment awarding possession in a suit for forcible detainer, we concluded: “Each refusal to surrender possession of real property on written demand for possession constitutes a new forcible detainer.” *Id.* at *4. Similar to the facts here, the appellant in that case contended in his sole issue on appeal that Wells Fargo’s suit was barred by limitations because appellant had refused to comply with Wells Fargo’s first notice to vacate, which was more than two years before Wells Fargo filed suit. *Id.* at *3. We concluded, however, that the suit was timely because Wells Fargo had provided notice to vacate a few weeks before filing suit. *Id.* at *3–4 (citing *Federal Home Loan Mortg. Corp. v. Pham*, 449 S.W.3d 230, 235–36 (Tex. App.—Houston [14th Dist.] 2014, no pet.), and section 24.002 of Property Code to support conclusion that each refusal to surrender possession of premises after receiving proper notice to vacate “constitutes a new forcible detainer”).

We have reached a similar conclusion in other cases as well. *See Custer v. Wells Fargo Bank, N.A.*, No. 03-15-00362-CV, 2016 Tex. App. LEXIS 2840, at *7–8 (Tex. App.—Austin Mar. 18, 2016, pet. filed) (mem. op.) (concluding that limitations did not bar action for forcible detainer that was brought within two years of subsequent notice to vacate and affirming judgment granting writ of possession); *Montenegro v. Wells Fargo Bank, N.A.*, No. 03-13-00123-CV, 2015 Tex. App. LEXIS 5563, at *10 (Tex. App.—Austin June 3, 2015, pet. filed) (mem. op.) (concluding that limitations did not bar suit for forcible detainer brought after subsequent notice to vacate and following previous determination by courts that “forcible-detainer

action accrues *each* time a person refuses to surrender possession of real property after a person entitled to possession delivers proper written notification to vacate”).

Following the reasoning and analysis from our opinion in *Massaad* and other precedent from this Court, we conclude that CMI’s suit was not barred by limitations even if we assume without deciding that CMI stands in the shoes of the Secretary of Veterans’ Affairs for purposes of calculating the applicable limitations period. Regardless of the notice that the Secretary of Veterans’ Affairs provided to appellants in November 2012, CMI provided notice to appellants in September 2014, demanding that they vacate the premises. *See* Tex. Prop. Code § 24.005(b). Appellants refused to vacate, and CMI then filed suit in November 2014. When appellants refused to vacate in September 2014, a new forcible detainer action accrued for purposes of calculating the applicable limitations period and, therefore, CMI’s suit brought within a few months of its September 2014 notice was not barred by limitations. *See Massaad*, 2015 Tex. App. LEXIS 896, at *3–4; *see also Custer*, 2016 Tex. App. LEXIS 2840, at *7–8; *Montenegro*, 2015 Tex. App. LEXIS 5563, at *10–11. We overrule appellants’ sole issue.

CONCLUSION

Having overruled appellants’ sole issue, we affirm the trial court’s judgment.

Melissa Goodwin, Justice

Before Justices Puryear, Goodwin, and Field

Affirmed

Filed: August 4, 2016