

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-15-00740-CV**

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**Michael Knight, Appellant**

**v.**

**MidFirst Bank, Appellee**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 419TH JUDICIAL DISTRICT  
NO. D-1-GN-14-003487, HONORABLE KARIN CRUMP, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Michael Knight appeals from the trial court’s summary judgment that granted appellee MidFirst Bank’s bill of review to vacate and set aside the “Judicial Finding[s] of Fact and Conclusion of Law Regarding a Documentation or Instrument Purporting to Create a Lien or Claim” (“Judicial Findings of Fact and Conclusion of Law”). *See* Tex. Gov’t Code § 51.903 (addressing action on fraudulent lien on property). In one issue, Knight argues that the trial court abused its discretion by concluding that the Judicial Findings of Fact and Conclusion of Law were not proper under section 51.903 of the Government Code. *See id.* Because we conclude that the trial court did not err in granting summary judgment, we affirm.

## BACKGROUND<sup>1</sup>

Knight purchased real property (the Property) in 2005 and financed the purchase by signing a promissory note (the Note) and a deed of trust (the Deed of Trust) on the Property. After Knight defaulted on payment obligations under the terms of the Note, MidFirst Bank, as the mortgagee of Knight and assignee of the Deed of Trust, took steps to foreclose on the Property, including recording a Notice of Substitute Trustee Sale on January 30, 2012, in the official public records of Travis County.

In March 2012, Knight filed a motion for judicial review of documentation or instrument purporting to create a lien or claim in connection with the Notice of Substitute Trustee Sale on the Property, seeking to establish that the document was fraudulent. *See* Tex. Gov't Code §§ 51.901(c)(2) (addressing when document or instrument is presumed to be fraudulent), .903. The assigned cause number in the trial court was D-1-GN-12-000940. The trial court considered the motion *ex parte* and without notice and signed the Judicial Findings of Fact and Conclusion of Law, deeming the Notice of Substitute Trustee Sale fraudulent. *See id.* The court's findings included that the Notice of Substitute Trustee Sale was "NOT properly asserted against real or personal property or an interest in real or personal property" and that "[t]here is no valid lien or claim created by this documentation or instrument." A few days after the trial court signed the Judicial Findings of Fact and Conclusion of Law, MidFirst Bank purchased the Property at the noticed foreclosure sale.

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<sup>1</sup> 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.

In September 2014, MidFirst Bank filed a petition for bill of review in the same trial court, seeking to set aside the Judicial Findings of Fact and Conclusion of Law. *See Mabon Ltd. v. Afri-Carib Enters.*, 369 S.W.3d 809, 812 (Tex. 2012) (listing requirements for bringing bill of review). Knight answered, and MidFirst Bank thereafter filed a motion for final summary judgment arguing that it met the requirements for bringing a bill of review and that the Judicial Findings of Fact and Conclusion of Law should be set aside because Knight failed to meet the requirements of sections 51.901 and 51.903 of the Government Code. *See* Tex. Gov't Code §§ 51.901(c)(2), .903. Midfirst Bank also filed evidence in support of its motion for summary judgment including copies of the Note, the Deed of Trust, the Substitute Trustee's Deed, and an affidavit. In the affidavit, a vice-president of MidFirst Bank averred about events surrounding Knight's loan and his section 51.903 motion for judicial review of the Notice of Substitute Trustee Sale. The vice-president averred that Midfirst Bank was not a party in the trial court's cause number D-1-GN-12-000940, in which the trial court granted Knight's motion for judicial review and that MidFirst Bank was unaware of the motion's filing or entry of the trial court's ruling on the motion in that case until after the Property's foreclosure in April 2012.

Knight filed a response to the motion for summary judgment, contending that he had filed a proper motion under section 51.903 of the Government Code, "which does not require notice." The trial court thereafter granted MidFirst Bank's motion for summary judgment and vacated and set aside the Judicial Findings of Fact and Conclusion of Law regarding the Notice of Substitute Trustee Sale. This appeal followed.

## GOVERNING LAW AND STANDARD OF REVIEW

“Section 51.903(a) of the Government Code authorizes a person or entity that owns real property, and has reason to believe that another has filed a document purporting to create a lien against that property, to file a motion with the district clerk alleging that the instrument in question is fraudulent, as defined by section 51.901(c), and therefore should not be accorded lien status.” *In re Purported Liens or Claims Against Samshi Homes, L.L.C.*, 321 S.W.3d 665, 666 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (citing Tex. Gov’t Code §§ 51.901(c), .903(a)). As happened here, a district judge may rule on the motion ex parte and without notice, and “[t]he court’s finding may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence.” Tex. Gov’t Code § 51.903(c); see *In re a Purported Lien or Claim Against Tu Nguyen*, 456 S.W.3d 673, 675 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (noting that “district judge may rule upon the motion ex parte after reviewing only the documentation or instrument attached to the motion, without testimonial evidence and without notice of any kind”). In a section 51.903 proceeding, however, “a trial court is limited to determining whether a particular instrument, or instruments, is fraudulent as therein defined; it may not rule on the validity of the underlying lien itself or other claims between the parties.” *Samshi Homes*, 321 S.W.3d at 667 (citing Tex. Gov’t Code § 51.903(a), (g)).

For purposes of a section 51.903 proceeding, a document is presumed to be fraudulent as that term is defined in section 51.901(c)(2). See Tex. Gov’t Code §§ 51.901(c)(2), .903(a). Section 51.901(c)(2) provides that a document is “presumed to be fraudulent if”:

- (2) the document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property *and*:
  - (A) is not a document or instrument provided for by the constitution or laws of this state or of the United States;
  - (B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or
  - (C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States.

*Id.* § 51.901(c)(2) (emphasis added). Under section 51.901(c)(2), “[a] trial court may presume a document is fraudulent only if it makes one positive finding and three negative findings about the document; if the document is provided for by constitution or statute, created by agreement, or imposed by a court, then it is not ‘presumed fraudulent.’” *Cardenas v. Wilson*, 428 S.W.3d 130, 132 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (citing Tex. Gov’t Code § 51.901(c)(2); *In re a Purported Lien or Claim Against Hai Quang La*, 415 S.W.3d 561, 565–66 (Tex. App.—Fort Worth 2013, pet. denied)). Whether a document purporting to create a lien is presumed fraudulent under section 51.901(c) is a question of law and, thus, subject to de novo review. *David Powers Homes, Inc. v. M.L. Rendleman Co.*, 355 S.W.3d 327, 335 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

We also review a trial court’s decision to grant summary judgment de novo. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). To prevail on a traditional summary judgment motion, the movant must demonstrate that there are no genuine

issues of material fact and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Knott*, 128 S.W.3d at 215–16. “When the trial court does not specify the grounds for its ruling, as is the case here, a summary judgment must be affirmed if any of the grounds on which judgment is sought are meritorious.” *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013) (citing *State v. Ninety Thousand Two Hundred Thirty-Five Dollars & No Cents in U.S. Currency*, 390 S.W.3d 289, 292 (Tex. 2013)).

### ANALYSIS

In his sole issue, Knight contends that the trial court abused its discretion in finding that the Judicial Findings of Fact and Conclusion of Law were not proper because section 51.903 of the Government Code “allows Knight to file a Motion for Judicial Review, without notice if he believes that a document purporting to create a lien or a claim against his real property is fraudulent” and the “Notice of Substitute Trustee Sale is ‘presumed’ to be a ‘fraudulent document or instrument’ pursuant to § 51.903.” Knight argues that the Notice of Substitute Trustee Sale is a claim against or an interest in the Property, *see* Tex. Gov’t Code § 51.901(c)(2), and that it is not provided for by law because, although notice is statutorily required, “courts have held that public notice of a sale and the subsequent filing in the county records is not necessary,” *see id.* § 51.901(c)(2)(A), and that he “did not consent or impliedly agree to such an improper filing.” *See id.* § 51.901(c)(2)(B).

As previously stated, in the context of a section 51.903 proceeding, a trial court must make a positive finding that the challenged document purports to create a lien or assert a claim in property and three negative findings—that it is not provided for by constitution or statute, created by agreement, or imposed by a court—to presume a document is fraudulent. *See id.* § 51.901(c)(2);

*Cardenas*, 428 S.W.3d at 132 (requiring one positive finding and three negative findings, including that challenged document was not provided for by statute, to presume document fraudulent). Because the trial court did not specify the basis for its ruling, its summary judgment must be affirmed “if any of the grounds on which judgment is sought are meritorious.” *See Merriman*, 407 S.W.3d at 248 (explaining review of summary judgment when trial court does not specify basis of ruling). Thus, we limit our review to whether the Notice of Substitute Trustee Sale is provided for by statute. *See id.*; *see also* Tex. R. App. P. 47.1.

Section 51.0075 of the Property Code authorizes a mortgagee to appoint substitute trustees, and section 51.002(b)(2) of the Property Code requires the notice of a trustee’s intended sale to be filed in the office of the county clerk. *See* Tex. Prop. Code §§ 51.002(b), .0075(c); *In re a Purported Lien or Claim Milissa Kay Bishop*, No. 07-12-00455-CV, 2013 Tex. App. LEXIS 14649, at \*6–7 (Tex. App.—Amarillo Dec. 4, 2013, no pet.) (mem. op.) (noting that section 51.0075(c) enables mortgagee to appoint substitute for trustees and section 51.002(b)(2) requires filing of notice of trustee’s intended sale). Because these statutory provisions expressly provide for filing notices of a substitute trustee sale, the Notice of Substitute Trustee Sale here is a form of document provided for by statute and, thus, it cannot be presumed fraudulent pursuant to section 51.901(c)(2)(A). *See* Tex. Gov’t Code § 51.901(c)(2)(A); *Samshi Homes*, 321 S.W.3d at 667 (explaining that, in section 51.903 proceeding, “a trial court is limited to determining whether a particular instrument, or instruments, is fraudulent as therein defined”); *David Powers Homes*, 355 S.W.3d at 338 (noting that section 51.903 was “enacted as part of a statutory scheme to quickly identify and remove liens and

encumbrances that are on their face patently without basis in recognized law” and “to expeditiously determine the legitimacy of the document manifesting the purported lien or interest”).

Because we conclude that the Notice of Substitute Trustee Sale is a form of document provided for by statute, we conclude that the trial court did not err in granting summary judgment on MidFirst Bank’s bill of review to vacate and set aside the Judicial Findings of Fact and Conclusion of Law. *See David Powers Homes*, 355 S.W.3d at 335 (noting that it is question of law whether document purporting to create lien is presumed fraudulent); *Merriman*, 407 S.W.3d at 248 (noting that summary judgment must be affirmed if any grounds are meritorious).<sup>2</sup>

### CONCLUSION

For these reasons, we overrule Knight’s issue and affirm the trial court’s judgment.

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Melissa Goodwin, Justice

Before Justices Puryear, Goodwin, and Field

Affirmed

Filed: August 4, 2016

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<sup>2</sup> To the extent Knight argues about the validity of the Notice of Substitute Trustee Sale based on the dates on which the substitute trustee was appointed and when the notice was filed, we decline to address these arguments because they go beyond the narrow scope of a section 51.903 proceeding. *See In re a Purported Lien or Claim Against Hai Quang La*, 415 S.W.3d 561, 565 (Tex. App.—Fort Worth 2013, pet. denied) (explaining limited nature of section 51.903 proceeding); *In re Purported Liens or Claims Against Samshi Homes, L.L.C.*, 321 S.W.3d 665, 668 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (citing Tex. Gov’t Code §§ 51.901(c), .903(a)) (noting that “substantive evidentiary claims” are beyond scope of section 51.903 proceeding).