

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00486-CV

Femi Onabajo and Christy Onabajo, Appellants

v.

**Wilmington Savings Fund Society, FSB,
as Trustee of Stanwich Mortgage Loan Trust A, Appellee**

**FROM THE COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY
NO. C-1-CV-16-012450, HONORABLE TODD T. WONG, JUDGE PRESIDING**

MEMORANDUM OPINION

Femi Onabajo and Christy Onabajo appeal from the county court at law's judgment in a forcible-detainer suit awarding possession of certain residential and real property to Household Finance Corporation III. In two appellate issues, the Onabajos contend that Household Finance's conveyance to a third party of its alleged ownership interest in the property moots the appeal and that the justice and county courts lacked subject-matter jurisdiction over this suit because the question of title was wholly intertwined with the issue of possession. We will affirm the county court at law's judgment.

BACKGROUND

In 2001, the Onabajos entered into a Texas Home Equity Adjustable Rate Note payable to Home Capital, Inc. As part of the transaction, the Onabajos also executed a Texas Home Equity Security Instrument, granting a first lien on the property. The security instrument provided that:

If the Property is sold pursuant to this paragraph [setting forth foreclosure procedure], Borrower 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.

After the Onabajos defaulted on the loan and failed to cure the default, Household Finance, as purported successor and assignee, filed an application for judicial foreclosure in the district court in Travis County. On April 3, 2012, the property was sold to Household Finance at a foreclosure sale by a substitute trustee, and Household Finance received a substitute trustee's deed memorializing the conveyance.

Household Finance then sent written notice to the Onabajos informing them of the foreclosure sale and instructing them to vacate the property. After the Onabajos refused to vacate the property, Household Finance brought a forcible-detainer action in justice court. The justice court granted possession of the property to Household Finance, and the Onabajos appealed to the county court at law. *See* Tex. R. Civ. P. 506.3. The county court rendered a final judgment granting possession of the property to Household Finance, and the Onabajos appealed to this Court. *See Onabajo v. Household Fin. Corp. III*, No. 03-15-00251-CV, 2016 WL 3917140 (Tex. App.—Austin July 14, 2016, no pet.) (mem. op.) (*Onabajo I*). This Court held that the evidence was insufficient to support the trial court's award of possession in favor of Household Finance and reversed the trial court's judgment and rendered judgment in favor of the Onabajos. *See id.* at *5.

Household Finance later filed this forcible-detainer action in November 2016 in the justice court. After a trial, the justice court signed a judgment granting possession to Household Finance. Once again, the Onabajos appealed to the county court at law. The county court rendered

judgment granting possession of the property to Household Finance, and this appeal followed. As discussed in more detail below, Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A (Wilmington) filed a motion to substitute party during the pendency of this appeal. This Court granted the motion, and Wilmington is now defending the trial court's judgment in place of Household Finance.

DISCUSSION

Mootness

In their first appellate issue, the Onabajos contend that “this forcible detainer appeal is moot because Household Finance no longer owns the property for which it sought possession in the lower court.” At the time the Onabajos filed their opening brief, Household Finance was still the appellee in this appeal. However, after the Onabajos filed their brief, Wilmington filed its motion to substitute party. *See* Tex. R. App. P. 7.1(b) (“If substitution of a party in the appellate court is necessary for a reason other than death, the appellate court may order substitution on any party’s motion at any time.”). The motion explains, “On December 1, 2017, Household conveyed all its interest in the subject property to Wilmington, and the deed without warranties conveying that interest was recorded in the official public records of Travis County on December 29, 2017” The motion further explains that Household Finance executed an assignment of judgment in favor of Wilmington.

Because Wilmington now possesses Household Finance’s interest in the property and in the trial court’s judgment awarding possession, we granted Wilmington’s motion to substitute party. *See Croft v. AMS SA Mgmt., LLC*, No. 04-11-00304-CV, 2015 WL 5258756, at *1 (Tex.

App.—San Antonio Sept. 9, 2015, no pet.) (mem. op., per curiam) (granting motion to substitute party); *Harrington v. Finley Res., Inc.*, No. 01-07-00652-CV, 2008 WL 598436, at *1 (Tex. App.—Houston [1st Dist.] Mar. 6, 2008, no pet.) (mem. op., per curiam) (construing document as motion to substitute party and granting motion). Moreover, because Wilmington has stepped into Household Finance’s shoes, Wilmington is defending its interest in the trial court’s judgment and in possession of the property. Therefore, the case is not moot, because there is a genuine dispute between the parties. *Cf. Heckman v. Williamson Cty.*, 369 S.W.3d 137, 162 (Tex. 2012) (“Put simply, a case is moot when the court’s action on the merits cannot affect the parties’ rights or interests.”). Accordingly, we overrule the Onabajos’ first appellate issue.

Trial-Court Jurisdiction

In their second appellate issue, the Onabajos contend in the alternative that the justice and county courts lacked subject-matter jurisdiction over this forcible-detainer action. The Onabajos argue that “the justice court loses subject matter jurisdiction over a forcible detainer action when a homeowner challenges the constitutional validity of a home-equity lien through which a subsequent purchaser, who is also the lien holder, acquired ownership because the Texas Constitution mandates a demonstration of compliance with loan terms and conditions before superior right to possession can be shown.” *See* Tex. Const. art. XVI, § 50(a)(6), (c); *Wood v. HSBC Bank USA, N.A.*, 505 S.W.3d 542, 547 (Tex. 2016) (stating that “a lien securing a constitutionally noncompliant home-equity loan is not valid before the defect is cured”). According to the Onabajos, because of the protections that the Texas Constitution extends to homesteads, courts should not “presume the validity of the home-equity lien that a subsequent purchaser, who is also the lien

holder, produces at the eviction hearing.” Moreover, the Onabajos argue, because they have challenged Household Finance’s standing to initiate foreclosure proceedings in a separate district-court proceeding, the trial court in this forcible-detainer suit lacked jurisdiction to determine right to possession until the district court has decided the issue of ownership: “Indeed, when the validity of the lien is directly challenged, and proof of the challenge is provided to the eviction court, those facts should be sufficient to invoke ownership considerations that are outside the jurisdiction of landlord/tenant suits, but necessary to resolve the superior right to possession issue.”

This Court, however, has already ruled against the Onabajos on a very similar issue. In *Onabajo I*, the Onabajos argued that “the foreclosure was improper because the only entity entitled to enforce the Note and to foreclose on the property was an entity identified in the Note as the lender’s assignee, Provident Bank.” 2016 WL 3917140, at *2. They further argued that “the evidence introduced in the lower courts shows a failure to connect the dots’ from the lender to Household Finance and ‘deprives the lower court of jurisdiction because the documents inherently create a title dispute.’” *Id.* This Court noted that “[d]efeats in the foreclosure process cannot be used either to negate a landlord-tenant relationship provision in a deed of trust or to raise a question of title depriving the justice or county courts of jurisdiction to resolve the question of immediate possession.” *Id.* We then concluded that “[w]here, as here, foreclosure under a security instrument creates a landlord and tenant-at-sufferance relationship, there is an independent basis for the justice court and for the county court to determine the issue of immediate possession without resolving the issue of title to the property.” *Id.* Accordingly, we overruled the Onabajos’ jurisdictional issue.

In reaching this decision, we distinguished *Rushton*, a case on which the Onabajos relied. *See A Plus Invs., Inc. v. Rushton*, No. 2-03-174-CV, 2004 WL 868866 (Tex. App.—Fort Worth Apr. 22, 2004, no pet.) (mem. op.). As we explained,

The [district] court [in *Rushton*] signed an order of foreclosure, and the foreclosure was subsequently conducted by CitiFinancial, an entity who had not been identified in the order of foreclosure. The court of appeals concluded that this discrepancy between the entity holding the right to foreclose under the order of foreclosure and the entity that actually foreclosed on the property, without evidence in the record to support a link between the two, created a title issue that deprived the trial court of jurisdiction over the forcible-detainer action.

We conclude that *Rushton* is distinguishable from the case at hand because the evidence here shows that the application for order of foreclosure was sought by the foreclosing entity, Household Finance. Thus, the discrepancy that was the source of the title dispute in *Rushton* is not present in this case, and the Onabajos' reliance on *Rushton* is misplaced.

Onabajo I, 2016 WL 3917140, at *2 n.1.

Here, as in *Onabajo I*, the Onabajos are arguing that the trial court lacked jurisdiction because the issue of possession was inextricably intertwined with the issue of title. Further, as in their prior appeal, the Onabajos are essentially questioning whether the entity that foreclosed on the property had the authority to do so. In *Onabajo I*, the Onabajos alleged that Household Finance failed to “connect the dots” from the lender to itself; here, they allege that the home-equity lien was invalid because it fails to meet the requirements of the Texas Constitution. But, as we pointed out in *Onabajo I*, the “foreclosure under [the] security instrument create[d] a landlord and tenant-at-sufferance relationship,” and, therefore, there was “an independent basis for the justice court and for the county court to determine the issue of immediate possession without resolving the issue of title to the property.” *Id.* at *2.

What is more, the Onabajos did not raise their constitutional challenge to the lien's validity in the justice court or county court. Indeed, as they admit in their appellate brief, they did not even raise their constitutional challenge in the separate district-court proceeding until January 2018, after the county court at law rendered its judgment in this forcible-detainer suit in June 2017. The Onabajos are essentially arguing, therefore, that the constitutional challenge they raised to the lien's validity in the district court retroactively deprived the county court of jurisdiction to resolve the issue of possession.¹ The Onabajos cite no relevant authority in support of this legal theory.

When the property was sold to Household Finance at the foreclosure sale, Household Finance received a substitute trustee's deed memorializing the conveyance. We conclude that, on the basis of this trustee's deed, the justice court and county court at law had jurisdiction to determine that Household Finance demonstrated a superior right of possession and to render a forcible-detainer judgment against the Onabajos. Household Finance later transferred all its interest in the property and judgment to Wilmington, and Wilmington was properly substituted as a party to this appeal. Accordingly, we overrule the Onabajos' second appellate issue.

CONCLUSION

Having overruled both of the Onabajos' appellate issues, we affirm the county court at law's judgment.

¹ Therefore, even if the Onabajos are correct that "the invalidity of the home-equity lien" would deprive the justice and county courts of jurisdiction "because it voids the tenancy-at-suffrage language that forms the independent basis through which eviction courts can enter judgments," the Onabajos have still failed to show how challenging the validity of the home-equity lien after the trial court signed its judgment retroactively deprived the court of jurisdiction or rendered the judgment void. In other words, the Onabajos have failed to show that the issue of title was wholly intertwined with the issue of possession when the trial court rendered its judgment.

Scott K. Field, Justice

Before Chief Justice Rose, Justices Goodwin and Field

Affirmed

Filed: June 7, 2018