



**NUMBER 13-16-00384-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**LINDA LAMERE AND  
LLOYD LAMERE,**

**Appellants,**

**v.**

**DEUTSCHE BANK NATIONAL  
TRUST COMPANY, AS TRUSTEE  
FOR AMERIQUEST MORTGAGE  
SECURITIES, INC. ASSET BACKED  
PASS-THROUGH CERTIFICATES;  
SERIES 2004-FR1,**

**Appellee.**

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**On appeal from the County Court at Law No. 2  
of Williamson County, Texas.**

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**MEMORANDUM OPINION<sup>1</sup>**

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<sup>1</sup> This case is before the Court on transfer from the Third Court of Appeals pursuant to a docket-equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2017 1st C.S.).

**Before Chief Justice Valdez and Justices Contreras and Hinojosa  
Memorandum Opinion by Justice Hinojosa**

Linda and Lloyd Lamere (the Lameres) appeal the trial court's judgment in a forcible-detainer action granting Deutsche Bank National Trust Company as Trustee for Ameriquest Mortgage Securities Inc. Asset Backed Pass-Through Certificates Series 2004-FR1 (Deutsche Bank) a writ of possession for real property located in Round Rock, Texas (the property). In one issue, the Lameres argue that Deutsche Bank's suit was barred by the applicable two-year statute of limitations. See TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (West, Westlaw through 2017 1st C.S.) (providing a two-year limitations period for forcible-detainer actions). We affirm.

**I. BACKGROUND<sup>2</sup>**

Deutsche Bank purchased the subject property at a foreclosure sale on August 7, 2012. A representative for Deutsche Bank served the Lameres with a notice to vacate the property on November 21, 2015. See TEX. PROP. CODE ANN. § 24.005(b) (West, Westlaw through 2017 1st C.S.) (requiring notice to vacate premises prior to filing a forcible-detainer suit). The Lameres refused to vacate the property, and Deutsche Bank filed a forcible-detainer action on November 30, 2015 in the justice court. The justice court granted possession of the property to Deutsche Bank, and the Lameres appealed the judgment to the county court at law for a trial de novo. See TEX. R. CIV. P. 506.3. In

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<sup>2</sup> Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. See TEX. R. APP. P. 47.4.

their pleadings before the justice court and trial court, the Lameres asserted limitations as an affirmative defense.

The case proceeded to a bench trial, where the Lameres argued that the action was barred by the applicable two-year statute of limitations. The Lameres asserted that Deutsche Bank pursued an earlier forcible-detainer action in the justice court to a favorable judgment in October of 2012. However, the Lameres did not introduce any evidence pertaining to the earlier case or ask the trial court to judicially notice the prior judgment. In response, Deutsche Bank argued that a new forcible-detainer action accrues each time a tenant refuses to vacate after receiving proper notice. The trial court rendered judgment granting Deutsch Bank possession of the property. This appeal followed.

## II. LIMITATIONS

### A. Standard of Review and Applicable Law

Limitations is an affirmative defense, and a defendant asserting limitations must plead, prove, and secure findings on that issue. TEX. R. CIV. P. 94; *Woods v. William M. Mercer, Inc.*, 769 S.W.2d 515, 517 (Tex. 1988); *Chacon v. Andrews Distrib. Co.*, 295 S.W.3d 715, 721 (Tex. App.—Corpus Christi 2009, pet. denied). Texas Civil Practice and Remedies Code section 16.003(a) provides that a forcible-detainer action must be brought no later than two years after the date the cause of action accrues. TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a). “For the purposes of the application of limitation statutes, a cause of action can generally be said to accrue when the wrongful act effects an injury.” *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 351 (Tex. 1990). When a

cause of action accrues is a legal question we review de novo. *Trelltex, Inc. v. Intecx, L.L.C.*, 494 S.W.3d 781, 787 (Tex. App.—Houston [14th Dist.] 2016, no pet.).

A forcible-detainer action is a special proceeding designed to be a speedy, simple, and inexpensive means to obtain immediate possession of the property. *Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 919 (Tex. 2013). “[A] tenant commits a forcible detainer by refusing to surrender possession of real property after the landlord has lawfully terminated the tenant’s right to possession.” *Kennedy v. Andover Place Apartments*, 203 S.W.3d 495, 497 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (citing TEX. PROP. CODE ANN. § 24.002(a) (West, Westlaw through 2017 1st C.S.)). Prior to bringing a forcible-detainer action, the landlord must make a written demand for possession and notice to vacate. *Id.* (citing TEX. PROP. CODE ANN. § 24.002(b)). The judgment in a forcible-detainer action is a final determination only of the right to immediate possession. *Coinmach Corp.*, 417 S.W.3d at 919.

## **B. Analysis**

The Lameres argue that the forcible-detainer action “accrued in 2012 when the initial notice to vacate was issued[.]” The Lameres set out in their statement of facts that Deutsche Bank initially filed suit in October of 2012 and was granted “a judgment for eviction” on November 5, 2012. However, the Lameres provide no citation to the appellate record for this proposition. See TEX. R. APP. P. 38.1(g), (i). Further, having conducted our own independent review of the record, we find no evidence of the earlier suit. Therefore, we cannot rely on the Lamere’s bare assertion that there was a 2012 notice to vacate and corresponding judgment. See *In re M.S.*, 115 S.W.3d 534, 546

(Tex. 2003) (noting that an appellate court “may only consider the record presented to it”). Finally, the trial court did not take judicial notice of any 2012 proceedings; but even if it did, to the extent that another court’s judgment is the proper subject of judicial notice, a party must still provide sufficient proof to those records. See *Freedom Commc’ns, Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012). The Lameres have failed to do so.

Even if we were to accept the Lameres’ unsupported factual assertions, we would not conclude that Deutsche Bank’s 2015 forcible-detainer action is barred by limitations. The Lameres do not dispute that Deutsche Bank filed the present action within two years of serving the latest notice to vacate. Nevertheless, they argue that we must look to the first notice to vacate served in 2012 as the date of accrual for the current forcible-detainer action. Deutsche Bank responds that a new and independent forcible-detainer action arose in November of 2015 when the Lameres refused to surrender possession of the property after they were served with a notice to vacate. We agree with Deutsche Bank.

“[A] judgment awarding possession on a particular date does not implicate a party’s possessory right when, at a later date, another forcible detainer is committed.” *Fed. Home Loan Mortg. Corp. v. Pham*, 449 S.W.3d 230, 235 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Therefore, “a new and independent cause of action for forcible detainer arises each time a person refuses to surrender possession of real property after a person entitled to possession of the property delivers a proper written notice to vacate.” *Id.* at 235–36. For purposes of calculating the applicable limitations period, the action accrues “each time a person refuses to surrender possession of real property after [the delivery

of a] proper notification to vacate.”<sup>3</sup> *Montenegro v. Wells Fargo Bank N.A.*, No. 03–13–00123–CV, 2015 WL 3543055, at \*4 (Tex. App.—Austin June 3, 2015, pet. dismiss’d) (mem. op.) (emphasis in original). We conclude that a new forcible-detainer action accrued when the Lameres refused to comply with Deutsche Bank’s November 2015 notice to vacate. See *Trelltex, Inc.*, 494 S.W.3d at 787; *Montenegro*, 2015 WL 3543055, at \*4. Therefore, Deutsche Bank’s suit, which was filed later that month, was timely filed and is not barred by the two-year statute of limitations.

We overrule appellant’s sole issue.

### III. CONCLUSION

We affirm the trial court’s judgment.

LETICIA HINOJOSA  
Justice

Delivered and filed the  
21st day of November, 2017.

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<sup>3</sup> The Third Court of Appeals has consistently held that a forcible-detainer action accrues each time a person refuses to surrender possession of property after receiving a notice to vacate. See *Standiford v. CitiMortgage, Inc.*, No. 03-15-00625-CV, 2016 WL 4177237, at \*2 (Tex. App.—Austin Aug. 4, 2016, pet. dismiss’d) (mem. op.); *Custer v. Wells Fargo Bank, N.A.*, No. 03-15-00362-CV, 2016 WL 1084165, at \*3 (Tex. App.—Austin Mar. 18, 2016, pet. dismiss’d) (mem. op.); *Montenegro v. Wells Fargo Bank, N.A.*, No. 03–13–00123–CV, 2015 WL 3543055, at \*4 (Tex. App.—Austin June 3, 2015, pet. dismiss’d) (mem. op.); *Massaad v. Wells Fargo Bank, Nat’l Ass’n*, No. 03–14–00202–CV, 2015 WL 410514, at \*1 (Tex. App.—Austin Jan. 30, 2015, no pet.) (mem. op.). This Court has not squarely addressed this issue. However, because this case was transferred from the Third Court of Appeals, we are required to apply its precedent to the extent it differs from our own. See TEX. R. APP. P. 41.3.