



NUMBER 13-19-00190-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**WILMINGTON TRUST NA, SUCCESSOR
TRUSTEE TO CITIBANK, N.A., AS TRUSTEE
F/B/O HOLDERS OF STRUCTURED ASSET
MORTGAGE INVESTMENTS II INC., BEAR
STEARNS ALT-A TRUST 2007-3, MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2007-3,**

Appellants,

v.

**CARLOS ENRIQUE AMARO AND
ODELIA M. DE AMARO AND ALL
OTHER OCCUPANTS OF 5 MESQUITE
BRANCH, BROWNSVILLE, TEXAS 78520-8444,**

Appellees.

**On appeal from the County Court at Law No. 1
of Cameron County, Texas.**

MEMORANDUM OPINION

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

By one issue, appellant Wilmington Trust NA, Successor Trustee to Citibank, N.A., as Trustee f/b/o Holders of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust 2007-3, Mortgage Pass-Through Certificates, Series 2007-3 (Wilmington Trust) argues that the trial court erred when it signed a judgment denying its request for writ of possession and commenting on the quality of its title. We reverse and remand.

I. BACKGROUND

On April 14, 2007, appellees Carlos Enrique Amaro and Odelia M. De Amaro signed a Texas Home Equity Security Instrument to finance the purchase of their home. The property was defined as “Lot One (1), Block Two (2), Mesquite Grove No. II Subdivision, City of Brownsville, Cameron County, according to map of said subdivision recorded in Cabinet 1, pages 1241-B, map records of Cameron County, Texas.”

The original lender named in the Deed of Trust was Bear Stearns Residential Mortgage Corporation. Covenant 22 of the Amaros’ Texas Home Equity Security Instrument provided that, in the event of foreclosure, any person holding possession of the property “shall immediately surrender possession of the property” to the new purchaser of the property. If possession was not surrendered, the borrower would become a tenant at sufferance and could “be removed by writ of possession or other court proceeding.”

The Amaros initiated certain legal proceedings in a Cameron County district court regarding their residential property.¹ The case was removed to the United States District

¹ The details of this legal proceeding are not in our appellate record, accordingly, we do not know the relief the Amaros were seeking.

Court for the Southern District of Texas, Brownsville Division. In federal court, Wilmington Trust filed a counterclaim for foreclosure of the property. Ultimately, the federal district court ruled in favor of Wilmington Trust. On March 31, 2016, the federal judge signed a Final Judgment denying all of the Amaros' claims and permitting Wilmington Trust to foreclose upon the property. The judgment provided that Wilmington Trust was "authorized to conduct a non-judicial foreclosure sale of the subject property pursuant to the terms and conditions of the security instrument in the instant case and in accordance with Tex. Property Code 51.002 and Tex. Const. art. XVI 50(a)(6)"

Wilmington Trust foreclosed on the property on November 7, 2017. The appointed substitute trustee conveyed the Amaros' property to Wilmington Trust. The Substitute Trustee's Deed set forth that proper notices indicating the time, place, and terms of the sale were mailed to the Amaros via certified mail at least twenty-one days prior to the sale, posted at the Cameron County Courthouse, and filed with the county, as required under the Texas Property Code.

Counsel for Wilmington Trust sent a Notice of Eviction to the Amaros on November 17, 2017. When the Amaros failed to vacate the home, Wilmington Trust initiated forcible detainer proceedings in Cameron County Justice Court on September 25, 2018. The justice court awarded a writ of possession to Wilmington Trust on October 25, 2018. The Amaros appealed to Cameron County Court at Law Number 1. When the Amaros failed to appear, the county court denied the appeal on November 15, 2018. The Amaros then filed a Motion for New Trial on the grounds that their counsel was unaware of the trial date due to "oversight, accident or mistake," which was granted on December 11, 2018.

At their second trial, the Amaros argued that, while the federal court ordered a non-judicial foreclosure, Wilmington Trust performed a judicial foreclosure. They asserted that Wilmington Trust violated the federal court's order by failing to follow foreclosure procedures under Texas Rule of Civil Procedure 736. The Amaros contended, "we've got an absolute issue with regard to ownership; and therefore, this court doesn't have jurisdiction because this court being a court reviewing de novo the JP order, doesn't have jurisdiction with regard to the underlying issue of ownership."

Wilmington Trust, on the other hand, pointed out that if the Amaros disputed ownership, it was their responsibility to file suit for a wrongful foreclosure. It argued that the federal court had ruled on the issue of ownership in 2016, and here, at trial two years later, the Amaros had done nothing in this regard. Furthermore, they argued that their foreclosure was authorized by the federal judgment:

He's already filed a district court case. The district court case was removed to federal court. That judge allowed for a foreclosure. It's a Judgment signed by a federal judge that says a foreclosure can take place. Texas Rules of Civil Procedure say[] that even if it's supposed to be a home equity application for expedited foreclosure, that a judicial foreclosure can take the place of that, and that's what this did. It was a judgment signed by the judge saying a foreclosure can go forward.

.....

Your Honor, again, I'd like to refer you to Texas Rules of Civil Procedure 735.3. It says any loan agreement or contract that may be foreclosed due to 736—which is the application for expedited foreclosure for home equity loans—may also be foreclosed by a judgment in an action for judicial foreclosure. That's exactly what happened in federal court, Your Honor.

The trial court denied the writ of possession. Notably, in its Final Judgment, the trial court concluded, "The court is concerned that the foreclosing lender did not have the

proper court order allowing foreclosure.” Wilmington Trust appeals.²

II. STANDARD OF REVIEW & APPLICABLE LAW

“The forcible detainer action is the procedure by which the right to immediate possession of real property is determined.” *Ward v. Malone*, 115 S.W.3d 267, 270 (Tex. App.—Corpus Christi—Edinburg 2003, pet. denied) (citing *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.)). The forcible detainer process was created “to provide a speedy, simple and inexpensive means for resolving the question of the right to possession of real property.” *Id.* To preserve the simplicity and speedy nature of the remedy, Texas Rule of Civil Procedure 510.3(e) provides that the only issue before the court is possession, not title. See TEX. R. CIV. P. 510.3(e) (setting forth that “the court must adjudicate the right to actual possession and not title”); *Rice*, 51 S.W.3d at 705. “Thus, the sole issue in a forcible detainer action is who has the right to immediate possession of the premises.” *Ward*, 115 S.W.3d at 270.

“To prevail in a forcible detainer action, a plaintiff is not required to prove title, but must show sufficient evidence of ownership to demonstrate a superior right to immediate possession.” *Rice*, 51 S.W.3d at 709. “However, where the right to immediate possession necessarily requires resolution of a title dispute, the justice court has no jurisdiction to enter a judgment and may be enjoined from doing so.” *Id.* Because a forcible detainer action is not an exclusive, but rather a cumulative, remedy, a displaced party may bring a separate suit in the district court to determine the question of title. See *Home Savings Ass’n v. Ramirez*, 600 S.W.2d 911, 913 (Tex. App.—Corpus Christi—Edinburg 1980, writ

² We note for the record that the Amaros did not file a responsive brief in this case.

ref'd n.r.e.); *Martinez v. Beasley*, 572 S.W.2d 83, 85 (Tex. App.—Corpus Christi—Edinburg 1978, no writ). Forcible detainer actions in justice courts may be brought and prosecuted concurrently with suits to try title in district court. See *Ramirez*, 600 S.W.2d at 912–13.

“A forcible detainer suit may be appealed to the county court for a de novo review.” *Black v. Wash. Mut. Bank*, 318 S.W.3d 414, 416–17 (Tex. App.—Houston [1st Dist.] 2010, pet. dismiss’d w.o.j.). “The appellate jurisdiction of the county court is confined to the jurisdictional limits of the justice court.” *Id.* at 417. “Accordingly, when a county court conducts a de novo review of a forcible detainer action, the court is restricted to the jurisdictional limits that existed in the justice court, regardless of other statutory grants of jurisdiction to the county court.” *Id.*

III. ANALYSIS

At trial, Wilmington Trust presented evidence to show its right to possession of the property at issue, including the signed March 31, 2016 federal judgment and the November 7, 2017 Substitute Trustee’s Deed. It showed how it complied with the Texas Rules of Civil Procedure and the Texas Property Code to secure title. The Amaros challenged the validity of Wilmington Trust’s title.

We find this case similar to a previous case decided by this court, *Home Savings Association v. Ramirez*. See *Ramirez*, 600 S.W.2d at 911–12. In *Ramirez*, Crespin and Mary Flores Ramirez contracted with Major United Steel Siding Corporation to install siding on their home, signing a property improvement loan agreement that provided, “in the event of default, foreclosure and a trustee’s sale would occur.” *Id.* at 912. Specifically,

the agreement set forth:

If the Owners or those holding under them shall remain in possession of said property after sale, however, made, such Owners or those holding under them shall become the tenants at sufferance of the purchaser, and should such tenants refuse to surrender possession of said property upon demand, the purchaser shall thereupon be entitled to institute and maintain the statutory action for forcible entry and detainer, and procure a writ of possession thereunder.

Id. The contractors later assigned the note to Home Savings, who moved for foreclosure when the Ramirezes ceased paying the note. Upon receiving title in a substitute trustee's sale, Home Savings then brought a forcible entry and detainer suit against the Ramirezes in justice court. *Id.*

In our opinion, we noted that "the forcible entry and detainer action provides a party with an immediate legal remedy to obtain possession." *Id.* "But, this cause of action does not prohibit the filing of related suits to determine the validity of the trustee's deed itself." *Id.* "The party who is removed from the property may challenge the trustee's deed in a suit in the district court." *Id.*

Here, we similarly conclude that Wilmington Trust conclusively established a superior right to immediate possession as a matter of law. *See Rice*, 51 S.W.3d at 709; *see also Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2011) ("When a party with the burden of proof challenges the legal sufficiency of an adverse finding, we must determine whether the complaining party has demonstrated on appeal that the evidence conclusively established, as a matter of law, all vital facts in support of the issue."). In denying relief because it was "concerned that the foreclosing lender did not have the proper court order allowing foreclosure," the trial court made an improper decision

regarding title. If the Amaros wish to contest the propriety of Wilmington Trust's title, then they have the right to bring a concurrent, separate suit in the district court to determine the question of title. See *Ramirez*, 600 S.W.2d at 913. With regard to immediate possession of the property, however, we hold that Wilmington Trust conclusively established its case.

We sustain Wilmington Trust's sole issue.

IV. CONCLUSION

We reverse the judgment of the trial court and remand with instructions to render judgment in favor of Wilmington Trust on its forcible detainer action and for further proceedings consistent with this opinion.

LETICIA HINOJOSA
Justice

Delivered and filed the
28th day of May, 2020.