

COURT OF APPEALS OF TEXAS, ELEVENTH DISTRICT

James Ruth v. Collazo Holdings, LLC

Ruth v. Collazo · No. 11-19-00182-CV · Decided April 30, 2021

SUMMARY

The Eleventh Court of Appeals of Texas affirmed summary judgment for Collazo Holdings, LLC in a dispute involving an alleged right of redemption after a tax foreclosure sale and an alleged contract to repurchase the property. The court held that James Ruth did not establish ownership of the property sold at the tax sale, and the parties lacked a meeting of the minds because their communications concerned different tracts of land. The court also concluded that Ruth failed to show that the alleged agreement satisfied or escaped the statute of frauds.

CASE DETAILS

COURT	Court of Appeals of Texas, Eleventh District
WRITING FOR THE COURT	W. Bruce Williams; Bailey, C.J.; Trotter, J.; W. Bruce Williams, J.
JURISDICTION	Texas
DECIDED	April 30, 2021
DOCKET	11-19-00182-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the grant of Collazo Holdings, LLC's combined traditional and no-evidence motion for summary judgment in a contract and property-redemption dispute.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. When an order does not specify its grounds, the judgment is affirmed if any asserted theory is meritorious. For combined traditional and no-evidence motions, the court reviews the no-evidence grounds first. A no-evidence motion is reviewed under the legal-sufficiency standard, requiring the nonmovant to produce more than a scintilla of evidence supporting each challenged element. Traditional summary judgment requires the movant to conclusively negate an essential element or establish each element of an affirmative defense.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status not expressly stated in the opinion text.
PARTIES	James Ruth v. Collazo Holdings, LLC

TOPICS

statute of frauds

mutual assent

contract formation

summary judgment

appellate procedure

PRACTICE AREAS

Contract law

Real property

Tax foreclosure

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in granting summary judgment against Ruth's breach-of-contract claim.
2. Whether Collazo could obtain no-evidence summary judgment based on the statute of frauds, an affirmative defense on which Collazo bore the initial burden.
3. Whether the parties formed an enforceable contract through their written correspondence concerning redemption of the property.
4. Whether Ruth established ownership of Block Two sufficient to support a right of redemption.

HOLDINGS

1. A party may not obtain no-evidence summary judgment on an affirmative defense for which it bears the burden of proof. Because Collazo asserted the statute of frauds as an affirmative defense, the court construed that portion of the motion as a traditional summary-judgment motion and evaluated whether Collazo established the statute's applicability.
2. No enforceable contract was formed because the parties lacked mutual assent and were discussing different tracts of land.
3. Ruth did not establish ownership of Block Two and therefore did not establish a right of redemption in the property sold at the tax foreclosure sale.

KEY QUOTATIONS

“a party may never properly move for no-evidence summary judgment to prevail on its own claim or an affirmative defense for which it bears the burden of proof.” (at 5)

“there must be a written memorandum which is complete within itself in every material detail, and which contains all of the essential elements of the agreement, so that the contract can be ascertained from the writings without resorting to oral testimony.” (at 6)

“There was no objectively apparent “meeting of the minds” reflected in the documents when it came to this alleged contract.” (at 11)

FACTUAL BACKGROUND

MRC Assisted Living, Inc. acquired property in Brown County and later subdivided it into Block One and Block Two of the Greenbriar Addition. Ruth obtained a 2010 special warranty deed describing Block One, while the property sold at the 2016 ad valorem tax foreclosure concerned Block Two, which remained titled of record in MRC. After Collazo purchased Block Two at the tax sale, Ruth claimed a right of redemption and asserted that

correspondence formed a contract allowing him to reclaim the property for \$8,413. Ruth provided a deed that did not describe Block Two and sent a lesser amount, which Collazo rejected.

PROCEDURAL HISTORY

James Ruth sued seeking a declaration that he had a right to redeem property sold at a tax foreclosure sale, alleging inadequate notice and breach of a constructive contract. Collazo moved for traditional and no-evidence summary judgment. The trial court granted the motion, and Ruth appealed, asserting that summary judgment was improper because the statute of frauds was an affirmative defense. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- *Beaumont v. Prieto*, 249 U.S. 554, 556 (1919)
- *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 219 (Tex. 2017)
- *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 216 (Tex. 2003)
- *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013)
- *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003)
- *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983)
- *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005)
- *Burges v. Mosley*, 304 S.W.3d 623, 628 (Tex. App.—Tyler 2010, no pet.)
- *Reyes v. Saenz*, 269 S.W.3d 675, 676-77 (Tex. App.—San Antonio 2008, no pet.)
- *Nassar v. Liberty Mut. Fire Ins. Co.*, 508 S.W.3d 254, 257 (Tex. 2017)
- *Sci. Spectrum Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997)
- *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678-79 (Tex. 1979)
- *Bridgestone Lakes Cmty. Improvement Ass'n v. Bridgestone Lakes Dev. Co.*, 489 S.W.3d 118, 127 (Tex. App.—Houston [14th Dist.] 2016, pet. denied)
- *Nowak v. DAS Inv. Corp.*, 110 S.W.3d 677, 679 (Tex. App.—Houston [14th Dist.] 2003, no pet.)
- *Cox v. Air Liquide America, LP*, 498 S.W.3d 686, 689 (Tex. App.—Houston [14th Dist.] 2016, no pet.)
- *Copano Energy, LLC v. Bujnoch*, 593 S.W.3d 721, 727 (Tex. 2020)
- *Cohen v. McCutchin*, 565 S.W.2d 230, 232 (Tex. 1978)
- *City of Houston v. Williams*, 353 S.W.3d 128, 137 (Tex. 2011)
- *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840 (Tex. 2000)
- *Reiland v. Patrick Thomas Props., Inc.*, 213 S.W.3d 431, 437 (Tex. App.—Houston [1st Dist.] 2006, pet. denied)
- *Morrow v. Shotwell*, 477 S.W.2d 538, 540 (Tex. 1972)
- *Schlumberger Tech. Corp. v. Pasko*, 544 S.W.3d 830, 835 (Tex. 2018)

- Wilson v. Burford, 904 S.W.2d 628, 629 (Tex. 1995)
- Khan v. GBAK Props., Inc., 371 S.W.3d 347, 356-57 (Tex. App.—Houston [1st Dist.] 2012, no pet.)
- Judwin Props., Inc. v. Griggs & Harrison, P.C., 911 S.W.2d 498, 504 (Tex. App.—Houston [1st Dist.] 1995, no writ)
- David Gavin Co. v. Gibson, 780 S.W.2d 833, 835 (Tex. App.—Houston [14th Dist.] 1989, writ denied)
- Goldman v. Olmstead, 414 S.W.3d 346, 354 (Tex. App.—Dallas 2013, pet. denied)
- Komet v. Graves, 40 S.W.3d 596, 600 (Tex. App.—San Antonio 2001, no pet.)
- Crisp Analytical Lab, L.L.C. v. Jakalam Props., Inc., 422 S.W.3d 85, 89 (Tex. App.—Dallas 2014, pet. denied)
- Bandera Cty. v. Hollingsworth, 419 S.W.3d 639, 645 (Tex. App.—San Antonio 2013, no pet.)
- Parker Drilling Co. v. Romfor Supply Co., 316 S.W.3d 68, 72 (Tex. App.—Houston [14th Dist.] 2010, pet. denied)
- Argonaut Ins. Co. v. Allstate Ins. Co., 869 S.W.2d 537, 540 (Tex. App.—Corpus Christi–Edinburg 1993, writ denied)
- Adams v. Petrade Int'l, Inc., 754 S.W.2d 696, 717 (Tex. App.—Houston [1st Dist.] 1988, writ denied)
- Wiley v. Bertelsen, 770 S.W.2d 878, 882 (Tex. App.—Texarkana 1989, no writ)
- Piranha Partners v. Neuhoff, 596 S.W.3d 740, 743 (Tex. 2020)