

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON

Marcy Lerch v. Wilmington Trust NA Successor Trustee for the Merrill Lynch Mortgage Investor Trust Series 2006-HE5

Lerch v. Wilmington Trust · No. 01-15-00505-CV · Decided June 12, 2015

SUMMARY

The First District Court of Appeals of Texas denied Marcy Lerch’s application for a temporary restraining order, temporary injunction, and permanent injunction seeking to stay execution of a writ of possession pending appeal. The court held that the record did not show that Lerch had filed the supersedeas bond required to stay a county-court eviction judgment under Texas Property Code section 24.007(a).

CASE DETAILS

COURT	Court of Appeals for the First District of Texas at Houston
WRITING FOR THE COURT	Laura C. Higley
JURISDICTION	Texas
DECIDED	June 12, 2015
DOCKET	01-15-00505-CV
DISPOSITION	denied
PROCEDURAL POSTURE	Marcy Lerch appealed a final judgment in an eviction proceeding and sought a temporary restraining order, temporary injunction, and permanent injunction staying execution of a writ of possession pending appeal.
PRECEDENTIAL VALUE	published
PARTIES	Marcy Lerch v. Wilmington Trust NA, Successor Trustee for the Merrill Lynch Mortgage Investor Trust Series 2006-HE5

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the court of appeals could issue injunctive relief solely to preserve the status quo or protect Lerch from damage pending appeal.
2. Whether the court could stay a county-court eviction judgment pending appeal absent proof that Lerch timely filed the required supersedeas bond.

HOLDINGS

1. The court of appeals may issue writs only as necessary to enforce and protect its jurisdiction and may not issue an injunction solely on equitable grounds to preserve the status quo or protect a party from damage pending appeal.
2. A county-court eviction judgment may not be stayed pending appeal unless, within ten days after the judgment is signed, the appellant files a supersedeas bond in an amount set by the county court.

KEY QUOTATIONS

“We have jurisdiction to issue writs only as necessary to enforce and protect our jurisdiction.” (2)

“We may not, however, issue an injunction on wholly equitable grounds or to preserve the status quo or to protect a party from damage pending appeal.” (2)

“Accordingly, we deny appellant’s application for a temporary restraining order, temporary injunction and permanent injunction, requesting a stay of execution of the writ of possession.” (2)

FACTUAL BACKGROUND

The trial court entered a final judgment in an eviction suit and issued a writ of possession. Lerch appealed and sought to stay execution of the writ through temporary and permanent injunctive relief. The appellate record did not show the amount of the supersedeas bond set by the trial court or that Lerch posted the bond within ten days of the April 21, 2015 judgment.

PROCEDURAL HISTORY

The County Court at Law No. 1 of Fort Bend County signed a final judgment on April 21, 2015, and denied Lerch's motion to stay enforcement of the writ of possession and for reconsideration on May 21, 2015. Lerch filed a notice of appeal on June 2, 2015, followed by an application for injunctive relief on June 8, 2015. The court of appeals denied the application because the record did not show that Lerch filed the required supersedeas bond within ten days after judgment.

DISPOSITION

denied

CASES CITED

- Parsons v. Galveston County Emp. Credit Union, 576 S.W.2d 99, 99 (Tex. Civ. App.—Houston [1st Dist.] 1978, no writ)
- Phillips v. Branch Banking & Trust Co., No. 03-11-00461-CV, 2012 WL 424875, at *1 (Tex. App.—Austin Feb. 1, 2012, order)

OPINION

PER CURIAM.

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON ORDER
 Appellate case name: Marcy Lerch v. Wilmington Trust NA Successor Trustee for the Merrill Lynch Mortgage Investor Trust Series 2006-HE5 Appellate case number: 01-15-00505-CV Trial court case number: 15-CCV-054652 Trial court: County Court at Law No. 1 of Fort Bend County
 On June 2, 2015, appellant, Marcy Lerch, filed a notice of appeal in the trial court from the final judgment, signed on April 21, 2015, and the order denying her motion to stay enforcement of the writ of possession and reconsideration of the April 21st order, signed on May 21, 2015.

On June 8, 2015, appellant filed an application for temporary restraining order, temporary injunction and permanent injunction, requesting a stay of the execution of the writ of possession to preserve the status quo, among other reasons, pending resolution of her appeal.

We have jurisdiction to issue writs only as necessary to enforce and protect our jurisdiction. See TEX. GOV'T CODE ANN. § 22.221(a) (West Supp. 2014). We may not, however, issue an injunction on wholly equitable grounds or to preserve the status quo or to protect a party from damage pending appeal. See Parsons v. Galveston County Emp. Credit Union, 576 S.W.2d 99, 99 (Tex.

Civ. App.—Houston [1st Dist.] 1978, no writ). Further, we may not stay the judgment of a county court in an eviction suit pending appeal unless, within ten days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. See TEX. PROP. CODE ANN. § 24.007(a) (West Supp. 2014); Phillips v. Branch Banking & Trust Co., No. 03-11-00461-CV, 2012 WL 424875, at *1 (Tex.

App.—Austin, Feb. 1, 2012, order). Based only on the documents filed in this Court, with the appellant's notice of appeal and motion, there is no indication what the supersedeas bond amount was as set by the trial court or that appellant posted that bond amount within ten days of the signing of the April 21, 2015 final judgment.

Accordingly, we deny appellant's application for a temporary restraining order, temporary injunction and permanent injunction, requesting a stay of execution of the writ of possession. It is so ORDERED. Judge's signature: /s/ Laura C. Higley Acting individually Date: June 11, 2015 2

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