COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS CHRISTI–EDINBURG

Ada Elizondo v. U.S. Bank, N.A.

No. 13-20-00159-CV · No. No. 13-20-00159-CV · Decided October 28, 2021

SUMMARY

The Thirteenth Court of Appeals of Texas reviewed a summary judgment favoring U.S. Bank in Ada Elizondo's claims arising from attempted foreclosure of her home. The court addressed wrongful foreclosure, breach of contract, unfair debt collection under the Texas Finance Code, DTPA violations, and promissory estoppel. The opinion affirms the trial court's judgment, concluding that Elizondo failed to raise a genuine issue of material fact on the challenged claims.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
WRITING FOR THE COURT	Clarissa Silva; Chief Justice Contreras; Justice Benavides; Justice Silva
JURISDICTION	Texas
DECIDED	October 28, 2021
DOCKET	No. 13-20-00159-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the County Court at Law No. 6 of Hidalgo County, Texas, after the trial court granted U.S. Bank's traditional and no-evidence motions for summary judgment on Elizondo's claims for wrongful foreclosure, breach of contract, unfair debt collection, DTPA violations, and promissory estoppel.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The court takes as true all evidence favorable to the nonmovant, indulges every reasonable inference in the nonmovant's favor, and resolves doubts in the nonmovant's favor. When both traditional and no-evidence motions are filed, the no-evidence motion is considered first; if the nonmovant fails to meet that burden, the traditional motion need not be addressed. If the summary-judgment order does not specify its grounds, the judgment must be affirmed if any preserved ground is meritorious.

PRECEDENTIAL VALUE	Published memorandum opinion of the Texas Court of Appeals; precedential status is not otherwise specified in the opinion text.
PARTIES	Ada Elizondo v. U.S. Bank, N.A.

TOPICS

summary judgment · appellate procedure · wrongful foreclosure · breach of contract · consumer protection

PRACTICE AREAS

civil procedure · appellate procedure · mortgage foreclosure · contracts · consumer protection · remedies

QUESTIONS PRESENTED

1. Whether the trial court properly granted no-evidence summary judgment on Elizondo's wrongful-foreclosure claim when no foreclosure sale had occurred.
2. Whether Elizondo produced evidence of a breach of the note or deed of trust's notice requirements or resulting damages.
3. Whether Elizondo produced evidence that U.S. Bank violated Texas Finance Code section 392.304(a)(8) by misrepresenting the character, extent, amount, or status of her consumer debt in a judicial or governmental proceeding.
4. Whether Elizondo had standing as a consumer to bring her stand-alone DTPA claim under section 17.46(b)(12).
5. Whether promissory estoppel was available where the alleged promise concerned payment application governed by an express written contract.

HOLDINGS

1. A wrongful-foreclosure claim requires evidence of an actual foreclosure sale; Texas law does not recognize a cause of action for attempted wrongful foreclosure. Because no foreclosure occurred, Elizondo failed to produce evidence of an essential element and summary judgment was proper.
2. Summary judgment was proper on Elizondo's breach-of-contract claim because she produced no evidence that U.S. Bank breached the note or deed of trust's notice requirements, the breach alleged in her pleadings.
3. Elizondo failed to produce evidence of a violation of Texas Finance Code section 392.304(a)(8). The statute's prohibition on misrepresenting a consumer debt's status applies to a misrepresentation of that status in a judicial or governmental proceeding, and the alleged telephone conversation was not shown to have occurred in such a proceeding.
4. A plaintiff asserting a stand-alone DTPA claim under section 17.46(b)(12) must establish consumer status. Elizondo conceded that she was not a consumer, so she lacked evidence of an essential element and summary judgment was proper.

5. Promissory estoppel is unavailable when an express contract governs the subject matter of the alleged promise. Because the note and deed of trust expressly governed application of payments, Elizondo's promissory-estoppel claim was barred as a matter of law.

KEY QUOTATIONS

> *"A wrongful foreclosure action does not encompass a claim for attempted wrongful foreclosure."* (6)

> *"The statute prohibits a misrepresentation of "the consumer debt's status in a judicial or governmental proceeding.""* (11)

> *"Promissory estoppel is an equitable remedy that is unavailable when an express contract covers the dispute's subject matter."* (16)

FACTUAL BACKGROUND

Ada Elizondo obtained a $159,920 mortgage loan secured by a note and deed of trust on her home, and U.S. Bank later became the owner of the loan while Nationstar serviced it. After Elizondo fell behind on payments, Nationstar sent a notice of default, Elizondo made an unspecified $4,500 payment, and Shapiro sent an acceleration and foreclosure-sale notice. Elizondo sued before any foreclosure sale occurred, alleging that the payment had been misapplied and that the lender violated the loan documents, the Texas Debt Collection Act, the DTPA, and promissory-estoppel principles.

PROCEDURAL HISTORY

Elizondo sued U.S. Bank and Shapiro Schwartz, LLP to prevent foreclosure and asserted wrongful foreclosure, breach of contract, unfair debt collection, waiver, estoppel, and DTPA claims. The trial court granted U.S. Bank's traditional and no-evidence summary-judgment motions, did not rule on U.S. Bank's motion to strike Elizondo's affidavit, and denied Elizondo's motion for new trial by operation of law. Elizondo appealed, and the court consolidated her seven issues into one and affirmed.

DISPOSITION

affirmed

CASES CITED

- Fair Oaks Hous. Partners, LP v. Hernandez, 616 S.W.3d 602, 605 (Tex. App.—Houston [14th Dist.] 2020, no pet.)
- Youngstown Sheet & Tube Co. v. Penn, 363 S.W.2d 230, 232 (Tex. 1962)
- Dockum v. Wal-Mart Stores Tex., LLC, No. 13-10-00328-CV, 2012 WL 256124, at *2 (Tex. App.—Corpus Christi–Edinburg Jan. 26, 2012, no pet.) (mem. op.)
- Eagle Oil & Gas Co. v. TRO-X, L.P., 619 S.W.3d 699, 705 (Tex. 2021)
- Bush v. Lone Oak Club, LLC, 601 S.W.3d 639, 646 (Tex. 2020)
- First United Pentecostal Church of Beaumont v. Parker, 514 S.W.3d 214, 219-220 (Tex. 2017)

- Painter v. Amerimex Drilling I, Ltd., 561 S.W.3d 125, 130 (Tex. 2018)
- Lujan v. Navistar, Inc., 555 S.W.3d 79, 84 (Tex. 2018)
- Centeq Realty, Inc. v. Siegler, 899 S.W.2d 195, 197 (Tex. 1995)
- Community Health Sys. Prof'l Servs. Corp. v. Hansen, 525 S.W.3d 671, 681 (Tex. 2017)
- City of Keller v. Wilson, 168 S.W.3d 802, 816 (Tex. 2005)
- Provident Life & Accident Ins. v. Knott, 128 S.W.3d 211, 216 (Tex. 2003)
- Southwestern Bell Tel., L.P. v. Emmett, 459 S.W.3d 578, 587 (Tex. 2015)
- Houle v. Casillas, 594 S.W.3d 524, 540 (Tex. App.—El Paso 2019, no pet.)
- Sauceda v. GMAC Mortg. Corp., 268 S.W.3d 135, 139 (Tex. App.—Corpus Christi–Edinburg 2008, no pet.)
- Pineda REO, LLC v. Lomix Ltd. P'ship, No. 13-17-00277-CV, 2019 WL 5799990, at *5 (Tex. App.—Corpus Christi–Edinburg Nov. 7, 2019, pet. denied) (mem. op.)
- American Sav. & Loan Ass'n of Hous. v. Musick, 531 S.W.2d 581, 587 (Tex. 1975)
- EverBank, N.A. v. Seedergy Ventures, Inc., 499 S.W.3d 534, 544 (Tex. App.—Houston [14th Dist.] 2016, no pet.)
- In re PlainsCapital Bank, No. 13-16-00592-CV, 2017 WL 1131092, at *5-*6 (Tex. App.—Corpus Christi–Edinburg Mar. 27, 2017, no pet.) (mem. op.)
- Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd., 574 S.W.3d 882, 890 (Tex. 2019)
- Gaber v. U.S. Bank Nat'l Ass'n, No. 02-19-00243-CV, 2020 WL 5242419, at *5 (Tex. App.—Fort Worth Sept. 3, 2020, pet. denied) (mem. op.)
- Kyle v. Strasburger, No. 13-13-00609-CV, 2019 WL 1487357, at *11 (Tex. App.—Corpus Christi–Edinburg Apr. 4, 2019, no pet.) (mem. op.)
- Rogers v. RREF II CB Acquisitions, LLC, 533 S.W.3d 419, 436 (Tex. App.—Corpus Christi–Edinburg 2016, no pet.)
- Hernandez v. El Paso Prod. Co., No. 13-09-184-CV, 2011 WL 1442991, at *7 (Tex. App.—Corpus Christi–Edinburg Apr. 14, 2011, pet. denied) (mem. op.)
- Washington-Jarmon v. Onewest Bank, FSB, 513 S.W.3d 103, 114 (Tex. App.—Houston [14th Dist.] 2016, no pet.)
- Jaster v. Comet II Constr., Inc., 438 S.W.3d 556, 564 (Tex. 2014)
- Elmo v. James, 282 S.W. 835, 839 (Tex. Civ. App.—Fort Worth 1926, writ dism'd w.o.j.)
- Ebrahimi v. Caliber Home Loans, Inc., No. 05-18-00456-CV, 2019 WL 1615356, at *5 (Tex. App.—Dallas Apr. 15, 2019, pet. denied) (mem. op.)
- Shellnut v. Wells Fargo Bank, N.A., No. 02-15-00204-CV, 2017 WL 1538166, at *14 (Tex. App.—Fort Worth Apr. 27, 2017, pet. denied) (mem. op.)
- Jody James Farms, JV v. Altman Grp., Inc., 547 S.W.3d 624, 638 (Tex. 2018)
- Amstadt v. U.S. Brass Corp., 919 S.W.2d 644, 649-650 (Tex. 1996)
- Gotcher v. Barnett, 757 S.W.2d 398, 403 (Tex. App.—Houston [14th Dist.] 1988, no writ)
- Doe v. Boys Clubs of Greater Dall., Inc., 907 S.W.2d 472, 478, 481 (Tex. 1995)
- Brown v. Tarbert, LLC, 616 S.W.3d 159, 167-168 (Tex. App.—Houston [14th Dist.] 2020, pet. denied)

- Lindsey Constr., Inc. v. AutoNation Fin. Servs., LLC, 541 S.W.3d 355, 365 (Tex. App.—Houston [14th Dist.] 2017, no pet.)
- Webb v. Int'l Trucking Co., Inc., 909 S.W.2d 220, 226, 228 (Tex. App.—San Antonio 1995, no writ)
- Crown Life Ins. Co. v. Casteel, 22 S.W.3d 378, 387 (Tex. 2000)
- Brown & Brown of Tex., Inc. v. Omni Metals, Inc., 317 S.W.3d 361, 380 (Tex. App.—Houston [1st Dist.] 2010, pet. denied)
- Sandoval v. DISA, Inc., No. 01-17-00846-CV, 2018 WL 6379665, at *10 (Tex. App.—Houston [1st Dist.] Dec. 6, 2018, pet. denied) (mem. op.)
- Rima Group, Inc. v. Janowitz, 573 S.W.3d 505, 513 (Tex. App.—Houston [14th Dist.] 2019, no pet.)
- Beverick v. Koch Power, Inc., 186 S.W.3d 145, 152 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)
- English v. Fischer, 660 S.W.2d 521, 524 (Tex. 1983)
- Rachal v. Reitz, 403 S.W.3d 840, 848 (Tex. 2013)
- Subaru of Am., Inc. v. David McDavid Nissan, Inc., 84 S.W.3d 212, 226 (Tex. 2002)
- Pabla v. Myers, No. 13-20-00292-CV, 2021 WL 3196965, at *5-*6 (Tex. App.—Corpus Christi–Edinburg July 29, 2021, no pet. h.) (mem. op.)
- Spicer v. Maxus Healthcare Partners, LLC, 616 S.W.3d 59, 122 (Tex. App.—Fort Worth 2020, no pet.)
- Severs v. Mira Vista Homeowners Ass'n, Inc., 559 S.W.3d 684, 701 (Tex. App.—Fort Worth 2018, pet. denied)
- El Paso Healthcare Sys., Ltd. v. Piping Rock Corp., 939 S.W.2d 695, 699 (Tex. App.—El Paso 1997, writ denied)