

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

**Derrick Jimmerson v. Homecomings Financial LLC F/K/A
Homecomings Financial Network Inc.**

No. 2-07-305-CV · No. No. 2-07-305-CV · Decided July 3, 2008

SUMMARY

The Second Court of Appeals of Texas affirmed a county court judgment awarding possession of property to Homecomings Financial LLC following foreclosure and a forcible detainer action. The court held that Jimmerson waived complaints concerning notice to vacate and the property description by failing to raise them in the county court at law.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Sue Walker; Dauphinot; Holman; Walker
JURISDICTION	Texas
DECIDED	July 3, 2008
DOCKET	No. 2-07-305-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jimmerson appealed a county court at law judgment awarding possession of real property to Homecomings in a forcible entry and detainer action following foreclosure.
STANDARD OF REVIEW	Complaints not preserved by a timely request, objection, or motion stating specific grounds and obtaining a ruling are waived on appeal. The opinion also describes the trial court's ruling in the forcible entry and detainer proceeding as subject to abuse-of-discretion review.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion under Tex. R. App. P. 47.4
PARTIES	Derrick Jimmerson v. Homecomings Financial LLC F/K/A Homecomings Financial Network Inc.

TOPICS

eviction

default judgment

preservation of error

appellate procedure

foreclosure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Jimmerson preserved his complaints that Homecomings failed to provide proper notice to vacate under the Texas Property Code.
2. Whether Jimmerson preserved his complaint that Homecomings inadequately described the property in its forcible detainer complaint.
3. Whether the county court judgment awarding possession to Homecomings should be affirmed.

HOLDINGS

1. Jimmerson waived both complaints by failing to make timely objections in the county court at law and obtain rulings on them.
2. A complaint that the property was insufficiently described in a forcible entry and detainer complaint cannot be raised for the first time on appeal when it was not presented to the trial court.
3. The record did not establish a preserved or meritorious challenge to the notice to vacate because Homecomings mailed the notice by first-class mail and Jimmerson neither objected nor presented controverting evidence that he failed to receive it.

KEY QUOTATIONS

“To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling, if they are not apparent from the context of the request, objection, or motion.”

“Accordingly, we hold that Jimmerson waived his complaints by failing to object in the county court at law to the notice and the description of the Property.”

FACTUAL BACKGROUND

Jimmerson executed a promissory note secured by a deed of trust on the property. After the property was sold to Homecomings at a foreclosure sale, Homecomings sent Jimmerson and other occupants a written notice to vacate by certified and first-class mail, allowing three days to vacate. Jimmerson remained in possession, and although he appeared at the county court hearing, he did not object to Homecomings's exhibits or present evidence supporting his alleged alternative mortgage arrangement.

PROCEDURAL HISTORY

Homecomings purchased the property at a foreclosure sale and sent Jimmerson a notice to vacate. After Jimmerson failed to vacate, Homecomings filed a forcible entry and detainer action in justice court, which entered a default judgment for Homecomings. Jimmerson appealed to the Denton County Court at Law, which awarded possession to Homecomings after a hearing. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Bushell v. Dean, 803 S.W.2d 711, 712 (Tex. 1991) (op. on reh'g)
- Granberry v. Storey, 61 Tex. Civ. App. 9, 127 S.W. 1122 (Tex. Civ. App. 1910, no writ)

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