

FIRST COURT OF APPEALS OF TEXAS

Derwin Tatum v. Wells Fargo Home Mortgage, Inc. and Federal Home Loan Mortgage Corporation

Tatum · No. 01-13-00855-CV · Decided January 14, 2015

SUMMARY

Appellees Wells Fargo Home Mortgage, Inc. and Federal Home Loan Mortgage Corporation filed a motion for rehearing in the First Court of Appeals of Texas. They argue that the trial court's adequate-protection order requiring payments into the court registry was not an injunction subject to Texas Rules of Civil Procedure 683 and 684, and request that the appellate court affirm the order.

CASE DETAILS

COURT	First Court of Appeals of Texas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	January 14, 2015
DOCKET	01-13-00855-CV
DISPOSITION	other
PROCEDURAL POSTURE	The provided document is appellees' motion for rehearing under Texas Rule of Appellate Procedure 49.1. Appellees asked the First Court of Appeals to reconsider its prior determination that the trial court's adequate-protection order was an injunction subject to Texas Rules of Civil Procedure 683 and 684, and to affirm the order.
PRECEDENTIAL VALUE	Unknown; the provided text is a party-filed motion for rehearing rather than the court's opinion.
PARTIES	Derwin Tatum v. Wells Fargo Home Mortgage, Inc., Federal Home Loan Mortgage Corporation

TOPICS

appellate procedure foreclosure equitable relief remedies real estate

PRACTICE AREAS

Appellate procedure Foreclosure Real estate Equitable remedies Civil procedure

QUESTIONS PRESENTED

1. Whether the trial court's adequate-protection order was an injunction subject to the formal requirements of Texas Rules of Civil Procedure 683 and 684.
2. Whether the trial court had equitable authority to require disputed mortgage or occupancy payments to be deposited into the court registry during litigation over the foreclosure sale.

KEY QUOTATIONS

“The net effect of the Adequate Protection Order is to preserve Tatum’s payments in the registry of the trial court until a determination could be made as to the proper party to receive payments.” (at 4)

“The subject matter of the litigation is the real property and improvements located at 610 Hard Rock Lane, Richmond, Texas 77469 (the “Property”).” (at 5)

FACTUAL BACKGROUND

Tatum challenged a foreclosure sale involving the property at 610 Hard Rock Lane, Richmond, Texas. The trial court entered an adequate-protection order directing payments to be placed in the court registry while the parties litigated whether Wells Fargo or Freddie Mac was entitled to receive them. Appellees argued that Tatum otherwise had an independent obligation to make mortgage or occupancy payments and that the order merely prevented him from living at the property without paying anything during the litigation.

PROCEDURAL HISTORY

Tatum sued after a May 4, 2010 foreclosure sale, seeking rescission and to void the sale. During the litigation, the trial court entered an adequate-protection order requiring disputed payments to be made into the court registry. The appellate court's prior opinion apparently declared that order void, vacated it, and remanded for a determination of funds to be refunded; the appellees then filed this motion for rehearing seeking withdrawal of that portion of the prior opinion.

DISPOSITION

other

REMAND INSTRUCTIONS

The motion requests withdrawal of the prior opinion's disposition voiding and vacating the adequate-protection order and asks the court to affirm the trial court's order. The provided text does not contain the appellate court's ruling on the motion.

CASES CITED

- Qwest Communication Corp. v. AT&T, 24 S.W.3d 334 (Tex. 2000)
- Del Valle I.S.D. v. Lopez, 845 S.W.2d 808, 809 (Tex. 1992)
- J.C. Matlock v. Data Processing Sec., Inc., 618 S.W.2d 327, 328 (Tex. 1981)
- Kaplan v. Floeter, 657 S.W.2d 1, 3 (Tex. App.—Houston [1st Dist.] 1983, no pet.)

- Northshore Bank v. Commercial Credit Corp., 668 S.W.2d 787, 790 (Tex. App.—Houston [14th Dist.], writ ref'd n.r.e.)
- Butnaru v. Ford Motor Co., 84 S.W.3d 198, 204 (Tex. 2002)
- Ex Parte Preston, 347 S.W.2d 938 (Tex. 1961)
- Castilleja v. Camero, 414 S.W.2d 431, 433 (Tex. 1967)
- North Cypress Medical Center Operating Co., Ltd. v. St. Laurent, 296 S.W.3d 171, 178-79 (Tex. App.—Houston [14th Dist.] 2009, no pet.)
- Alliance Royalties, LLC v. Boothe, 313 S.W.3d 493, 497 (Tex. App.—Dallas 2010, no pet.)
- Scott v. Sebree, 986 S.W.2d 364, 368 (Tex. App.—Austin 1999, pet. denied)
- Lambert v. First Nat'l Bank of Bowie, 993 S.W.2d 833, 835 (Tex. App.—Fort Worth 1999, pet. denied)
- Tex. Capital Secs., Inc. v. Sandefer, 58 S.W.3d 760, 774 (Tex. App.—Houston [1st Dist.] 2001, pet. denied)
- Hausman v. Hausman, 199 S.W.3d 38, 42 (Tex. App.—San Antonio 2006, no pet.)
- Warren v. Osborne, 154 S.W.2d 944, 946 (Tex. Civ. App.—Texarkana 1941, writ ref'd w.o.m.)