COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

Lee Robin v. M & T Bank Corporation

No. 04-17-00579-CV · No. No. 04-17-00579-CV · Decided December 12, 2018

SUMMARY

The Texas Fourth Court of Appeals affirmed a take-nothing judgment against Lee Robin in his claims concerning M&T Bank Corporation's handling of property-tax payments, escrow, and foreclosure. The court held that M&T's escrow account disclosure statement effectively revoked the prior waiver of escrow under the deed of trust and that the evidence was sufficient to establish Robin's failure to timely pay the property taxes.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Sandee Bryan Marion, Chief Justice; Rebeca C. Martinez, Justice; Irene Rios, Justice
JURISDICTION	Texas
DECIDED	December 12, 2018
DOCKET	No. 04-17-00579-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Robin appealed a take-nothing judgment entered after a jury found that both parties failed to comply with the deed of trust, but that M & T's failure was excused by Robin's prior failure to comply with a material obligation. M & T raised cross-points seeking alternative affirmance.
STANDARD OF REVIEW	For legal sufficiency, the court considered whether the trial evidence would enable a reasonable and fair-minded fact finder to reach the verdict and whether the evidence supporting a vital fact was more than a mere scintilla. For factual sufficiency, the court considered and weighed all the evidence and would set aside the verdict only if it was so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Whether a party breached an unambiguous contract based on undisputed facts is a question of law reviewed by the court.
PRECEDENTIAL VALUE	Published Texas Court of Appeals memorandum opinion according to the provided metadata; no reporter citation appears in the opinion text.

PARTIES Lee Robin v. M & T Bank Corporation

TOPICS

breach of contract | contract interpretation | mortgages | foreclosure | standard of review

PRACTICE AREAS

contract law | real estate law | mortgage foreclosure | appellate practice

QUESTIONS PRESENTED

1. Whether the evidence was legally insufficient to support the jury's finding that M & T failed to comply with the deed of trust.
2. Whether the evidence was sufficient to support the jury's finding that Robin failed to comply with the deed of trust by failing to pay the property taxes when payable.

HOLDINGS

1. M & T's Annual Escrow Account Disclosure Statement constituted notice given in accordance with section 15 of the deed of trust that M & T was revoking the prior waiver of escrow. Because the relevant facts were undisputed, M & T did not fail to comply with the deed of trust as a matter of law.
2. The evidence was sufficient to support the jury's finding that Robin failed to comply with the deed of trust because he did not pay the property taxes when payable.

KEY QUOTATIONS

> *"Because we hold the Escrow Statement was "notice given in accordance with Section 15" that M & T was revoking the waiver of escrow, we hold M & T did not fail to comply with the deed of trust as a matter of law."* (at 6)

> *"Accordingly, the evidence is sufficient to support the jury's finding that Robin breached the deed of trust by failing to pay the property taxes "when payable,""* (at 7)

FACTUAL BACKGROUND

Robin's 2006 home loan was secured by a deed of trust that initially waived escrow payments and required Robin to pay property taxes directly when due. Robin did not pay the 2011 property taxes by January 31, 2012, causing them to become delinquent, and M & T paid the taxes and sent Robin an escrow account disclosure statement increasing his monthly payment. M & T later foreclosed on the property after Robin failed to make required payments, and the property was sold at foreclosure on December 4, 2012.

PROCEDURAL HISTORY

Robin sued M & T Bank Corporation based on alleged noncompliance with a deed of trust. After a jury trial, the 166th Judicial District Court of Bexar County entered a take-nothing judgment against Robin and also ordered M & T to take nothing on its counterclaim. Robin appealed, and M & T did not appeal the judgment on its counterclaim. The court of appeals affirmed, resolving the appeal on the sufficiency of the evidence and the legal effect of the escrow notice without reaching the remaining issues.

DISPOSITION

affirmed

CASES CITED

- Gunn v. McCoy, 554 S.W.3d 645, 658 (Tex. 2018)
- Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)
- Grohman v. Kahlig, 318 S.W.3d 882, 887 (Tex. 2010)
- Benavides v. Benavides, No. 04-11-00252-CV, 2011 WL 5407493, at *1 (Tex. App.—San Antonio Nov. 9, 2011, pet. denied) (mem. op.)
- ConocoPhillips Co. v. Koopmann, 547 S.W.3d 858, 874 (Tex. 2018)