

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

**Patten Custom Homes, LLC v. Robert Mahlin, Anne Mahlin, and
Samanum Ngernerd**

No. 05-16-01017-CV · No. No. 05-16-01017-CV · Decided July 18, 2017

SUMMARY

The Fifth District Court of Appeals of Texas reversed a take-nothing judgment in a forcible-detainer action brought by Patten Custom Homes, LLC. The court held that the foreclosure documents, subsequent deed, and notices to vacate conclusively established PCH's right to immediate possession, while challenges to the foreclosure's validity could not be resolved in a forcible-detainer proceeding. The court rendered judgment awarding possession and reasonable attorney's fees to PCH and remanded for determination of the fee amount.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	David J. Schenck; Justice Francis; Justice Brown; Justice Schenck
JURISDICTION	Texas
DECIDED	July 18, 2017
DOCKET	No. 05-16-01017-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Patten Custom Homes, LLC appealed a county court at law's take-nothing judgment in its forcible-detainer action after the justice court had awarded PCH possession and attorney's fees.

STANDARD OF REVIEW	When the trial court makes no separate findings of fact or conclusions of law, the appellate court implies all findings necessary to support the judgment if supported by the evidence and must affirm on any supported legal theory. For a legal-sufficiency challenge to an adverse finding on an issue on which the challenging party bore the burden of proof, the party must show that the evidence conclusively established all vital facts in its favor. The court first considers evidence supporting the adverse finding, credits favorable evidence and reasonable inferences, and disregards contrary evidence unless a reasonable factfinder could not; if no supporting evidence exists, it examines the entire record to determine whether the contrary proposition was established as a matter of law.
PRECEDENTIAL VALUE	Memorandum opinion; opinion states that all issues are well settled in law under Tex. R. App. P. 47.4.
PARTIES	Patten Custom Homes, LLC v. Robert Mahlin, Anne Mahlin, Samanum Ngernd

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether legally sufficient evidence established PCH's superior right to immediate possession in the forcible-detainer action.
2. Whether the occupants' letters purporting to rescind the mortgage under the Truth in Lending Act invalidated the foreclosure sale and could defeat PCH's possession claim in the forcible-detainer action.
3. Whether PCH was entitled to recover reasonable attorney's fees under Texas Property Code section 24.006.
4. Whether the amount of attorney's fees should be determined by the trial court on remand.

HOLDINGS

1. PCH conclusively established its right to immediate possession because the substitute trustee's deed showed that Catalyst purchased the property at foreclosure, the warranty deed showed that Catalyst conveyed it to PCH, and the occupants remained after receiving notices to vacate, thereby becoming tenants at sufferance.
2. The validity of the foreclosure sale and the effect of the occupants' purported TILA rescission could not be determined in the forcible-detainer action; those issues must be brought in a separate suit.

3. PCH was entitled to recover reasonable attorney's fees because it provided notices to vacate satisfying Texas Property Code section 24.006(a) and prevailed on its possession claim.
4. The amount of reasonable attorney's fees must be determined by the trial court on remand rather than by the appellate court.

KEY QUOTATIONS

“The only issue in a forcible-detainer action is which party has the right to actual possession of the property.” (at 3-4)

“Whether the sale of a property under a deed of trust is invalid may not be determined in a forcible detainer but must be brought in a separate suit.” (at 4)

“The foregoing evidence proves PCH’s right to immediate possession of the property as a matter of law.” (at 5)

FACTUAL BACKGROUND

The occupants possessed a Dallas property after Robert Mahlin and Samanum Ngernerd defaulted on a promissory note and deed of trust. The property was sold at a foreclosure auction to Catalyst Resource Group, which later conveyed it to PCH. After PCH sent notices to vacate, the occupants remained in possession. PCH introduced the substitute trustee's deed, warranty deed, notices to vacate, and testimony concerning the notices and attorney's fees.

PROCEDURAL HISTORY

PCH filed a forcible-detainer action in justice court after purchasing property that had been sold at foreclosure and obtained an award of possession and \$1,500 in attorney's fees. The occupants appealed to the County Court at Law No. 2 of Dallas County and challenged the foreclosure sale through a plea to the jurisdiction and arguments concerning rescission under the Truth in Lending Act. After a bench trial, the county court denied the plea and rendered a take-nothing judgment. The Court of Appeals reversed, rendered judgment awarding PCH possession and reasonable attorney's fees, and remanded for determination of the amount of fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine the reasonable amount of attorney's fees to be awarded to PCH. The appellate judgment otherwise renders that PCH is entitled to possession of the property and to reasonable attorney's fees.

CASES CITED

- Vaughn v. Drennon, 324 S.W.3d 560, 562-63 (Tex. 2010) (per curiam)
- Rossman v. Bishop Colo. Retail Plaza, L.P., 455 S.W.3d 797, 808 (Tex. App.—Dallas 2015, pet. denied)

- Dow Chem. Co. v. Francis, 46 S.W.3d 237, 241 (Tex. 2001) (per curiam)
- City of Keller v. Wilson, 168 S.W.3d 802, 807, 822 (Tex. 2005)
- Williams v. Bank of N.Y. Mellon, 315 S.W.3d 925, 926-27 (Tex. App.—Dallas 2010, no pet.)
- Coinmach Corp. v. Aspenwood Apartment Corp., 417 S.W.3d 909, 915, 918 (Tex. 2013)
- Williams v. Deutsche Bank Nat'l Trust Co., 05-11-00434-CV, 2012 WL 1899156, at *2 (Tex. App.—Dallas Apr. 27, 2012, no pet.)
- Smith v. Patrick W.Y. Tam Trust, 296 S.W.3d 545, 547 (Tex. 2009)

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