

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

Barbara Moss-Schulze v. EMC Mortgage Corporation

No. 08-07-00098-CV · No. 08-07-00098-CV · Decided May 22, 2008

SUMMARY

The Eighth District Court of Appeals of Texas dismissed Barbara Moss-Schulze’s appeal as moot after the property involved in EMC Mortgage Corporation’s foreclosure proceeding was sold. The court held that any judgment would have no effect on an existing controversy and granted EMC’s motion to dismiss.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	David Wellington Chew, Chief Justice; McClure, Justice; Carr, Justice
JURISDICTION	Texas
DECIDED	May 22, 2008
DOCKET	08-07-00098-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the 73rd Judicial District Court of Bexar County, Texas; appellee moved to dismiss the appeal as moot after the foreclosed property was sold.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Barbara Moss-Schulze v. EMC Mortgage Corporation

TOPICS

- mootness
- appellate procedure
- foreclosure
- mortgages
- real estate

PRACTICE AREAS

- appellate procedure
- real estate
- foreclosure
- mortgages

QUESTIONS PRESENTED

- Whether the appeal became moot because the property that was the subject of the foreclosure litigation had been sold.
- Whether the court should dismiss the moot appeal.

HOLDINGS

1. The appeal became moot because the property that was the subject of the litigation had been sold, leaving no existing controversy that a judgment could affect.

KEY QUOTATIONS

“When the judgment of this Court can have no effect on an existing controversy, a case becomes moot and should be dismissed.”

FACTUAL BACKGROUND

Moss-Schulze purchased the property in January 2003 and financed it with a mortgage loan from EMC Mortgage Corporation. After she failed to make payments, EMC attempted to foreclose. During the appeal, the foreclosure was completed and the property was sold, as shown by an authenticated Substitute Trustee's Deed.

PROCEDURAL HISTORY

Barbara Moss-Schulze appealed a foreclosure-related judgment arising from EMC Mortgage Corporation's attempt to foreclose after she failed to make mortgage payments. While the appeal was pending, EMC represented that the foreclosure had proceeded and the property had been sold, submitting an authenticated Substitute Trustee's Deed. The court granted EMC's motion to dismiss because no judgment could affect an existing controversy.

DISPOSITION

dismissed

CASES CITED

- F.D.I.C. v. Nueces County, 886 S.W.2d 766, 767 (Tex. 1994)
- Restrepo v. First National Bank of Dona Ana County, New Mexico, 888 S.W.2d 606, 607 (Tex. App.—El Paso 1994, no writ)

OPINION

PER CURIAM.

COURT OF APPEALS EIGHTH DISTRICT OF TEXAS EL PASO, TEXAS BARBARA MOSS-SCHULZE, § No. 08-07-00098-CV Appellant, § Appeal from the v. § 73rd Judicial District Court § EMC MORTGAGE CORPORATION, of Bexar County, Texas § Appellee. (TC# 2005-CI-06777) § OPINION Pending before the Court is Appellee, EMC Mortgage Corporation's ("EMC") motion to dismiss this appeal.

Finding that the property which was the subject of the underlying lawsuit has been sold, we will dismiss the appeal as moot. Appellant, Ms. Barbara Moss-Schulze purchased the property at issue

in January of 2003. She financed the purchase with a mortgage loan from EMC. This appeal arises from EMC's attempt to foreclose on the property after Ms. Schulze failed to make payments.

In its motion to dismiss, EMC represents to the Court that the foreclosure proceeded and the property has been sold. The motion includes an authenticated copy of the Substitute Trustee's Deed executed at the foreclosure sale. When the judgment of this Court can have no effect on an existing controversy, a case becomes moot and should be dismissed. See *F.D.I.C. v. Nueces County*, 886 S.W.2d 766, 767 (Tex.

1994); *Restrepo v. First Nat'l Bank of Dona Ana County, New Mexico*, 888 S.W.2d 606, 607 (Tex.App.--El Paso 1994, no writ). Because the property which was the subject of this appeal has been sold, any judgment issued by the Court would have no effect as there is no longer a controversy to resolve. See *F.D.I.C.*, 886 S.W.2d at 767.

Thus, Appellant's case has become moot. Accordingly, we grant Appellee's motion and dismiss the appeal. May 22, 2008 DAVID WELLINGTON CHEW, Chief Justice Before Chew, C.J., McClure, and Carr, JJ. -2-