

Texas Case Law Update

Mortgage Lending and Servicing Institute

September 29-30, 2022

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Austin | Charlotte | Dallas | Fort Worth | Houston | New York | San Antonio | The Woodlands

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I. Mortgages/Foreclosure/Liens

1. Limitations Tolled by Bankruptcy and Abandonment of Acceleration

Citibank, NA v. Pechua, Inc., [Houston 14th, pet. denied] p. 3

- Home loan (2003); acceleration & BK filed (2009); acceleration (2015 & 16)
- S/L challenge
- 3 intervening bankruptcies totaling 5 years
- Issue: Did auto stay toll statute of limitations? [Case of FIRST IMPRESSION]

HELD: BK tolled running of limitations

- Issue: Was 2009 acceleration abandoned?
 - 2015 (never addressed) & 2016 accelerations

HELD: language was clear and unequivocal unilateral abandonment

- 4 critical elements: 1) allow cure by payment of delinquent installments; 2) statement of future acceleration without payment; 3) acceleration in future; 4) notice of intent to accelerate –forward looking.

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2. Bankruptcy Abuse

In re Parson [N.D. Tex.] p. 4

- Pro Se – Ch. 13 bankruptcy filing blocked default judgment remedies
- Numerous frivolous objections; appealed virtually all orders
- 2 prior BK filings with 389 and 311 docket entries
- Numerous motions for continuance; writ of mandamus; motion for judge recusal in each BK
- No substantive evidence presented; refused to acknowledge other party documents

HELD: ▪ BK dismissed with prejudice - 3 years ban on refiling

STATED: ▪ BK purpose to afford fresh start to **honest** but unfortunate debtor.

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3. Foreclosure – Right of Reverter

Ridgefield Permian, LLC v. Diamondback E&P LLC [El Paso, pet. denied], p. 5

- Tax lien foreclosure suit for unpaid taxes on royalties on Merriweather O&G lease
- O&G lease terminated for lack of production
- Dispute as to mineral interest ownership by Ridgefield (successor to Griffith (owner)) and royalty foreclosure purchaser (Diamondback)

HELD: ▪ O&G lease severed surface and mineral estate

 ▪ Revisionary interest in mineral estate is a non-taxable property interest

 ▪ Therefore, no foreclosure of such interest because foreclosure was on ROYALTY interest not MINERAL ESTATE

 ▪ Also legal description in foreclosure was only of the royalty

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4. Commercially Reasonable Sale

Airpro Mobile Air v. Prosperity Bank [Dallas, pet. denied] p. 6

- Personal property foreclosure complicated by landlord actions
 - Landlord asserted superior landlord lien on personalty
 - Landlord denied access to and possession of personalty
- Collateral (\$1.3M) was sold to single bidder for \$17.5K
- In deficiency action, Airpro alleged not commercially reasonable sale

HELD: ▪ Commercially reasonable based on Regal Fin. factors: 1) effort for best price; 2) bulk v. piecemeal, 3) private v public, 4) collateral inspection, 5) time, 6) expenses, 7) advertisement, 8) bids received, 9) collateral condition, and 10) place

- N/W/S bank did not follow its policy: public & multiple bids.
- B/C evidence that LL interference prevented/limited: inspection; valuation; auction services; access; relocation costs prohibitive; subsequent higher re-sale

HELD: ▪ Reasonable price (under circumstances) NOT highest price

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I. Mortgages/Foreclosure/Liens

5. Tax Lien Transfers

Ovation Services, LLC v. Richard [Tyler, no pet.] p. 7

- 2 chains of title on tax lien foreclosure; 1 with breach in chain
- 2004-08 tax defaults; tax lien transfer to Community; assigned to MLS then FGMS Fund
- No evidence of assignment from MLS to FGMS Fund
- 2011-12 tax defaults; school district foreclosure; Richard was purchaser
- Ovation (servicer for PGMS) alleged due process violation for non-joinder in second suit

HELD: ▪ Though Tex. Tax Code § 33.445 requires all tax lien transferees; the breach in chain of title voided that requirement

- Due process claim failed b/c no actual knowledge by Richard of lienholder status of FGMS

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First appeared as part of the conference materials for the
56th Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session
"Case Law Update - Part I"