

# Texas Case Law Update

## Mortgage Lending and Servicing Institute

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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. Purch. Money Equit. Lien v. A/J

#### In re Huth [Bk.] p. 3

- England had **purchase money equitable lien** and an **abstract of judgment lien** against homestead property conveyed to Huth.
- Huth obtained discharge in Ch. 7 bankruptcy.
- Alleged bankruptcy discharge voided the equitable lien and A/J lien.
- Bankruptcy Code § 522(f)(1) avoids fixing of lien on exempt property if it is a “judicial lien.”

**HELD:** The equitable lien created by **op. of law** - not a judicial lien; therefore not discharged.

**HELD:** A/J was “judicial lien” under Bankruptcy Code § 101(36) and therefore discharged.

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# I. MORTGAGES/FORECLOSURE/LIENS

## 2. Forcible Detainer Action

Lua v. Capital Plus Fin., LLC, [Dallas] p. 4

- Foreclosure; notice to vacate; eviction suit.
- Suit supported by (1) trustee's deed; (2) notice to vacate; (3) DOT (w/ **tenancy at sufferance** clause).
- Allegations:
  - (1) Faulty notice to vacate (signed by attorney); **HELD:** T.P.C. allows agents to sign notice to vacate.  
**HELD:** T.R.C.P. 500.4(b)(2) allows property manager or agent to sign.
  - (2) Petition not properly sworn under T.R.C.P. 510.3; **HELD:** not jurisdictional.
  - (3) Not in occupancy; **HELD:** (1) discussion between parties of need to vacate; (2) discussed amount of bond; (3) Lua's appeal of T.C. order of possession – sufficient evidence of possession.

**STATED:** Defects in standing not applicable in forcible detainer action (**issue: possession not title**).

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# I. MORTGAGES/FORECLOSURE/LIENS

## 3. Foreclosure – Collateral Attack/Due Process

Mitchell v. MAP Res., Inc. [Tex.] p. 5

- 1999 Tax suit default judgment v. Mitchell.
- 2009 Mitchell dies.
- Heirs alleged **due process** violation – **not properly served**.
- Foreclosure suit attorney filed affidavit reciting T.R.C.P. 117a(3) requirements.
- But – Mitchell was listed in 8 public records (deeds and tax records)

**HELD:** (1) Citation by publication violates due process where address of defendant is **readily ascertainable** from **public records**.

(2) Const. and T.R.C.P. 117a require **diligent inquiry** of contents of public records.

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# I. MORTGAGES/FORECLOSURE/LIENS

## 3. Foreclosure – Collateral Attack

CL III Funding Holding Co., LLC v. Steelhead Midstream Partners, LLC  
[Ft. Worth, pet. filed] p. 5

- CL obtained judicial foreclosure judgment for mechanic's lien.
- CL and Steelhead co-owner of pipeline; CL was operator and contractor.
- Steelhead did not pay share of construction costs.
- Steelhead filed 2d suit in Tarrant County for CL's breach of contract (sole cost of construction).

### HELD:

- Tarrant County suit was impermissible collateral attack on prior foreclosure judgment.
- Prior foreclosure suit established debt obligation for construction costs.

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# I. MORTGAGES/FORECLOSURE/LIENS

## 4. Backdating of Documents

FFGGP, Inc. v. MTGLQ Investors, LP [San Antonio, no pet.] p. 6

- 3 liens: (1) first lien to mortgagee; (2) second lien to RESMAE; (3) third lien in CCRs to HOA.
- HOA foreclosed; FFGGP purchased; FFGGP got default judgment to void prior liens.
- MTGLQ attempted foreclosure; FFGGP filed second action; sought injunction.
- U.S. Bank intervened alleging ownership of note and deed of trust by **2017** transfer from MTGLQ.
  - Transfer document dated 4-28-**2020** with effective date 11-26-**2019**; recorded 6-16-**2020**.
- FFGGP alleged res judicata against U.S. Bank.

**ISSUE:** Was there privity between U.S. Bank and MTGLQ?

- If so, then deemed constructive notice of suit and res judicata.
- If not, then not res judicata.

**HELD:** There was **PRIVITY**; backdating documents to before default judgment seeking to revive voided right in property was impermissible; **but not universally impermissible**.

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