

# Texas Case Law Update

## Mortgage Lending and Servicing Institute

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J. Richard White  
Amanda R. Grainger

4876-9893-1930

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

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## I. MORTGAGES/FORECLOSURES/LIENS

### 1. Foreclosure – County Court Jurisdiction

#### Ditech Servicing, LLC v. Perez [Tex.], p. 3

- Ditech foreclosure suit in Hidalgo County Court of Law #4.
- Jurisdiction challenged.

Issue: What is jurisdiction of court?

- SCOTX noted two classes of county courts:
  - (1) Constitutional (\$500-\$250K and no title issues)
  - (2) Statutory (Tex. Gov. Code § 15.1102)
    - For this court – **expanded** jurisdiction up to \$750K without limitation on title issues [Tex. Gov. Code § 25.1102(a)(2)]

Held: • Jurisdictional statutes are "independent and cumulative".

- Therefore, court had jurisdiction for foreclosures if amount less than \$750K.

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## 2. Foreclosure – Credits to Judgment Lien

Hibernia Energy III, LLC v. Ferae Naturae, LLC [El Paso, no pet.], p. 4

- \$15M judgment lien held by Ferae Naturae was abstracted in multiple counties.
- Many partial assignments of abstracts of judgment; one over \$20M consideration.
- Foreclosure sought; Hibernia alleged credit.

Issue: Was Hibernia entitled to credit for amounts paid for partial assignments?

Held: Hibernia did not submit sufficient evidence of lien satisfaction.

- Also, issues asserted as to proper parties.

Held: • Foreclosure was "*in rem*".

- Only current (not prior) interest holders were necessary parties.

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## 3. Foreclosure – Lease Termination

Heron Lakes 2005 HQ-7, LLC v. Cadence Bank Successor by Merger to BancorpSouth Bank [S.D. Tex.], p. 4

- Bank was tenant on four locations; non-judicial foreclosure.
- Bank abandoned three of four locations; Heron sued for breach of fourth lease.
- Lease provisions:

Paragraph 13.01 SUBORDINATION. This Lease is and shall be subject and subordinate to any and all . . . mortgages which may now or hereafter encumber or affect the Project . . . ; provided, however, at the option of any [mortgagee], this Lease shall be superior to the . . . mortgage.

Paragraph 14.02 ATTORNMENT. In the event of the . . . enforcement by the trustee or the beneficiary under any mortgage or deed of trust of remedies provided by law or by such mortgage or deed of trust, Tenant will, upon request of any person or party succeeding to the interest of Landlord as a result of such termination or enforcement, automatically become the Tenant of such successor in interest.

- Heron did not elect lease to be superior; Bank stayed in possession.

Issue: Did abandonment of three leases affect fourth lease?

Held: • NO. General Rule: If landlord accepts rents, then lease continues.

- Action and negotiations on other leases do not apply.



Read leases and SNDAs and take appropriate action.

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## 4. Foreclosure – Prerequisites for Mechanic's Lien

Valley Forge v. CK Const. [El Paso, no pet.], p. 5

- CK completed construction; demanded \$69K payment.
- Valley Forge tendered \$40K check; CK refused check and sued for foreclosure.
- CK presented no evidence of alleged change orders and invoices.
- Valley Forge evidence: affidavit of principal re: 10% profit, 5% retainage, service call and repair fee.

Issue: Was there a "meeting of minds" on terms?

Held: • Trial court erred in granting foreclosure:

- (1) No contract in evidence.
- (2) Contract terms disputed by Valley Forge (service charge; repair fee).

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## 5. Foreclosure – Due Process; Notice

Gill v. Hill [Tex.], p. 6

- Tax district noticed tax lien foreclosure sale by **posting** notice.
- Same facts as Mitchell v. MAP Resources (last year).
- Gill heirs sued 19 years after foreclosure alleging due process violation (in notice).
- Purchaser Hill alleged one year S/L.

Issue: Did due process prevail over one-year S/L?

Held:

- Draughon v. Johnson: Defendant has burden on S/L; plaintiff has burden for equitable defenses.
- Hill presented evidence of recorded sheriff's deed; burden shifted to Gill.
- Gill presented no evidence supporting due process, unlike Mitchell v. MAP Resources (deed and tax record evidence); Gill failed to meet burden.
- BUT, remanded because parties did not have benefit of Mitchell and Draughon.

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## 6. Foreclosure – Responsibility for Taxes

Ortiz v. Nat'l City Home Loan Servs. [Houston [14<sup>th</sup> Dist.], pet. denied], p. 7

- Ortiz defaulted on payment of home mortgage; lender foreclosed.
- 15 years of litigation followed; ad valorem taxes accrued and not paid.
- Third party paid taxes; got assignment of tax lien.
- Ortiz won litigation against lender (faulty acceleration).

Issue: Who was responsible for taxes during litigation (when lender held **record** title)?

Held: Because Ortiz won litigation; foreclosure was invalid and trustee deed rescinded; then Ortiz was owner and obligated to pay taxes.

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## 7. Equitable Subrogation Rights and Limitations

PNC Mortg. v. Howard ("Howard IV") [Tex. 2023], p. 7

- End of Howard saga; see following slides.
- Texas law recognized "dual nature of note and deed of trust".
  - Different rights and remedies.
- Equitable Subrogation – transfers **lien** rights to refinance lender – **separate lien**.
  - does not constitute new financing terms.

Held: • Equitable subrogation provides **"alternative remedy; not additional claim"**.

- Accrual date for S/L is based on the one debt (refinanced loan).
- PNC action time-barred in 2013.

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