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WMC Mortg. Corp. v. Adams

Court of Appeals of Texas, Fourteenth District, Houston
July 3, 2008, Judgment Rendered; July 3, 2008, Memorandum Opinion Filed
NO. 14-06-00671-CV

Reporter: 2008 Tex. App. LEXIS 4974; 2008 WL 2605606

WMC MORTGAGE CORP., EMMANUEL D. GAINES, AND DARRELL TURNER, Appellants v. JAMES ADAMS AND DOROTHY ADAMS, Appellees

Subsequent History: Petition for review dismissed by [Adams v. WMC Mortg. Corp., 2009 Tex. LEXIS 16 \(Tex., Feb. 6, 2009\)](#)

Petition for review denied by [Adams v. WMC Mortg. Corp., 2009 Tex. LEXIS 602 \(Tex., Aug. 21, 2009\)](#)

Prior History: [*1] On Appeal from the 127th District Court, Harris County, Texas. Trial Court Cause No. 2003-00430.

Core Terms

trial court, construction loan, excess proceeds, award damages, no evidence, vital fact, foreclosure, deed, declaratory judgment, calculate, finance

Case Summary

Procedural Posture

Appellants, a mortgage company, a grantee, and a buyer, challenged a decision from the 127th District Court, Harris County, Texas, which awarded appellee grantors damages against the grantee and created an equitable lien against the buyer's real property in a construction dispute.

Overview

The grantors were unable to obtain construction financing due to poor credit. Under the terms of an agreement, the grantors conveyed their land to the grantee. A house was supposed to be built there, and then the house and land were to be conveyed back to the grantors. However, a price dispute arose, the grantors refused to pay, and the house and land were sold to the buyer. A lawsuit was filed, and the grantors recovered excess proceeds as damages. An equitable lien was also placed on the property. This appeal followed. In reversing, the appellate court determined that the damages awarded were improper because there was no evidence to support the trial court's finding that there was actually any excess proceeds from the sale to the buyer. Much of the alleged excess was

disbursed for closing costs and to fund additional repairs and improvements on the property. There was no evidence of a "kickback." Moreover, even if every dollar was not accounted for, since most of it went towards paying legitimate expenses, it should not have been considered in calculating excess proceeds.

Outcome

The decision was reversed, a take nothing judgment was entered against the former owners, and the case was remanded for further proceedings to remove the lien.

LexisNexis® Headnotes

Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

Evidence > Inferences & Presumptions > Inferences

HN1 In a legal sufficiency or no-evidence review, an appellate court determines whether the evidence would enable reasonable and fair-minded people to reach the finding under review. In conducting this review, the appellate court credits favorable evidence if reasonable factfinders could credit it and disregard contrary evidence unless reasonable factfinders could not disregard it. The appellate court must consider the evidence in the light most favorable to the finding under review and indulge every reasonable inference that would support it. The appellate court must sustain no-evidence points only when either (a) the record reveals a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence establishes conclusively the opposite of the vital fact.

Real Property Law > Financing > Foreclosures > General Overview

HN2 In a foreclosure sale, unpaid expenses should be deducted before calculating surplus proceeds.

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Emmanuel D. Gaines, appellant, Pro se, Houston, Tx.

For appellees: Matthew Brian Probus, Sugarland, Tx.

Judges: Panel consists of Justices Yates, Guzman, and Sears.*

Opinion by: Leslie B. Yates

Opinion

MEMORANDUM OPINION

Appellants WMC Mortgage Corp., Emmanuel D. Gaines, and Darrell Turner appeal from the trial court's judgment awarding appellees James Adams and Dorothy Adams \$ 111,000 in damages against Gaines and creating an equitable lien against Turner's property, which he purchased with loans through WMC. Appellants claim the Adamses are not entitled to damages or a lien because there was no liability finding against any defendant and because the Adamses breached the contract first. They also argue that there is legally insufficient evidence to support the trial court's damages findings. We conclude there is no evidence to support the trial court's damages award. Thus, we reverse, render a take nothing judgment against the Adamses, and remand for further proceedings to remove the lien.

I. BACKGROUND

In 1998, the Adamses bought a piece of property in a residential neighborhood outside of Houston in Porter, Texas for \$ 19,850, which they financed with a loan. They wanted [*2] to build a home there, but because of their poor credit, they were not eligible for a construction loan, although they were eligible for permanent financing. They often drove to visit the property on weekends, and during one such visit, they met Robert Rone. Rone, who is a builder, owned a lot across the street. Rone and the Adamses eventually began discussing the option of Rone building their house, and Rone put the Adamses in touch with appellant Gaines, who Rone believed could help the Adamses obtain construction financing. For a \$ 15,000 fee, the Adamses agreed to convey the property to Gaines so he could obtain a construction loan, and after the home was built, the Adamses would use their permanent financing to repurchase the house from Gaines, who would pay off the construction loan. The Adamses hired an attorney to prepare a deed and construction contract to reflect their agreement. These documents were signed and given to Rone, who lost both before he could file the deed.

Everything proceeded without incident until it was time for the Adamses to purchase the property from Gaines.

Even though the construction loan was for nearly \$ 289,000, which included building costs, Gaines's [*3] fee, and the cost to pay off the Adamses' land loan, the Adamses refused to pay more than \$ 230,000. The Adamses insisted that the agreement had been for a flat rate price of \$ 230,000, regardless of the actual construction costs, and that this \$ 230,000 included Gaines's fee and the payoff for the land purchase loan.

After Gaines and Rone refused to accept only \$ 230,000 for the property, the Adamses sued them, along with Rone's company, Tri City Turnkey Services, for, among other things, fraud, breach of contract, negligent misrepresentation, violations of the Deceptive Trade Practices Act, and a declaratory judgment that the deed from the Adams to Gaines was void. Meanwhile, interest charges on the construction loan were mounting, and Gaines and Rone began to look for another buyer. The house appraised for \$ 400,000, and appellant Darrell Turner agreed to purchase the house for that amount, with appellant WMC providing 100% financing through two loans. The Adamses then added WMC and Turner to the lawsuit, alleging civil conspiracy, requesting cancellation of the deed from Gaines to Turner, and seeking a declaratory judgment that neither Turner nor WMC have any right, title, or interest [*4] in or to the property.

During the pendency of this lawsuit, Tri City declared bankruptcy and many claims were disposed, so that by the time the case went to the jury, the only remaining claims were declaratory judgment against WMC, declaratory judgment and conspiracy against Turner, and fraud, conspiracy, and declaratory judgment against Gaines and Rone. The jury found that a valid lost deed existed conveying the property from the Adamses to Gaines and the parties agreed that the Adamses would pay \$ 230,000 for the house in addition to \$ 15,000 for Gaines and another \$ 15,000 to pay off the debt on the land. The jury also found against the Adamses on all remaining claims and awarded zero damages.

After various post-verdict motions and substantial briefing, the trial court entered a final judgment, finding:

- . The lost deed and construction agreement are to be construed together, and therefore the Adamses' conveyance to Gaines was subject to the terms of the construction agreement.
- . The Adamses defaulted by refusing to pay the purchase price as found by the jury.
- . Gaines had a right to sell the property to satisfy the construction loan, but the Adamses

* Senior Justice Ross A. Sears sitting by assignment.

had the right to the excess proceeds [*5] from the sale.

. Turner was not an innocent purchaser because the Adamses had filed a valid lis pendens on the property at the time Turner purchased it.

The trial court concluded it “must apply common law principles to determine the rights [of the parties] after a default” because they had not agreed to such terms. The trial court awarded the Adamses \$ 111,000 in “excess proceeds” against Gaines, which is presumably the difference between the \$ 400,000 sales price and the \$ 289,000 construction loan. The trial court then awarded the Adamses a lien on the property, giving it priority over WMC’s two deeds of trust from its loans to Turner.

Gaines, Turner, and WMC brought this appeal ¹ and raise four issues: (1) the trial court erred in awarding any damages to the Adamses because there was no liability finding against any defendant upon which to base a damages award, and alternatively, no evidence supports the trial court’s \$ 111,000 award; (2) the trial court erred in awarding the Adamses a lien and in giving it priority over WMC’s interest; (3) the trial court erred in awarding damages pursuant to the construction agreement because it was an illegal contract and therefore void; and (4) [*6] the trial court erred in awarding the Adamses appellate attorney’s fees. Because we determine no evidence supported the trial court’s damages award, we need not decide the merits of the remaining issues, which all depend on the Adamses’ damages.

II. ANALYSIS

HNI In a legal sufficiency or no-evidence review, we determine whether the evidence would enable reasonable and fair-minded people to reach the finding under review. See *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). In conducting this review, we credit favorable evidence if reasonable factfinders could credit it and disregard contrary evidence unless reasonable factfinders could not disregard it. See *id.* We must consider the evidence in the light most favorable to the finding under review and indulge every reasonable inference that would support it. See *id. at 822*. We must sustain no-evidence points only when either (a) the record reveals a complete

absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving [*7] weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence establishes conclusively the opposite of the vital fact. *Id. at 810*.

In their first issue, appellants ² argue that awarding any damages to the Adamses was improper as a matter of law because with no liability finding against any defendant, the jury correctly awarded zero damages and, alternatively, that no evidence supports the trial court’s award of \$ 111,000 to the Adamses as so-called “excess proceeds.” The parties sharply disagree as to whether the trial court found that Gaines breached the contract by selling the property without first seeking a judicial foreclosure, thus providing a basis for the trial court’s damages award. Appellants argue that the trial court erred in imposing foreclosure requirements in this case and further contend the trial court never found that Gaines breached the contract because the court’s ultimate conclusion, as expressed in the final judgment, was that Gaines had the right to sell the property. We need not determine whether the trial court’s foreclosure theory was correctly applied or supported [*8] by the evidence or whether the trial court actually made a liability finding against Gaines because we determine there is no evidence to support the damages award.

The property sold for \$ 400,000, and the construction loan was for \$ 289,000. The trial court awarded the \$ 111,000 difference between these two amounts as excess proceeds of the sale to the Adamses against Gaines. Appellants argue no evidence supports the trial court’s finding that there was actually \$ 111,000 in excess proceeds. We agree. At the closing on the sale to Turner, much of the \$ 111,000 was disbursed for purposes such as closing costs and to fund additional repairs and improvements on the property. After the closing, the only money remaining from the \$ 111,000 was \$ 22,048.99, [*9] which was given to Gaines by check. Gaines signed that check over to Rone to reimburse him for interest payments he had made on the construction loan before the sale and for additional work he had performed in the house.

The Adamses argue that \$ 65,000 of the money went to paying a fraudulent invoice to Imani Enterprises for work

¹ The Adamses also filed a notice of appeal, but they did not file a cross-appellant’s brief or otherwise brief any cross-issues, and therefore we dismiss their cross appeal.

² The Adamses argue that Turner and WMC have no standing to challenge the damages award against Gaines and that because Gaines did not file an appellant’s brief, we have no basis for reviewing the damages award. However, as Turner and WMC point out in their reply brief, Gaines filed a letter joining their brief, which he is permitted to do under [Texas Rule of Appellate Procedure 9.7](#). Thus, we may review the trial court’s damages award.

that was never performed and that Turner received a \$ 50,000 "kickback" from Imani. The record actually shows that somehow, \$ 50,000 of the \$ 65,000 given to Imani went back to Turner for improvements on the property and that it was not a kickback but a portion of the \$ 400,000 loan, on which he is fully liable to WMC.

In any event, even if every dollar of the \$ 111,000 cannot be accounted for, it is undisputed that much of this money went toward paying legitimate expenses and, therefore, should not have been considered in calculating excess proceeds. See Adams v. First Nat'l Bank of Bells/Savoy, 154 S.W.3d 859, 874 (Tex. App.--Dallas 2005, no pet.) (holding *HN2* in foreclosure sale that unpaid expenses should be deducted before calculating surplus proceeds); Harris v. Harbour Title Co., No. 14-99-00034-CV, 2001 Tex. App. LEXIS 7030, 2001 WL 1249730, at *2 (Tex. App.--Houston [14th Dist.] Oct. 18, 2001, no pet.)

[*10] (not designated for publication) (noting that surplus proceeds from foreclosure sale did not include costs, interest, or fees); Conversion Props., L.L.C. v. Kessler, 994 S.W.2d 810, 813 (Tex. App.--Dallas 1999, pet. denied) (calculating surplus proceeds from foreclosure sale after deducting for expenses and fees); cf. Woodside Assurance, Inc. v. N.K. Res., Inc., 175 S.W.3d 421, 424 (Tex. App.--Houston [1st Dist.] 2005, no pet.) (noting in tax lien foreclosure, excess proceeds are determined after accounting for costs, fees, and commissions).

Furthermore, it is undisputed that Gaines, against whom the trial court assessed the \$ 111,000 judgment, retained

nothing other than his \$ 15,000 fee, which was included in the construction loan, not the remaining \$ 111,000 at issue. Thus, even assuming that an excess proceeds calculation is a proper measure of damages in this case, no evidence supports the trial court's conclusion that there are \$ 111,000 in excess proceeds in this case or that Gaines retained any excess proceeds whatsoever.

Accordingly, we sustain appellants' first issue and render judgment that the Adamses take nothing on their claims against appellants. Further, because there [*11] is no longer a damages award in favor of the Adamses, there is no basis for imposing an equitable lien on the property to secure the judgment. We therefore sustain appellants' second issue, in which they argue that the lien was inappropriate. Because we determine that no evidence supports the trial court's damages award, we need not reach appellants' third and fourth issues regarding the legality of the contract and attorney's fees. We reverse the trial court's judgment, render judgment that the Adamses take nothing on their claims against appellants, and remand for all further proceedings necessary to remove the lien against the property.

/s/ Leslie B. Yates

Justice

Judgment rendered and Memorandum Opinion filed July 3, 2008.