

CONTESTED EVICTION



COUNSEL'S CORNER

Aurora Borunda mortgaged her property with Financial Freedom Senior Funding Corp. in 2007, granting a \$117,000 Deed of Trust. Financial Freedom had the right to accelerate the debt upon Borunda's death – a typical event of default in most mortgages.

The Deed of Trust also stated that if the property is sold at foreclosure, any person holding possession shall immediately surrender the property to the buyer at the foreclosure sale. And if they do not surrender it, that person is a “*tenant at sufferance*” and may be removed by writ of possession.

Those are also typical provisions in virtually all Texas mortgages.

Aurora Borunda died on September 21, 2011. The property was sold at foreclosure to The Federal National Mortgage Association on January 8, 2013. You know TFNMA as *Fannie Mae*.

Aurora's daughter Linda Borunda continued to reside at the property. So Fannie Mae sent Linda a written demand for possession on January 25, 2013, and then filed an eviction lawsuit on February 8.

The Justice Court granted Judgment for the Plaintiff Fannie Mae. Linda appealed.

At a new trial in El Paso, the County Court also granted Judgment for Fannie. Linda Borunda appealed. Again.

Linda claimed that the El Paso County Court lacked jurisdiction because of a title dispute and as a consequence, the Deed of Trust's tenancy-at-sufferance clause is unenforceable against her. Specifically, Linda claimed that Financial Freedom violated the terms of the Deed of Trust by failing to provide her with adequate notice of the foreclosure sale.

As a result of the inadequate notice and according to Linda, Financial Freedom had no right to conduct the foreclosure sale. If Linda was correct in her assertion, then

Fannie Mae's interest is void and it had no authority to cause Linda to be evicted because only property owners and their managers may evict.

The Court readily admitted that Linda might have raised a legitimate title issue. However, defects in the foreclosure process are not relevant to eviction claims. Such defects must be raised separately. In another lawsuit. In District Court.

Fannie Mae's Deed granted by Financial Freedom at the foreclosure sale is sufficient evidence of ownership for purposes of an eviction case. Title defects in the foreclosure sale as between Financial Freedom and Fannie Mae are not recognizable in the limited eviction proceeding as between Linda and deed-holder Fannie Mae.

Fannie Mae bought the property at a foreclosure sale. The underlying Deed of Trust had a tenant-at-sufferance clause that could allow a Justice Court to determine the right of immediate possession independently of title.

Fannie Mae wins. Again.
Linda Borunda loses. Again.

See *Borunda v. Federal National Mortgage Association*; Cause No. 08-13-00331-CV; Texas Court of Appeals; 8th District; December 8, 2015.

Lessons learned:

1. We handle many tenant evictions at my Firm. This El Paso Court easily ruled for the Landlord / property purchaser. However, I have seen other courts struggle with this issue and this is why it is a favored strategy of tenants to claim a title defect in an eviction lawsuit.
2. In order to avoid a lawsuit over a possession issue that could take years to resolve, our smart landlord-clients offer "cash for keys" to some tenants who are particularly difficult. This can work well to expedite a tenant's exit from the property.
3. Happy New Year to all my faithful readers!

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