Reversed and Dissolved and Opinion Filed November 16, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-01145-CV

YYP GROUP, LTD. AND GEORGE KIMELDORF, Appellants
V.
AARON C. MCKNIGHT, Appellee

On Appeal from the County Court at Law No. 2
Dallas County, Texas
Trial Court Cause No. CC-19-02682-B

MEMORANDUM OPINION

Before Justices Whitehill, Pedersen, III, and Reichek
Opinion by Justice Pedersen, III

McKnight sought declaratory relief and a temporary injunction against appellants in relation to appellants' actions to evict him from the property located at 3624 Shenandoah Street, Dallas, Texas 75205 (the "Property").[1] The trial court held an evidentiary hearing and entered an order granting McKnight's requested temporary injunction, which is the subject of this appeal. After reviewing the parties' briefs and the record, we reverse and dissolve the trial court's order granting the

[1] McKnight further raised claims of wrongful foreclosure, unjust enrichment, and money had and received against appellants. McKnight requested the trial court impose a constructive trust on the Property.

temporary injunction. We dismiss McKnight's causes of action against appellants for lack of subject matter jurisdiction.

I. BACKGROUND

A. Financing for the Property

On July 27, 2018, CGE Real Estate Holdings, LLC ("CGE") made a real estate note, as borrower, promising to pay appellant YYP Group, Ltd. ("YYP")[2] the sum of $1,400,000.00 (the "Note"). CGE was a single member Texas limited liability company owned entirely by Russell Laird, who executed the Note.[3] YYP lent CGE $1,400,000.00 to finance the purchase of the Property.

Pertinent to our discussion, McKnight executed a guaranty "for the benefit of [YYP]" in his individual capacity. The guaranty includes the following: "The parties intend that [McKnight] shall not be considered a "debtor" as defined in TEX. BUS. & COM. CODE ANN. 9.105, as amended (and any successor statute thereto)."[4] McKnight

[2] Appellant Kimeldorf is the president and general partner of YYP.

[3] Laird secured the Note by executing a deed of trust payable to YYP. This deed of trust made no mention of McKnight, and McKnight did not execute the deed of trust.

[4] This is a direct quotation from the guaranty contract. Currently, Texas Business & Commerce Code section 9.105 does not contain a definition for "debtor" and instead relates to control of electronic chattel paper. TEX. BUS. & COM. CODE ANN. § 9.105. We presume the parties intended to reference Texas Business & Commerce Code section 9.102, which defines "Debtor" to mean:

> (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
>
> (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
>
> (C) a consignee.

BUS. & COM. § 9.102(28).

further executed a Loan Agreement Rider in his individual capacity as a "guarantor" on the Note.

B. Default on the Note and Bankruptcy

CGE defaulted on the Note by failing to make the first payment as agreed. YYP accelerated the Note on September 13, 2018. YYP posted a foreclosure sale to occur on December 4, 2018. On December 3, 2018, YYP and CGE executed a Temporary Forbearance Agreement in which (i) CGE agreed to pay YYP $15,400.00 and (ii) YYP agreed to cancel the December 4, 2018 foreclosure sale.[5] Only Laird and Kimeldorf executed this agreement; McKnight was not a party to this agreement.

Thereafter, YYP claimed that CGE defaulted on the Note and sought to foreclose on the Property a second time. CGE filed for Chapter 11 bankruptcy protection—styled *In Re CGE Real Estate Holdings, LLC*, Case No. 19-40007-11-mxm in the Northern District of Texas. YYP moved for relief from the bankruptcy stay on the Property, and the Bankruptcy Court for the Northern District of Texas entered an order as follows:

> It is therefore, ORDERED, ADJUDGED AND DECREED that:
>
> 1. [CGE] agrees that YYP has a valid perfected first lien on the Property more completely described in the Motion and exhibits thereto.

[5] In this Temporary Forbearance Agreement, YYP "retain[ed] the right to have the Property sold at a foreclosure sale at any time after December 5, 2018."

2. Effective immediately, the automatic stay is modified to allow YYP to take all steps required by law and under its loan documents to post the Property for a May 7, 2019 foreclosure sale and provide notice of such as required by law and the loan Documents;

3. On or before 4:00 p.m. central standard time on May 6, 2019, [CGE] shall pay in full the indebtedness owing to YYP under its loan documents in an amount acceptable and agreeable to YYP in cash or other certified funds. Such payment must be received by YYP no later than 4:00 p.m. CST on May 6, 2019.

. . .

6. [CGE] agrees not to take any action whatsoever in any court or otherwise to delay, impede, postpone or otherwise interfere with Movant's rights under this Order to foreclose on the Property on May 7, 2019 if Movant is not paid in full pursuant to the terms of paragraph 3 of this Order. [CGE] and/or anyone acting on its behalf or at its direction is specifically prohibited for seeking injunctive relief in an attempt to delay the May 7, 2019 foreclosure sale. . . .

YYP received no further payments on the Note and moved for a May 7, 2019 foreclosure sale.

C. McKnight's Temporary Injunction

McKnight has lived on the Property with his son since July 2018 and desired to prevent YYP's foreclosure. McKnight filed his original petition on May 6, 2019, which requested an ex-parte temporary restraining order. On the morning of May 7, 2019, YYP foreclosed on the property at 10:06 a.m. That same morning, the trial court entered a temporary restraining order at about 10:30 a.m., which (i) ordered appellants to "refrain from instituting foreclosure proceedings against the Property"

and (ii) set the temporary injunction hearing for May 21, 2019.[6] This May 7, 2019 temporary restraining order expired on its own terms, and no temporary injunction hearing was held on May 21, 2019.

Appellants answered and counterclaimed for declaratory judgment. Both parties addressed McKnight's standing to bring suit on the Property in their pleadings and following motions.

On August 26, 2019, trial court held an evidentiary hearing on McKnight's second request for temporary injunction and appellants' motion to expunge lis pendens.[7] Both parties raised McKnight's standing to bring the suit during the hearing.[8] McKnight testified as follows:

> Q. Mr. McKnight can you explain to [the] court what was your agreement between you and CGE real estate LLC when you two [purchased the] home?
>
> A. That we were going to buy the Property, and do construction on the Property and resell it, or make it my permanent residence, and make the payments and live in the house. … I didn't sell the home. I've been staying there.
>
> . . .
>
> Q. Did you put any money into the purchase of the Property?
>
> A. Yes I put every dollar into the purchase of the Property.
>
> . . .
>
> Q. And who owns CGE?

[6] The temporary restraining order ordered that "Defendants and their agents, representatives, and employees shall immediately refrain from instituting foreclosure proceedings against the Property."

[7] McKnight filed a notice of lis pendens on the Property.

[8] During the hearing, McKnight's attorney specifically asks for finding on standing: "we're asking this court to find that [McKnight] does in fact have standing to dispute the validity of the sale and at least let us litigate this case while my client maintains the status quo that allows my client to remain in the property."

A. Russell owns CGE.

Q. How much does he own?

A. 100 percent.

. . .

Q. . . . have you ever been a title holder for the residence on Shenandoah?

A. No.

Q. Have you ever had a lien on the Property on Shenandoah?

A. No.

Q. Did you ever executed a written lease agreement for the Property on Shenandoah?

A. Me?

Q. Yes.

A. No.

Q. Did you ever record anything on the deed records prior to May 7th of this year, saying that you had any sort of interest in the Property on Shenandoah?

A. No.

Although the trial court did not rule at the hearing, Judge Bellan stated: "I've got to go kick around this standing issue that will determine all of the rest of this." On August 30, 2019, the trial court entered a temporary injunction, which ordered appellants "to cease all action to evict [McKnight] and all occupants from the [Property]," and "further ENJOINED [appellants] from attempting to sell or convey

title to the [Property] by gift or otherwise without a full trial on the merits." This interlocutory appeal followed.[9]

II. ISSUES RAISED ON APPEAL

Appellants raise the following three issues on appeal:

1. Whether McKnight lacks standing to contest the validity of the foreclosure sale.

2. Whether the foreclosure sale was properly noticed and conducted.

3. Whether McKnight has an adequate remedy at law and can be compensated by money damages.

Although McKnight filed no notice of appeal,[10] he raises a single additional issue in his briefing:

1. Whether, in light of the Dallas County and Texas Supreme Court's emergency orders halting residential eviction proceedings, the court should affirm the trial court's issuance of the preliminary injunction ordering appellants to cease all action to evict McKnight and his family from [the Property].

III. STANDARD OF REVIEW

Temporary Injunction

In addressing evidence supporting a trial court's injunction order, we review a trial court's order that grants or denies a request for a temporary injunction under

[9] Texas Civil Practices and Remedies Code section 51.014 permits appeal from a county court at law's interlocutory order that "grants or refuses a temporary injunction . . . " TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4).

[10] "A party who seeks to alter the trial court's judgment or other appealable order must file a notice of appeal. Parties whose interests are aligned may file a joint notice of appeal. The appellate court may not grant a party who does not file a notice of appeal more favorable relief than did the trial court except for just cause." TEX. R. APP. P. 25.1

an abuse of discretion standard. *RWI Constr., Inc. v. Comerica Bank*, 583 S.W.3d 269, 274 (Tex. App.—Dallas 2019, no pet.) (citing *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002)). If the trial court abused its discretion in granting such relief, the reviewing court should reverse the temporary injunction order. *Id.* "The reviewing court must not substitute its judgment for the trial court's judgment unless the trial court's action was so arbitrary that it exceeded the bounds of reasonable discretion." *Butnaru*, 84 S.W.3d at 204. When we address the trial court's jurisdiction to enter an injunction order, we employ a de novo standard. *See City of McKinney v. Hank's Rest. Group, L.P.*, 412 S.W.3d 102, 109 (Tex. App.—Dallas 2013, no pet.).

IV. DISCUSSION

"Subject matter jurisdiction is essential to the authority of a court to decide a case." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). Standing is a threshold issue that implicates subject matter jurisdiction. *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998). The plaintiff bears the burden of alleging facts that affirmatively show the trial court has subject matter jurisdiction. *Tex. Parks & Wildlife Dep't v. Garrett Place, Inc.*, 972 S.W.2d 140, 142 (Tex. App.—Dallas 1998, no pet.) (citing *Texas Ass'n of Business*, 852 S.W.2d at 446).

A. The Standing Doctrine

Standing is a party's justiciable interest in a controversy and is a component of subject matter jurisdiction. *Town of Fairview v. Lawler*, 252 S.W.3d 853, 855 (Tex. App.—Dallas 2008, no pet.) (citing *Nootsie, Ltd. v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 661–62 (Tex. 1996)). Standing focuses on who is entitled to bring an action and is determined at the time the suit is filed in the trial court. *Id.* (citing *M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 708 (Tex. 2001)). If a party lacks standing to bring an action, the trial court lacks subject matter jurisdiction to hear the case. *Id.* (citing *Tex. Ass'n of Bus.*, 852 S.W.2d at 444–45).

> A court has no jurisdiction over a claim made by a plaintiff who lacks standing to assert it. Thus, *if a plaintiff lacks standing to assert one of his claims, the court lacks jurisdiction over that claim and must dismiss it*. Similarly, if the plaintiff lacks standing to bring any of his claims, the court must dismiss the whole action for want of jurisdiction.

Heckman v. Williamson County, 369 S.W.3d 137, 150–51 (Tex. 2012) (emphasis added). Generally, courts must analyze the standing of each individual plaintiff to bring each individual claim he or she alleges. *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 77 (Tex. 2015); *see Fitness Evolution, L.P. v. Headhunter Fitness, L.L.C.*, No. 05-13-00506-CV, 2015 WL 6750047, at *13 (Tex. App.—Dallas Nov. 4, 2015, no pet.) (mem. op. on reh'g) (addressing parties' standing to bring claims and counterclaims in the context of a guarantor and debtor).

B. Standing Analysis

"As a general rule, only the mortgagor or a party who is in privity with the mortgagor has standing to contest the validity of a foreclosure sale pursuant to the mortgagor's deed of trust." *Goswami v. Metro. Sav. & Loan Ass'n*, 751 S.W.2d 487, 489 (Tex. 1988) (citing *Estelle v. Hart*, 55 S.W.2d 510, 513 (Tex. [Comm'n Op.] 1932)). "However, when [a] third party has a property interest, whether legal or equitable, that will be affected by such a sale, the third party has standing to challenge such a sale to the extent that its rights will be affected by the sale." *Id.*[11]

The record shows that the only parties in privity on the Note were CGE and YYP. There is no evidence in the record that suggests McKnight was a mortgagor on the Property. McKnight held no ownership interest in CGE. There is no evidence in the record that shows McKnight had any privity with appellants regarding an ownership interest in the Property.[12] Neither McKnight's guaranty nor the Loan Agreement Rider conferred legal or equitable interest in the Property to McKnight.

Instead, McKnight argues he has standing to bring his claims through an acquired equitable interest on the Property. McKnight contends he acquired equitable interest because (i) he made payments into the Property; (ii) appellants

[11] "Guarantors, individually, may not recover affirmatively on the debtor's claims because in the absence of damages that are independent from those suffered by the principal debtor, they lack standing." *Fitness Evolution, L.P.*, 2015 WL 6750047, at *13.

[12] We note that McKnight's counsel conceded this point during the August 26, 2019 hearing, stating "a guarantor does not have standing to dispute a foreclosure sale, there's no question about it, a guarantor can only dispute a deficiency lawsuit[.]" Nevertheless, McKnight's counsel argued "[h]owever, Mr. McKnight is not just a guarantor, he's a guarantor plus."

were aware of a joint venture agreement between him and CGE; (iii) appellants were aware that he and his family lived on the Property; and (iv) appellants waived their right to challenge his standing. We address each of these arguments separately.

i. McKnight's Payments On the Property

Relying on *Goswami*, McKnight contends that—similar to the appellant in *Goswami*—his investment in and payments on the Property caused him to acquire an equitable interest in the Property. In *Goswami*, the owner of real property filed bankruptcy to stop a foreclosure by the appellee ("Metropolitan"). *Goswami*, 751 S.W.2d at 488. During the bankruptcy, the owner entered a lease-option agreement with appellant ("Goswami") on the real property. *Id*. at 488-89.[13] "Goswami made monthly mortgage payments to Metropolitan and made extensive repairs to the property." *Id*. Nevertheless, Metropolitan foreclosed on the property, and Goswami sued to set aside the foreclosure sale. *Id*.

> Prior to the signing of the lease-option agreement a hearing was conducted before the bankruptcy court with Metropolitan in attendance. Metropolitan made no objection in the bankruptcy court to the lease-option agreement. Instead, Metropolitan accepted mortgage payments from Goswami pursuant to the lease-option agreement.

[13] Regarding the owner's power to agree to a lease-option agreement during the bankruptcy, the Texas Supreme Court in *Goswami* held:

> It is not clear from the record whether a trustee was assigned by the bankruptcy court to administer the estate of Yerasi [the owner]. In the event that a trustee was not assigned, Yerasi had the right to perform all of the functions and duties of a Chapter 11 trustee. 11 U.S.C. §§ 1107, 1303 (1987). The trustee or Yerasi was empowered to use, sell or lease the property, other than in the ordinary course of business, after notice and hearing. 11 U.S.C. § 363(b)(1) (1987).

Goswami, 751 S.W.2d at 499.

Id. at 489. The Supreme Court held that Goswami acquired an equitable interest in the property—and therefore had standing to contest the validity of the foreclosure sale—because Metropolitan made no objection to the lease-option agreement during the hearing in the bankruptcy court. *Id*.[14]

Here, the evidence shows that McKnight paid over $330,000.00 on the Property, paid three mortgage payments, and made renovations to the Property. However, in *Goswami*, the Supreme Court did not conclude that Goswami had standing based on Goswami's payments and renovations. *See id*. Instead, the Supreme Court based its decision—that Goswami acquired an equitable interest—on Metropolitan's failure to object to a lease-option agreement between the owner and Goswami. *See id.* Therefore, we reject McKnight's contention that the evidence of his payments and renovations to the Property caused him to acquire an equitable interest in the Property.

ii. Joint Venture Agreement

Further relying on *Goswami*, McKnight next contends that appellants knew of a joint-venture agreement ("JVA") between CGE and McKnight relating to the Property. However, there is no written evidence in the record of a JVA.[15] There is

[14] This suggests that Metropolitan impliedly consented to the lease-option agreement when Metropolitan did not object to the lease-option agreement during the hearing in the bankruptcy court. *See id.*

[15] We note that McKnight submitted a "Joint Venture Agreement for McKnight-Laird Joint Venture 978A" as a part of his briefing to this Court. However, this JVA document was never admitted in evidence

no evidence in the record that CGE assigned any interest to McKnight.[16] Although McKnight testified that he "communicated" about the agreement between him and CGE to Kimeldorf,[17] the Loan Agreement Rider provides:

> **THE WRITTEN LOAN AGREEMENTS REPRESENT THE FINAL AGREEMENTS BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**
>
> **THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

Unlike Goswami, who was a party with an assigned interest in the bankruptcy debtor's mortgaged property, McKnight is merely a guarantor on the Note. *Id.* at 488-89. Moreover, the Loan Agreement Rider repudiates any other alleged agreement between McKnight and CGE. Therefore, we reject McKnight's contention that an oral or written agreement existed on the Property that caused him to obtain an equitable interest in the Property.

iii. Appellants' Awareness of McKnight's Living on the Property

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at the hearing in the instant case, and our evidentiary review is limited to the evidence before the trial court. *See* TEX. R. APP. P. 34.6(a). McKnight has not otherwise challenged the accuracy of the reporter's record. *See* TEX. R. APP. P. 34.6(e).

[16] "Certain agreements, including 'a contract for the sale of real estate,' are 'not enforceable unless the promise or agreement, or a memorandum of it' is 'in writing' and 'signed by the person to be charged with the promise or agreement or by someone legally authorized to sign for him.' . . . This requirement is commonly called the statute of frauds." *Copano Energy, LLC v. Bujnoch*, 593 S.W.3d 721, 727 (Tex. 2020) (citing BUS. & COM. § 26.01(a), (b)(4)).

[17] When asked about his understanding of the relationship between McKnight and CGE, Kimeldorf responded that he "had no idea how [McKnight] was involved with CGE."

McKnight asserts that appellants were aware that he and his family lived on the Property, which therefore caused him to acquire an equitable interest in the Property. However, McKnight provides no supporting authorities to support this assertion, nor have we found authority supporting his position.[18] Accordingly, we reject McKnight's assertion.

iv. Appellants Waived Their Right to Challenge McKnight's Standing

McKnight argues that appellants "waived their rights to argue McKnight lacks standing by asserting counterclaims for declaratory relief against McKnight." McKnight relies on *State and County Mut. Fire Ins. Co. v. Walker*, a case in which our sister court held that an insurance company "waived any argument that [appellee] did not have standing to challenge its claims" after the insurance company joined appellee in a declaratory judgment action. 228 S.W.3d 404, 412 (Tex. App.—Fort Worth 2007, no pet.).[19] We reject McKnight's argument.[20]

Because it is a component of subject matter jurisdiction, standing cannot be waived and may be raised for the first time on appeal. *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 484 (Tex. 2018). "A court can—and if in doubt, must—raise

[18] McKnight makes no argument that he acquired interest in the Property by adverse possession.

[19] In *Walker*, the insurance company joined appellee "as a defendant in the suit, naming her as a person potentially having an interest or claiming an interest in the insurance policy." *Walker*, 228 S.W.3d at 406. There is no similar discussion that McKnight was a beneficiary of the Note in the instant case.

[20] McKnight also refers us to our sister court's holding in *Spruiell v. Lincoln*. No. 07–97–0336–CV, 1998 WL 174722, at *1 (Tex. App.—Amarillo Apr. 13, 1998, pet. denied) (not designated for publication). However, as that case is not binding on this Court and has no precedential value, we decline to address *Spruiell* herein. TEX. R. APP. P. 47.7 ("Opinions and memorandum opinions designated 'do not publish' under these rules by the courts of appeals prior to January 1, 2003 have no precedential value.").

standing on its own at any time." *Id*. Appellants' assertion of a declaratory judgment claim against McKnight does not preclude appellants from challenging McKnight's standing to bring claims on the Property. *See Heckman*, 369 S.W.3d at 150–51.

Here, all of McKnight's claims against appellants hinge on whether McKnight had an interest in the Property. The undisputed evidence shows that McKnight (i) was not a party to the Note; (ii) had no ownership in the mortgagor, CGE; (iii) never held title to the Property; (iv) never had a lien on the Property; (v) never executed a written lease agreement for the Property; and (vi), prior to May 7, 2019, never recorded that he had any interest on the Property's deed records.

As discussed above, McKnight's payments on the Property did not cause him to acquire an equitable interest in the Property. There is neither evidence in the record of a written agreement between McKnight and CGE regarding the Property, nor evidence of appellants' consent or acquiescence to any such an agreement.

In summary, there is no evidence in the record that McKnight has legal or equitable interest in the Property. We must therefore conclude that McKnight has no standing to bring suit on the Property. We conclude that McKnight's causes of action against appellants fail for lack of standing.[21] We sustain appellants' first issue.

[21] A party's lack of standing deprives the court of subject-matter jurisdiction and renders any trial court action void. *Fitness Evolution, L.P.*, 2015 WL 6750047, at *14.

V. CONCLUSION

Because of our resolution of these jurisdictional issues, we need not reach the parties' remaining issues. We reverse the trial court's August 30, 2019 order granting the temporary injunction and dissolve this temporary injunction. We dismiss all of McKnight's causes of action for lack of subject matter jurisdiction.[22] We remand this case to the trial court for further proceedings consistent with this opinion.

/Bill Pedersen, III//
BILL PEDERSEN, III
JUSTICE

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[22] We note that our opinion in no way deprives McKnight of his right to defend himself against appellants' declaratory judgment counterclaim action.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

YYP GROUP, LTD. AND GEORGE KIMELDORF, Appellants	On Appeal from the County Court at Law No. 2, Dallas County, Texas Trial Court Cause No. CC-19-02682-B.
No. 05-19-01145-CV V.	Opinion delivered by Justice Pedersen, III. Justices Whitehill and Reichek participating.
AARON C. MCKNIGHT, Appellee	

In accordance with this Court's opinion of this date, the August 30, 2019 Order Granting Temporary Injunction of the trial court is **REVERSED** and **DISSOLVED**. Furthermore, all of appellee AARON C. MCKNIGHT's causes of action in this cause are **DISMISSED** for want of jurisdiction. This cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellants YYP GROUP, LTD. AND GEORGE KIMELDORF recover their costs of this appeal from appellee AARON C. MCKNIGHT.

Judgment entered this 16th day of November 2020.