

**Affirmed and Opinion filed October 4, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-00295-CV**

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**ALFRED J. ANTONINI and ALL OCCUPANTS, Appellants**

**V.**

**APTNH, L.P., A TEXAS LIMITED PARTNERSHIP, Appellee**

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**On Appeal from the County Civil Court at Law No. 3  
Harris County, Texas  
Trial Court Cause No. 728,047**

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**OPINION**

Appellant, Alfred J. Antonini, appeals from the final judgment in a forcible detainer action of the County Civil Court at Law awarding possession of three apartments to appellee APTNH, L.P. In his first point of error, Antonini contends that the courts below lacked jurisdiction because the right to possession of the apartments depended upon the outcome of a title dispute. Antonini's second and third points of error challenge the legal and factual sufficiency of the evidence supporting the judgment. Because Antonini fails to show that title to the property is directly involved in the suit, and sufficient evidence to support the judgment appears in the record, we affirm.

In three separate forcible detainer actions, APTNH sued Antonini in Justice Court for possession of three apartments in the Natchez House Apartments complex (Apts. A901, A902, and A904) and obtained judgments against him in each.<sup>1</sup> Antonini's appeals of the adverse judgments were consolidated in the County Civil Court at Law No. 3 for trial *de novo*. The trial court rendered judgment for APTNH for possession, costs and \$6800 in attorney fees.<sup>2</sup> The trial court also entered findings of fact and conclusions of law in response to Antonini's request and subsequent past due notice.

### **1. The Facts Surrounding the Dispute.**

The record indicates that Plantation Capital Corp., a Chapter 11 debtor, formerly owned the Natchez House Apartments complex. Appellant Antonini appears to have had some interest in Plantation Capital, although the exact relationship is not apparent from the record. Antonini made use of several apartments in the complex, but again, the record does not show when he entered into possession of the apartments or which apartments he used, other than the three at issue.

During the pendency of Plantation Capital's bankruptcy proceeding, Antonini entered into a handwritten agreement on behalf of Plantation Capital to sell the Natchez House Apartments to Gatesco, Inc. as soon as the bankruptcy trustee could provide Gatesco with a deed free and clear of all liens, claims and encumbrances. The handwritten agreement, entitled "Contract to Purchase," was executed on April 20, 1999 by Antonini and Gary Gates, Jr., president of Gatesco. The Contract to Purchase also provided that Bissonet Investments, L.L.P., an entity not a party to this appeal, would sell an apartment complex known as Woodland Forest to Gatesco under certain terms and upon the approval of the

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<sup>1</sup> Although the judgments of the justice court do not appear in the record, no one disputes this fact.

<sup>2</sup> The trial court also refused Antonini's motion to set supersedeas bond, which was appealed to this court. This court ordered supersedeas to be set in the amount of \$2,100, to suspend execution of the writ of possession, effective for 20 days from the date of the order. This court also ordered the judge of County Court at Law Number Three to enter findings of fact concerning its determination to deny appellant's motion to set supersedeas bond. Those findings were subsequently filed in this court.

bankruptcy court. Antonini signed the Contract to Purchase on behalf of Bissonet Investments, as well as several other entities not relevant to this appeal. As additional consideration, Antonini and his entities agreed to subordinate certain claims and liens on the properties. All parties agreed that each party had the right to enforce specific performance of the contract, and that the Contract to Purchase was subject to bankruptcy court approval.

In addition, the Contract to Purchase provided that, following the closing of the sales of both properties and the completion of certain other terms, the Natchez House and Woodland Forest Apartments were to be transferred to “new L.P. entities in which all of the terms listed above will be complied with.” While not a model of clarity, the referenced “terms listed above” appear to provide that Antonini is to retain a 1/3 interest in any profits from “operations and increase in value” and other benefits identified on the attached “Exhibit A.” Exhibit A, which is also handwritten, includes three columns headed “Gary,” “Partner X, and “Al’s Group.” The columns appear to identify the interests each partner was to have in the limited partnerships to be formed, and reflects that each was to have a 1/3 interest in operational profits and tax benefits. The “Al’s Group” column additionally appears to list “5 Apts 6 months,” “3 Apts 2 years,” and “1 Apt permanent.”<sup>3</sup>

One day after the Contract to Purchase was executed, the bankruptcy trustee filed an expedited motion to approve an earnest money contract with Gatesco and for authority to sell the Natchez House Apartments “free and clear of security interests, liens, claims and encumbrances.” In his motion, the bankruptcy trustee acknowledged the Contract to Purchase:

The Trustee understands that Al Antonini (an insider of the Debtor) and related entities have reached some form of agreement with the Purchaser concerning the sale. In that regard, Al Antonini will have an interest in the new venture formed to acquire the Project. The interest is 33%. . . . Since

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<sup>3</sup> In his brief, Antonini states that the Contract to Purchase provides for “the right to possession of apartments, 5 for a period of 6 months, 3 for a period of 2 years, and one perpetually.”

the monies should be available to pay all creditors in full (based on the agreed subordinations), the Trustee believes that the agreement between Mr. Antonini and Mr. Gates does not adversely effect [sic] the estate.

Of importance to this appeal, the earnest money contract provided that the Natchez House Apartments complex was to be sold to Gatesco in its entirety. Regarding the Contract to Purchase, the earnest money contract states as follows:

[The Trustee] acknowledges the existence of an agreement dated April 20, 1999, between and among [Gatesco], Gary Gates, Alfred Antonini, Lava Corp, Texas Valla Real Estate I, Inc., and Alfred Antonini, Trustee, to which [the Trustee] is not a party; provided, however, it is expressly stipulated, understood and agreed that [the Trustee] is not bound by the provisions of such other agreement and is not responsible for ensuring that any party performs its obligations thereunder, and nothing in such other agreement constitutes a condition to the obligations of [Gatesco] under this Contract.

On April 23, 1999, the Bankruptcy Court for the Southern District of Houston approved the trustee's sale of the Natchez House Apartments to Gatesco "free and clear of all security interests, liens, claims and encumbrances" (except for several exceptions not relevant here). Antonini signed the order, signifying his agreement. Finalizing the sale as approved by the bankruptcy court, Gatesco and the trustee executed a special warranty deed conveying the Natchez House Apartments to Gatesco. This deed does not acknowledge the Contract to Purchase or any retained interest in any apartments by Antonini.

On June 23, 1999, Gatesco conveyed the Natchez House Apartments to Appellee APTNH. At the time of the conveyance, Gary Gates, Jr. was both the president of Gatesco and the sole owner of the general partner of APTNH. As before, there was no mention of the Contract to Purchase or any retained interest in any apartments by Antonini in the deed to APTNH. Antonini alleges that APTNH is, in fact, the limited partnership contemplated in the Contract to Purchase in which Antonini was to receive a 1/3 interest, and that APTNH

engaged in wrongful conduct that prevented Antonini from fully performing under the Contract to Purchase.

On October 4, 1999, Antonini brought suit in state district court against Gates and others alleging, among other things, fraudulent inducement, breach of contract, and specific performance relating to the Contract to Purchase. On December 13, 1999, APTNH sued Antonini for possession of apartments A901, A902, and A904 of the Natchez House Apartments, alleging that Antonini was a tenant at sufferance guilty of forcible detainer. Antonini asserted that he was properly in possession of the apartments under the Contract to Purchase. Antonini also asserted in a motion for continuance that the trial court lacked subject matter jurisdiction and referenced the suit pending in the district court.

## **2. Jurisdiction in the Courts Below.**

Antonini's first issue on appeal is that the courts below lacked jurisdiction because the right to possession of the apartments in question depended upon the outcome of a contest over the title to the apartments. In support of his argument, Antonini contends that the Contract to Purchase resulted in an equitable conversion, vesting equitable title to the apartments in Antonini. APTNH responds that Antonini is foreclosed from raising the jurisdictional issue because Antonini did not raise the equitable conversion argument below, and Antonini's district court suit does not include a cause of action specifically for trespass to try title. Alternatively, APTNH contends that the Contract to Purchase fails to satisfy the statute of frauds.

APTNH concedes, however, that Antonini argued at trial that "since [Antonini's] lawsuit concerned the title to the Apartment Complex, the court did not have jurisdiction over the matter." Further, Antonini is correct that subject matter jurisdiction may not be waived by the parties, and may be raised for the first time on appeal. *Color Tile, Inc. v. Ramsey*, 905 S.W.2d 620, 622 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1995, no writ) (citing *Texas Ass'n of Business v. Texas Air Control Board*, 852 S.W.2d 440, 443 (Tex. 1993)).

With that said, we do not agree with Antonini that merely raising the issue of property ownership divests the justice and county courts of jurisdiction. A forcible detainer action is a special proceeding governed by particular statutes and rules. *Kennedy v. Highland Hills Apartments*, 905 S.W.2d 325, 326 (Tex. App.—Dallas 1995, no writ). It was created to provide a speedy, simple, and inexpensive means for resolving the question of the right to possession of premises. *Id.* Accordingly, “the only issue shall be as to the right to actual possession; and the merits of the title shall not be adjudicated.” TEX. R. CIV. P. 746. The sole issue in a forcible detainer suit is who has the right to immediate possession of the premises. *Fandey v. Lee*, 880 S.W.2d 164, 168 (Tex. App.—El Paso 1994, writ denied). To prevail in a forcible detainer action, therefore, a plaintiff is not required to prove title, but is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Goggins v. Leo*, 849 S.W.2d 373, 377 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1993, no writ).

Where title to the property is directly involved in the suit, the justice and county courts lack jurisdiction. *Fandey*, 880 S.W.2d at 168. If it becomes apparent that a genuine issue regarding title exists in a forcible detainer suit, the court does not have jurisdiction over the matter. *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1995, writ denied). In contrast, where issues related to the title of real property are merely tangentially or collaterally related to possession, the justice courts may adjudicate possession. *Falcon v. Ensignia*, 976 S.W.2d 336, 338 (Tex. App.—Corpus Christi 1998, no pet.). A justice or county court is deprived of jurisdiction only if “the right to immediate possession necessarily requires the resolution of a title dispute.” *Haith v. Drake*, 596 S.W.2d 194, 196 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1980, writ ref’d n.r.e.).

In the present case, Antonini raises no genuine issue of title that must be resolved in order to determine the right to immediate possession. The Contract to Purchase Antonini relies upon reflects that upon the completion of certain conditions, a limited partnership entity or entities were to be created to own the properties initially purchased by Gatesco, and

that, at best, Antonini was to have a partnership interest in the profits and other benefits of ownership – not actual title to property. Indeed, Antonini contends that APTNH is the limited partnership in which he was to have acquired a 1/3 interest under the Contract to Purchase. A partnership interest is personal property, and a partner has no interest in specific limited partnership property. TEX. REV. CIV. STAT. ANN. art. 6132a-1, § 7.01 (Vernon Supp. 2001).

Regarding the handwritten reference to a number of apartments in Exhibit A of the Contract to Purchase under the “Al’s Group” column, specific apartments are not identified, and it is not even specified whether the apartments designated for the use of “Al’s Group” were to be in the Natchez House Apartments or the Woodland Forest Apartments. Presumably, that is an issue that the partnership would determine. Additionally, Antonini’s argument that the Contract to Purchase amounts to an equitable conversion<sup>4</sup> does not create a title issue, because, even if the doctrine were applied here, the problem remains that the Contract to Purchase does not provide for the transfer of specific property or apartments to Antonini, but merely a partnership interest in a limited partnership entity to be formed and the use of unspecified apartments.

In short, on this record, we find that a genuine issue of title does not exist. Therefore, the courts below could determine the right to immediate possession of apartments A901, A902, and A904 without resolving title issues. *Falcon*, 976 S.W.2d at 338; *Haith v. Drake*, 596 S.W.2d at 196. Consequently, we find that the courts below had jurisdiction over this

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<sup>4</sup> An equitable conversion is generally defined as that change in the nature of property by which, for certain purposes, realty is considered as personalty or personalty is considered as realty, and the property is transmissible as so considered. *Sebesta v. Daniels*, 812 S.W.2d 641, 644 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1991, writ denied). Equitable conversion may occur by will or by contract. *Id.* In equitable conversion by contract, the doctrine is used to decide the status of the parties’ interests during the period between the execution of the contract of sale and actual transfer of legal title. *Id.* It is utilized to allocate the increase or decrease in value of the property during this period, or to determine how the realty or personalty passes upon the death of either the vendor or vendee. *Id.* We express no opinion on whether the doctrine is applicable in the present case.

dispute.<sup>5</sup>

Because we find that the lower courts had jurisdiction to adjudicate the forcible detainer action, we do not reach APTNH's alternative argument that the Contract to Purchase fails to satisfy the statute of frauds.

### **3. Antonini's Legal and Factual Sufficiency Challenges.**

In his second and third issues, Antonini challenges the legal and factual sufficiency of the evidence. Specifically, he contends the trial court's finding that "Defendant occupied the Premises as a tenant by sufferance," is legally and factually unsupportable. He also contends that APTNH failed to show the existence of a landlord-tenant relationship. Additionally, Antonini contends that the evidence was legally insufficient to prove either a forcible entry or a forcible detainer. As these issues relate to the same evidence, they will be discussed together.

In reviewing a claim of legally insufficient evidence, the appellate court must consider only the evidence and inferences tending to support the verdict, and disregard all evidence and inferences to the contrary. *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex.1992); *Jacobs v. Danny Darby Real Estate, Inc.*, 750 S.W.2d 174, 175 (Tex.1988). If the appellate court finds that more than a scintilla of evidence exists to support the verdict, then the no evidence challenge must fail. *Sherman v. First Nat'l Bank*, 760 S.W.2d 240, 242 (Tex. 1988).

Only one standard of review is used in reviewing factual sufficiency challenges,

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<sup>5</sup> While this action may determine the right to immediate possession of the property at issue, Antonini remains free to pursue his remedies in the district court. Because the forcible detainer remedy is cumulative, not exclusive, of other remedies, *Goggins*, 849 S.W.2d at 376, justice and district court remedies may be employed concurrently. *Id*; *Haith*, 596 S.W.2d at 196-97. Further, questions about title to property are not foreclosed by the issuance of a writ of possession. *Falcon*, 976 S.W.2d at 339. A party who is removed from property may challenge a competing deed in district court. *Id*; *see also* TEX. PROP. CODE ANN. § 24.008 (Vernon 2000) ("An eviction suit does not bar a suit for trespass, damages, waste, rent, or mesne profits."). Since the county court has no jurisdiction with regard to title, any decisions it may have made as to title are not binding on the district court. *Bacon v. Jordan*, 763 S.W.2d 395, 396 (Tex. 1988).



regardless of whether the court of appeals is reviewing a negative or affirmative jury finding or whether the complaining party had the burden of proof on the issue. *See Merckling v. Curtis*, 911 S.W.2d 759, 763 (Tex. App.—Houston [1st Dist.] 1995, writ denied); *M.J. Sheridan & Son Co. v. Seminole Pipeline Co.*, 731 S.W.2d 620, 623 (Tex. App.—Houston [1st Dist.] 1987, no writ). In determining factual sufficiency, we weigh all the evidence, both supporting and conflicting, and set aside the verdict only if the evidence is so weak, or the finding is so against the great weight and preponderance of the evidence, that it is clearly wrong and unjust. *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

Although Antonini apparently believes that the judgment was based in part on forcible entry and detainer, the record does not support this contention. Rather, APTNH's pleadings and the court's findings reflect only an action for forcible detainer. Accordingly, the only statute at issue is the forcible detainer statute, TEX. PROP. CODE ANN. § 24.002 (Vernon 2000). Further, APTNH alleged, and the trial court found, that Antonini was a tenant at sufferance; therefore, only subsection (a)(2) of section 24.002 is implicated. It provides the following:

A person who refuses to surrender possession of real property on demand commits a forcible detainer if the person . . . (2) is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease. . . .

TEX. PROP. CODE ANN. § 24.002(a)(2) (Vernon 2000).

Antonini claims there is legally and factually insufficient evidence to show that he was a tenant by sufferance or that APTNH was a landlord. The trial judge's findings of fact recite that APTNH was the owner and landlord of the three apartments in the Natchez House Apartments and that, as of June 23, 1999, Antonini "occupied the Premises as a tenant by sufferance." APTNH demonstrated that it was the owner and landlord of the apartments by the evidence of its acquisition of title from Gatesco. Contrary to Antonini's assertion, the fact that it might be necessary to introduce evidence of title in order to prove the landlord-

tenant relationship does not deprive the county court of jurisdiction, since the validity of the title so developed is not in issue. *Haith*, 596 S.W.2d at 197.

Further, Antonini himself attested to the existence of a landlord-tenant relationship by testifying that he considered himself a tenant under a lease. At a hearing on several motions, Antonini testified that he “never turned over possession and always had an agreement with Gates, Gatesco and the follow-up company, APTNH, that he had a lease for all times mentioned under the 4-20 agreement [the Contract to Purchase],” and that he “had the peaceful use of those apartments until approximately May of 1999.” Antonini further testified that there were “nine apartments – there were actually ten and I believe we ended up paying some money the first month to Gatesco or APTNH.” Thus, Antonini’s testimony and the evidence presented by APTNH sufficiently demonstrate the existence of a landlord-tenant relationship.<sup>6</sup>

That Antonini subsequently became a tenant at sufferance is likewise supported by the record. A tenant at sufferance does not have privity with the landlord but is merely an occupant in naked possession after his right to possession has ceased. *Goggins*, 849 S.W.2d at 377.<sup>7</sup> APTNH placed in evidence three notices to vacate, one for each apartment at issue, terminating Antonini’s continued possession. When Antonini failed to vacate the premises, he became a tenant at sufferance.

On this record, we find that (1) Antonini was in possession of the apartments at the

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<sup>6</sup> Antonini has claimed that the county court’s judgment is *void* because APTNH failed to prove that a landlord-tenant relationship existed. Since we have held that the record contains evidence of a landlord-tenant relationship, we need not answer this claim. However, we note that, in *Academy Corp. v. Sunwest N.O.P., Inc.*, 853 S.W.2d 833, 834 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1993, writ denied), this court held that proof of the landlord-tenant relationship is not jurisdictional; it is merely one of the elements of section 24.002.

<sup>7</sup> Antonini argues that *Goggins* is distinguishable because that case involved an occupant at the time of foreclosure of a lien superior to the tenant’s lease, a situation specifically identified in the statute. However, Section 24.002(a)(2) is not limited to that situation; it provides that a tenant at will or by sufferance *includes* an occupant at the time of foreclosure of a lien superior to the tenant’s lease.

time APTNH became the owner of the Natchez House Apartments, (2) APTNH provided sufficient evidence of ownership to demonstrate a superior right to immediate possession of the Natchez House Apartments, (3) a landlord-tenant relationship existed, and (4) Antonini became a tenant at sufferance guilty of forcible detainer when he refused to vacate the apartments as demanded in APTNH's notices to vacate.

The judgment of the trial court is affirmed.

/s/ Wanda McKee Fowler  
Justice

Judgment rendered and Opinion filed October 4, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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