

CAUSE NO. 2022-24128

ANETRAL HALL

Plaintiff,

v.

WILMINGTON SAVINGS FUND SOCIETY,  
FSB, AS OWNER TRUSTEE OF THE  
RESIDENTIAL CREDIT OPPORTUNITIES  
TRUST VII-B

Defendant.

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IN THE DISTRICT COURT

295<sup>th</sup> JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

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**DEFENDANT’S NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT**

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COMES NOW, Defendant WILMINGTON SAVINGS FUND SOCIETY, FSB, AS OWNER TRUSTEE OF THE RESIDENTIAL CREDIT OPPORTUNITIES TRUST VII-B (“RCOT” or “Defendant”), and pursuant to Texas Rule of Civil Procedure 166a(i), moves for entry of no-evidence summary judgment on the claims asserted against it by Plaintiff Anetral Hall (“Hall” or “Plaintiff”) and would respectfully show the Court as follows:

**Introduction**

RCOT purchased real property and the improvements thereon located at 6314 Lacoste Love Court, Spring, TX 77379 (the “Property”).

On October 22, 2021, RCOT, through counsel, delivered a “Notice to Vacate and Demand for Possession” to Anetral Hall, a tenant on the Property.

Plaintiff failed to vacate the Property and RCOT filed a petition for eviction with the Justice of Peace, which Plaintiff appealed to the County Court.

On April 1, 2022, the County Court entered a Final Judgment and Order of Possession in favor of RCOT, evicting Hall from the Property.

On April 11, 2022, Hall filed a Notice of Appeal regarding the eviction judgment rendered on April 1, 2022, which was ultimately dismissed by the Fourteenth Court of Appeals on May 24, 2022.

In an effort to collaterally attack the County Court eviction judgment, Hall initiated this case on April 21, 2022. Hall sued RCOT seeking (1) a declaratory judgment that RCOT does not have an ownership interest in the Property due to a break in the chain of title; (2) suit to quiet title asserting RCOT's claim to the Property is invalid; (3) trespass to try title asserting Plaintiff has superior title to Defendant; and (4) fraudulent transfer asserting the company from whom RCOT purchased the Property, PSC 2019P, LLC ("PSC 2019"), transferred the Property to RCOT for inadequate consideration. *See generally Pl.'s Am. Pet.* ¶¶ 17-23; *see also Pl.'s First Supp. Pet.* ¶ 4.

The above-listed claims in Hall's Petition are wholly unsupported and unfounded. Hall has no evidence to support any of her claims. As such, the Court should award summary judgment in favor of RCOT.

## Argument

### **A. Summary Judgment Standard**

A defendant can prevail on a no-evidence motion for summary judgment by asserting that there is no evidence to support one or more of the essential elements of a plaintiff's claim. Specifically, Rule 166a(i) of the Texas Rules of Civil Procedure provides:

(i) No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

TEX. R. CIV. P. 166a(i).

A party moving for summary judgment pursuant to Rule 166a(i) is not required to provide supporting summary judgment evidence. *See, e.g., Gen. Mills Rests, Inc. v. Texas Wings, Inc.*, 12 S.W.3d 827, 832 (Tex. App.—Dallas 2000, no pet.); *Moore v. K-Mart Corp.*, 981 S.W.2d 266, 268 (Tex. App.—San Antonio 1998, writ denied). Rather, the “no-evidence summary judgment shifts the burden to the nonmovant to present enough evidence to be entitled to a trial[;] . . . [i]f the nonmovant is unable to provide some evidence, then the trial court must grant the motion.” *Merch. Ctr., Inc. v. WNS, Inc.*, 85 S.W.3d 389, 395 (Tex. App.—Texarkana 2002) (internal citations omitted).

To defeat such a motion, the non-movant must bring forth admissible evidence supporting each element of his claim which creates more than a mere surmise or suspicion of fact. *See Miller v. Mullen*, 531 S.W.3d 771, 778 (Tex. App.—Texarkana 2016). “When the evidence offered to prove a vital fact is so weak as to do no more than create a mere surmise or suspicion of its existence, the evidence is no more than a scintilla and, in legal effect, is no evidence.” *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983). If the non-movant fails to produce summary judgment evidence raising a genuine issue of material fact, the court must grant the motion. *See Tex.R.Civ.P. 166a(i)*. *See also Texas Wings*, 12 S.W.3d at 832.

Rule 166a(i) does not require discovery to be completed but only that there be adequate time for discovery. *Lattrell v. Chrysler Corp.*, 79 S.W.3d 141, 146 (Tex. App.—Texarkana 2002). “An adequate time for discovery is determined by the nature of the cause of action, the nature of the evidence necessary to controvert the no-evidence motion, and the length of time the case had been active in the trial court.” *Specialty Retailers, Inc. v. Fuqua*, 29 S.W.3d 140, 145 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).

Here, an adequate time for discovery has passed and Hall has no evidence to support any of her claims. In fact, this case was *already scheduled for trial* on the two-week docket for October

3, 2022. If Plaintiff has any evidence to support her claims, she should have it by now. Moreover, according to the Scheduling and Docket Control Order, this Court would begin hearing no-evidence motions for summary judgment after November 18, 2022, which has already passed. Altogether, the reasons listed above demonstrate that an adequate time for discovery has passed, and as such, Hall cannot avoid a no-evidence motion for summary judgment.

**B. There is No Evidence in Support of the Declaratory Judgment Claim**

Hall’s claim for declaratory judgment should be dismissed because she has no evidence to support this claim. A declaratory judgment action requires proof of two elements: “(1) there must be a real controversy between the parties and (2) the controversy must be one that will actually be determined by the judicial declaration sought.” *Nehls v. Hartman Newspapers, LP*, 522 S.W.3d 23, 29 (Tex. App.—Houston [1st Dist.] 2017, pet. denied). A real controversy “ceases to exist when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Id.* Thus, when there is no “real controversy between the parties,” a declaratory judgment action is not available.

In this case, Hall seeks declaratory judgment “that Home Today, Inc. is the owner of the Property as well as that the pending eviction of Anetral Hall from the Property is wrongful because Defendant does not have an ownership interest in the Property and Defendant thus lacks standing to evict people from the Property.” *Pl.’s Am. Pet.*, ¶ 18. First, Home Today, Inc. is no longer a party to this suit, and because “all persons who have or claim any interest that would be affected by the declaration must be made parties,” there is no “real controversy between the parties” with respect to RCOT and Home Today, Inc.<sup>1</sup> *See* Tex. Civ. Prac. And Rem. Code § 37.006.

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<sup>1</sup> Even if Home Today, Inc. were a party to this suit, Plaintiff Hall has no evidence that she is authorized to act on Home Today’s behalf, or even that she has any affiliation whatsoever with Home Today. Moreover, if the Court determines Home Today is a plaintiff, this motion applies equally to Home Today’s claims for all the reasons set forth herein.

Second, because the “pending eviction” is no longer pending as the Fourteenth District has dismissed the appeal, and Hall is a prior tenant who has never owned the Property, Hall has not and cannot produce any evidence that there is a “real controversy” between herself and RCOT with respect to RCOT’s ownership interest in the Property. *See Nehls, LP*, 522 S.W.3d at 29 (“A controversy ceases to exist when . . .the parties lack a legally cognizable interest in the outcome.”). Because Hall has no evidence of a “real controversy between the parties,” the declaratory judgment claim against RCOT should be dismissed.

**C. There is No Evidence to Support a Quiet Title Claim.**

“The elements of the cause of action to quiet title are that the plaintiff must show (1) an interest in a specific property, (2) title to the property is affected by a claim by the defendant, and (3) the claim, although facially valid, is invalid or unenforceable.” *Lockhart as Tr. of Lockhart Family Bypass Tr. v. Chisos Minerals, LLC*, 621 S.W.3d 89, 101 (Tex. App.—El Paso 2021, pet. denied). In other words, “[t]he plaintiff in a quiet-title suit must prove, as a matter of law, that he has a right of ownership and that the adverse claim is a cloud on the title that equity will remove.” *DHI Holdings, LP v. Legacy Mortgage Asset Tr. 2018-RPLS2*, No. 14-19-00987-CV, 2021 WL 4957023, at \*5 n. 12 (Tex. App.—Houston [14th Dist.] Oct. 26, 2021, pet. denied). “The plaintiff has the burden of supplying the proof necessary to establish his superior equity and right to relief.” *Id.*

Here, Hall has no evidence to support element one. As merely a prior tenant, rather than owner, Hall has no evidence to support any claim that she has “a right of ownership” or “interest in a specific property.” *See id; see also Lockhart*, 621 S.W.3d at 101. Thus, summary judgment on Hall’s Quiet Title claim is appropriate.

Hall also has no evidence to support the third element. That is, Hall has no evidence to show that RCO's interest in the Property is invalid or unenforceable. Thus, summary judgment on Hall's Quiet Title claim is appropriate.

**D. There is No Evidence to Support a Trespass to Try Title Claim.**

For Hall to prevail on a trespass-to-try-title action, she must “(1) prove a regular chain of conveyances from the sovereign, (2) establish superior title out of a common source, (3) prove title by limitations, or (4) prove title by prior possession coupled with proof that possession was not abandoned.” *Lance v. Robinson*, 543 S.W.3d 723, 735 (Tex. 2018). “The trespass-to-try-title statute, however, only applies when the claimant is seeking to establish or obtain *the claimant's* ownership or possessory right in the land at issue. *Id.*; see also Tex. Prop. Code § 22.002 (requiring “evidence of...sufficient title to maintain a trespass to try title action.”).

Much like Hall's quiet title claim above, she cannot prove any ownership or possessory right in the Property by any of the four aforementioned methods. She was a prior tenant who had no ownership in the Property when the Property was sold in a foreclosure sale. And she has no right to possession of the Property as conclusively established through the eviction proceedings. Because Hall has no evidence to support of her trespass-to-try-title claim, RCOT is entitled to summary judgment on this claim.

**E. There is No Evidence of a Fraudulent Transfer.**

Lastly, Hall does not have any evidence with respect to her fraudulent transfer claim. To prove that a transfer was fraudulent under The Uniform Fraudulent Transfer Act (TUFTA), plaintiff must show (1) his claim arose prior to the property transfer; (2) transferee did not pay reasonably equivalent value for the property; and (3) the transferor was insolvent at the time of the transfer or became insolvent as a result of the transfer. *Corpus v. Arriaga*, 294 S.W.3d 629, 634 (Tex. App.—Houston [1st Dist.] 2009, no pet.).

Here, Hall has no evidence to prove elements one, two, or three of her fraudulent transfer claim. First, Hall's claim against PSC 2019 arose in the form of a judgment, which is dated March 7, 2022, approximately five months *after* the transfer of the Property from PSC 2019 to RCOT on October 21, 2021. Thus, Hall cannot provide any evidence that her claim arose prior to the property transfer. *See Corpus*, 294 S.W.3d at 634. Second, Hall has no evidence that RCOT did not provide adequate consideration to PSC 2019 for the Property. And, Hall has no evidence that PSC 2019 was insolvent or became insolvent as a result of the transfer. Resultingly, because Hall cannot prove any element of her fraudulent transfer claim, RCOT is entitled to summary judgment under a no-evidence standard.

**F. Hall is Not Entitled to Attorneys' Fees**

Because there is no claim on which Hall may prevail, she is not entitled to attorneys' fees.

**PRAYER**

Wherefore Defendant WILIMINGTON SAVINGS FUND SOCIETY, FSB, AS OWNER TRUSTEE OF THE RESIDENTIAL CREDIT OPPORTUNITIES TRUST VII-B respectfully moves the Court grant this No-Evidence Motion for Summary Judgment and order that Plaintiff Anetral Hall take nothing on her claims, and for such other and further relief, in law and equity, to which RCOT may be justly entitled.

Respectfully submitted,

**CONDON TOBIN SLADEK THORNTON  
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*/s/ Jared T.S. Pace*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served by electronic filing as follows:

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Signed this the 28<sup>th</sup> day of NOVEMBER 2022.

*/s/ Jared T.S. Pace*  
\_\_\_\_\_  
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