

EXHIBIT  
"FALLACIOUS DEEDS"

- **Big Law**
  - **BakerHostetler**
  - **Boies Schiller Flexner LLP**
  - **Gibson Dunn**
    - **Allyson Ho**
    - **Orin Snyder**
  - **Goodwin Law's Hall of Shame**
    - **Who is Catalina Azuero?**
    - **Who is Lawyer Alexis Susan Coll-Very?**
    - **Who is Laura Stock Craven?**
    - **Who is Thomas M. Hefferon?**
    - **Who is Matthew S. Sheldon?**
    - **Who is Sabrina Rose-Smith?**
    - **Who is Laura A. Stoll?**
- **Bounty Hunters**
  - **Special Report on Michael F. Hord, Jr. of Hirsch Westheimer**
- **ROBBERS**
  - **CA5 and CA11 Whiteout Opinions**
  - **ClerkGate Corruption Scandal**
  - **CA11 Intervenor Appeal**
  - **Outlaws In Robes**
    - **Outlaws In Robes (FL) and (GA)**
    - **Outlaws In Robes (TX)**
  - **Is Texas Attorney General Ken Paxton a Criminal?**
- **SALOONS**
  - **DC Bar**
  - **Florida Bar**
  - **Texas Bar**
    - **Texas Bar Journal 2021**
    - **Texas Bar Journal 2020**
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**Deed of Trust** Judge Tamika Craft In Private Practice: LIT Reviews Past Case Involving Fallacious Quitclaim Deeds

Court decision raises eyebrows, pointing to the lack of authority in the quitclaim deeds presented by attorney Tamika Craft Demming.

By **justicefortexas**

Posted on October 11, 2023

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LIT's Explosive Series on Harris County District Judge Tami Craft OCT 11, 2023

In this case, LIT highlights the risk of title deed irregularities or potential fraud, which is clearly evident.

The situation involves a property dispute where quitclaim deeds were executed without the necessary approval from the probate court.

The court ruled that these deeds were not valid, emphasizing that the guardian lacked the authority to convey the property without proper approval.

This raises concerns about the integrity of the title transfer process and highlights the risks associated with:

**Lack of Legal Authority:** Executing property deeds without the required approval from the probate court can lead to a lack of legal authority in the transfer process. In this case, the court found that the guardian exceeded her authority, rendering the quitclaim deeds ineffective.

**Title Deed Issues:** The use of quitclaim deeds, which typically transfer the rights the grantor possesses but don't guarantee a clear title, can contribute to title deed issues. The deeds were deemed legally insufficient due to the absence of proper authorization.

**Potential Fraud:** While the court did not explicitly use the term "fraudulent," the circumstances surrounding the unauthorized property transfers could be seen as a species of title deed fraud. This emphasizes the importance of transparency and adherence to legal procedures in property transactions.

**Legal Repercussions:** The court's decision to reverse the adverse possession finding underscores the legal repercussions of improper property transfers. Such cases can result in significant legal battles, affecting the rights and claims of both parties involved.

**Property Disputes:** Title deed irregularities can lead to prolonged and complex property disputes. In this case, the lack of proper authority in the conveyance process initiated a legal conflict over ownership, requiring court intervention for resolution.

This situation serves as a cautionary tale, emphasizing the need for individuals involved in property transactions to adhere to legal procedures, secure proper approvals, and ensure transparency to mitigate the risks of title deed issues and potential fraud.

Here's Ten Bucks, sayeth Tami Craft-Demming  
Johnson v. McClintock 202 S.W.3d 821 (Tex. App. 2006)

OPINION

**Opinion by Justice HINOJOSA.**

Appellants, Kevin Johnson, Nona K. Roberts, Thurman Johnson, William Johnson, and Geraldine Johnson, appeal the trial court's finding that under the five-year statute, appellee, Melvin McClintock, adversely possessed certain property in Wharton County, Texas.

In one issue, appellants contend the evidence is legally insufficient to support the trial court's finding of adverse possession.

We reverse and render.

#### A. FACTUAL AND PROCEDURAL BACKGROUND

Anne Stevens owned the following three tracts of land in Wharton County: (1) Lot 5A, (2) Lot 3, and (3) Lot 3A.

In 1993, Stevens was declared incompetent, and Mabel Davis was named guardian of her person and estate.

In 1994, Davis asked the probate court for permission to sell Lot 5A to appellee.

Appellants contested the sale, and the probate court denied Davis's request.

On February 25, 1994, without consulting the probate court, Davis executed a **quitclaim deed** purporting to transfer Lot 3A to appellee and his wife.

A year later, on March 19, 1995, Davis executed another **quitclaim deed** purporting to transfer Lot 3 to appellee's wife.

Stevens died on June 19, 1995.

From 1994 to 2005, appellee paid off a lien that the Department of Housing and Urban Development ("HUD") had placed on the property, paid taxes on the property, and executed a gas, oil, and mineral lease on the property.

Throughout this period of time, appellants were aware of appellee's use of and dealings with the land.

After paying off the HUD lien in 2003, appellee filed suit to quiet title to the property.

In response, appellants demanded that appellee vacate the property and filed a **trespass-to-try-title counterclaim**.

After a bench trial, the trial court found that, under the five-year statute, appellee had adversely possessed Lots 3 and 3A. After the trial court denied their motion for new trial, appellants filed this appeal.

#### B. STANDARD OF REVIEW

An appellant may challenge a trial court's findings of fact for legal sufficiency; we review those findings under the same legal standard that we apply to the review of jury findings.

BMC Software Belg., N.V. v. Marchand, 83 S.W.3d 789, 794 (Tex. 2002); Ortiz v. Jones, 917 S.W.2d 770, 772 (Tex. 1996).

In reviewing the legal sufficiency of the evidence, we view all the evidence in the light favorable to the verdict, crediting favorable evidence if reasonable jurors could, and

disregarding contrary evidence unless reasonable jurors could not.

City of Keller v. Wilson, 168 S.W.3d 802, 807 (Tex. 2005).

We will sustain a legal sufficiency point if the record reveals the following: (a) the complete absence 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.

Id. at 810.

The fact finder is the sole judge of the credibility of the witnesses and the weight to give their testimony.

See id. at 819.

### C. ADVERSE POSSESSION UNDER FIVE-YEAR STATUTE

Appellants contend the trial court erred in finding that appellee adversely possessed Lots 3 and 3A, because appellee did not satisfy all the elements of the five-year statute.

Section 16.021 of the Texas Civil Practice and Remedies Code defines adverse possession as “an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person.”

TEX. CIV. PRAC. REM. CODE ANN. § 16.021(1) (Vernon 2002); Clements v. Corbin, 891 S.W.2d 276, 278 (Tex.App.-Corpus Christi 1994, writ denied).

To establish adverse possession under the five-year statute:

(a) A person must bring suit not later than five years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who:

- (1) cultivates, uses, or enjoys the property;
- (2) pays applicable taxes on the property; and
- (3) claims the property under a duly registered deed.

TEX. CIV. PRAC. REM. CODE ANN. § 16.025(a) (Vernon 2002).

Appellants contend that appellee did not satisfy the third element of the statute.

They assert that because a **quitclaim deed** only transfers the rights that the transferor possesses, and Davis, as grantor, did not have the right to transfer Stevens' property, appellee did not present evidence at trial of a duly registered deed.

Generally, “an instrument which purports to convey such right, title, and interest as a

grantor may have and no more will not qualify as a deed under the statute as it does not purport to convey the land itself nor does it specify any particular interest which is purportedly conveyed.”

Porter v. Wilson, 389 S.W.2d 650, 654 (Tex. 1965); see Rogers v. Ricane Enter., Inc., 884 S.W.2d 763, 769 (Tex. 1994) (providing that a quitclaim deed passes the interest of the grantor in the property); Garza v. Maddux, 988 S.W.2d 280, 289 (Tex.App.-Corpus Christi 1999, pet. denied).

A guardian does not have authority to convey the property of a ward without approval from the probate court.

TEX. PROB. CODE ANN. § 820 (Vernon 2005).

The first time she attempted to sell Stevens’ land, Davis asked the probate court for permission to sell, but her request to sell Lot 5A was denied.

Davis never asked the probate court for permission to convey either Lot 3 or Lot 3A to appellee and his wife.

Instead, she circumvented the probate court and purported to convey Lots 3 and 3A by quitclaim deeds.

Both quitclaim deeds transferred “all the right, title, land, interest and claim” that Davis, as guardian, had.

However, without the probate court’s permission, Davis, as guardian, had no right, title, interest, or claim to either Lot 3 or Lot 3A.

Thus, Davis conveyed nothing by her quitclaim deeds.

Because the record contains no evidence that appellee’s claim to Lots 3 and 3A was under duly registered deeds, we hold the evidence is legally insufficient to support the trial court’s finding that appellee adversely possessed Lots 3 and 3A.

Appellants’ sole issue is sustained.

The judgment of the trial court is reversed and judgment is rendered that appellee take nothing by his suit.

### **What is a Quitclaim Deed?**

In layman’s terms, a quitclaim deed is a legal document used to transfer interest in real estate from one person or entity to another. Unlike a warranty deed, a quitclaim deed doesn’t make any guarantees about the property’s title. Instead, it transfers whatever interest the grantor (the person transferring the property) has in the property to the grantee (the person receiving the property).

Think of it like this: If you have any rights to a property, a quitclaim deed allows you to give up those rights to someone else. However, it doesn’t guarantee that you actually have any rights or that the property is free of other claims. It’s a way of saying, “Whatever interest I have in this property, I’m giving it to you, but I’m not making any promises about what that interest is.”

Quitclaim deeds are often used in situations where there is already a level of trust between the parties involved, such as transferring property between family members or divorcing spouses. They are not typically recommended for transactions where a clear title is crucial, like when buying or selling real estate on the open market, because the grantor does not guarantee the quality of the title being transferred.

### **What is a Trespass-to-try-title Counterclaim?**

A "trespass-to-try-title" counterclaim is a legal action that can be taken in response to a claim or lawsuit related to the ownership or title of real property. Let's break down the key terms:

**Trespass-to-Try-Title:** This refers to a legal cause of action where a person (the plaintiff) seeks a court judgment to establish or clear title to a piece of real property. It is a legal remedy to resolve disputes over ownership of land.

**Counterclaim:** In a legal context, a counterclaim is a claim made by a defendant in response to the claim of the plaintiff. It's a way for the defendant to assert their own rights or seek a remedy against the plaintiff.

Putting them together, a "trespass-to-try-title counterclaim" would occur when a defendant in a lawsuit concerning the ownership or title of real property responds by filing a counterclaim asserting their own rights to the property and seeking a judgment from the court to establish or defend their title.

This type of counterclaim is often used in situations where there is a disagreement about the rightful owner of a piece of land, and both parties want the court to resolve the issue and officially determine the legal owner. It's a legal process aimed at settling disputes related to property titles.

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