No. 14-23-00391-CV

In the Fourteenth Court of Appeals
Houston, Texas

ANTHONY L. HUTCHISON AND ALL OCCUPANTS,
Appellants

V.

KENSINGTON STATION, LLC,
Appellee

APPEAL FROM CAUSE NO. 1201868
CIVIL COURT AT LAW NO. 3 OF HARRIS COUNTY, TEXAS
THE HONORABLE LASHAWN A. WILLIAMS, PRESIDING

APPELLEE'S BRIEF

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ORAL ARGUMENT NOT REQUESTED

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GUIDE TO CITATIONS

Citations to the record are as follows: CR[page], referencing the Clerk's Record followed by page number; and [volume]RR[page or exhibit], referencing the Reporter's Record by volume and page number or exhibit number (PX___ for Petitioner's Exhibit). Reference to Appellants' brief is APP. BR. at___.

STATEMENT REGARDING ORAL ARGUMENT

Appellee does not believe oral argument would aid the Court in deciding this appeal. The issues in this case are not too complicated. They also do not require any new interpretations of law, but instead require applying established legal principles to the evidence. Further, the record does not contain much evidence. If the Court determines that oral argument is necessary, however, Appellee requests the opportunity to participate.

TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

Appellee Kensington Station, LLC files this brief asking the Court to affirm the trial court's final judgment and order of possession. In support, Appellee respectfully shows the following:

STATEMENT OF THE CASE

Nature of the Case:	This is an appeal of a forcible-detainer action occurring after a foreclosure sale. CR5; 1RR5-6; 2RR:PXA.
Course of Proceedings:	Kensington filed a petition for forcible detainer in the justice court. CR5-7. After a bench trial, the justice court issued a no-answer default judgment against Appellants Anthony L. Hutchison and all other occupants. CR27-28. Appellants appealed the case de novo to County Court at Law No.3. CR29-30. After Kensington filed a motion for default judgment, Appellants answered the suit. CR39-45. Appellants later amended their answer by adding some affirmative defenses and verified denials. CR63-66.
Trial Court's Disposition:	On May 22, 2023, the county court held a bench trial and then issued its final judgment and order of possession. CR67-68; 1RR1.

ISSUE PRESENTED

1. Should the Court affirm the trial court's judgment and order of possession when:

    a. sufficient evidence supports the trial court's decision;

    b. the trial court had jurisdiction;

    c. Appellants did not provide the Court with a basis for reversing the trial court's judgment or rendering judgment in their favor; and

    d. the appellate record does not support rendering judgment in Appellants' favor or Appellants' reasons for seeking reversal?

STATEMENT OF FACTS

Background: Caroline Allison is the sole member and owner of Appellee Kensington Station, LLC. 1RR5. On September 6, 2022, Kensington paid $146,000 for a residential property located at 4241 Purdue Street, Houston, Texas 77005 (the "Property") at a foreclosure sale involving a deed of trust executed by Appellant Anthony L. Hutchison. 1RR5-6.; 2RR:PXA, PXD.

Kensington later retained The Weaver Law Firm to assist with evicting Hutchison and any other occupants of 4241 Purdue Street. *See* 1RR5-7; 2RR:PXB. In performing its duties, the Weaver firm sent a three-day notice to vacate to Hutchison and all occupants by certified and first-class mail. 1RR7; 2RR:PXB. The notice was dated December 30, 2022, and was delivered. 1RR7; 2RR:PXB.

The Justice Court Suit: After Appellants Hutchinson and all occupants failed to surrender the Property, Kensington sued them by filing an original petition for forcible detainer in justice court on or about January 11, 2023. CR5-7. The justice court subsequently held a February 15, 2023, bench trial on Kensington's petition, but Appellants did not attend it. The justice court then issued a no-answer default judgment in Kensington's favor. CR27-28.

The De Novo Appeal: Appellants appealed the judgment to County Court at Law No. 3 and filed their first answer. CR29-30, 43-45. Appellants then filed an amended answer with affirmative defenses and verified denials, including the following statements concerning a senior lien and Kensington's right to possession:

- "Defendant, Anthony L. Hutchison would show that at all times prior to the manner in which the Plaintiff acquired the property that he maintained and is paying a senior lien with Ocwen Mortgage Servicing with deed of trust on the same subject property."

- "As such, Defendant would show that pursuant to Texas Property Code Section 51.002 et. seq., the Plaintiff is not a bona fide third person entitled to possession and only took title subject the rights of the senior lien holder and Defendant, *SHUMWAY VS. HORIZON CREDIT CORP.* 801 SW2d 890 (sic) (Tex. 1991)."

- "To wit, Defendants deny that Plaintiff is entitled to possession on the basis of purchasing a junior lien at a contested foreclosure sale."

CR63-64, 66. During this time, Kensington hired new legal counsel. CR35-36.

The County Court held a bench trial on Kensington's petition on May 22, 2023. CR67. At trial, Kensington was the only party to offer evidence, which it did by offering the following three exhibits: (1) the recorded foreclosure sale deed concerning the Property and listing Kensington as the purchaser; (2) the three-day notice to vacate; and (3) the deed of trust executed by Hutchison. 1RR4-17; 2RR:PXA-B, PXD. Kensington also offered evidence through Allison's testimony, including that Kensington sent the notice to vacate by both first class and certified mail. 1RR5-9. Allison also testified to that she and her legal counsel confirmed that the notices were in fact delivered. 1RR7.

While Appellants did cross-examine Allison, they only asked her (1) whether she had performed a title search on the Property; (2) whether she discovered there were other liens; (3) whether there was a first mortgage; (4) whether Kensington purchased the first mortgage; and (5) how much was paid for the Property. 1RR8-9.

After the trial concluded, the County Court issued its final judgment and order of possession in Kensington's favor. CR67-68. Neither party requested findings of fact and conclusions of law. CR76-78.

The Appeal: Appellants filed a notice of appeal on May 31, 2023. CR73-74.

MOTION TO STRIKE APPENDIX IN PART AND ALL CORRESPONDING REFERENCES IN APPELLANTS' BRIEF

Kensington respectfully asks that the Court strike (1) Tab C of Appellants' appendix; and (2) the portions of Appellants' brief in which they cite to Tab C for support. Appellants included an uncertified copy of a petition (filed in a separate lawsuit) in their appendix and labeled it as "Tab C[.]" APP. BR., TAB C. Appellants also cited Tab C as support for almost three pages of factual assertions. APP. BR. at 8-10. Tab C, however, is not part of the appellate record. *See generally* CR, 1RR, 2RR. And, because documents included in the appendix do not constitute the formal inclusion of the same in the appellate record, courts of appeals may not consider them. *Bencon Mgmt. & Gen. Contracting, Inc. v. Boyer, Inc.*, 178 S.W.3d 198, 210 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

Accordingly, when requested to do so, courts of appeals have struck appendix documents and parts of appellate briefs under circumstances like those here. *See, e.g.*, *Democratic Sch. Research, Inc. v. Rock*, 608 S.W.3d 290, 305 (Tex. App.—Houston [1st Dist.] 2020, no pet.) (striking appendix documents that were outside the appellate record and portions of the brief that referred to those documents). The Court should do the same and grant Kensington's motion.

SUMMARY OF THE ARGUMENT

The Court should affirm the trial court's judgment and order of possession. The appellate record contains the type of evidence that this Court and others have highlighted when affirming judgments in similar forcible-detainer actions. Moreover, this Court has adjudged this type of evidence sufficient to support forcible-detainer judgments. Although a frequently litigated issue, this Court's precedent and the record also demonstrate that the trial court had jurisdiction in this matter. The Court should follow its precedent and affirm the trial court's judgment in its entirety.

Nonetheless, the Court has other reasons for affirming the trial court's judgment and order of possession. Appellants have not supplied the Court with any recognized basis for reversing the same. Further, while Appellants argue that the trial court ignored certain alleged title-and-foreclosure issues, the law mandates that trial courts do so under circumstances like those presented here. The law similarly requires trial courts to determine whether a party to be evicted is tenant at sufferance and whether possession should be awarded to the property owner, which is contrary to Appellants' second reason for reversing the judgment.

Assuming, for argument's sake, that the law supported Appellants' bases for reversal, the appellate record does not. Appellants proffered no evidence at trial. Additionally, the evidence that exists does not support Appellants' contentions.

STANDARDS OF REVIEW

When the appealing parties do not request findings of fact and conclusions of law following a bench trial, appellate courts imply all fact findings necessary to support the trial court's judgment. *Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 480 (Tex. 2017). They also presume all fact findings and conclusions of law were made in favor of the judgment. *See PM Holdings, LLC v. Jong Song*, No. 14-15-00933-CV, 2017 WL 830552, at *2 (Tex. App.—Houston [14th Dist.] Feb. 28, 2017, no pet.) (mem. op.). And appellate courts "will affirm the judgment if it can be upheld on any legal theory supported by the evidence." *Id.*

An appellant may, however, challenge implied findings by arguing evidentiary sufficiency when the appellate record contains the clerk's and reporter's record. *Id.* If the appellant lodges a legal-sufficiency challenge to a finding, the appellate court considers "the evidence in the light most favorable to the challenged finding, making every reasonable inference to support it." *Id.* The appellate court also credits "favorable evidence if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not" to "determine whether the evidence would enable reasonable and fair-minded people to reach the verdict at issue." *Id.*

When appellants challenge the legal sufficiency of evidence on matters for which they did not possess the burden of proof, they must demonstrate on appeal

that no evidence supports the adverse findings. *Id.* To do so, appellants must show that "the record discloses one of the following situations: (a) a 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 conclusively establishes the opposite of the vital fact." *Id.*

When appellants challenge whether factually sufficient evidence supports a finding, appellate courts "consider and weigh all the evidence in a neutral light and may set aside the finding 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." *Id.* at *3.

Appellate courts review a trial court's legal conclusions de novo. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). They also apply a de novo review to questions regarding subject-matter jurisdiction. *Cook v. Mufaddal Real Estate Fund*, No. 14-15-00651-CV, 2017 WL 1274118, at *2 (Tex. App.—Houston [14th Dist.] Apr. 4, 2017, no pet.) (mem. op.).

ARGUMENT

I. The Court Relied on Sufficient Evidence When Deciding Kensington's Forcible-Detainer Action

While Appellants do not explicitly make any evidentiary sufficiency challenges to the trial court's findings, the record demonstrates that the trial court relied on sufficient evidence when issuing its judgment and order of possession.

A. Forcible-Detainer Law, and What Constitutes Sufficient Evidence

Forcible-detainer actions are intended to be simple, speedy, and inexpensive means to obtain immediate possession of properties. *Marshall v. Hous. Auth. of City of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006). Courts hearing these actions only adjudicate the right to a property's immediate possession, not the merits of title. *See* TEX. R. CIV. P. 510.3(e); *Greer v. JP Morgan Mortg. Acquisition Corp.*, No. 14-21-00583-CV, 2023 WL 2659099, at *2 (Tex. App.—Houston [14th Dist.] Mar. 28, 2023, pet. denied) (mem. op.). In other words, plaintiffs in forcible-detainer actions do not have to prove title to prevail. *Woodfork v. Bank of Am.*, No. 14-12-00927-CV, 2013 WL 5637751, at *2 (Tex. App.—Houston [14th Dist.] Oct. 15, 2013, no pet.) (mem. op.). The law simply requires them to "present 'sufficient evidence of ownership' to demonstrate a superior right to immediate possession…." *Id.*

To do so, plaintiffs must prove (1) they own the property; (2) the defendants are either a tenants at will, tenants at sufferance, or tenants or subtenants willfully holding over after the termination of the tenants' right of possession; (3) plaintiffs

provided proper notice to defendants to vacate the premises; and (4) defendants refused to vacate the premises. *See* TEX. PROP. CODE § 24.002; *Bradberry*, 526 S.W.3d at 478. Plaintiffs meet their evidentiary burden by presenting a deed demonstrating the property's conveyance, a deed of trust executed by the party to be evicted, and evidence that the party to be evicted was properly notified. *Molinar v. Refaei*, No. 08-14-00299-CV, 2016 WL 5121988, at *2 (Tex. App.—El Paso Sept. 21, 2016, pet. denied).

This Court and others have held that the same evidence is also sufficient to support a trial court's judgment that awards possession in a forcible-detainer action. *See, e.g.*, *id.*; *Glapion v. AH4R I TX, LLC*, No. 14-13-00705-CV, 2014 WL 2158161, at *4 (Tex. App.—Houston [14th Dist.] May 22, 2014, no pet.) (mem. op.).

B. Sufficient Evidence Supports the Trial Court's Judgment

The record contains sufficient evidence to support the trial court's judgment. The record reflects that the trial court admitted the following evidence without any objections: (1) the foreclosure sale deed; (2) the deed of trust executed by Hutchison; (3) the notice to vacate; and (4) evidence that the notice to vacate was delivered. 1RR5-8, 13-15; 2RR:PXA-B, PXD. This evidence essentially mirrors the evidence that this Court has adjudged sufficient to support other judgments issued in forcible-detainer actions. *See, e.g.*, *Valentine v. JP Morgan Chase Bank*, No. 14-14-00381-CV, 2017 WL 3611839, at *2 (Tex. App.—Houston [14th Dist.] Aug. 22, 2017, pet.

denied) (mem. op.); *Cook*, 2017 WL 1274118, at *3; *Glapion*, 2014 WL 2158161, at *4.

The Court should, therefore, affirm the trial court's judgment and order of possession on this basis alone. Nonetheless, Appellants have not supplied the Court with a legitimate reason, let alone one supported by evidence, for reversing the trial court's judgment.

II. Neither the Law Nor the Record Supports Appellants' Bases for Reversing the Judgment[1]

Well-established law and the record betray Appellants' bases for reversing the trial court's judgment. Appellants seem to assert two bases for reversal. The first involves title and the foreclosure sale. In their summary-of-the-argument section, Appellants claim that the trial court "committed reversible error" because a senior lienholder purportedly foreclosed on the Property before the later foreclosure sale to Kensington. APP. BR. at 11. They then argue that this prior foreclosure extinguished Kensington's junior lien.[2] *Id.* Appellants further claim that the foreclosure sale to Kensington was, consequently, void and did not pass title to Kensington. *Id.*

[1] Appellants also ask the Court to render judgment in their favor. APP. BR. at 18. Appellants do not, however, discuss this relief in their brief or present the Court with any basis for rendering judgment in their favor. *See generally id.* Nonetheless, for the reasons discussed below, Appellants did not supply the Court with a reason for reversal, let alone rendition.

[2] Although not directly asserted in their argument, Appellants pleaded that Kensington "is not a bona fide third person entitled to possession and only took title subject (sic) the rights of the senior lien holder and [Hutchison]…." CR64.

Alternatively, Appellants argue that the foreclosure sale and the foreclosure sale deed was voidable.[3] *Id.*

Appellants also assert a second basis for reversing the judgment. They argue that the trial court reversibly erred by making an "irrelevant factual finding that Hutchison was a tenant at sufferance and, therefore, he and the occupant of the subject Property should be removed and possession awarded to Kensington." APP. BR. at 12, 17-18.

A. The Law Does Not Support Appellants' Bases for Reversal

Appellants did not present the Court with a legitimate basis for reversing the trial court's judgment. Notably, Appellants do not cite any authority demonstrating that their bases, as stated, support reversing a trial court's judgment in a forcible-detainer action. *Id.* at 12-18. Instead, Appellants cite caselaw to (almost exclusively) argue that title did not pass to Kensington and that the foreclosure sale was void or voidable and then make conclusory statements concerning reversible error. *Id.* at 11-17. Appellants also make conclusory statements concerning the "irrelevant factual finding," but do not cite any authority in support or explain why the finding is

[3] Although unstated, Appellants might be impliedly arguing the trial court lacked jurisdiction because the title/foreclosure issue is inextricably linked to the issue of possession. APP. BR. at 11-18. For the reasons discussed below, the law and the record still do not support reversing the trial court based on subject-matter jurisdiction.

irrelevant. *Id.* at 12, 17-19. Additionally, Appellants did not attempt to show how either basis necessitates reversing the trial court's judgment. *Id.* at 11-18.

1. The Law Does Not Support Appellants' Title-and Foreclosure Arguments

The law belies Appellants' title-and-foreclosure arguments. Courts cannot adjudicate title challenges or defects in foreclosure processes when deciding forcible-detainer actions. *Sissom v. Equity Tr. Co. FBO 200186851 IRA*, No. 03-20-00154-CV, 2021 WL 3148871, at *2 (Tex. App.—Austin July 27, 2021, no pet.) (mem. op.); *Tehuti v. Bank of New York Mellon Tr. Co., Nat'l Ass'n*, 517 S.W.3d 270, 274 (Tex. App.—Texarkana 2017, no pet.); *Pinnacle Premier Props., Inc. v. Breton*, 447 S.W.3d 558, 563 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Further, courts may decide which party is entitled to the immediate right of possession when there are issues concerning a mortgage's validity and/or the quality of the property-buyer's title. *Woodfork*, 2013 WL 5637751, at *2.

Unsurprisingly, this Court has consistently affirmed forcible-detainer judgments by rejecting similar arguments under similar circumstances as those presented here. *See, e.g.*, *Phelan v. Goodbuys USA Inc.*, No. 14-18-00107-CV, 2019 WL 1966883, at *2 (Tex. App.—Houston [14th Dist.] May 2, 2019, no pet.) (mem. op.) (rejecting argument that trial court erred by deciding a foreclosure-buyer's right to possession before a title dispute was resolved); *Cook*, 2017 WL 1274118, at *3-4 (rejecting complaint that the foreclosure had not occurred and that foreclosure buyer

was not a bona fide purchaser); *Trotter v. Bank of New York Mellon*, No. 14-12-00431-CV, 2013 WL 1928776, at *1, 3-4 (Tex. App.—Houston [14th Dist.] May 9, 2013, no pet.) (mem. op.) (rejecting argument that resolving a title dispute—that purportedly rendered the foreclosure process void—is a prerequisite to determining the right to immediate possession).[4]

The trial court, therefore, did not err to the extent it ignored Appellants' title/foreclosure complaints.

2. The Law Does Not Support Appellants' Argument Regarding an Irrelevant Finding of Fact

The law also belies Appellants' argument concerning the allegedly irrelevant factual finding. Appellants argue that the trial court reversibly erred by making an "irrelevant factual finding that Hutchison was a tenant at sufferance and, therefore, he and the occupant of the subject Property should be removed and possession awarded to Kensington." APP. BR. at 12, 17-18. In forcible-detainer actions, trial courts must determine whether the defendants are either tenants at will, tenants at sufferance, or tenants or subtenants willfully holding over after the termination of the tenants' right of possession." *See* TEX. PROP. CODE § 24.002; *Bradberry*, 526 S.W.3d at 478. They also determine whether a tenant at sufferance should be

[4] *See also Valentine*, 2017 WL 3611839, at *2 (holding defects in the foreclosure process are not relevant to possession when party seeking possession purchased the property at a foreclosure sale and the party to be evicted was subject to tenant-at-sufferance clause).

removed and whether possession should be awarded to the property owners.[5] The trial court's tenant-at-sufferance determination was, therefore, relevant and did not constitute error.

B. The Law and the Record Demonstrate That the Trial Court Had Jurisdiction Over Kensington's Forcible-Detainer Action

To the extent that Appellants impliedly argue subject-matter jurisdiction, the law and the record demonstrate that the trial court had jurisdiction over Kensington's suit. The legislature vested jurisdiction to hear forcible-detainer actions in justice courts and county courts of law (by way of a de novo appeal). *See* TEX. PROP. CODE § 24.004(a); *Cook*, 2017 WL 1274118, at *2. In de novo appeals of forcible-detainer judgments, a county court's jurisdiction only extends "as far as the justice court's jurisdiction." *Cook*, 2017 WL 1274118, at *2. When deciding forcible-detainer actions, these courts exclusively adjudicate the right to a property's immediate possession. *See* TEX. R. CIV. P. 510.3(e); *Greer*, 2023 WL 2659099, at *2. They do not have jurisdiction to determine or adjudicate title. *Cook*, 2017 WL 1274118, at *2. These courts also lack jurisdiction when genuine issues of title are so intertwined with the issue of possession that the trial court would be required to determine title before awarding possession. *Id.* at *3.

[5] *See, e.g.*, *Gardocki v. Fed. Nat'l Mortg. Ass'n*, No. 14-12-00921-CV, 2013 WL 6568765, at *2, 4-5 (Tex. App.—Houston [14th Dist.] Dec. 12, 2013, no pet.) (mem. op.) (affirming judgment wherein trial court awarded possession to owner after determining defendant was a tenant at sufferance).

The appellate record reflects that the trial court had jurisdiction over Kensington's forcible-detainer action. For example, the record demonstrates that the trial court adjudicated Kensington's right to the Property's immediate possession, and not any title issues. CR5-7, 67-68; 1RR4-17. Even if the record, however, failed to show the same, Appellants impliedly concede the point when they argue that the trial court ignored their arguments concerning title. *See* APP. BR. at 11-18.

Additionally, the law and the record demonstrate that any genuine title issues were not sufficiently intertwined with the possession issue. Justice and county courts have jurisdiction to hear forcible-detainer actions when "there are grounds for determining immediate possession independent from title." *Cook*, 2017 WL 1274118, at *3. Tenant-at-sufferance clauses provide trial courts with grounds for immediate possession independent from any title issues because the clauses separate the possession issues from the title issues. *See id.* Consequently, trial courts have jurisdiction to resolve the possession issues without determining the title issues. *Id.* This occurs when a deed of trust provides that—in the event of disclosure—the previous owner becomes a tenant at sufferance (if he or she does not surrender possession). *Id.* Here, the record contains a deed of trust (executed by Hutchison) that includes a tenant-at sufferance clause that relieves the trial court from having to determine any title issues. 1RR13-15; 2RR:PXD (Section 20, on page 9 of the deed of trust).

The record also demonstrates that the trial court had jurisdiction for an additional reason. When a party fails to present "specific evidence to raise a genuine title dispute[,]" the trial court's jurisdiction is not an issue. *Ebert v. Strada Capital, Inc.*, No. 03-13-00729-CV, 2014 WL 4915046, at *2 (Tex. App.—Austin Oct. 1, 2014, no pet.) (mem. op.). As will be discussed more below in Part II.C, Appellants presented no evidence, and the only evidence that was presented did not constitute specific evidence of a genuine title dispute. 1RR4-17; 2RR:PXA-B, PXD.

C. The Record and Appellants' Cited "Evidence" Do Not Support Appellants' Bases for Reversal

Assuming Appellants' contentions did provide the Court with a legal basis for reversal, no evidence supports their allegations and arguments.

1. The Record Does Not Support Appellants' Allegations or Arguments

The record illustrates that Appellants did not proffer any evidence at trial. 1RR:4-17; 2RR:PXA-B, PXD. It also illustrates that Kensington's evidence does not sufficiently support that there is a genuine title dispute. 1RR5-9; 2RR:PXA-B, PXD. Further, the record demonstrates that Kensington's evidence does not support Appellants' pleading allegations concerning (1) Hutchison paying a senior lien with Ocwen Mortgage Servicing; (2) Kensington taking title subject to the senior lienholder's and Hutchison's rights; (3) Kensington not being a bona fide third person entitled to possession; and (4) Kensington not being entitled to possession

because it purchased a junior lien at a contested foreclosure sale. *Compare* CR63-64, *with* 1RR5-9, *and* 2RR:PXA-B, PXD.

The record additionally demonstrates that Kensington's evidence does not support (1) that a senior lienholder foreclosed on the Property; (2) that Kensington's lien was extinguished Kensington; (3) that no title passed to Kensington; (4) that the foreclosure sale was void; or (5) that the foreclosure sale deed is voidable. 1RR5-9, 2RR:PXA-B, PXD. In other words, the record does not provide Appellants any support for their legal arguments concerning title and the foreclosure sale. *Compare* APP. BR. at 14-17, *with* 1RR4-17, *and* 2RR:PXA-B, PXD.

2. Appellants' Cited Evidence Does Not Support Their Allegations or Arguments

On appeal, Appellants primarily rely on the following "evidence" to support their arguments: (1) Appellants' counsel's statement at trial; and (2) verified statements in Appellants' pleadings. APP. BR. at 11. Neither of these cited instances of evidentiary support, however, constitute evidence.

i. Appellants' Counsel's Statement Is Not Evidence and Does Not Support Appellants' Arguments

The law demonstrates that Appellant's trial counsel's argument is not evidence. This Court and others have repeatedly held that counsel's arguments are not evidence. *New Bethel Baptist Church v. Taylor*, No. 14-22-00028-CV, 2023 WL 5550229, at *7 (Tex. App.—Houston [14th Dist.] Aug. 29, 2023, no pet. h.) (mem.

op.); *Barkley v. Tex. Windstorm Ins. Ass'n*, No. 14-11-00941-CV, 2013 WL 5434171, at *4 (Tex. App.—Houston [14th Dist.] Sept. 26, 2013, no pet.) (mem. op.); *Cleveland v. Taylor*, 397 S.W.3d 683, 693 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). Here, Appellants assert—as evidence—that, "[a]t trial, Hutchison's legal counsel ***argued*** that the subject Property 'currently has a senior lien that . . . Hutchison pays and . . . confirmed . . . he's current on the two loans on contiguous properties totaling almost $800,000.'" APP. BR. at 11 (emphasis added) (citing 1RR9). As Appellants have admitted, their counsel's statement concerning the senior lien was an argument. *Id.* The statement, therefore, is not evidence that could support Appellants' contentions.

Regardless, even if Appellants' counsel's statement were evidence, Appellants' counsel's statement does not sufficiently support their arguments. Standing alone, evidence that there is a senior lien on the Property does not prove a senior lienholder foreclosed on the Property before the foreclosure sale and extinguished Kensington's junior lien. It also does not prove that the foreclosure sale to Kensington was void and did not pass title to Kensington. Additionally, the statement does not prove that the foreclosure sale and the foreclosure sale deed was voidable.[6]

[6] This same rings true when a party argues that the trial court lacks jurisdiction. Courts have held that counsel's unsworn statements are insufficient to constitute specific evidence of a title dispute that would preclude jurisdiction. *Tillis v. Home Servicing, LLC*, No. 02-16-00171-

ii. Appellants' Verified Pleadings Are Also Not Evidence

The law demonstrates Appellants' verified pleadings do not constitute evidence. While opposing parties' pleadings can constitute judicial admissions, in general, pleadings are not competent evidence—even if sworn or verified. *Hersh v. Tatum*, 526 S.W.3d 462, 470 (Tex. 2017). This Court has, consequently, refused to consider a party's own verified pleadings as evidence. *Langhorne v. Miller*, No. 14-08-00081-CV, 2009 WL 2365592, at *5 n.8 (Tex. App.—Houston [14th Dist.] Aug. 4, 2009, no pet.) (mem. op.). Other courts have held similarly when reviewing forcible-detainer actions like the one here. *See, e.g.*, *Ebert*, 2014 WL 4915046, at *2 & n.19 (noting that party resisting eviction presented no evidence at trial and citing authority for the proposition that verified pleadings are generally not competent evidence). Appellants' verified pleadings, therefore, are not evidence and cannot support Appellants' allegations or arguments.

CONCLUSION AND PRAYER

For the foregoing reasons, Appellee respectfully requests that this Court affirm the trial court's judgment and order of possession. Appellee also requests any other relief to which it is entitled.

CV, 2017 WL 817151, at *4 (Tex. App.—Fort Worth Mar. 2, 2017, no pet.) (mem. op.); *Ebert*, 2014 WL 4915046, at *2; *Jaimes v. Fed. Nat'l Mortg. Ass'n*, No. 03-13-00290-CV, 2013 WL 7809741, at *5 (Tex. App.—Austin Dec. 4, 2013, no pet.) (mem. op.).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Rule 9.4(i), if applicable, because it contains 4,356 words, excluding any parts exempted by Rule 9.4(i)(1).

/s/ *Maitreya Tomlinson*
Maitreya Tomlinson

CERTIFICATE OF SERVICE

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Filing Description: Appellee's Brief
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