

No. 05-23-00259-CV

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
8/23/2023 6:02:26 PM
Ruben Morin
Clerk

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

NEW RESIDENTIAL MORTGAGE, LLC,
Appellant,

v.

LEGACY BROKERAGE, LLC,
Appellee.

Restricted Appeal from the
366th Judicial District Court
Collin County, Texas
Cause No. 366-01691-2022

**APPELLANT'S RESPONSE TO APPELLEE'S
MOTION TO DISMISS APPEAL AS MOOT**

/s/ Gabriella E. Alonso

GABRIELLA E. ALONSO
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ATTORNEY FOR APPELLANT,
New Residential Mortgage, LLC

INTRODUCTION

Legacy Brokerage, LLC’s (“Legacy”) Motion to Dismiss Appeal as Moot (the “Motion”) is due to be denied. It betrays an elementary misunderstanding of both the mootness doctrine and the significance of an assignment of a security instrument. Legacy contends that the February 23, 2023, assignment of the deed of trust (the “Assignment”) from Appellant New Residential Mortgage, LLC (“New Residential”) to LoanCare, LLC mooted the appeal. As a result, Legacy contends, this Court should dismiss the appeal and leave in place the default judgment.

Both contentions are wrong. This Court does not need to take any actions in response to the Assignment, because LoanCare automatically stepped into the shoes of New Residential when the Assignment was effectuated. Thus, New Residential could continue defending the case while LoanCare became the new assignee of the Deed of Trust. Dismissal is neither necessary nor appropriate. At most, this Court should order the substitution of LoanCare in place of New Residential as the Appellant.

APPLICABLE LAW

“The mootness doctrine implicates subject-matter jurisdiction.” *Meeker v. Tarrant Cnty. Coll. Dist.*, 317 S.W.3d 754, 759 (Tex. App.—Fort Worth 2010, pet. denied). “A case is moot when either no ‘live’ controversy exists between the parties, or the parties have no legally cognizable interest in the outcome. ‘Put simply, a case

is moot when the court’s action on the merits cannot affect the parties’ rights or interests.”” *Hays St. Bridge Restoration Group v. City of San Antonio*, 570 S.W.3d 697, 702–03 (Tex. 2019) (quoting *City of Krum v. Rice*, 543 S.W.3d 747, 749 (Tex. 2017) (per curiam)).

“If a case becomes moot, the court must vacate all previously issued orders and judgments and dismiss the case for want of jurisdiction.” *Glassdoor, Inc. v. Andra Group, LP*, 575 S.W.3d 523, 527 (Tex. 2019); accord *Tex. Foundries v. Int'l Moulders & Foundry Workers' Union*, 151 Tex. 239, 241, 248 S.W.2d 460, 461 (1952) (“The rule has long been established in this court that when a case becomes moot on appeal, all previous orders are set aside by the appellate court and the case is dismissed. To dismiss the appeal only would have the effect of affirming the judgment of the lower court without considering any assignments of error thereto.”).

ARGUMENT

The case is not moot because the validity of the Deed of Trust is still at issue. Legacy fails to understand that the Deed of Trust did not become void by virtue of its assignment from New Residential to LoanCare. This Court can either permit New Residential to remain the named Appellant or, if it wishes, order the substitution of LoanCare as the Appellant.

Notably, Legacy’s one-page Motion does not contain any discussion of the legal effect an assignment. “When an assignee holds a contractually valid

assignment, that assignee steps into the shoes of the assignor and is considered under the law to have suffered the same injury as the assignors and have the same ability to pursue the claims.” *Shipley v. Unifund CCR Partners*, 331 S.W.3d 27, 28–29 (Tex. App.—Waco 2010, no pet.); *see also Douglas-Peters v. Cho, Choe & Holen, P.C.*, No. 05-15-01538-CV, 2017 WL 836848, at *7 (Tex. App.—Dallas Mar. 3, 2017, no pet.) (“It is well settled that when a claim is assigned, the assignee ‘steps into the shoes of the [assignor] and is considered under the law to have suffered the same injury as the assignors and have the same ability to pursue the claims.’” (quoting *Sw. Bell Tel. Co. v. Mktg. on Hold, Inc.*, 308 S.W.3d 909, 916 (Tex. 2010))). This transfer of interest (and “ability to pursue the claims”) happens automatically, by operation of law, and does not require a court order.

Additionally, even if the case had become moot, Legacy would not get the relief it wants: an order simply dismissing the appeal and leaving the default judgment in place. Because mootness negates subject-matter jurisdiction, its consequence is more drastic than Legacy supposes. “If a case becomes moot, the court must vacate all previously issued orders and judgments and dismiss the case for want of jurisdiction.” *Glassdoor*, 575 S.W.3d at 527. Thus, if this case were moot (it’s not), the result would be an order vacating the default judgment and dismissing the entire action on jurisdictional grounds.

The Motion is short on citations to authority or reasoning to support Legacy's requested relief. It cites only one case: *Meeker v. Tarrant Cnty. Coll. Dist.*, 317 S.W.3d 754 (Tex. App.—Fort Worth 2010, pet. denied). *Meeker* contains general discussion of the mootness doctrine, but it does not have any factual similarities to this case. It did not involve an assignment of any claim or interest. Instead, the court of appeals held that claims seeking to void a college system's contracts with its chancellor were mooted when the chancellor's employment terminated. 317 S.W.3d at 760–63. Consequently, the court vacated the trial court's judgment and dismissed the case for lack of subject matter jurisdiction. It should be clear, then, how *Meeker* does not support Legacy's argument that the present case is moot, let alone that the appeal should be dismissed with the judgment left in place.

Finally, it is strange for Legacy to be arguing that the Assignment mooted the case when Legacy conveyed away its interest in the property *ten months ago*. The property records show that in October of 2022, Legacy conveyed its interest to an entity called MRK2 Brokerage, LLC. See Exhibit A (Deed Without Warranties); Exhibit B (Correction Instrument). Under Legacy's misunderstanding of the mootness doctrine, its conveyance of its property interest presumably would moot the action and require a decision in New Residential's favor. But the fact that Legacy has continued to litigate this case for ten months after the conveyance indicates that it tacitly understands a transfer of a property interest does not end the controversy

and moot the case. Rather, it simply changes the interested party. LoanCare and MRK2 Brokerage, LLC have each stepped into the shoes of the original party.

CONCLUSION

Mortgage loan cases would be precarious and inefficient if every mid-litigation assignment of a deed of trust mooted the case. Fortunately, that's not the rule in Texas. This Court should deny the Motion and continue on with briefing. In the alternative, it should order the substitution of LoanCare as Appellant.

Respectfully submitted,

/s/ Gabriella E. Alonso

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ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2023, a true and correct copy of the foregoing was served on all counsel of record in accordance with the Texas Rules of Civil Procedure:

Kenneth S. Harter
LAW OFFICES OF KENNETH S. HARTER
5080 Spectrum Dr. Suite 1000-E
Addison, Texas 75001
ken@kenharter.com

/s/ Gabriella E. Alonso

GABRIELLA E. ALONSO

EXHIBIT A

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

DEED WITHOUT WARRANTIES

STATE OF TEXAS §

DALLAS COUNTY §

GRANTOR: LEGACY BROKERAGE, INC.

GRANTEE: MRK2 BROKERAGE, INC..

1776 Lookout Dr. No. 4207

Garland, Tx., 75044

PROPERTY BEING CONVEYED:

LEGACY BROKERAGE, INC., ("GRANTOR"), in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, have GRANTED, BARGAINED, SOLD, and CONVEYED and do GRANT, BARGAIN, SELL, AND CONVEY to MRK2 BROKERAGE, INC. ("GRANTEE"), the real property in Dallas , Texas, fully described as:

Lot 20, Block D, Falcoln Creek Phase IV, , an addition to the city of McKinney, Collin, County, Texas, according to the Map or Plat thereof recorded as Volume K, Page 589, Map Records of Collin County, Texas..

More commonly known as 8800 Aviary Drive, McKinney, Texas

together with (1) all buildings, structures, fixtures, and improvements located on, in, or under the real property, and (2) all of GRANTOR'S right, title, and interest in and to the appurtenances to the real property, including but not limited to all right, title, and interest of GRANTOR in and to all roads, rights-of-way, alleys, drainage facilities, easements, and utility facilities on, in, over, under, through, or adjoining the real property; all oil, gas, and other minerals under the real


property; all strips and gores between the described real property and abutting properties; and all utility, access, and development rights (collectively, "Property").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances to it in any way belonging, to GRANTEES, its successors, and its assigns forever.

This deed is made without warranties, express or implied.

EXECUTED on October 17 2022

Legacy Brokerage, Inc.



Fazel Rhamani

Before me, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Fazel Rhamani, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed it for the purposes and consideration expressed in it. The acknowledging person personally appeared physically before me.

Given under my hand and seal of office, this 17 day of October, 2022

Notary Public—State of Texas



**Collin County
Honorable Stacey Kemp
Collin County Clerk**

Instrument Number: 2022000154035

eRecording - Real Property

DEED

Recorded On: October 18, 2022 10:18 AM

Number of Pages: 3

" Examined and Charged as Follows: "

Total Recording: \$30.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

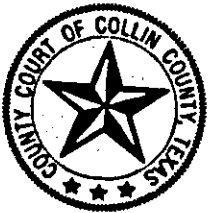
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2022000154035
Receipt Number: 20221018000192
Recorded Date/Time: October 18, 2022 10:18 AM
User: Christina G
Station: Station 9

Record and Return To:

CSC



**STATE OF TEXAS
COUNTY OF COLLIN**

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Public Records of Collin County, Texas.

Honorable Stacey Kemp
Collin County Clerk
Collin County, TX

EXHIBIT B

Correction Instrument

Date: February 8, 2023

Person Executing Correction Instrument: Muhammad Kohistani

Mailing Address of Person Executing Correction Instrument:
1776 Lookout Dr # 4207 Garland TX 75044

Real Property:

Lot 20, in Block D, of FALCOLN CREEK PHASE IV, an Addition to the City of McKinney, Collin, County, Texas, according to the Map or Plat thereof recorded in Volume K, Page 589, of the Map Records of Collin County, Texas.

Instrument Being Corrected:

Deed without Warranties filed for record under document number 2022000154035 of the Deed Records of Collin County, Texas between Legacy Brokerage, Inc. as Grantor and MRK2 Brokerage, Inc., Grantee.

Error Being Corrected:

Under Texas Property Code § 5.028 a person with personal knowledge of facts relevant to the correction may execute a correction instrument such as this one for the purpose of addition, correction, and clarification.

The above instrument contained a misidentification of the type of entity involved.

Correction:

MRK2 Brokerage, Inc., should be corrected to be MRK2 Brokerage, LLC

Facts Relevant to the Correction:

When the instruments were being prepared and filed, an typographical error resulted in a misnomer of the Grantee.

The person executing this Correction Instrument is the sole member and manager of Grantee, a party to the transaction and has personal knowledge of the facts.

The person executing this Correction Instrument has personal knowledge of the facts relevant to the Correction.

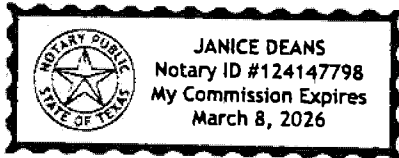
The person executing this Correction Instrument has provided a copy of this Correction Instrument and notice to each party to the Conveyance and, if applicable, the parties' heirs, successors, or assigns. Evidence of notice is attached to this Correction Instrument and incorporated herein by reference as if fully set forth herein.

Executed this 8th day of February 2023.

Rafi
Muhammad Kohistani

THE STATE OF TEXAS §
COUNTY OF FARRANT §
Denton §

This instrument was acknowledged before me on the 8th day of February 2023 by Muhammad Kohistani.



Janice Deans
Notary Public, State of Texas

**Collin County
Honorable Stacey Kemp
Collin County Clerk**

Instrument Number: 2023000013844

eRecording - Real Property

CORRECTION

Recorded On: February 14, 2023 09:16 AM

Number of Pages: 3

" Examined and Charged as Follows: "

Total Recording: \$30.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2023000013844
Receipt Number: 20230213000332
Recorded Date/Time: February 14, 2023 09:16 AM
User: Kristen M
Station: Workstation cck028

Record and Return To:

Simplifile



**STATE OF TEXAS
COUNTY OF COLLIN**

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Public Records of Collin County, Texas.

Honorable Stacey Kemp
Collin County Clerk
Collin County, TX

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Nandita Dasrath on behalf of Gabriella Alonso

Bar No. 24113527

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Envelope ID: 78857012

Filing Code Description: Response

Filing Description: 20230823 Appellants Response to Motion to Dismiss with Exhibits

Status as of 8/24/2023 8:00 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: New Residential Mortgage, LLC

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Gabriella Alonso		galonso@bradley.com	8/23/2023 6:02:26 PM	SENT
Nandita Dasrath		ndasrath@bradley.com	8/23/2023 6:02:26 PM	SENT