

2015

**Deutsche Bank National Trust Company, Trustee for Ameriquest
Mortgage Securities, Inc. Asset-Backed Pass-Through
Certificiates Series 2004-R8 Appellee, v. William York, Appellant**

Utah Court of Appeals

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DEUTSCHE BANK NATIONAL
TRUST COMPANY, TRUSTEE
FOR AMERIQUEST MORTGAGE
SECURITIES, INC. ASSET-BACKED
PASS-THROUGH CERTIFICATES
SERIES 2004-R8

Appellee,

v.

WILLIAM YORK,

Appellant.

Case. No. 20141083-CA

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT, MILLARD
COUNTY, STATE OF UTAH, THE HON. JAMES BRADY,
CASE NO. 120700011

BRIEF OF THE APPELLANT

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UTAH APPELLATE COURTS

OCT 05 2015

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this matter pursuant to Utah Code section 78A-4-103(2)(j).

ISSUES PRESENTED

ISSUE I: Did the trial court err by determining that actual ownership of the property was irrelevant to an action for unlawful detainer pursuant to Utah Code section 78B-6-802.5?

a. Standard of review: A trial court's interpretation of a statute is reviewed for correctness, affording no deference to the trial court's conclusions. *See In re Baby Girl T.*, 2012 UT 78, ¶ 9, 298 P.3d 1251.

b. Preservation: T. 1076: 5–6.

ISSUE II: Did the trial court err by determining that Mr. York's request for discovery sanctions were untimely even when Mr. York had raised this issue earlier and when the trial court had instructed Mr. York to raise his motions at trial?

a. Standard of review: A determination that a motion is untimely involves a mixed question of fact and law. The factual determination of when a motion is raised is reviewed for clear error, and the embedded legal determination of when the motion should have been raised is reviewed for correctness. *See In re Adoption of Baby B.*, 2012 UT 8, ¶ 47, 270 P.3d 486.

b. Preservation: T. 1075: 20–21; T. 1076: 15–19.

DETERMINATIVE STATUTORY PROVISIONS

Utah Code section 78B-6-802.5

A previous owner, trustor, or mortgagor of a property is guilty of unlawful detainer if the person:

- (1) defaulted on his or her obligations resulting in disposition of the property by a trustee's sale or sheriff's sale; and
- (2) continues to occupy the property after the trustee's sale or sheriff's sale after being served with a notice to quit by the purchaser.

Utah Constitution Article XXII Section 1

The Legislature shall provide by statute for an exemption of a homestead, which may consist of one or more parcels of lands, together with the appurtenances and improvements thereon, from sale on execution.

Utah Code section 78B-5-502(3)

A homestead is exempt from . . . forced sale except for . . . security interests in the property . . . for debts created for the purchase price of the property.

STATEMENT OF THE CASE

This case is an appeal from an action for unlawful detainer before the honorable Judge James Brady of the Fourth District Court for the State of Utah, Millard County.

SUMMARY OF ARGUMENT

The trial court erred by forbidding Mr. York from arguing at trial that the underlying foreclosure and trustee's sale of his home was invalid. Utah law has long recognized the relevance of actual ownership in an unlawful detainer action following a trustee's sale. This Court should reverse and remand with instructions that Mr. York should be allowed to argue this and any other affirmative defenses.

The trial court also erred by failing to consider Mr. York's motion for sanctions based on discovery violations. Mr. York was denied essential discovery concerning his argument that the trustee's sale was invalid. Mr. York raised this issue at a hearing in November 2012. When Mr. York asked for sanctions before the trial in December 2012, the trial court refused to address it because it mistakenly believed that Mr. York had never raised the issue before. Therefore, this Court should remand with instructions to the trial court to consider Mr. York's motion for discovery sanctions.

STATEMENT OF FACTS

The Appellant, Mr. York, obtained a mortgage loan from Ameriquest Mortgage Company in June 2004. R. 836. The loan was secured by a property in Delta, Utah that Mr. York purchased. R. 835.

On March 26, 2013, the Appellee, Deutsche Bank, as trustee for an entity titled Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-R8, brought an unlawful detainer action against Mr.

York. R. 0001. Acting pro se, Mr. York answered that Deutsche Bank had failed to state a claim for which relief could be granted. R. 15. Over the course of the next few months, Mr. York attempted to argue that Ameriquest Mortgage Company and the new entity, Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-R8, had participated in fraudulent activities that precluded it from bringing the current action. Acting pro se, Mr. York filed a counterclaim in state court, R. 21, and a federal claim, R. 158. Deutsche Bank, as trustee for Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-R8, did not dispute the state counterclaim on the merits. *See* R. 139–141. Instead it argued that Mr. York should not have brought a federal claim that was identical to the state claim and that his counterclaim failed to meet the pleading and notice standards. *Id.* On August 17, 2012, the federal court dismissed Mr. York’s pro se claim because he failed to meet the pleading standard. R. 325–329. On August 28, 2012, after taking judicial notice of the federal court’s decision, the trial court issued a memorandum decision dismissing Mr. York’s state counterclaim as well. R. 334.

On September 4, 2012, Mr. York attempted to amend his counterclaim so that it would adhere to the pleading requirements. R. 353–513. On October 24, 2012, a bench trial was scheduled on the matter for November 21, 2012. R. 572.

On the day of the hearing, Mr. York came prepared to argue his amended counterclaim, among other issues. The trial court, however, informed Mr. York that in reviewing the case for trial it became apparent that it had failed to issue a

decision on the amended counterclaim and dismiss third-party defendants. T.

1075: 3. The trial court explained:

My reason for that was in my order. And I thought that it was clear to everybody that the only parties remaining are the plaintiff's and Mr. York.

However, in my review, I did not find that order in my computer and so I reviewed with my clerks the status and where that order had gone, and what I found is that although the order had been signed back in October, for whatever reason it was not entered into the computer. It was not in the Court's file. . . . As of, I believe, Monday of this week the document was in the Court's file and was in the electronic file.

T. 1075: 3–4.

The trial court also determined that Mr. York's amended counterclaim was not properly served on either the third-party defendants or on Deutsche Bank because Mr. York had used certified mail. T. 1075: 4. The trial court stated that

certified mailing is only service under certain federal rules. It's not service under the state rules.

So whether we deal with the original counterclaim cross-claim made by Mr. York or whether we deal by the amended counter-claim cross-claim we still have no service. With no service under the rules the matter is dismissed.

Id.

Mr. York explained,

I filed the amended complaint because the original complaint was defective when it was filed in the federal court. It was only half there so I filed the counter-complaint, had everybody served. You're saying that service by certified mail—I thought I'd read the rule that it was allowed.

Id. at 6.

The trial court replied that “certified mail on an initial complaint is not adequate service.” *Id.* The trial court, however, did not address whether Mr. York’s counterclaim against Deutsche Bank was properly served.

Mr. York also filed a motion to dismiss that apparently went missing and was not “entered into the computer by clerks or received by the Court.”

Id. at 11. The trial court determined that it would let Mr. York address that issue before the hearing. However, before Mr. York could do so, the trial court asked Mr. York to explain his motion to delay the trial because of problems with discovery. *Id.* at 12. Instead of addressing why the hearing should be delayed, Mr. York kept trying to explain why he did not think that Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-R8 had proper title to his home and therefore could not evict him. The trial court emphasized several times that Mr. York could raise this argument later. The trial court stated, “It’s an argument you may have in your quiver of arguments, but it’s not a reason not to proceed with trial. . . . I may or may not grant relief to the other plaintiff that’s named that you have a concern about, but that doesn’t say we can’t go forward with the trial and have you present those arguments at trial.” *Id.* at 17.

Mr. York responded, “Well, I’m talking about the real party in interest, the real owner.” *Id.* at 18.

The trial court replied once again, “Right. And those would be arguments you could raise at trial because they haven’t been raised before.” *Id.*

After refusing to hear Mr. York's arguments about who had the right to initiate an unlawful detainer action against him, the trial court decided to delay the trial because Deutsche Bank had not provided some discovery documents in a timely manner. *Id.* at 29. Deutsche Bank sent some of the requested discovery documents to Mr. York the day before the hearing, in violation of the trial court's order to provide all discovery documents at least seven days before the hearing. *Id.* at 13. Mr. York had also requested discovery so that he could determine who actually had title to his home, but was simply ignored. *Id.* at 14.

A new trial date was set. The trial court once again told Mr. York to reserve his arguments about actual ownership of the home for trial. "There's a time and a place for everything. Today we're not going to conduct any arguments that are not filed in a motion without the plaintiff having notice. So if you wish to address that issue by written document, there's time. If you prefer to do it at the time of the trial, there's time then." *Id.* at 33.

Following the trial court's instructions, Mr. York filed a written motion the day before the rescheduled hearing. R. 721. Among other things, Mr. York asked the trial court to apply sanctions to the plaintiff for violating rule 26 of the Utah Rules of Civil Procedure. R. 724–727. Mr. York also asserted that Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-R8 did not have title to his home because the document that transferred interest to it was created through fraudulent robo-signing. R. 727–729. Mr. York singled out the Corporate Assignment of Deed of Trust, which purported to assign the original

Deed of Trust from Ameriquest Mortgage Company to Deutsche Bank National Trust Company, as trustee for Ameriquest Mortgage Securities Inc. Asset-Backed Pass-Through Certificates, Series 2004-R8. *See* Plaintiff's Exhibit 7. The document appears to be signed by Crystal Moore and witnessed by Bryan J. Bly. *Id.* As Mr. York pointed out, Crystal Moore and Bryan J. Bly are well known robo-signers. *See* R. 728; *See also* William Alden and Ryan McCarthy, *The Most Shocking Statements From Alleged Foreclosure 'Robo-signers'*, Huffington Post (November 13, 2010) http://www.huffingtonpost.com/2010/11/13/foreclosure-robo-signers-statements_n_783031.html (“[Crystal Moore, Bryan Bly, and Dhurata Doko] admit they didn’t read thousands of documents they signed daily, and they betray ignorance of key aspects of the mortgage industry. In some cases, according to testimony, their signatures were affixed to documents without their knowledge.”).

During the hearing, however, the trial court flatly denied all of Mr. York’s attempts to raise or argue these issues.

As to Mr. York’s request for sanctions under rule 26, the trial court stated that the timeliness of the motion was “not adequate.” T. 1076: 15. The trial court stated that because the motion “wasn’t raised until the moment of trial,” it would not address it. *Id.* Mr. York then directed the trial court to the minute entry from the November 21, 2012 hearing. He said, “The notes that I had here, the minute entry, at 10:38 Court rules and finds under Rule 26 initial disclosures were not made. I did raise that.” *Id.* Despite this, the trial court declined to consider the

motion for sanctions under rule 26 of the Utah Rules of Civil Procedure for the continuing discovery violations.

The trial court also prevented Mr. York from arguing that the Corporate Deed of Trust was invalid and that the underlying foreclosure was fraudulent. The trial court asked Mr. York why he even needed discovery for an eviction hearing. He replied, "Well, if a foreclosure was not legally done, that would affect an eviction proceeding." T. 1076: 24. The trial court then stated, "But you understand those are not the issues I'm considering. So if you're exploring whether the foreclosure was legal, that is immaterial to today's hearing." *Id.*

The trial court later explained in more detail:

You raise a very interesting question. . . . So that's an issue for another day, another hearing, perhaps a different court, maybe me, but at this time I only have one issue before me and that is a question of who has the right to possess that land. Not the right of ownership.

And I know those are two different features that we don't always separate in our minds, but in terms of a legal analysis I'm not dealing with ownership questions. I'm dealing with possessory interests.

T. 1076: 25–26.

Despite several more attempts, the trial court never allowed Mr. York an opportunity to argue that Deutsche Bank, as trustee for Ameriquest Mortgage Securities Inc. Asset-Backed Pass-Through Certificates, Series 2004-R8, did not own his home and therefore could not bring an unlawful detainer action against him. Mr. York also attempted to assail the validity of the foreclosure sale based on the notice and timing of the sale. T. 1076: 104–06. Deutsche Bank objected

arguing that “the Court has explained in *RM Lifestyles versus RM Lifestyles* that the appropriate time to raise those questions in challenging the foreclosure sale is not in an unlawful detainer action.”¹ *Id.* at 107.

At the conclusion of the hearing, the trial court ruled against Mr. York and evicted him from his home. Mr. York filed a timely appeal.

ARGUMENT

I. The trial court erred in determining that ownership was irrelevant in an unlawful detainer action.

Mr. York should have had the opportunity to defend himself in the action for unlawful detainer by arguing that Ameriquest Mortgage Securities Inc. Asset-Backed Pass-Through Certificates, Series 2004-R8 did not own his home and therefore could not bring the action in the first place. Utah courts have long recognized the right of a defendant in an unlawful detainer action to assert the affirmative defense that the purported owner does not actually own the property in question. *See, e.g., Federal Nat. Mortg. Ass’n v. Sundquist*, 2013 UT 45, 311 P.3d 1004.

Utah Code section 78B-6-802.5 explains that a person is guilty of unlawful detainer if there is a trustee’s sale and the person continues to stay in the home

¹ Mr. York’s counsel was unable to identify any Utah appellate case titled “*RM Lifestyles versus RM Lifestyles*.” This was most likely a reference to *RM Lifestyles, LLC v. Ellison*, 2011 UT App 290, 263 P.3d 1152. The holding in that case, however, does not support Deutsche Bank’s conclusion. This will be discussed in more detail in the argument section.

after the purchaser at the trustee sale provides a notice of eviction. *See* Utah Code Ann. § 78B-6-802.5(1)–(2) (LexisNexis 2012). The validity of the trustee’s sale then becomes an essential inquiry in an unlawful detainer action. In *Sundquist*, 2013 UT 45, a national bank brought an unlawful detainer action against a Utah woman. *Id.* ¶ 1. The Utah woman argued in her defense that the national bank had not complied with Utah law regarding the trustee’s sale and, as a result, did not have ownership of her property and could not evict her. *Id.* ¶ 8. The Utah Supreme Court determined that the trustee’s sale was invalid and reversed and remanded to the trial court to consider that issue and other arguments against the validity of the national bank’s title. *Id.* ¶ 50.

Recently, in *Capri Sunshine, LLC v. E & C Fox Investments, LLC*, 2015 UT App 231, this Court spent a great deal of time determining the validity of a series of forced sales to determine who had actual ownership and the right to bring an unlawful detainer action. *Id.* ¶ 21. This Court determined that Capri, the party that brought the unlawful detainer action, had failed to prove the “necessary element” of ownership. *Id.* Therefore, Capri’s unlawful detainer action failed. *Id.* ¶ 23.

It is important to note that in *Capri Sunshine*, one of the trustee’s sales in question was found to be invalid by the trial court because it occurred at 9:45 a.m. instead of 9:00 a.m. as advertised. *Id.* ¶ 4. While the appellate case was decided on other grounds, the district court set aside the sale, noting that the defect in the notice of the sale caused a chilling effect. *Id.* ¶ 6.

In *RM Lifestyles, LLC v. Ellison*, 2011 UT App 290, 263 P.3d 1152, this Court once again considered the validity of a trustee's sale in the context of an unlawful detainer action. *Id.* ¶ 12. This Court determined that the defendants had fully participated in the trial but had not produced "any evidence that the alleged irregularity [in the trustee's sale] resulted in their receiving defective notice of the sale or in any other way affected their ability to protect their rights." *Id.* ¶ 18. Because of the lack of evidence presented, this Court affirmed "the trial court's decision that the trustee's sale was valid and its ultimate determination that the [defendants] unlawfully detained the Property after the trustee's sale." *Id.*

In this case, the trial court actively prevented Mr. York from presenting evidence to support his contention that the trustee's sale was invalid. Mr. York wanted to argue that the assignment of the deed to Deutsche Bank as trustee was fraudulent and that the trustee's sale was late and contained irregularities that caused a chilling effect. When Mr. York attempted to do so, Deutsche Bank argued that a case called "RM Lifestyles versus RM Lifestyles" held that the that the "appropriate time to raise those questions in challenging the foreclosure sale is not in an unlawful detainer action." T. 1076: 107. It is unclear to which case Deutsche Bank was referring. If it was referring to *RM Lifestyles*, however, it misstated the holding. In *RM Lifestyles* the defendants in an unlawful detainer action lost precisely because they had the opportunity to attack the validity of the trustee's sale but did not present enough evidence of harm. *RM Lifestyles*, 2011 UT App 290, ¶ 18. That is opposite of this case. Mr. York wanted to address the

issue of ownership by questioning witnesses and presenting evidence obtained through discovery, but the trial court did not allow him to do so and refused to consider the validity of the trustee's sale at all.

Instead, the trial court impermissibly attempted to bifurcate the proceedings. The trial court said that ownership was

an issue for another day, another hearing, perhaps a different court, maybe me, but at this time I only have one issue before me and that is a question of who has the right to possess that land. Not the right of ownership.

And I know those are two different features that we don't always separate in our minds, but in terms of a legal analysis I'm not dealing with ownership questions. I'm dealing with possessory interests.

T. 1076: 25--26.

Based on the Utah Supreme Court's holding in *Sundquist*, 2013 UT 45, however, and based on this Court's determinations in *Capri Sunshine*, 2015 UT App 231, and *RM Lifestyles*, 2011 UT App 290, the trial court erred in denying Mr. York an opportunity to challenge the validity of Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-R8's ownership of the property.

A. Mr. York is not estopped from challenging the validity of the trustee's sale.

In some early unlawful detainer actions, some Utah courts held that a "tenant is estopped from disputing the title of his landlord." *See, e.g., Williams v. Nelson*, 237 P. 217, 219 (Utah 1925) (citation and internal quotation marks

omitted). The idea was that if a person voluntarily entered into a tenant relationship with a landlord, then that indicated the tenant's belief that the landlord held title to the property. A tenant, then, was estopped from arguing otherwise in an unlawful detainer action. *See id.* at 220.

This case, however, does not involve a tenant/landlord relationship. Instead it is an unlawful detainer action following a trustee's sale. As such, Mr. York is not estopped in any way from challenging the validity of that sale and the ultimate ownership of the property in question.

II. Ignoring ownership in an unlawful detainer action violates the Utah Constitution.

The Homestead Exemption in the Utah Constitution would be violated if Utah law allowed for unlawful detainer actions to proceed without regard to actual ownership.

Utah Const. art. XXII, § 1 orders the Utah Legislature to "provide by statute for an exemption of a homestead, which may consist of one or more parcels of lands, together with the appurtenances and improvements thereon, from sale on execution." Accordingly, the Utah Legislature has enacted Utah Code section 78B-5-503, which states that a home is not subject to a trustee's sale unless there are "security interests in the property . . . for debts created for the purchase price

of the property.” Utah Code Ann. § 75B-5-503(3)(b).² On May 2, 1895, Mr. Andersen, one of the delegates to the Utah Constitutional Convention, spoke in favor of the constitutional protection of homes from forced sale. Echoing the sentiments of many others, he said, “It is a provision to protect the poor and the weak—those who need protection. The money lender and the rich man take care of themselves. If a section of this kind or an article of this kind is in the Constitution, they will be more careful.” Utah Constitutional Convention, Sixtieth Day (May 2, 1895) available at <http://le.utah.gov/documents/conconv/60.htm>.

Considering all this, if a trial court allows an international bank to come in and kick a person out of his or her home, the bank must, at the very least, prove that the forced sale of the home fits into one of the statutory exemptions. As Mr. Andersen said in 1895, the intent of the provision was to make the money lenders and rich be careful in how they deal with Utah citizens.

In this case, Deutsche Bank as trustee for Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-R8, came to Utah and kicked Mr. York out of his home. The whole time Mr. York was attempting to show that the trustee’s sale was invalid. If Mr. York is correct and there was fraud in the transfer of the deed, then the sale of the property would not be based on a security interest in the property for debts created to purchase the property. His property then is exempt from forced sale under the Utah Constitution from any

² There are three other exceptions, but none of them appears to apply to the current situation. See Utah Code Ann. § 78B-5-503(3) (LexisNexis 2012).

entity except the true owner, who would be the only entity capable of proving the required security interest. Because the trial court did not allow Mr. York to make this argument in the unlawful detainer action, the proceeding violated the Utah Constitution and should be reversed.

III. The trial court erred in failing to consider Mr. York's request for sanctions as untimely.

The trial court clearly erred when it concluded that Mr. York had not raised his concerns about discovery earlier. The trial court also erred by instructing Mr. York to raise his discovery issues in a motion at trial and then refusing to hear it when he did. An appellate court will not set aside a trial court's findings as clearly erroneous unless they are "against the clear weight of the evidence, or if the appellate court otherwise reaches a definitive and firm conviction that a mistake has been made." *State v. Walker*, 734 P.2d 191, 193 (Utah 1987).

In this case the trial court said it would not consider Mr. York's motion on discovery issues because he should have raised it earlier. T. 1076: 15. Mr. York then directed the trial court to the minute entry from the November 21, 2012 hearing where he did raise the issue. *Id.*; *see also* T. 1075: 13–14. In fact, in a lengthy discussion, at the earlier hearing, the trial court said, "So your objection might be as to specific items that they want to present as evidence because it wasn't timely given to you. Is that correct?" *Id.* Mr. York replied, "Well, what I'm saying is they didn't comply with the court order. It cut me pretty short." *Id.* Mr.

York also complained that he had sent a discovery request to Deutsche Bank trying to determine who had actual ownership of the home, but was ignored. *Id.* at 14.

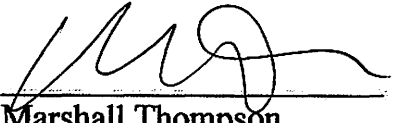
In response to all this, the trial court told Mr. York, “There’s a time and a place for everything. Today we’re not going to conduct any arguments that are not filed in a motion without the plaintiff having notice. So if you wish to address that issue by written document, there’s time. If you prefer to do it at the time of the trial, there’s time then.” *Id.* at 33.

But when Mr. York attempted to address these issues at trial, the trial court said it was too late. As a result, it seems that the trial court was clearly in error about when and how Mr. York first raised his discovery issues. Therefore, this Court should reverse and remand with instructions that the trial court now fully consider Mr. York’s timely request for sanctions under rule 26.

CONCLUSION

For the foregoing reasons, the Appellant respectfully requests this Court to reverse and remand with instructions to the trial court to allow the Appellant to challenge the validity of the trustee’s sale and to consider rule 26 sanctions against Deutsche Bank. The Appellant further requests an award of cost incurred on appeal according to rule 34 of the Utah Rules of Appellate Procedure.

RESPECTFULLY SUBMITTED ON October 5, 2015



Marshall Thompson
Attorney for Appellant

ADDENDUM

No addendum is necessary. *See* Utah R. App. P. 24(a)(11).

CERTIFICATE OF COMPLIANCE

I, Marshall Thompson, certify that the Appellant's Brief complies fully with the requirements of rule 24(f) of the Utah Rules of Appellate Procedure. It contains 4,943 words and 544 lines of text.



Marshall Thompson
Attorney for Appellant

CERTIFICATE OF SERVICE

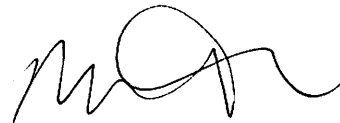
I, Marshall Thompson, certify that on 10/5/15 I served two copies of the Appellant's Brief to the counsel for the Appellee by first class mail to the following address:

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I further certify that on 10/5/15 I served notice that two copies of the Appellant's Brief had been sent to the above address to Appellee's additional counsel at the following addresses:

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