

### LANDLORD TENANT

#### SUIT FOR FORCIBLE ENTRY AND DETAINER REQUIRES LANDLORD TENANT RELATIONSHIP

Aguilar v. Weber, \_\_\_ S.W.3d \_\_\_ (Tex. App.—Waco 2002).

**FACTS:** In April of 1998, the Webers and the Aguilars entered into a contract for the purchase of residential property. Under the contract, the Webers agreed to execute a warranty deed conveying the property to the Aguilars if the Aguilars made timely payments for a period of three to six months. The contract stated that in the event of a default on payments due, the Aguilars forfeited all monies previously paid. The contract did not provide that default created a landlord-tenant relationship or that in the event of default the Webers could institute a detainer suit to establish possession.

In the summer of 2000, the Webers initiated a detainer suit, alleging that the Aguilars had defaulted on the contract by failing to make timely payments, pay taxes, or provide insurance as provided by the contract. The justice court issued judgment in favor of the Webers.

On appeal to the county court, the Aguilars filed a counter-claim in which they: (1) disputed the amount allegedly owed under the contract, and (2) argued that the Webers failed to execute the warranty deed as required by the contract. The county court ruled in favor of the Webers, the Aguilars appealed.

**HOLDING:** Appeal dismissed for want of jurisdiction.

**REASONING:** Jurisdiction over forcible detainer actions is expressly given to the justice court of the precinct where the property is located and, on appeal, to county courts for a trial de novo. See TEX. PROP. CODE ANN. § 24.004 (Vernon 2000). However, a justice court is expressly denied jurisdiction to determine or adjudicate title to land. TEX. GOV'T CODE ANN. § 27.031(b) (Vernon Supp. 2001).

The sole issue in a forcible detainer suit is who has the immediate right of possession of the premises. See *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). To prevail in a forcible detainer action, a plaintiff is not required to prove title, but is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession. If it becomes apparent that a genuine issue of fact regarding title exists, the justice court does not have jurisdiction over the matter. See *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d at 171 (Tex. App.—Houston [1st Dist.] 1995, writ denied)

A forcible detainer action is dependant on proof of a landlord-tenant relationship. See *Haith v. Drake*, 596 S.W.2d 194, at 196 (Tex. App.—Houston [1st Dist.] 1980, writ ref'd n.r.e.). The lack of a landlord-tenant relationship is an indication that the justice court (and county court on appeal) is called upon to adjudicate title to real estate in a forcible detainer case. Because this is a right justice courts are expressly denied, this court agrees that a forcible detainer action must be based on a landlord-tenant relationship.

### CONSUMER CREDIT

#### POINTS ARE INTEREST NOT FEES

Tarver v. Sebring Capital Credit, 69 S.W.3d 708 (Tex. App.—Waco 2002).

**FACTS:** Sharon and James Tarver (“the Tarvers”) went to Sebring Capital Credit (“Sebring”) to obtain a home equity loan. They entered into an agreement for the home equity loan for 80% of the value of their home and gave Sebring a lien on their residence to secure the loan. While negotiating the loan, Sebring offered the Tarvers a 12.375% interest rate, however, the Tarvers requested a lower rate. Thereafter, Sebring offered the Tarvers a 9.375% interest rate in exchange for the Tarvers paying 3% of the original loan amount as discount points. At the final signing of the loan agreement, the Tarvers signed a Discount Point Acknowledgment stating that they had been offered a higher interest rate, and had agreed to pay the discount points in exchange for the lower interest rate of 9.375%. Sebring absorbed most of the fees charged in order to stay within the limitations of the three-percent rule of section

50(a)(6)(E) of the Texas Constitution. The three-percent rule limits the amount of fees that can be charged to a consumer to three percent of the loan principal.

The Tarvers brought a declaratory judgment action seeking to invalidate the loan. They alleged that Sebring never offered any interest rate other than 9.375% and, therefore, the discount points paid were actually fees charged by the bank subject to the limitations of the three-percent rule. The Tarvers argued that section 50(a)(6)(E) of the Texas Constitution states that fees may not exceed three percent of the original loan principal. The trial court granted summary judgment in favor of Sebring. The Tarvers appealed.

**HOLDING:** Affirmed.

**REASONING:** The Tarvers argue that the points charged are fees disguised as interest. Section 50(a)(6)(E) of the Texas Constitution specifically excludes interest from the three-percent limitation. Points are one of two forms of consideration paid by a borrower to a lender: (1) interest as a percentage of the principal balance, charged overtime for the use of the money, and (2) points calculated as a