

Question 2 – February 2020 – Selected Answer 1

A. Validity of Big Oil's Oil and Gas Lease

Big Oil did not obtain a valid oil and gas lease as to Greenacre and Whiteacre.

The issue is whether one spouse can grant a valid oil and gas lease on property that is used as a homestead by the parties.

The first question is whether a) Greenacre and b) Whiteacre were used by Ann and Brad as a homestead. A homestead is property used as a primary residence. Texas law recognizes urban and rural homesteads. A married couple can have up to 200 acres of rural property and 10 acres of urban property as a homestead. While an urban homestead has to be contiguous land, a rural homestead does not, as long as all of the land is being used as support of the homestead. A homestead is urban if it is in the city limits of a municipality and has fire and police protection, as well as three services of gas, water, sewage, electricity (internet does not count).

Here, both Greenacre and Whiteacre qualify as the rural homestead of Ann and Brad. They are rural homesteads because they are not within the city limits or extraterritorial jurisdiction of any town. The 200-acre limit for rural homesteads therefore applies. Greenacre is 100 acres, and Whiteacre is 50 acres, so the two lots combined are below the 200-acre limit. In addition, we know that Ann and Brad immediately began to live in the home on Greenacre in 2010. While Whiteacre was inherited by Ann, making it her separate property, that does not mean it cannot be part of the homestead. While we know that Greenacre and Whiteacre were not contiguous (they were within a few miles of each other), we also know that Brad and Ann lived on Greenacre and farmed both Greenacre and Whiteacre as their primary source of income. As such, both Greenacre and Whiteacre qualify as the homestead of Brad and Ann.

The second question is what the impact on the oil and gas lease is of Greenacre and Whiteacre being a homestead. Generally, if spouses own a homestead together, they can only encumber the homestead jointly, i.e. if they are both party to the transaction. In addition, only certain security interests are valid as to homesteads.

Here, Ann signed a lease with a three-year primary term describing both Greenacre and Whiteacre without consulting Brad (and therefore, we can assume, without joining him to the transaction). An oil and gas lease is a property right - it typically grants a fee simple determinable (for so long as oil and gas is being produced in paying quantities) to the lessee, with the lessor retaining the reversion. As such, an oil and gas lease is an encumbrance and conveyance of property rights that a spouse

cannot do without the other spouse as relates to a homestead. Big Oil therefore did not obtain a valid oil and gas lease as to either Greenacre or Whiteacre because they were the rural homesteads of Ann and Brad and Brad was not a party to the transaction.

B. Termination of Dallas Property Lease and Related Demands

Thomas properly terminated the Dallas Property lease and is entitled to a pro-rated portion of the rent, but he is not entitled to recover damages. He can recover the security deposit if he provided a written statement with his forwarding address to Ann.

The issue is whether a tenant can terminate a lease where there is no water to the property.

Generally, a tenant cannot terminate a lease for a term without incurring liability. However, where the apartment has become uninhabitable due to no fault of the tenant (for example, by not having running water), the tenant is entitled to terminate the lease. This is because the implied warranty of habitability is breached, and because the change in circumstances frustrated the contract and thereby relieved the tenant of his contractual obligation. Here, we know that the water main broke preventing water from flowing to the home. As such, the home was no longer inhabitable and Thomas was entitled to terminate the lease.

As to the rent, a party who terminates a lease of an apartment that has become uninhabitable due to force majeure may recover pro-rated rent for the month in which the party terminated the lease. Here, Thomas provided written notice and moved out on January 15 as a result of not having running water in the apartment. He is therefore entitled to recover pro-rated rent for the remaining 15 days of the month (approximately \$900).

With regard to the damages, Thomas moved out on January 15, and the repair was done on January 31. While a landlord generally has a duty, upon written notice from the tenant, to make repairs of conditions that would affect the health or safety of an ordinary tenant, the landlord is also permitted to wait for the receipt of insurance proceeds to make such repairs. Here, while Thomas gave notice of the repair request, and not having running water certainly qualifies as affecting the health of an ordinary tenant, Ann was allowed to wait to make the repairs until she had received the insurance proceeds. In addition, Thomas was not harmed by the delay in making repairs because he had already terminated the lease and moved out. As such, he is not entitled to any damages.

As to the security deposit, generally, a tenant is required to obtain his security deposit within 30 days of providing the landlord with his forwarding address (this applies to residential cases - in commercial leases, the time limit is 60 days). Alternatively, the landlord has to provide a written statement of the deductions made based on damage caused by the tenant. Here, we know that the property was in excellent condition except for the damaged waterline, which was caused by a lightening storm and was not the fault of Thomas. However, we do not know whether Thomas provided Ann with a written statement of his forwarding address, rather than just a demand for the security deposit. If he provides his forwarding address, he is entitled to his security deposit back within 30 days.

C. Validity of Bank's lien

Ann will not prevail in her assertion that Bank's lien is invalid.

The issue is whether a lien over property is invalid where the property was not a homestead at the time the lien was taken, but became a homestead later on.

Generally, as discussed above, there are only certain liens that can be incurred against a homestead, including a property tax lien, certain mechanics' liens, and purchase money liens. Other liens against homesteads, such as to secure personal loans, are not valid. However, for this rule to apply, the property has to be a homestead at the time the lien was incurred.

Here, Ann inherited the property in 2014, when she and Brad were still living on Greenacre, and rented the property out. She took out the loan from Bank for her personal credit card, and secured the loan with the lien in 2014. While the type of lien (for a personal loan) would make it invalid as to a homestead, at the time the lien was granted, the Dallas Property was therefore not a homestead because it was not used as a primary residence. This is not changed by the fact that Ann and Brad later moved into the Dallas Property, thereby making it their homestead. The question is whether the property was a homestead at the time the lien was granted. Ann will therefore not prevail in her assertion that the Bank's lien is invalid.

Question 2 – February 2020 – Selected Answer 2

a. Big Oil did not obtain a valid oil and gas lease as to Greenacre and Whiteacre.

Under Texas Community Property laws, separate property is any property that is acquired prior to the marriage, given to a spouse during the marriage by gift, devise, or

descent, or damages resulting from personal injury with the exception of loss wages and medical expenses. However, when the a married couple uses property as their homestead, then any conveyance requires the signature of both husband and wife to be valid. Here, Ann inherited Whiteacre which would make it seperate property. However, the facts indicate that Ann and Brad farmed both Whiteacre and Greenacre as their primary source of income. Based on Whiteacre's use, Whiteacre became a part of the Greenacre homestead.

To qualify for a homestead under Texas Real Property law, a family or single adult may use their residence to qualify for a homestead. A party may qualify for a rural homestead of 100 acres non contiguous acres of they are a single adult, or 200 non contiguous acres if they are a family. A single adult or family may qualify for an urban homestead of not more than 10 acres if they are within the municipal limits, are served by police and fire, and receive access to three utilities. Here, Ann and Brad would qualify for an rural homestead because Greenacree is 100 acres. Although, Whiteacre was later inherited, Whiteacre will be treated as part of the rural homstead because it is 1.) only 50 acres and thus makes it less than the 200 acres permitted for a family, and 2.) parcels do not have to be next to each other in order to be part of the homstead. As such, because Ann and Brad farmed both parcels in conjunction with Greenacre, this changes the nature of the property and it becomes part of the homestead.

Under property owed by spouses, a conveyance without the signature of the other is not valid. Thus, because the property was used as a homestead, in order to properly convey any part of property, Ann would have needed Brad's signature as well. Therefore, because Ann did not obtain Brad's signature Big Oil did not obtain a valid oil and gas lease.

b. Thomas properly terminated the Dallas Property lase and is only entitled to recover his security deposti and a pro rata refund of rent. Thomas is not entitled to damages.

Under Texas Landlord Tenant law, when a property becomes uninhabitable due to no fault of either the landlord or the tenant, then either party may terminate the lease by providing proper written notice. Here, the water line preventing the flow of water from the water main to the home was damaged due to a lightening strike. The lightening strike is considered to be an "act of God," which makes fault not attributable to either the landlord or the tenant. Further, the breakage of the water line renders the property uninhabitable because water is needed for daily activites and use of the property thus qualifying the damage as rendering the property uninhabitable. As such Thomas could properly terminate the lease because Thomas properly provided written notice to the Ann. Thomas also gave Ann a reasonable

amount of time to fix the damage given the condition because he provided Ann notice on January 11th the day after the incident and gave provided his termination notice on January 15th as he was permitted to do.

Under Texas Landlord Tenant law, when a property is rendered uninhabitable and proper notice is given, the tenant may recover the full amount of their security deposit, and a pro rata refund of their rent. Additionally, when an act on the property is covered by casualty loss insurance, the date measuring whether the landlord's repair of the condition was within a reasonable amount of time is measured by the date that the landlord receives the insurance proceeds - not the date of notice. Thus, although Thomas may recover his security deposit and a pro rata refund of the \$1,800 he paid in rent for January, he is not entitled to damages because he moved out before Ann received her insurance proceeds.

c. Ann will not prevail in her assertion that Bank's lien is invalid.

As previously discussed, Greenacre and Whiteacre were Ann and Brad's homestead. Under Texas Property law, a homestead is protected from creditors with the exception of the following: tax liens, purchase money, owelty of partition, mechanic's liens (unless contracted otherwise), to name a few. Here, Ann and Brad used Greenacre and Whiteacre as their homestead from 2010 until assumably February 1, 2018 as they moved into the Dallas property after Ann repaired the Dallas home.

Ann however, entered into the loan with Bank in 2014. At that time, Ann and Brad were still living on Greenacre and occupying it as their homestead. To qualify as a homestead, the party has to actually have the intent to live in the home and actually reside in them home. Additionally, an adult/family cannot have more than homestead at a time. At the time Ann entered into into the transaction with Bank, they were living in Greenacre, not the Dallas property; Ann and Brad did not occupy the Dallas property until 2019. Thus, because Ann and Brad did not have the intent or occupancy required to have a valid homestead, the Dallas property is not propteced by the Bank's lien. As such, Ann will not prevail.

Question 2 – February 2020 – Selected Answer 3

(A)

Big Oil has not obtained a valid lease upon Whiteacre and Greenacre.

Under Texas law, a rural homestead is created over property up to 100 acres in case of a single person or up to 200 acres in case of a family. The property does not have to be contiguous, as family may live in one part of the property and work of the other part for farming purposes, for instance. Further, it is a rural homestead if the area is not within the city limits or extraterritorial jurisdiction of any town or platted subdivision served by police and fire protection and services such as sewer, storm sewer, electricity, and natural gas. Additionally, the holder of the homestead must have the intent of using property of homestead and actually doing so. Finally, in the case of a homestead, a spouse, even if she is entitled to the homestead as her separate property, may not convey the homestead or encumber the homestead in any manner without the consent of the other spouse.

Here, Greenacre and Whiteacre meet the requirements for homestead in Texas. Greenacre is a property of 100 acres used mostly for living of Ann and Brad. It is also located out of city limits or extraterritorial jurisdiction of any town. As for Whiteacre, it is not contiguous with Greenacre, but this is not a requirements under Texas law for rural homesteads. Greenacre is mainly used as Ann's and Brad's primary source of income, such as Greenacre. As such, Whiteacre does also fall within the definition of rural homestead in Texas. Therefore, as both Greenacre and Whiteacre are homesteads under Texas law and regardless of Whiteacre being Ann's separate property, Ann could not have leased Greenacre and Whiteacre to Big Oil without Brad's consent.

(B)

Thomas has properly terminated the Dallas property lease under the statutory warranty of habitability. However, Thomas is not entitled to recover damages and the full January rent. Further, Thomas will be entitled to recover the security deposit but only within 30 days of termination of the lease.

Under Texas statutory warranty of habitability, defects in the home which affect habitability, such as water supply, entitle the tenant to terminate the lease upon notice and move out. In such a situation, rent is owed on a pro rata basis considered the period during which tenant remained in the property. Alternatively, the tenant may stay in the premises and offset repair costs incurred by her or sue for damages. Also under Texas law, in case of breach of the statutory warranty of habitability and termination of the lease, tenant is entitled to recover her security deposit within 30 day if there are no disputes or claims between the parties as per the condition of the property.

Here, due to a lightning strike, the water supply to the Dallas Property was cutoff. Though Thomas put Ann immediately on notice, repairs were only provided days after the notice, when Ann received the proceeds from her insurance. As such, Thomas was entitled to terminate the lease under the statutory warranty of habitability. However, as Thomas was in the premises until mid January, he is not entitled to recover the full January rent, but only half of it. Further, as Thomas decided to move out and terminate the lease, he is not entitled to \$500 in damages. Finally, as Thomas terminated the lease on notice given on January 15, Ann has 30 days thereof to return the security deposit.

(C)

Ann will not prevail in her assertion that Bank's lien is invalid.

Under Texas law, to qualify as a homestead, besides the holder's intent to use the property as a homestead, in the case of an urban property, it must be limited to 10 acres (and acreage must be contiguous). In addition, a homestead is generally protected against a creditor's claim unless it falls within one of the exceptions provided for in the relevant Texas statute, such as purchase money, taxes, home equity, exchanging a chattel with a mortgage, and others.

Here, though the facts indicate that Ann was using the Dallas property as a homestead at the time of foreclosure (as Ann and Brad moved to the property), there is no indication of acreage of the Dallas county, in particular, whether it is up to 10 acres and, therefore, whether it fully qualifies as a homestead under the Texas statute. Further, the Dallas Property was not a homestead at the time Ann granted Bank a Deed of Trust lien. Finally, considering that Bank granted Ann a home equity, such transaction will be excepted from homestead's protection as granted under Texas law.