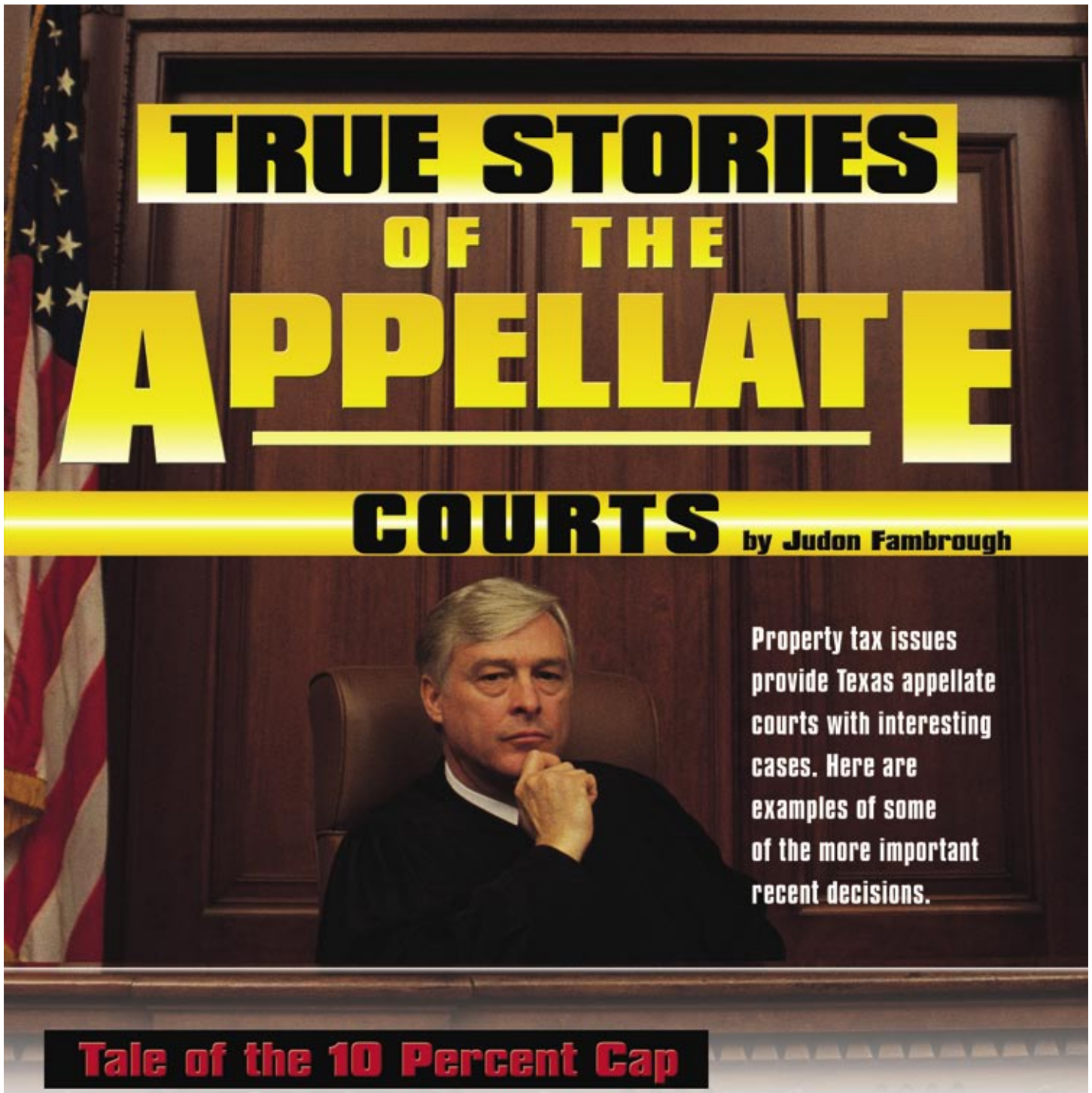


A Reprint from *Tierra Grande*


TRUE STORIES OF THE APPELLATE COURTS

by Judon Fambrough

Property tax issues provide Texas appellate courts with interesting cases. Here are examples of some of the more important recent decisions.


Tale of the 10 Percent Cap

Property taxes concern homeowners, especially when property values are rising. The Texas Tax Code caps or limits increases in the appraised value of a residence for tax purposes to 10 percent annually when no improvements have been made to the property. But a recent case called the statute into question (*Bader v. Dallas Central Appraisal Dist.* [139 SW3rd 778]). In it, a homeowner used a novel approach to interpret the statute (Section 23.23).

Briefly, Section 23.23 says the *appraised value* of a residential homestead for property tax purposes may not exceed the lesser of the market value or sum of three items:

- the value of the property the last year it was appraised for tax purposes,
- 10 percent of the last appraised value times the number of years since the appraisal occurred, plus
- the market value of any new improvements to the property.

In 2001, the Bader's residential property appraised at \$217,000 for tax purposes. The land was \$75,000 of the value and the improvements (the residence) \$142,000. Because of the cap, the appraised value for tax purposes was limited to \$181,500.



In 2002, the residential property appraised at \$235,000 — \$75,000 for the land and \$160,000 for improvements. Because of the cap, the assessed value was limited to an increase of \$18,150 (10 percent of \$181,500).

The Baders protested. They contended the 10 percent increase applied to the taxpayers' residence (improvements) and to the land separately, not as a unit. Because the value of the land remained constant, they argued, the increase in appraised value should be limited to 10 percent of last year's appraised value for the residence or \$16,000, not \$18,150.

The trial court ignored the Baders' plea and granted the appraisal district summary judgment. A trial court grants summary judgment when there is no real disagreement about the facts of the case, and the only issue is a question of law. The judge decides the case based on the facts and grants a summary judgment to the prevailing party.

The Baders focused on the interpretation of the term *property* as used in Section 23.23. They contended the term encompassed two components: the land and the improvements, and the 10 percent rule applies separately to each. The homeowners contended Section 23.19(f) of the Tax Code supported their argument because it requires appraisal districts to list each component separately with its value.

The appellate court affirmed the summary judgment against the Baders. The court found no connection between the caps in Section 23.23 and the separate listing of the land and improvements in Section 23.19(f). Instead, the court pointed to the definition of *residence homestead* in Section 11.13, which reads "a structure . . . together with the land and improvements used as the residential occupancy of the structure . . ." The court ruled the two components are assessed for taxes as a whole, not separately.

The court concluded that the legislature "intended the 10 percent cap to apply to the residence homestead as a single unit, i.e., the land together with improvements."

it is a homestead or a commercial property. No right of redemption exists in Texas following a mortgage foreclosure sale, but one is afforded after a homeowners association forecloses for nonpayment of assessments.

A property tax foreclosure sale eliminates most, if not all, existing liens on the property — certainly existing mortgage liens. To protect themselves, lenders must make sure property taxes are paid in a timely manner.

While redemption restores title to the delinquent taxpayer, it does much more than that, as the Hunts found out in *Associates Home Equity Services Co. v. Hunt* (151 SW3rd 559).

The Hunts borrowed \$155,000 from Associates Home Equity Services (Associates) to purchase a home in Montgomery County in 1996. The debt was secured by a deed of trust. The Hunts failed to pay the property taxes, which led to a tax foreclosure sale in 1998. A third party purchased the property at the sale, but the Hunts subsequently redeemed it.

Following the redemption, Associates (the lender) posted the property for foreclosure because the Hunts failed to make the mortgage payments. The Hunts sought an injunction to stop the sale. The trial court granted the Hunts summary judgment based on the fact that the tax foreclosure sale forever eliminated the mortgage lien on the property. Associates appealed.

Associates argued the redemption not only restored title to the Hunts, but restored the mortgage held by Associates on the land. Associates cited the case of *Reynolds v. Batchelor* (216 SW2d 663), in which the court held that an owner who redeems property does not strengthen his or her title against other owners or lienholders.

The appellate court agreed, reversed the summary judgment and remanded the case for trial. The court held that, as long as the third-party buyer at the tax sale held title, the mortgage lien was temporarily suspended. But, when the former owners redeemed the property, the lien was restored. Whether or not the Hunts redeem the property, the ruling stated, they are personally liable for the repayment of the loan.

The Reynolds case illustrates a situation that plagues many property co-owners. One cotenant pays all the property taxes to prevent a tax foreclosure sale. While the law provides that nonpaying cotenants are personally liable for their share of the taxes, litigation among co-owners, especially family members, seldom occurs.

To eliminate the nonpaying cotenants' ownership in the property, the cotenant paying the property taxes simply stops, lets the property go to foreclosure, then redeems the property from the buyer. The cotenant is now the sole owner.

Basically, this is what happened in the Reynolds case but with a twist. Homer Hamilton owned property in Fort Worth. He died intestate in 1934. His heirs failed to pay the property taxes, and the sheriff sold the property to the City of Fort Worth for \$1,800. After the sale and still within the redemption period, Batchelor purchased one of the heirs' one-sixth undivided interest in the property. He then proceeded to purchase the land from the city for \$1,800.

When the other heirs discovered the redemption, they sued to partition the property, alleging that Batchelor's redemption restored their co-ownership. The trial court ruled in favor of Batchelor. The heirs appealed.

The court had to decide whether Batchelor *purchased* the property from the city or *redeemed* it. The weight of the

Case of the Redeemed Residence

Texas statutory law allows a person who loses property at a property tax foreclosure sale to redeem it (buy it back) at a stipulated price within a certain period (see "Forced Sale Remedies," www.recenter.tamu.edu/pdf/652.pdf). The redemption period varies depending on whether

evidence favored a purchase. The redemption price, according to the statute, would have been \$2,700, not \$1,800. Also, Batchelor received a general warranty deed from the city, not a redemption receipt. The transaction with the city, though, occurred during the redemption period, not afterwards.

If the transaction was a redemption, the heirs win. The redemption restored their ownership in much the same way the redemption restored the lien on the property discussed earlier in the Hunt case.

“It is a general principle of law” wrote the court, “that one who by virtue of an existing legal or contractual relation with another is under an obligation to such other person to pay the taxes on the lands, but who omits to pay such taxes, cannot be allowed to strengthen his title to such land by buying the tax title when the property is sold as a consequence of his omission to pay the taxes . . .”

If the transaction was a purchase, the heirs lose. The purchase would not restore their interest; thus, they would have no right to partition the land.

The court ruled the transaction a purchase for two reasons. The deed to Batchelor from the cotenant conveyed “all rights, title and interest” to the property, not the cotenant’s undivided interest. Under Texas case law, this amounts to a repudiation of the other cotenants’ interest.

Second, Batchelor acquired title from the cotenant *after* the foreclosure sale. He owed no responsibility to pay the property taxes on behalf of the other cotenants. He did not profit from his own neglect. The results would have been different had Batchelor acquired the title prior to the foreclosure sale.

Elimination of the Nonpaying Cotenant

Based on the Reynolds case, a cotenant may not voluntarily withhold payment of property taxes in an attempt to gain sole ownership of land by redeeming the property following a tax sale. However, the Texas Tax Code describes another little-known alternative that may be beneficial.

In a nutshell, Sections 29.001 through 29.004 outline the following procedures for acquiring another cotenant’s undivided interest for not paying his or her share of the property taxes.

First, a person acquires title to an undivided interest in private property in one of three ways:

- by inheritance (under the rules of descent and distribution when the owner dies intestate or without a will),
- by devise (under the terms of someone’s will when the owner dies testate) or
- by joint tenancy with the right of survivorship or by some other survivorship agreement (a type of co-ownership where the person who lives the longest gets full title to the land).

Second, one of the joint tenants (co-owners) pays all the property taxes on behalf of another cotenant for three out of five years.

Third, the joint tenant who pays the taxes formally demands reimbursement and at least half of the amount is not forthcoming.

Fourth, the cotenant who paid the taxes (the petitioner) petitions the district court located in the same county as the property, asking it to order the nonpaying cotenant (the defendant) to sell his or her property to the petitioner. Another co-owner conducts the sale.

At times the petitioner may not be able to identify or locate the other co-owners for whom the payments are made. In such cases, it is impossible to make formal demands for repayment. The statute anticipates this problem and allows formal demand to be made via the county newspaper. The demand must appear once a week for four consecutive weeks. The petition in the district court must be filed within 30 days after the fourth publication.

The district court conducts a hearing based on the petition. The petitioner must prove all elements of the case by “clear and convincing” evidence, a much higher standard than in most civil cases.

If the petitioner successfully meets the burden of proof, the court orders the defendant’s undivided interest sold to the petitioner based on a court-ordered appraisal. The petitioner tenders the defendant the appraised value of the property less the amount owed for taxes. The court may order the defendant to execute and deliver a deed proving the transfer if the defendant is known and can be located.

The statute outlines a viable means by which a cotenant may, under certain circumstances, acquire another cotenant’s undivided interest in property. No Texas appellate courts have construed the statute, leaving several unanswered questions including the following.

- Who does the petitioner pay when the defendant is unknown or cannot be located?
- What happens when the defendant’s undivided interest appraises for less than the defendant owes the petitioner for reimbursement? Is the defendant still personally liable for the excess?
- What if the county does not have a weekly newspaper?
- How is the sale conducted when there are only two cotenants? The statute specifically requires “another owner of an undivided interest in the property” to sell the property to the petitioner. The language appears to require a third cotenant other than the petitioner and defendant. ➔

Fambrough (judon@recenter.tamu.edu) is a member of the State Bar of Texas and a lawyer with the Real Estate Center at Texas A&M University.





MAYS BUSINESS SCHOOL

Texas A&M University
2115 TAMU
College Station, TX 77843-2115

<http://recenter.tamu.edu>
979-845-2031

Director, Dr. R. Malcolm Richards; **Associate Director**, Gary Maler; **Chief Economist**, Dr. Mark G. Dotzour; **Communications Director**, David S. Jones; **Associate Editor**, Nancy McQuiston; **Assistant Editor**, Kammy Baumann; **Assistant Editor**, Ellissa Brewster; **Art Director**, Robert P. Beals II; **Graphic Designer**, JP Beato III; **Circulation Manager**, Mark W. Baumann; **Typography**, Real Estate Center.

Advisory Committee

Tom H. Gann, Lufkin, chairman; Douglas A. Schwartz, El Paso, vice chairman; Joseph A. Adame, Corpus Christi; David E. Dalzell, Abilene; Celia Goode-Haddock, College Station; Joe Bob McCartt, Amarillo; Catherine Miller, Fort Worth; Nick Nicholas, Dallas; Jerry L. Schaffner, Dallas; and Larry Jokl, Brownsville, ex-officio representing the Texas Real Estate Commission.

Tierra Grande (ISSN 1070-0234) is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115. Subscriptions are free to Texas real estate licensees. Other subscribers, \$20 per year. Views expressed are those of the authors and do not imply endorsement by the Real Estate Center, Mays Business School or Texas A&M University. The Texas A&M University System serves people of all ages, regardless of socioeconomic level, race, color, sex, religion, disability or national origin. Photography/Illustrations: Real Estate Center files, p. 1; JP Beato III, pp. 2, 3.