

**EVICTON JURISDICTIONAL WARS:
DISTRICT COURTS AND JUSTICE COURTS ON
“JURISDICTION” V. “TITLE”**

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EVICTON JURISDICTIONAL WARS: DISTRICT COURTS AND JUSTICE COURTSON “JURISDICTION” V. “TITLE”

By Robert Harms Bliss

Texas law states that in a forcible detainer action “the only issue shall be as to the right to actual possession; and the merits of the title shall not be adjudicated.” District courts have exclusive jurisdiction over title questions involving real property. Yet, a lease is a conveyance of land for a designated period with a reversionary interest in the lessor. How do the courts sort out this incongruity?

A. THE CONSTITUTION

Prior to 1985, Article V, Section 8, of the Texas Constitution stated that the district courts had “original jurisdiction . . . of all suits for the trial of title to land; and for the enforcement of liens thereon . . .” TEX. CONST. ART V, § 8 (amended 1985). After 1985, Article V, Section 8, gives the jurisdiction as follows:

District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction.

TEX. CONST. ART V, § 8. Jurisdiction of the justice of the peace courts is limited. “Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law . . .” TEX. CONST. ART V, § 19.

B. THE STATUTES AND RULES

Prior to 1987, Article 1906, gave the district courts jurisdiction in seven classes of cases, number four of which was “Suits for the trial of title to land and for the enforcement of liens thereon.” Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 148, § 1.36, eff. Sept. 1, 1987. Jurisdiction of district courts is now given by Section 27.004 of the Government Code as follows: “The district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution.”¹

Jurisdiction of justice courts is limited by the Government Code. Justice courts have jurisdiction of cases of forcible entry and detainer, but do not have jurisdiction of “a suit for trial of title to land. . .” TEX. GOV. CODE § 37.031. In a forcible detainer action, “the only issue shall be as to the right to actual possession; and the merits of the title shall not be adjudicated.” (Emphasis supplied) TEX. R. CIV. P. 746.

C. THE CASES

(1) Two Early Cases

The case of *City of Victoria v. Schott*, 029 S.W. 681 (Tex. Civ. App. 1895, no writ), involved a landowner suing in county court for damages for removing gravel from her land. The defense was that the land was owned not by the plaintiff, but by the city, and that it was necessary to determine the title to the land; therefore, the district court had exclusive jurisdiction. The court of civil appeals held for the landowner and stated:

[T]he fact that the liability arose from a trespass upon plaintiff's land did not affect the power of the court to adjudicate upon it. The suit was not one *for the trial of title to land,* or *for the recovery of land.* The two expressions used in the constitution in defining the jurisdiction of the district and county courts are evidently intended to convey the same meaning, and have reference to cases where the title to land is to be determined, or its recovery had, by the judgment sought. In actions for a debt or damages, in amounts within the jurisdiction of the county courts, the right of recovery may depend upon the title to land. The court having the power expressly given to determine such right to recover must decide all questions of law and fact upon which its determination depends. Thus *the question of title comes incidentally into the case*, and must be decided before the court can render judgment settling the claims in dispute. But in doing so it does not adjudicate or settle the title to the land, nor the right to recover it, but simply determines that the plaintiff is or is not entitled to recover the thing sued for within the jurisdiction.

(Emphasis supplied) 29 S.W. at 681. Having said that, the court went on to adjudicate title to the land by ruling on the boundaries of adjoining landowners

added to Section 24.007 giving district courts original jurisdiction of civil matters where the amount in controversy is over \$500.00.

¹ After January 1, 2012, a subsection b has been

where their property is divided by a river. The case was remanded to allow the plaintiff to prove up her case for damages.

Henslee v. Boyd, 107 S.W. 128 (Tex. Civ. App. Dallas 1908, no writ) involved a dispute over an easement by prescription. The plaintiff claimed an easement by prescription after 25 years of use and sought damages in the justice court from the landowner for fencing off the easement. Trial de novo was in the county court. The landowner filed a plea to the jurisdiction alleging the dispute involved title to the land. The county court granted the plea and the court of civil appeals affirmed. The plaintiff claiming the easement argued that the question of title was only incidentally brought in issue by the suit. The court of civil appeals rejected that argument.

In the case before us the question as to whether appellant was the owner of an easement in, to, and over appellee's land formed the basis of his right to recover judgment, and the burden was on him to establish that fact before he could recover judgment. This was proving title . . .

(Emphasis supplied) 107 S.W. at 129.

(2) The Incongruity

The decision making mantra for the courts has evolved into the following:

Justice courts may adjudicate possession when issues related to the title of real property are tangentially or collaterally related to possession. If, however, the question of title is so integrally linked to the issue of possession that the right to possession cannot be determined without first determining title, then the justice courts and, on appeal, the county courts, lack jurisdiction over the matter.

Gibson v. Dynegy Midstream Services, L.P., 138 S.W.3d 518, 522 (Tex. App. Fort Worth 2004, no pet.). If courts want to rule for exclusive district court jurisdiction, then the question of title is integrally linked to the issue of possession. If the courts want to rule for the justice and county courts, then the question of title is only incidentally or tangentially or collaterally related to possession. However, the right to possession in a landlord tenant case depends upon the terms of a lease and whether there has been a breach which might terminate the lease.

(3) The Incongruity Resolved

The incongruity between cases holding that the question of title was only incidentally involved and cases holding that the question of title was integrally

involved met in a Commission of Appeals case in 1939. *Coughran v. Nunez*, 127 S.W.2d 885 (Tex. 1939), involved an easement case involving a water pipe from a spring. The landowner was threatening to take up the water pipe and the easement owner sought an injunction in the county court. The landowner objected on the ground that the district court had exclusive jurisdiction. The injunction was granted and the court of appeals affirmed. The Commission of Appeals reversed saying:

The real controversy concerns the nature of the relief sought by plaintiff and what plaintiff is required to establish before being entitled to said relief. The Court of Civil Appeals applied the well recognized rule that the county court has jurisdiction to prevent by injunction a trespass upon real estate . . . when the title to such real estate is only incidentally involved. The application of this rule, however, necessarily implies that plaintiff owned the easement or interest in real estate as alleged by him, and had acquired same by limitation, prescription or dedication . . . This necessarily involved the trial of title to real estate. To assume that he owned the easement is to assume the whole case in his favor.

(Emphasis supplied) 127 S.W.2d at 887. In order for the claimant to be entitled to an injunction, he necessarily had to prove a valid grant of an easement. “This is proving title; and a cause which requires proof of title to real estate the county and justice courts are without jurisdiction to try.” *Ibid*. The Supreme Court adopted the opinion of the Commission of Appeals.

In *Gottschalk v. Gottschalk*, 212 S.W.2d 223 (Tex. Civ. App. Austin 1948, no writ) the court followed the ruling in *Coughran v. Nunez*. The landlord sought an injunction in the county court at law to prevent the tenant from moving existing fences on the property. The tenant filed a plea in abatement asserting that the district court had exclusive jurisdiction. The court of appeals dissolved the injunction, holding that the district court had exclusive jurisdiction. The right of the tenant or his lack thereof depended upon the validity of the lease.

[I]t is plain that as a possessory action it could not be maintained without invalidating the lease, upon which Carl's right of possession depended. Either the lease was invalid ab initio, or had terminated upon some authorizing breach. These issues, which clearly involved Carl's asserted right of possession of the land, could not be adjudicated in the County Court. *The right to*

construct fences upon the property depended upon this right of possession, and an enforced prevention of the exercise of such asserted right constituted an infringement thereof, a question which the District Court alone had jurisdiction to adjudicate. The trial court should have sustained the plea in abatement and dismissed the suit.

(Emphasis supplied) 212 S.W.2d at 224. The landlord argued that he was not questioning the lease, he was merely trying to prevent waste and have the leased premises returned to him in the same condition as he delivered at the commencement, reasonable wear and tear excepted; therefore, any issue of title was incidental. The court did not buy the argument. “*This showed a clear repudiation of the lease, the inference being that it did not embody the terms agreed upon.*” (Emphasis supplied) 212 S.W.3d at 225.

The Supreme Court of Texas weighed in again on the subject in 1973 in the case of *Doggett v. Nitschke*, 498 S.W.2d 339 (Tex. 1973). This case involved a dispute between a landlord and tenant over the proceeds of a condemnation award. Suit was brought in the county court at law. The Supreme Court held that the county court at law did not have jurisdiction because it would necessarily have to determine the validity of the leasehold estate.

(4) Not So Fast!

Just because the Commission of Appeals and the Supreme Court weighed in on the dueling doctrines of Incidental Title and Integral Title, it doesn’t mean that subsequent opinions of the courts are in alignment. Cases are all over the map in determining whether the justice and county courts have jurisdiction and as to whether title is incidentally or integrally involved.

Haith v. Drake, 596 S.W.2d 194 (Tex. Civ. App. Hous. [1st Dist.] 1980, writ ref’d n.r.e.), involved a contract for deed and there was a dispute over default. A forcible detainer was filed by the seller, but was dismissed. When the seller appealed to the county court, the buyer filed suit in the district court. The district court enjoined the forcible detainer. The court of civil appeals dissolved the injunction and held that the county court had jurisdiction. The buyer had not fully performed under contract for deed and, therefore, only had equitable rights, not equitable title. The contract provided for a landlord tenant relationship in the event of default. “The fact that it might be necessary to introduce evidence of title in order to prove the landlord-tenant relationship does not deprive the county court of jurisdiction since the validity of the title so developed is not in issue.” The court said there should be a liberal policy for cumulative remedies. “An application for an injunction to prevent the prosecution of either remedy should be subjected to strict

construction.”

In *McGlothlin v. Kliebert*, 672 S.W.2d 231 (Tex. 1984). The Supreme Court reversed an injunction enjoining landlord from proceeding with a forcible detainer. The case involved a commercial lease. When the landlord filed a forcible detainer against the tenant, the tenant filed suit in the district court seeking a temporary injunction and damages. The opinion of the Supreme Court does not state the allegations of either the landlord or the tenant as to whether there was a breach and what constituted the breach. The Supreme Court held that the tenant had adequate remedy in district court for damages. It is interesting to note that the tenant conceded there was no title question.

Anarkali Enterprises, Inc., v. Riverside Drive Enterprises, Inc., 802 S.W.2d 25 (Tex. App. Fort Worth 1990, no writ). A commercial tenant defended a forcible detainer in county court and filed a counterclaim for damages for wrongful termination of the lease. The tenant alleged he exercised a renewal option. In addition, the tenant alleged the landlord wrongfully terminated the lease pursuant to a provision in the lease allowing the landlord to terminate the lease in the event of a fire if the premises could not be rebuilt in 120 days; the tenant said the premises could be rebuilt. The court of appeals held that it did not have jurisdiction to hear the appeal of eviction, but did have jurisdiction to hear the point of error on denial of damages for wrongful termination. The court pointed out that the evidence supported landlord’s version of events and that the tenant filed a counterclaim in the county court and thereby submitted himself to its jurisdiction for all purposes. There was no discussion of title being either integrally or incidentally involved.

TMC Medical, Ltd. v. The Lasaters French Quarter Partnership, 880 S.W.2d 789, (Tex. App. - Tyler 1994, writ dismissed, w.o.j.). The tenant sued for an injunction to prevent landlord from filing forcible detainer, claiming parties entered into a new lease. The injunction was denied by the district court. The appellate court first held that “the tenant’s right to possess leasehold property does not present any question of title, disputes regarding such possession are subject to the jurisdiction of the appropriate justice court, whose jurisdiction in these types of action is exclusive.” 880 S.W.2d at 790. The court cited the Supreme Court decision in *McGlothlin v. Kliebert*, 672 S.W.2d 231 (Tex. 1984), for this proposition. “TMC asserts that it is illogical that a court having jurisdiction to render a declaratory judgment lacks the authority to issue orders necessary to preserve the status quo pending final judgment. But that is the clear consequence of the holdings in the *McGlothlin* and *Yepez* cases . . .” 880 S.W.2d at 791-792.

Rice v. Pinny, 51 S.W.3d 705 (Tex. App. Dallas 2001, no pet). Borrower defaulted, the lender foreclosed, and a third party bought at the foreclosure

sale. After the buyer bought, he filed a forcible detainer suit in the justice court. The borrower urged the county court on appeal to dismiss the suit on the grounds that title to the land was in question, i.e., a wrongful foreclosure. No facts were given as to how the foreclosure was wrongful. The Dallas Court of Appeals upheld the jurisdiction of the justice court and the county court in the trial de novo because the deed of trust established a landlord tenant relationship upon default and foreclosure between the borrower and the purchaser at the foreclosure sale. The borrower argued “the issues of title to the property and possession of the property are inseparable, and it is unreasonable to determine possession of real estate without first determining who holds its title.” 51 S.W.3d at 709-710. The Dallas court disagreed and went on to discuss at great length the merits of forcible detainer actions and presumptions in favor of justice courts. This case is often cited in favor of jurisdiction for the justice courts and county courts.

Meridien Hotels, Inc. v. LHO Financing Partnership I, L.P., 97 S.W.3d 731 (Tex. App. Dallas 2003, no pet.). A commercial lease gave the landlord an option to purchase the tenant's hotel if tenant's management changed, which it did. Landlord opted to buy. Tenant filed a declaratory judgment action in district court to interpret the purchase clause. The district court granted a partial summary judgment (*interlocutory*) declaring lease terminated and awarding possession to landlord. The landlord then filed a forcible detainer. The tenant then filed a plea in abatement in the justice court, which was granted until district court judgment is final. The landlord then asked the county court for a writ of mandamus ordering justice court to hear the forcible detainer. Although the tenant argued that title was integrally involved in the case, the court of appeals upheld the writ of mandamus saying that the forcible detainer does not involve any issues of title.

In Gibson v. Dynegy Midstream Services, L.P., 138 S.W.3d 518, 522 (Tex. App. Fort Worth 2004, no pet.). the landowner's son leased to defendant without the owner's consent. When the owner found out about it, she filed a forcible detainer. There was no lease between the owner and the defendant. The defendant asserted that, if the owner was not the son's landlord, then it pled adverse possession as a defense. Even though it is virtually impossible for a tenant to prevail on an claim adverse possession against a landlord, the court held that this paper thin defense was enough to deprive the justice court of jurisdiction. “[W]e conclude that the questions of title and possession raised by Dynegy's allegations of adverse possession are so integrally linked that the justice court could not have decided Hattie's claims without deciding Dynegy's title by adverse possession claim.” 138 S.W.3d at 524.

In *Dass, Inc., v. Smith*, 206 S.W.3d 197 (Tex. App. Dallas 2006, no pet), there was a month to month tenancy and the tenant agreed to buy property. The landlord said his signature on the sales agreement was forged, and filed a forcible detainer. The tenant sought a temporary injunction in district court. Held: the right to immediate possession requires resolution of title dispute; therefore, the injunction was granted. “When the right to immediate possession necessarily requires resolution of a title dispute, the justice court has no jurisdiction to enter a judgment and may be enjoined from doing so.” 206 S.W.3d at 200. “We conclude the determination of the right to immediate possession of the property necessarily requires a resolution of the title dispute and jurisdiction properly lies with the district court.” 206 S.W.3d at 201.

In *Breceda v. Whi*, 224 S.W.3d 237 (Tex. App. El Paso 2005, no pet), a commercial tenant was ready, willing and able to occupy the premises, but, landlord was two months late in completing construction. After completion, the tenant moved in and began paying rent, but the landlord charged the tenant rent for the two months they couldn't occupy due to the failure to complete. When the tenant refused to pay, the landlord threatened to file a forcible detainer. The tenant sued in district court for a TRO to enjoin the landlord from taking any action from impairing tenant's use of premises, including filing the filing of a forcible detainer. Nevertheless, the landlord filed a forcible detainer in violation of the TRO. The district court later granted a temporary injunction against landlord from taking any actions that would interfere with the tenant's use and enjoyment of the premises, but did not enjoin justice court from hearing forcible detainer. The court of appeals upheld the temporary injunction. The appellate court opinion discusses in detail whether a district court may enjoin a justice court, but does not discuss incidental title v. integral title. The injunction was upheld, according to the opinion, because it did not enjoin the justice court or the landlord from filing a forcible detainer (although the facts stated that the district court did enjoin the landlord from filing a forcible detainer).

In *Yarto v. Gilliland*, 287 S.W.3d 83 (Tex. App. Corpus Christi 2009, no pet.), the owner/landlord sued for forcible detainer on oral lease and the tenant brought suit in district court on an oral contract to buy the house. The parties dispute whether there was a landlord tenant or a buyer and seller relationship. The district court enjoined landlord from prosecuting the forcible detainer action because it necessarily required resolution of a title dispute. The district court enjoined the landlord from (1) “initiat[ing] any further forcible entry and detainer actions applicable to [the residence],” (2) “attempt[ing] to prosecute any forcible entry and detainer actions applicable to [the residence],” and (3) “attempt[ing] to enforce any order

issued by any forcible entry and detainer actions applicable to [the residence]." 287 S.W.3d at 87. One party claimed an oral lease and the other party claimed an oral contract for the sale of land. These slim claims were held to be enough to enjoin the justice court from hearing a forcible detainer because the justice of the peace would have to determine a matter of title. The question arose as to whether there was specific evidence of title being in issue.

We interpret "specific evidence" as consisting of nothing more than the various assertions that comprise a party's title claim, and conclude that "specific evidence" of a title dispute exists when through those assertions, the party has asserted a basis for title ownership that is not patently ineffective under the law and is intertwined with the issue of immediate possession.

287 S.W.3d at 93. The landlord failed to show that the tenant's title claim was "patently ineffective." 287 S.W.3d at 94.

Black v. Washington Mutual Bank, 318 S.W.3d 414 (Tex. App. Hous. [1st Dist.] 2010, pet. dism'd w.o.j.). The lender/buyer at a foreclosure sale sought a forcible detainer in the justice court against the occupant who was alleged to be a tenant at sufferance pursuant to the deed of trust. The lender lost in the justice court but prevailed in the county court at law. The occupant appealed to the court of appeals on the grounds that she was the equitable owner of the property and the county court at law did not have jurisdiction to determine a matter of title. The occupant paid the borrower \$100,000.00 down on a note and was given a quit claim deed. While she was making monthly payments of \$8,500.00 to the borrower, he approached her and said he needed her to deed the property back to him so he could get a release from the lender. The occupant deeded the property back to the borrower who promised to deed it back to her. He didn't; he defaulted and the lender foreclosed. The court of appeals quoted the rule as follows:

Although a justice court has subject-matter jurisdiction over a forcible detainer action, the justice court, and a county court on appeal, lack jurisdiction to resolve any questions of title beyond the immediate right to possession. . . *On the other hand, a justice court is not deprived of jurisdiction merely by the existence of a title dispute; rather, it is only deprived of jurisdiction if the right to immediate possession necessarily requires the resolution of a title dispute.*

(Emphasis supplied) 318 S.W.3d at 417. The court said

the forcible detainer only determined the right to immediate possession and did not determine the ultimate rights of the parties; that the parties had the right to sue for damages in the district court should the trustee's deed and foreclosure be void. The court held that the deed of trust established the landlord tenant relationship, a tenant at sufferance. "*Based on this evidence, it was unnecessary for the trial court to determine the issue of title to the property.*" (Emphasis supplied) 318 S.W.3d at 418. The court pointed out that the occupant took the property under a quitclaim deed and, therefore, took the property subject to the deed of trust. In addition, the occupant had deeded the property back to the borrower.

The court made the audacious statement that it was not making a determination on the issue of title because the deed of trust established the landlord tenant relationship. Yet, this is exactly what the court did. The court necessarily determined that the deed of trust and resulting foreclosure were valid. Change the facts slightly. Suppose the occupant and bought the property from the borrower before he executed the deed of trust and the deed was a warranty deed.

Merit Management Partners I, L.P. v. Noelke, 266 S.W.3d 637 (Tex. App. Austin 2008, no pet.). This is a case of an overreaching and rapacious landlord. The lease was for a pipeline storage facility and the term was twenty years. After the term was extended pursuant to a letter agreement, the tenant assigned the lease to the new tenant and requested the landlord's consent. The landlord did not respond and the next year the new tenant paid the rent. After depositing the rent check, the landlord sent the new tenant a letter saying the landlord had never consented; therefore, the landlord enclosed a consent to assignment which made material changes to the lease and letter agreement, increased the rent and provided that the tenant would reimburse landlord attorney's fees and other costs. In addition, the consent to assignment said the tenant would be "deemed to have accepted" its terms by continued occupancy of the premises. A year later the landlord brought suit in the county court at law for the amount of new rent plus reimbursement of attorney's fee. The tenant took the position that the terms of the consent to assignment were not binding and alleged that only the district court had jurisdiction of the case because it was necessary to make a determination of title.

The Austin Court of Appeals, after examining in detail the history of the dueling doctrines of Integral Title v. Incidental Title, determined that the matter was resolved in *Coughran v. Nunez*, 127 S.W.2d 885 (Tex. 1939). The opinion, by Justice Waldrop, noted that while some early cases would only exclude from a county court's jurisdiction cases where the court's judgment would include an award of title to land, the better reasoned cases gave exclusive jurisdiction to

district courts in matters “in which a judicial determination of a title dispute between the parties is necessary to render the judgment, even if the judgment itself does not include an express grant of relief with respect to title.” 266 S.W.3d at 647. Then the court quoted with approval the language from *Edwards v. Hefley*, 22 S.W. 659, 661 (Tex. Civ. App. - Austin 1893, no writ):

But when the gist of a cause of action, whether in form of trespass to try title or in any other form, rests upon the proposition that the title to land asserted by the plaintiff is superior to that of the defendant, the district court alone has jurisdiction to adjudicate the matter.

The Austin court then analyzed the claims of the landlord. The consent to assignment amended the letter agreement which amended the lease. “*The entire dispute turns on the extent of Merit’s leasehold and the terms that govern that leasehold. The county court cannot adjudicate Noelke’s claims without resolving the contested issue of what is the extent and nature of Merit’s leasehold interest.*” (Emphasis supplied) 266 S.W.3d at 648. The court then pointed out “***There is no greater impact to a leasehold estate than its complete elimination.***” (Emphasis supplied) 266 S.W.3d at 651.

The Austin Court of Appeals then devised a way to determine whether a claim was one that necessarily was determinative of title to the real property.

The true nature of the dispute in this case can be illustrated by asking the question, “Could the judgment in this case have claim preclusive effect with respect to the validity and enforceability of the Consent to Assignment, a document that directly prescribes the nature and extent of a variety of interests in real property?” If so, title to real property is involved. . . *If the adjudication of the claims asserted in county court could arguably have **claim preclusive effect** on a question of title to real property, we think even the earliest case law reserved such claims for the district court’s jurisdiction.*

(Emphasis supplied) 266 S.W.3d at 650.

Justice Diane Henson dissented. 266 S.W.3d at 651. She argued that since Noelke was seeking “to enforce a clause in the Consent to Assignment [sic Assignment],” title to the property was merely incidental to the claim for damages. Justice Henson argued that

Noelke is not required to establish his right and title to any real property in order to recover on his claim for damages. He merely seeks the recovery of attorney’s fees, costs, and liquidated damages pursuant to a provision of the Consent to Assignment. While issues regarding title may be tangentially involved, they are incidental to the primary issue of resolving a contract dispute between the parties.

266 S.W.3d at 652-653. However, Justice Henson necessarily assumes the consent to assignment is enforceable and the tenant breached it.

D. ANALYSIS

The incidental title cases seem to have been born from the language in the earlier versions of the Texas Constitution and statutes setting forth in detail district court jurisdiction. Those cases also seemed to have the philosophy that district court jurisdiction was limited and county court jurisdiction was general, rather than the other way around. The Constitution and statutes have changed, but the courts don’t seem to have noticed.

Recent cases have introduced another factor in the integral v. incidental debate and that is whether the title claim is “patently ineffective.” This might help to explain the foreclosure and tenant at sufferance cases. However, the fact remains that the court is making a determination on the title claim. The best test for determining whether title to the real property is in issue seems to be whether the claims asserted would have a claim preclusive effect.

Consider the scale of the following types of leases:

1. A residential apartment lease.
2. A residential home lease.
3. A commercial retail lease in a strip center.
4. A commercial office lease.
5. A commercial triple net lease of a single standing building.
6. A commercial build to suit pad lease.
7. A commercial long term lease where the tenant has the obligation to build.

The lower on the scale, the better the chance that the only issue is possession. The higher on the scale, the better the chance that the issue is title. The lower on the scale is probably in direct proportion to the amount of money involved and the number of lawyers involved. Justice courts are not equipped to handle sophisticated commercial leases where the question of default or right of possession depends upon interpretation of lease clauses resulting in default or involving such issues as lease amendments.

The case with the best reasoning and analysis is *Merit Management Partners I, L.P. v. Noelke*, 266 S.W.3d 637 (Tex. App. Austin 2008, no pet.), which reaffirms the decision of the Commission of Appeals in *Coughran v. Nunez*, 127 S.W.2d 885 (Tex. 1939). As the Austin Court said: ***“There is no greater impact to a leasehold estate than its complete elimination.”*** (Emphasis supplied) 266 S.W.3d at 651. The litigation in the county court at law would have a claim preclusive effect on the title question being litigated in the district court.

The concept of possession v. title and of incidental title v. integral title is, in reality, a fiction. As pointed out by some of the parties in the cases set forth above, it is “. . . is illogical that a court having jurisdiction to render a declaratory judgment lacks the authority to issue orders necessary to preserve the status quo pending final judgment . . .” Nevertheless, there is a need for a speedy and efficient way to evict non-paying tenants where there is no way title is in question. The problems arise when the fiction is applied to sophisticated commercial leases.

