

**Supreme Court of Texas**  
**March 27, 2015**

***PlainsCapital Bank v. Martin***

No. 13-0337

Case Summary written by Linda Castillo, Staff Member.

JUSTICE JOHNSON delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GREEN, JUSTICE WILLETT, JUSTICE LEHRMANN, JUSTICE DEVINE, and JUSTICE BROWN joined.

William Martin borrowed money from PlainsCapital Bank (the bank) to build a house that he intended to sell. Martin was unable to sell the house, once it was completed, and defaulted on his construction loan agreement and promissory note with the bank. The bank consulted with a real estate broker who estimated the property's fair market value as \$770,000 and noted that the market was depressed. The bank then held the foreclosure sale on in June of 2008, where it purchased the home for \$539,000 (the difference between the broker's estimate and the bank's estimated holding and disposition costs of \$231,000). A week later, the bank had the property appraised at \$825,000 and the appraiser opined that the value would have been the same the previous week. The bank quickly put the house up for sale, but it did not sell until September 2009, after a re-appraisal of \$575,000, for \$599,000. Soon after the foreclosure sale Martin sued the bank for Fraud and wrongful foreclosure, including other various theories. The bank counterclaimed for damages from Martin's breach of construction loan agreement, note, and deed of trust, and also attorney's fees.

Martin dismissed his affirmative claims, but maintained that Property Code §51.003 required an offset of the property's fair market value on the date of the foreclosure sale against any judgment in favor of the bank. Martin claimed at trial that the fair market value of the property was \$825,000. The bank argued that §51.003(a) of the Property Code limits its application to cases which the deficiency sought from the borrower is the precise difference between the foreclosure sale price and the outstanding secured obligations. Consequently, the bank argued that the statute was inapplicable to the claim against Martin's. The trial court held that § 51.003 did not apply and ruled in favor of the bank and awarded it \$332,927.27 in damages and \$127,558.24 in attorney's fees. The trial court also concluded that if § 51.003 did apply, Martin would not be entitled to an offset because the fair market value was less than \$539,000 that the bank paid at the foreclosure sale. The trial court used the future price of the property (\$599,000) and deducted the banks actual holding costs and costs of sale to determine the fair market value.

The court of appeals reversed, holding that Martin's deficiency must be calculated pursuant to § 51.003. The court of appeals also found that the term "fair market value" as used in the statute is defined as the price the property

would bring when offered for sale by a seller desiring to sell, but not obliged to do so, and bought by a purchaser desiring to buy, but under no necessity of doing so, the common or historical definition.

The issues before the Supreme Court of Texas were: (1) whether § 51.003 applied, and if so, (2) whether it contemplates the use of a post-foreclosure sale price and actual post-foreclosure costs as competent evidence of fair market value.

First, the Court looked at whether §51.003 of the Property Code applied to the claim. The court held that § 51.003 is applicable to the claims against Martin. Section 51.003 of the Property Code lays out how the amount of the deficiency judgment is to be determined. The bank argued that the legislature's use of the word "the" when referencing deficiency as opposed to "a" deficiency or "any" deficiency limits the application of the statute to deficiencies calculated using the precise foreclosure sales prices. However, the court reasoned that the bank's interpretation would allow lenders to work around deficiency judgment statutes by suing the borrower for some amount other than the difference between the secured debt and the exact foreclosure price.

Second, the Court looked to what is to be considered when determining the fair market value. The court noted that when a term is not defined in the statute it is presumed to have the common meaning, but § 51.003 lists categories of evidence that may be considered by a trial court in determining the fair market value. The Court points to § 51.003(b)(5), as an example, which allows for evidence of the necessity and amount of any discount to be applied to the future sales price. This allows the trial court to consider the price that the lender ultimately sells the property for and to apply a discount. Therefore, the price that the property sold for after foreclosure is an integral component of determining the fair market value on the date of foreclosure. Consequently, the Court held that the enumerated factors in § 51.003(b) will support a fair market value finding under the statute even though that type of evidence might not otherwise be used in the common fair market value construct.

Finally, the Court determined that the trial court did not err in its finding of the fair market value of the property on the date of the foreclosure sale. The Court discussed that in order for Martin to receive an offset, he had the burden of proving that the fair market value on the date of the foreclosure sale exceeded the foreclosure price. Martin argued that no evidence supported the trial court's finding of \$477,715.65 as the property's § 51.003 fair market value. The appellate court, by erroneously applying the historical meaning of fair market value, held that no evidence linked the foreclosure sale price to the property's fair market value on the foreclosure sale date. The appellate court, consequently, failed to address the factual sufficiency challenges Martin raised against the trial court's finding.

The bank did not complain of the trial court's failure to apply a

discount to the foreclosure sales price or the failure to use the bank's estimated holding and sales costs, which would have been permissible to do. This would have resulted in a lesser fair market value than the trial court's determination and Martin would still not have been entitled to an offset. The court found that § 51.003 permits unknown but anticipated holding costs to be considered as competent evidence and specifies that the trial court may consider, but is not limited to considering, the listed categories of evidence and, therefore, the trial court could, in its discretion, consider the actual holding costs.

The Court concluded that the trial court did not abuse its discretion by calculating the property's fair market value using the \$599,000 future sales price, not applying a discount to reduce the price further, and deducting the bank's actual holding costs and actual sales costs. The court of appeals decision was reversed and remanded to consider Martin's factual sufficiency challenges and other issues that the appeals court did not consider.

JUSTICE BOYD, joined by JUSTICE GUZMAN, dissenting.

The dissent agreed that § 51.003 applies to the case. Further the dissent agreed that the statute allows the fact-finder to consider evidence relating to a future sale price, but only to the point that evidence is relevant to determining the property's fair market value as of the date of the foreclosure sale. The dissent did not agree that "fair market value" was to be interpreted as anything other than its common and historical meaning, the amount that a willing buyer would have paid a willing buyer, even when permitting the consideration of the future sale price. The dissent would have only allowed the consideration of the future sales price as evidence leading to the determination of the willing-seller/willing-buyer fair market value as of the date of the foreclosure sale.