

A banner featuring a wooden gavel resting on a wooden surface, with the Texas state flag in the background. The text is overlaid on the image.

## Texas Supreme Court Update

### *Opinions Issued February 5, 2021*

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**Real Estate – Adverse Possession:** *A pleading unchallenged by special exception that alleges the elements of a trespass-to-try-title by adverse possession unchallenged by special exception will support recovery of title even if incorrectly characterized as a suit to quiet title.*

**Error Preservation – Defective Pleading:** *Complaint about the form of the opponent’s pleading must be preserved by special exception or other written motion pointing out the defect in the opposing party’s pleading; submission of the issues raised in the pleadings is not reversible error when without timely objection the pleading does not correctly name or plead the appropriate theory of recovery.*

In [\*Brumely v. McDuff\*](#), plaintiffs sought title to property based on adverse possession for over ten years. Plaintiffs alleged all necessary elements of a trespass-to-try-title suit; (1) chain of title from the sovereign to the plaintiff; (2) title from a common source superior to defendant’s; and (3) either title by adverse possession or unabandoned possession. However, the plaintiffs labelled their suit as one to “quiet title” to “remove the cloud on their title.” A suit to quiet title, however, is only appropriate when the claimant has a title to the property, not when the claimant seeks ownership by adverse possession. The defendants did not specially except to the pleading. Trial proceedings showed that all parties were aware the case was about adverse possession. At the charge conference, the trial court overruled defendant’s request to submit quiet title issues requiring plaintiffs to prove ownership and submitted but one question asking whether plaintiffs “h[e]ld the Property in peaceable and adverse possession for at least ten years.”

Although the defendants did not argue the pleading to quiet title did not support the submission of an issue appropriate to an action for trespass to try title, the court of appeals reversed the plaintiff’s judgment on that basis. In a unanimous opinion by Justice Bland, the Court overturned the appellate court’s judgment because it thought the *substance* of plaintiffs’ allegations sufficient to assert a trespass-to-try-title suit when not challenged by special exception or other motion. Indeed, the opinion cites several examples in which pleadings that were mischaracterized as a suit for declaratory relief or erroneously included a claim to quiet title were addressed according to their substance, and not the label ascribed to the form of action. If the pleading alleges the essential elements of trespass to try title, mislabeling the form of action will not prevent recovery of title when the parties are aware the plaintiff’s claim is for adverse possession. Erroneously naming the theory of recovery “not forfeit its trespass-to-try- title action.”