

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 07/10/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

US BANK NATIONAL ASSOCIATION AS ) No. 1 CA-CV 11-0608  
TRUSTEE FOR CREDIT SUISSE FIRST )  
BOSTON 2004-AR4, ) DEPARTMENT E  
)  
Appellant, ) **MEMORANDUM DECISION**  
)  
v. ) (Not for Publication -  
) Rule 28, Arizona Rules of  
R. GRUNINGER, ) Civil Appellate Procedure)  
)  
Appellee. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CV 2011-012747

The Honorable James Morrow, Commissioner

**AFFIRMED**

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Tiffany & Bosco, P.A. by Leonard J. McDonald David W. Cowles Attorneys for Appellee	Phoenix
Law offices of Kevin Jensen, PLLC by Kevin Jensen Attorneys for Appellant	Gilbert

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H A L L, Judge

¶1 R. Wayne Gruninger appeals the judgment for US Bank National Association (US Bank) on its claim of forcible detainer. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL BACKGROUND<sup>1</sup>**

¶2 On June 3, 2011, US Bank filed a forcible detainer action alleging that Gruninger was occupying and refusing to surrender possession of a property US Bank purchased in a trustee's sale in April 2010. US Bank attached a copy of the trustee's deed to its complaint.

¶3 In his answer, Gruninger asserted that the trustee's sale was "invalid," and therefore "to the extent [US Bank] actually purchased the property at a Trustee's Sale[,] it was illegally sold and purchased[.]" Specifically, Gruninger alleged that the "Substitution of Trustee is void on its face because the individual who signed had no authority" and, as a result, the "Notice of Trustee's Sale" and the "Trustee's Deed Upon Sale" are also void. Gruninger further claimed that US Bank "has no pecuniary or beneficial interest in the property" and therefore "is not the real party in interest and cannot proceed with [the] action." Gruninger explained that he

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<sup>1</sup> "We view the facts in the light most favorable to sustaining the trial court's judgment." *Southwest Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, 440, ¶ 2, 36 P.3d 1208, 1210 (App. 2001).

believed his "mortgage was securitized and sold to investors on Wall Street."

¶14 US Bank filed a motion for judgment on the pleadings arguing that the trustee's deed upon sale conveying the property to US Bank "unequivocally demonstrates that [US Bank] is entitled to immediate possession of the Property." Gruninger opposed the motion and reasserted his claim that "there are issues of fact for a jury to decide" relating to whether US Bank is the real party in interest and whether the trustee's sale was legally conducted.

¶15 The trial court held a hearing on US Bank's motion for judgment on the pleadings. US Bank argued that its purchase of the property at a trustee's sale entitled it to take possession of the property. Gruninger argued that the copy of the trustee's deed that US Bank relied upon to demonstrate its purchase is hearsay and that US Bank is not a real party in interest because it is not the original beneficiary under the deed of trust Gruninger signed. In response, US Bank countered that it could provide a self-authenticating certified copy of the trustee's deed upon sale. The trial court denied the motion for judgment on the pleadings, stating: "You'll have to give me the authenticated copy."

¶16 The case then proceeded to trial. US Bank submitted a certified copy of the trustee's deed upon sale recorded on April

8, 2010. US Bank's process server also testified that he served notice of the demand for possession on May 18, 2011. After US Bank concluded its presentation of evidence, counsel for Gruninger called US Bank's attorney, Leonard J. McDonald, Jr., as a witness. When the trial court questioned the purpose in calling McDonald as a witness, defense counsel informed the court that he wanted to question McDonald regarding "his knowledge about obtaining this trustee's deed upon sale." The court explained that it would not permit Gruninger to delve into whether the trustee's deed was properly issued and denied defense counsel's request to call McDonald as a witness.

¶17 At the close of the trial, the court signed a judgment finding Gruninger guilty of forcible detainer and terminating his right to possession of the property. This appeal followed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(A)(1) (Supp. 2012).

#### **DISCUSSION**

¶18 On appeal, Gruninger primarily argues that there was insufficient evidence to support the finding that US Bank has the right to possess the property.

¶19 A person is guilty of forcible detainer if he retains possession of a property after receiving "written demand of possession" and the real property "has been sold through a trustee's sale under a deed of trust pursuant to title 33,

chapter 6.1." A.R.S. § 12-1173.01(A)(2) (2003). Under such circumstances, the person entitled to possession may institute a summary forcible detainer proceeding to have the premises immediately restored. A.R.S. §§ 12-1175, -1176 (2003 & Supp. 2011).

¶10 The purpose of a forcible detainer action is to afford a summary, speedy and adequate remedy for obtaining possession of withheld premises. *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 351, ¶ 21, 101 P.3d 641, 645 (App. 2004). Accordingly, the validity of a plaintiff's claim of title may not be litigated in a forcible detainer action. A.R.S. § 12-1177(A) (2003) ("[T]he only issue shall be the right of actual possession and the merits of title shall not be inquired into."); see also *Curtis v. Morris*, 186 Ariz. 534, 535, 925 P.2d 259, 260 (1996) (*Curtis II*). As a corollary, a defendant may not assert counterclaims, off-sets, or cross-complaints as a defense or for affirmative relief in a forcible detainer action. *Curtis II*, 186 Ariz. at 535, 925 P.2d at 260; *Holm*, 209 Ariz. at 351, ¶ 21, 101 P.3d at 645.

¶11 Because a summary forcible detainer action "does not bar subsequent proceedings between the parties to determine issues other than the immediate right to possession, [issues regarding the validity of title] are better resolved in proceedings designed to allow full exploration of the issues

involved." *Curtis v. Morris*, 184 Ariz. 393, 398, 909 P.2d 460, 465 (App. 1995) (*Curtis I*). When a forcible detainer action directly involves a genuine dispute as to the merits of title, the action cannot be maintained. See *Holm*, 209 Ariz. at 351, ¶¶ 21, 24, 101 P.3d at 645. Nonetheless, a defendant may not avoid a forcible detainer proceeding simply by denying that a plaintiff has valid title. *RREEF Mgmt. Co. v. Camex Prods., Inc.*, 190 Ariz. 75, 79, 945 P.2d 386, 390 (1997). Rather, a defendant must demonstrate that a "genuine dispute" as to title exists. *Id.* In general, defendants may dispute the merits of plaintiff's title in a forcible detainer action only if they can demonstrate that the foreclosure sale was void based on "fraud, misrepresentation, or concealment." See *Main I Ltd. P'ship v. Venture Capital Const. & Dev. Corp.*, 154 Ariz. 256, 260, 741 P.2d 1234, 1238 (App. 1987); see also *In re Hills*, 299 B.R. 581, 586 (Bankr. D. Ariz. 2002) (identifying grounds to challenge the presumption of validity of a trustee's deed).

¶12 Pursuant to A.R.S. § 33-811(B) (2007), a trustee's deed upon sale "shall constitute conclusive evidence of the meeting of [the statutory requirements of the deed of trust] in favor of purchasers or encumbrancers for value and without actual notice." The statute further provides that "[k]nowledge of the trustee shall not be imputed to the beneficiary." A.R.S. § 33-811(B). Thus, the statute creates an irrebuttable

presumption that "a beneficiary of the trust deed who purchases for value and without actual notice" of any alleged defect in the trustee's sale holds good title. *Main I Ltd. P'ship*, 154 Ariz. at 260, 741 P.2d at 1238. Indeed, as recently explained by the supreme court in *BT Capital, LLC v. TD Service Co.*, of Arizona, 229 Ariz. 299, \_\_\_, ¶ 10, 275 P.3d 598, \_\_\_ (2012), under A.R.S. § 33-811, "a person who has defenses or objections to a properly noticed trustee's sale has one avenue for challenging the sale: filing for injunctive relief."

¶13 Applying A.R.S. § 33-811 here, US Bank, as the purchaser for value without any knowledge of actual defects in the trustee's sale, holds valid title to the subject property and is therefore entitled to possession. Gruninger's claim that the foreclosure of his property and subsequent trustee's sale were not valid does not provide a defense to US Bank's claim for possession. Although Gruninger argued in the trial court that the trustee's sale was void "because it was based on fraud, misrepresentation, and concealment," those allegations related to an asserted lack of "authority to hold a Trustee's Sale." See *BT Capital*, 229 Ariz. at \_\_\_, ¶ 11, 275 P.3d at \_\_\_ (explaining that a party subject to A.R.S. § 33-811 cannot challenge a completed trustee's sale "based on pre-sale defenses or objections"). Even assuming, as Gruninger contends, that there were improprieties on the part of the trustee, such

improprieties would not invalidate US Bank's title because, pursuant to statute, a trustee's knowledge is not imputed to the beneficiary. See A.R.S. § 33-811(B). Gruninger did not allege that US Bank had actual knowledge of any alleged improprieties or defects associated with the trustee's sale, and, in the absence of such a claim, the statutory presumption of good title controls. Therefore, because Gruninger's arguments regarding title are not triable in a forcible detainer action, the trial court did not err in granting judgment in favor of US Bank.<sup>2</sup>

**CONCLUSION**

¶14 For the foregoing reasons, we affirm.

\_\_\_\_\_  
\_ /s/ \_\_\_\_\_  
PHILIP HALL, Judge

CONCURRING:

\_\_\_\_\_  
\_ /s/ \_\_\_\_\_  
MAURICE PORTLEY, Presiding Judge

\_\_\_\_\_  
\_ /s/ \_\_\_\_\_  
DIANE M. JOHNSEN, Judge

<sup>2</sup> Likewise, the trial court did not err by denying Gruninger's request to call US Bank's attorney as a witness because Gruninger intended to elicit testimony regarding the merits of title. We similarly conclude that the trial court did not err by rejecting Gruninger's argument that US Bank does not have standing as a real party in interest because this argument is predicated on the claim that US Bank did not obtain good title through the trustee's sale.