

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: 12/4/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

FEDERAL NATIONAL MORTGAGE ) 1 CA-CV 11-0758  
ASSOCIATION, its successors )  
and/or assigns, ) DEPARTMENT C  
)  
Plaintiff/Appellee, ) **MEMORANDUM DECISION**  
)  
v. )  
) Not for Publication -  
ANTHONY ADRIAN, MARIA M. ADRIAN, ) (Rule 28, Arizona Rules  
) of Civil Appellate Procedure)  
)  
Defendants/Appellants. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-015758

The Honorable James Morrow, Commissioner

**AFFIRMED**

Wright, Finlay & Zak, LLP  
By Bradford E. Klein  
Attorneys for Plaintiff/Appellee

Newport Beach, CA

Anthony Adrian and Maria M. Adrian  
*In Propria Persona*

Surprise

H A L L, Judge

¶1 Appellants Anthony Adrian and Maria M. Adrian  
(collectively, Appellants) appeal the superior court's judgment

for Appellee Federal National Mortgage Association (Fannie Mae) on its claim of forcible detainer. For the following reasons, we affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶12 On October 6, 2011, Fannie Mae filed a forcible-detainer action alleging that Appellants were occupying and refusing to surrender possession of a property Fannie Mae purchased in a trustee's sale on July 28, 2011.<sup>1</sup> Fannie Mae attached a copy of the trustee's deed upon sale to its complaint.

¶13 The superior court held a trial on the forcible-detainer complaint in November 2011 and found Appellants guilty of forcible detainer.<sup>2</sup>

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<sup>1</sup> Both parties failed to properly cite to the record in the opening and answering briefs. See Arizona Rules of Civil Appellate Procedure (ARCAP) 13(a)(4). Indeed, Appellants' opening brief did not contain a single record citation. Fannie Mae attached as appendices to the answering brief copies of documents labeled "exhibits" and cited to the exhibits to support their factual assertions without specificity. Although ARCAP 11(a)(4) allows for an appendix to a brief, reference to an appendix is not a substitute for proper citation to the record pursuant to ARCAP 13(a)(4). Both parties are advised that failure to comply with the rules of this court in the future may result in the imposition of sanctions.

<sup>2</sup> In a parallel action in the federal district court, Appellants filed a complaint against Fannie Mae alleging wrongful foreclosure, intentional infliction of emotional distress, and fraud. The district court granted Fannie Mae's motion to dismiss that matter.

¶14 Appellants timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(A)(1) (Supp. 2012).

#### DISCUSSION

¶15 Appellants contend that the forcible-detainer judgment should be vacated due to what they characterize as "the fraudulent nature of the loan modification and foreclosure process." Specifically, Appellants claim they were misled by OneWest Bank, the beneficiary under the deed of trust on the property when the trustee's sale was noticed, to believe that the trust deed would not be foreclosed pending the outcome of their loan-modification request. Appellants further contend that Fannie Mae is not entitled to the conclusive presumption of compliance with statutory procedures relating to the issuance of the trustee's deed in A.R.S. § 33-811(B) because it had "actual notice prior to the trustee sale of a dispute over title." In making these arguments, Appellants acknowledge that Arizona law prevents the merits of title from being litigated in a forcible-detainer action, but requests that we "reconsider this long-standing [sic] policy." As we explain below, the "policy" that governs the correct procedures for non-judicial foreclosures and forcible-detainer action is dictated by statute and not subject to reconsideration by this court. Therefore, we decline Appellant's request.

¶6 A person is guilty of forcible detainer by retaining possession of real 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 (2003).

¶7 Because the purpose of the 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), "the only issue shall be the right of actual possession and the merits of title shall not be inquired into" and the validity of one's claim of title may not be litigated in a forcible-detainer action, A.R.S. § 12-1177 (2003); see also *Curtis v. Morris*, 186 Ariz. 534, 535, 925 P.2d 259, 260 (1996); *Holm*, 209 Ariz. at 351, ¶ 21, 101 P.3d at 645. A defendant may not assert counterclaims, offsets, or cross-complaints as a defense or for affirmative relief in a forcible-detainer action. *Curtis*, 186 Ariz. at 535, 925 P.2d at 260; *Holm*, 209 Ariz. at 351, ¶ 21, 101 P.3d at 645.

¶8 Appellants nonetheless maintain that title is not conclusively presumed under A.R.S. § 33-811(B) because Fannie

Mae had actual notice of a dispute over title prior to the trustee sale. Although it is unclear from Appellants' brief what the precise nature of the dispute over title entailed, Appellants waived all issues related to the foreclosure proceedings by failing to obtain injunctive relief before the trustee's sale. See A.R.S. § 33-811(C) (2007) ("The trustor . . . and all persons to whom the trustee mails a notice of a sale under a trust deed . . . shall waive all defenses and objections to the sale not raised in an action that results in the issuance of court order granting relief pursuant to Rule 65 . . . before the scheduled date of the sale."); *BT Capital, LLC v. TD Serv. Co., of Ariz.*, 229 Ariz. 301, ¶ 10, 275 P.3d 598, 600 (2012) (explaining that "a person who has defenses or objections to a properly noticed trustee's sale has one avenue [pursuant to § 33-811(C)] for challenging the sale: filing for injunctive relief").

¶19 Appellants received notice requiring delivery of possession of premises and notice of the trustee's sale. The trustee's sale has been completed, and Appellants cannot challenge it in this forcible-detainer action. *BT Capital*, 229 Ariz. at 307, ¶ 11, 275 P.3d at 600 (a party subject to A.R.S. § 33-811 cannot challenge a completed trustee's sale "based on pre-sale defenses or objections"). Accordingly, because Appellants failed to seek and obtain injunctive relief prior to

the trustee's sale, and because their arguments regarding title are not triable in a forcible-detainer action, the court did not err in granting judgment in favor of Fannie Mae.<sup>3</sup>

¶10 Neither party requested attorneys' fees on appeal and we therefore decline to award any fees. We do, however, grant Fannie Mae its costs, in an amount to be determined, upon its compliance with ARCAP 21.

**CONCLUSION**

¶11 For the foregoing reasons, we affirm.

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

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PETER B. SWANN, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
SAMUEL A. THUMMA, Judge

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<sup>3</sup> Because Appellants' claim of fraud was not properly presented and, therefore, was not adjudicated in this forcible-detainer action, our decision has no preclusive effect should the same claim be raised in another forum.