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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: 10/1/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

FEDERAL NATIONAL MORTGAGE ) 1 CA-CV 12-0570  
ASSOCIATION, )  
 ) DEPARTMENT C  
Plaintiff/Appellee, )  
 ) **MEMORANDUM DECISION**  
v. )  
 ) (Not for Publication -  
HAROLD EPPERSON and LEA EPPERSON, ) (Rule 28, Arizona Rules of  
 ) Civil Appellate Procedure)  
Defendants/Appellants. )  
 )  
 )  
 )  
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Appeal from the Superior Court in Maricopa County

Cause No. CV2012-005014

The Honorable James R. Morrow, Judge Pro Tempore

**AFFIRMED**

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Tiffany & Bosco, P.A.	Phoenix
By David Cowles	
William M. Fischbach, III	
Attorneys for Plaintiff/Appellee	
Rhoads & Associates, PLC	Phoenix
By Douglas C. Rhoads	
Attorney for Defendants/Appellants	

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O R O Z C O, Judge

¶1 Harold and Lea Epperson (the Eppersons) appeal a judgment in favor of Federal National Mortgage Association (FNMA) on its forcible detainer claim. The Eppersons' arguments on appeal relate primarily to the issue of the legitimacy of title. The Eppersons also argue that the judgment of eviction was void because the trial court was deprived of jurisdiction by their pending appeal to the Ninth Circuit of a non-appealable remand order. Because parties may not litigate the issue of title in a forcible detainer action, and the trial court retained jurisdiction over the case despite the Eppersons' improper appeal, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 FNMA filed and served a forcible detainer complaint alleging the Eppersons refused to surrender real property that FNMA had purchased at a trustee's sale. The Eppersons responded by filing a notice of removal to federal court. The federal court remanded the matter to the trial court for lack of federal jurisdiction. The Eppersons purported to appeal the remand to the Ninth Circuit Court of Appeals. The Ninth Circuit instructed the Eppersons to show cause why the appeal should not be dismissed for lack of jurisdiction. In the meantime, in the

trial court, the Eppersons filed a motion to dismiss for lack of jurisdiction based upon their appeal of the district court's remand order. Notwithstanding their motion, the Eppersons continued to participate before the trial court by making various filings, including a motion to strike the complaint and exhibits, and a supplemental answer and counterclaim.

¶13 FNMA moved for judgment on the pleadings and to dismiss the counterclaim.<sup>1</sup> The trial court denied the Eppersons' motion to dismiss and their motion to strike. It granted FNMA's motions to dismiss the counterclaim and for judgment on the pleadings, finding the Eppersons guilty of forcible detainer and awarding FNMA immediate possession of the property.

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

#### **DISCUSSION**

¶15 The Eppersons contend that the trial court lacked jurisdiction because they were not properly served by the real party in interest, and they had appealed the federal court's

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<sup>1</sup> Rule of Procedure for Eviction Actions (RPEA) 8 prohibits counterclaims in forcible detainer actions unless specifically allowed by statute. The Eppersons' answer and counterclaim did not set forth the statutory basis that would authorize any counterclaim.

remand order to the Ninth Circuit. The Eppersons also contend that the documents used by FNMA to foreclose on their home were fabricated, thus they had the right to litigate whether FNMA had standing to foreclose. They further assert that their due process rights were violated because FNMA's attorneys did not exercise the due diligence and good faith required by the Rules of Procedure for Eviction Actions (RPEA) 4(a)-(b) and RPEA 11. Specifically, the Eppersons argue that FNMA's attorneys were required to examine the recorded documents. If they had, the Eppersons argue, FNMA would have detected the alleged fabrication and the invalidity of FNMA's title to the property prior to filing the action. Finally, the Eppersons maintain that FNMA lacked standing because it was not the real party in interest, again, based upon the alleged improprieties of the underlying non-judicial foreclosure.

¶16 Our review of a judgment on the pleadings requires us to treat the allegations of the complaint as true, but we review issues of law de novo. *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 359, 988 P.2d 143, 144 (App. 1999); *Nielson v. Patterson*, 204 Ariz. 530, 531, ¶ 5, 65 P.3d 911, 912 (2003).

*Title May Not Be Litigated in a Forcible Detainer Action*

¶17 Most of the Eppersons' arguments are premised on their contention that FNMA lacks valid title to the property because of alleged fraud perpetrated in connection with the underlying trustee's sale. It is well established in Arizona, however, that issues concerning title cannot be considered in a forcible detainer action. See *Andreola v. Arizona Bank*, 26 Ariz. App. 556, 557, 550 P.2d 110, 111 (1976).

¶18 The Eppersons urge that under A.R.S. § 12-1177(A), a trial court "can legitimately explore title where such issue is incidental to the issue of possession." To the contrary, the statute expressly states: "On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title *shall not* be inquired into." A.R.S. § 12-1177(A)(emphasis added). The law is clear that title cannot be litigated in a forcible detainer action. See also, e.g., *Mason v. Cansino*, 195 Ariz. 465, 468, ¶ 8, 990 P.2d 666, 669 (App. 1999)("[O]ne cannot try title in a forcible detainer action."); *United Effort Plan Trust v. Holm*, 209 Ariz. 347, ¶ 21, 351, 101 P.3d 641, 645 (App. 2004) ("The only issue to be decided in [a forcible detainer action] is the right of actual possession. Thus the only appropriate judgment is the

dismissal of the complaint or the grant of possession to the plaintiff.").

¶9 The purpose of a forcible detainer action is limited to providing a "summary, speedy, and adequate remedy" for obtaining possession of premises being withheld by another. *Phoenix-Sunflower Indus., Inc. v. Hughes*, 105 Ariz. 334, 336, 464 P.2d 617, 619 (1970). In fact, the focus of a forcible detainer action is so restricted that, with exceptions not relevant here, no counterclaims, offsets or cross claims may be plead, either as a defense or for affirmative relief. *United Effort Plan Trust*, 209 Ariz. at 351, ¶ 21, 101 P.3d at 645. All of the Eppersons' arguments based on the premise that FNMA lacks valid title to the property because of alleged fraud perpetrated in connection with the underlying trustee's sale therefore fail.

¶10 The Eppersons' further contention that this limitation violated their constitutional due process rights has no merit. The Eppersons could have raised the defenses and objections they raise now by seeking injunctive relief prior to the trustee's sale. Because they failed to obtain a court order preventing the trustee's sale, the Eppersons have waived all defenses and objections to the sale under A.R.S. § 33-811(C). See *Madison v. Groseth*, 230 Ariz. 8, 13, ¶ 15, 279 P.3d 633, 638 (App. 2012)

(holding homeowner waived all defenses and objections to the sale of the property because she failed to obtain an injunction prior to the trustee's sale).

*Trial Court Retained Jurisdiction*

¶11 The only argument the Eppersons properly raised with the trial court and on appeal is whether the court had jurisdiction to enter the judgment of eviction given their pending appeal to the Ninth Circuit of the federal court's remand order. The law is clear that a federal court's remand order is not appealable. See 28 U.S.C. § 1447(d)(2011); *Levin Metals Corp. v. Parr-Richmond Terminal Co.*, 799 F.2d 1312, 1315 (9th Cir. 1986). A trial court is not divested of jurisdiction by a party's appeal of a non-appealable order. *Yaeger v. Vance*, 20 Ariz. App. 399, 400, 513 P.2d 688, 689 (1973). Accordingly, the trial court clearly had jurisdiction to enter the judgment of eviction; despite the Eppersons' arguments to the contrary, that judgment was not void.

**CONCLUSION**

¶12 The trial court's judgment is affirmed. FNMA is awarded costs pursuant to A.R.S. § 12-342(B). In our discretion, we grant FNMA's request for reasonable attorneys' fees pursuant to A.R.S. § 12-349, and direct that the Eppersons'

counsel personally pay both the fees and costs, subject to FNMA's compliance with ARCAP 21. We direct counsel rather than the Eppersons to pay the fees and costs because the title arguments asserted in this case clearly lack merit, were without substantial justification, and were designed to create unreasonable delay. Counsel has made the same arguments, unsuccessfully, in another case before this court, and has been personally sanctioned for doing so.<sup>2</sup> Because counsel's arguments are clearly meritless and have been rejected repeatedly, we conclude that it is appropriate that counsel personally bear the burden of the fees and costs in this appeal.

/S/

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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SAMUEL A. THUMMA, Presiding Judge

/S/

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DIANE M. JOHNSEN, Chief Judge

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<sup>2</sup> See *2525 S. McClintock, LLC v. James*, 1 CA-CV 11-0801, 2012 WL 5269674, at \*6, ¶ 24 (Ariz. App Oct. 25, 2012) (mem. Decision).