

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

AMERON NATIONAL TRUST, *Plaintiff/Appellant*,

v.

CHRISTIANA TRUST, et al., *Defendants/Appellees*.

No. 1 CA-CV 16-0132
FILED 4-25-2017

Appeal from the Superior Court in Maricopa County
No. CV2014-094920
The Honorable Robert H. Oberbillig, Judge

AFFIRMED

COUNSEL

The Law Office of David E. Swain, P.L.L.C., Tempe
By David E. Swain
Counsel for Plaintiff/Appellant

Lake & Cobb, P.L.C., Tempe
By Richard L. Cobb, Joseph J. Glenn
Counsel for Defendant/Appellee Christiana Trust

Houser & Allison, P.C., Phoenix
By Robert W. Norman, Solomon Krotzer
Counsel for Defendant/Appellee Western Progressive-Arizona, Inc.,

AMERON v. CHRISTIANA TRUST
Decision of the Court

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Lawrence F. Winthrop joined.

T H O M P S O N, Judge:

¶1 Ameron National Trust (Ameron) appeals from the grant of summary judgment against it and in favor of Christiana Trust and Western Progressive-Arizona, Inc., (collectively, trustees). This matter concerns whether a missing legal description on a deed of trust invalidates it, thus rendering it into merely evidence of an unsecured loan dischargeable in bankruptcy. Finding no legal or factual error in the grant of summary judgment, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 The essential facts of this matter are undisputed. In May 2006 Garrett Sims, aka Carl Greiner, obtained a \$216,000 adjustable rate loan with a balloon rider from Homecoming¹ and secured that loan with a deed of trust on his residence in Glendale, Arizona. The deed of trust was recorded with the Maricopa County Recorder's Office as #2006-0921500. The deed of trust has the physical address of the property and the assessor's parcel number, however it does not include a legal description of the property. The promissory note, attached to the deed of trust, also references the physical address of the property.

¶3 In February 2010, Sims filed for Chapter 7 bankruptcy. The schedules filed with the bankruptcy included, among other things, the listing of the secured loan as his "first mortgage." In January 2012, an

¹ The deed of trust has been assigned numerous times, with all of the assignments recorded. The original loan was with Homecoming Financial Network, in 2010 the deed of trust was assigned to Deutsche Bank, in 2011 it was assigned to Bank of America. Christiana Trust has been the holder of the deed of trust since 2014. Western Progressive is the successor trustee under the deed of trust, where the original trustee was the Talon Group.

AMERON v. CHRISTIANA TRUST
Decision of the Court

affidavit of scrivener's error, listing the correct legal description, was recorded with the deed of trust as document #2012-0033640.

¶4 Meanwhile, Bob Hanks, the owner of Ameron, who had had various dealings with Sims, made a loan to Sims of \$1000. When Sims's debts to Ameron were not paid back, Ameron filed a lis pendens on another piece of property partially owned by Sims. In 2012, Sims and Ameron stipulated to a judgment in favor of Ameron. In satisfaction of the judgment, Sims agreed to transfer his interest in his Glendale residence to Ameron. A quit claim deed to that effect was recorded on December 20, 2013. Prior to the transfer of the residence, Bob Hanks reviewed the deed of trust with his lawyer and noted that it lacked a legal description.

¶5 Pursuant to their rights under the note and deed of trust, trustees initiated foreclosure proceedings pursuant to Arizona Revised Statutes (A.R.S.) § 33-801, et seq. (2014). The original trustee's sale was scheduled for October 24, 2014. Ameron sought a temporary restraining order and a preliminary injunction to prevent the sale. Trustees opposed the restraining order. The request for a temporary restraining order was later denied due to the sale being indefinitely postponed.

¶6 Trustees filed their first motion for summary judgment asserting that the property was adequately identified and recorded so as to give constructive notice to Ameron, and further that Ameron also had notice of the legal description via the scrivener's error affidavit, filed nearly two years prior to Ameron obtaining the quit claim deed. The court found, without enumeration, that genuine issues of material fact existed and denied trustees summary judgment.

¶7 Trustees sought additional discovery, including as to Garrett Sims. Trustees then filed their second motion for summary judgment, reurging that Ameron had constructive notice of the lien with an adequate description, that any deficiency in the legal description was cured nearly two years prior to Ameron being assigned the property, and finally that the lien was unaffected by Sims's bankruptcy. Ameron responded to the second motion for summary judgment, but did not file a controverting statement of facts. A hearing was held and the trial court granted trustees's motion for summary judgment without explanation. A final judgment in favor of trustees, including attorneys' fees, was entered. Ameron timely appealed.

AMERON v. CHRISTIANA TRUST
Decision of the Court

ISSUES

- ¶8 On appeal, Ameron asserts:
1. The trial court erred in finding Ameron had constructive notice of the deed of trust in contravention of A.R.S. § 33-802(A) (2014) which requires deeds of trust to have legal descriptions;
 2. The trial court erred in failing to accept Ameron's various contentions related to the scrivener's error affidavit, the effect of Sims's bankruptcy, and that the invalid deed of trust was merely evidence of an unsecured loan; and
 3. The trial court erred in failing to make findings of fact and conclusions of law.

¶9 In response, the trustees assert that there was a valid, secured, senior loan on the property, and any defect in the legal description had been cured. It further asserts Ameron had both actual and constructive notice of the senior interest prior to obtaining its interest in the property.

DISCUSSION

¶10 We review the grant of summary judgment de novo. *Hudgins v. Sw. Airlines, Co.*, 221 Ariz. 472, 486, ¶ 37, 212 P.3d 810, 824 (App. 2009). Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56; *Johnson v. Earnhardt's Gilbert Dodge, Inc.*, 212 Ariz. 381, 385, ¶ 15, 132 P.3d 825, 829 (2006).

When a summary judgment motion is made and supported as provided in [Rule 56], an opposing party may not rely merely on allegations or denials of its own pleading. The opposing party must, by affidavits or as otherwise provided in this rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against that party.

Ariz. R. Civ. P. 56(e); see also *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 119, ¶ 26, 180 P.3d 977, 984 (App. 2008) ("The non-moving party may not rest on its pleadings; it must go beyond simply cataloging its defenses.").

AMERON v. CHRISTIANA TRUST
Decision of the Court

¶11 Although Ameron has filed responsive briefs on appeal which quibble with non-essential facts such as how trustees characterize Sims’s original debt to Ameron and an asserted failure by trustees to state that Ameron had consulted with an attorney regarding the legal character of the property, no controverting statement of facts was filed below. Thus, we proceed on the legal issues.

¶12 A deed of trust is defined as “conveying trust property to a trustee or trustees qualified . . . to secure the performance of a contract or contracts.” A.R.S. § 33-801(8). Section 33-802(A) reads, in pertinent part:

In deeds of trust the legal description of trust property shall be given by one of the following methods:

1. By the use of lot, block, tract or parcel as set forth within a recorded subdivision plat.
2. By the use of a metes and bounds or course and distance survey.
3. By the use of the governmental rectangular survey system with specific identification of the location within any section or sections, tract or tracts, of a township and range.

...

¶13 Ameron asserts that the lack of a legal description on the original deed of trust renders the document an unsecured loan agreement. It argues that the error was incurable and, thus, the failure to strictly comply with the statute was fatal.² We disagree.

¶14 As an incorrect legal description does not invalidate a deed of trust, neither will the lack of one invalidate one where the totality of the evidence shows a reasonably prudent person would have been put on notice. *See Manicom v. CitiMortgage, Inc.*, 236 Ariz. 153, 157, ¶¶ 12-14, 336 P.3d 1274, 1278 (App. 2014) (holding an error in the legal description still

² That “unsecured loan agreement,” Ameron also argues, did not survive Sims’s bankruptcy. To this end, Ameron points to the form order “Discharge of Debtor.” There is no evidence that the deed of trust was disallowed or stripped from the property. Rather, the evidence in the record shows the debt was ratified by Sims. We are not persuaded by Ameron that the deed of trust indicating senior loan interests did not survive Sims’s bankruptcy.

AMERON v. CHRISTIANA TRUST
Decision of the Court

provided notice to future purchaser). In another example, our supreme court has held the mere fact that a trust instrument failed to designate a trustee did not render it invalid as deed of trust. *In re Bisbee*, 157 Ariz. 31, 35, 754 P.2d 1135, 1139 (1988). Likewise, even a failure to caption the document or to include all of the pages of the deed will not invalidate a deed of trust. *Watson Constr. Co. v. Amfac Mortgage Corp.*, 124 Ariz. 570, 575, 606 P.2d 421, 426 (1979). In fact, the Deeds of Trust Act statutes contemplate that errors in legal descriptions may occur. *Manicom*, 236 Ariz. at 157, ¶ 12, 336 P.3d at 1278, citing A.R.S. § 33-808(C)(2) (requiring notice of sale to contain “the street address . . . as well as the legal description of the trust property”) and (E) (“Any error in the legal description of the trust property shall not invalidate a trustee's sale if considered as a whole the information provided is sufficient to identify the trust property being sold.”). Where the totality of the information in the deed adequately identifies the subject property, it provides notice to a reasonably prudent person. *Manicom*, 236 Ariz. at 157, ¶ 14, 336 P.3d at 1278.

¶15 Here, it is undisputed that the original deed, recorded in 2006, had a street address and parcel number. Because we hold that the failure to include the legal description in the original deed of trust did not invalidate it, we need not address the role of the scrivener’s error affidavit that was recorded nearly two years before Ameron gained an interest in the property.

¶16 Having determined that the deed of trust was valid, we turn to whether it provided sufficient notice to Ameron of a senior secured interest. We find it did. “The recording statutes are designed to protect interests in property against claims of subsequent purchasers or creditors without notice.” *In re Vasquez*, 228 Ariz. 357, 359, ¶ 6, 266 P.3d 1053, 1055 (2011). A deed of trust recorded under the act provides constructive notice of the deed's contents to “all persons,” including subsequent purchasers. A.R.S. § 33-818 (2014); *Main I Ltd. P'ship v. Venture Capital Constr. & Dev. Corp.*, 154 Ariz. 256, 259, 741 P.2d 1234, 1237 (App. 1987).

¶17 Finally, Ameron asserts that the trial court was required to outline specific findings of fact and conclusions of law in the grant of summary judgment. It asserts that, when it filed its request for temporary restraining order nearly a year before the summary judgment was before the court, it also filed a “Motion for Findings of Fact, Conclusions of Law and an Appropriate Judgment Based Thereon Pursuant to A.R.C.P., Rule 52(A).” Trustees counter that Rule 52 does not apply to summary judgment motions, only to cases “tried” to the court. To this end, trustees

AMERON v. CHRISTIANA TRUST
Decision of the Court

cite *Orkin Exterminating Co. v. Robles*, 128 Ariz. 132, 134, 624 P.2d 329, 331 (App. 1980). We agree that Rule 52 did not apply here.

¶18 The deed of trust was valid, it was recorded, and Ameron had information that, at the very least, would put a reasonably prudent person on notice of the existence of senior interests. Because Ameron had the requisite notice, we find no error in the trial court's grant of summary judgment to trustees.

Attorneys' Fees

¶19 Trustees request their reasonable attorneys' fees pursuant to A.R.S. §§ 12-341.01 (2016), and -342(2016). Attorneys' fees are awarded to trustees, in an amount to be determined, after compliance with Rule 21, Arizona Rule of Civil Appellate Procedure.

CONCLUSION

¶20 The trial court is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA