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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: 12/07/10  
RUTH WILLINGHAM,  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DLJ MORTGAGE CAPITAL, INC., ) 1 CA-CV 10-0156  
)  
Plaintiff/Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
GEORGE A. RAMIREZ; PAULA ) Rule 28, Arizona Rules of  
RAMIREZ; FORECLOSURE ASSISTANCE ) Civil Appellate Procedure)  
FOUNDATION, INC., )  
)  
Defendants/Appellants. )  
\_\_\_\_\_)

Appeal from the Superior Court in Maricopa County

Cause No. CV2009-055072

The Honorable Gerald Porter, Commissioner

**AFFIRMED**

Routh Castle Cooper Olsen, L.L.C. Phoenix  
By Marty G. Baker  
Ian D. Quinn  
Attorneys for Plaintiff/Appellee

Jack H. Simon Mesa  
Attorney for Defendants/Appellants

W I N T H R O P, Presiding Judge

¶1 George A. and Paula Ramirez and the Foreclosure Assistance Foundation, Inc. ("FAF") (collectively, "Appellants") appeal the trial court's judgment in favor of DLJ Mortgage

Capital, Inc. ("DLJ") on DLJ's forcible entry and detainer action. For the following reasons, we affirm.

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

¶2 DLJ filed a forcible detainer complaint against Xiaofen Liu and the occupants of 1436 E. Grove Street in Phoenix, Arizona ("the property").<sup>1</sup> The complaint alleged that DLJ had obtained a Trustee's Deed Upon Sale after purchasing the property at a trustee's sale. Attached to the complaint was the Trustee's Deed Upon Sale, which listed Liu as the trustor of a deed of trust, listed Quality Loan Service Corporation-AZ ("QLSC") as the trustee, and indicated that DLJ was the grantee and foreclosing beneficiary.

¶3 Appellants filed an answer to the forcible detainer complaint as well as a request for a jury trial. Appellants denied that DLJ owned the property and asserted that the deed of trust described in the complaint had always been void and that Liu had no interest to convey to a trustee. Appellants admitted a trustee's deed had been executed and they possessed the property, but alleged they were the rightful owners and possessors of the property.

¶4 In attacking the validity of DLJ's title to the property, Appellants' answer outlined a complex series of events. Appellants explained that George Ramirez purchased the

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<sup>1</sup> The Ramirezes occupied the property.

property in July 2004, but was induced by Peter Hou in May 2006 to convey the property to a trust in which Zhigang Chen was the trustee and Ramirez the beneficiary. Appellants asserted that on August 17, 2006, George Ramirez recorded a substitution of trustee, substituting his attorney as trustee, who then recorded a termination of the trust and a quitclaim deed reconveying the property to Ramirez. George Ramirez then executed two deeds of trust, on August 18 and 23, 2006, in favor of FAF.

¶15 Appellants maintained that Chen, as trustee, recorded a warranty deed to Liu on August 24, 2006 - after George Ramirez had substituted the trustee, terminated the trust, and accepted reconveyance of the property. Liu executed two deeds of trust naming Cherry Creek Mortgage Co., Inc. ("Cherry Creek") as beneficiary and Fidelity National Title Company as trustee. Appellants asserted that one of those deeds of trust was the deed of trust at issue, but that neither was valid.

¶16 Appellants next explained that George Ramirez had executed a Warranty Deed in Lieu of Foreclosure conveying ownership of the property to FAF, and that FAF filed a quiet title action in civil court, to have the deed to Liu and the two Cherry Creek deeds of trust declared invalid.<sup>2</sup> Meanwhile, the

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<sup>2</sup> The case was assigned Maricopa County Superior Court Case No. CV2006-092637.

Ramirez continued to reside on the property under an agreement with FAF.

¶17 Appellants also averred that Select Portfolio Servicing, Inc. ("SPS") had filed an answer in the quiet title action, claiming it was the owner of the deeds of trust and that FAF's claim might be barred by equitable subrogation. SPS allegedly caused a notice of substitution of trustee to be recorded in favor of QLSC as the trustee of the deed of trust at issue. Subsequently, on August 9, 2007, Mortgage Electronic Registration Systems, Inc. ("MERS"), Cherry Creek's nominee, executed an assignment of mortgage by which it claimed to convey Cherry Creek's interest in the deed of trust at issue to DLJ. Because Cherry Creek had purportedly already conveyed its interest in the deed of trust to Credit Suisse First Boston on September 6, 2006, Appellants' answer alleged that MERS could assign no interest in the property to DLJ.

¶18 In June 2009, the court in the quiet title action entered summary judgment in favor of DLJ after concluding DLJ was entitled to equitable subrogation.<sup>3</sup> In their answer in this case, Appellants asserted that ruling constituted a finding that the deed of trust at issue "was invalid and void because a creditor cannot have equitable subrogation if their Deed of

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<sup>3</sup> Appellants filed an appeal from that decision, which has been assigned Case No. 1 CA-CV 10-0230 in this court.

Trust was valid." Appellants further asserted that because the invalidity of the deed of trust had been established and was res judicata, the trustee's sale on which the detainer action was based was invalid.

¶19 At oral argument, counsel for Appellants began to explain that the situation did not involve a typical deed of trust, but involved a "scam" in which the property had been put into a trust, but the trust had been terminated before the party involved in the fraud had obtained the title. Upon inquiry by the court, counsel admitted that a trustee's sale had been held, but contended that complex factual issues existed requiring a jury trial. The court rejected counsel's arguments, stating in pertinent part as follows:

This is a summary proceeding. . . .

There's two ways to deal with this issue. One is pre-trustee sale; one is post-trustee sale. But neither of those things happened here. That's purely a civil matter.

All I need is -- and once I have [a] deed and it's proffered, I'm going to sign and give them the right of restitution.

. . . .

You're just -- you're in the wrong place. . . . Let's assume everything you're saying is right, that we've got fraud here, that the trustee sale should never have occurred as it occurred. That is -- that requires you to do two things in civil court.

One, file an appropriate action and [two,] ask the civil court to stay pending a determination as to

who is the valid owner. But that doesn't occur here in this court.

. . . .

. . . Title is never an issue in a forcible entry and detainer case.

The court indicated that it did not need to consider the answer because title was not an issue in the summary proceeding. The court also acknowledged:

Your client may have had -- may have been a victim of fraud. That is not going to be decided here. It's going to be decided in a civil court after you file a quiet-title action.

And to stay the action I'm going to take -- you're going to need to deal with that in civil court.

¶10 The court entered judgment in favor of DLJ, and Appellants timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

#### ANALYSIS

¶11 A forcible detainer action is a summary proceeding created by statute to provide a speedy remedy to gain actual possession of a property. *Mason v. Cansino*, 195 Ariz. 465, 466, ¶ 5, 990 P.2d 666, 667 (App. 1999). In such an action, "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) (2003); accord *Mason*, 195 Ariz. at 468, ¶ 8, 990 P.2d at 669. Thus, as a general rule, the court in a forcible detainer action is precluded from determining the validity of title. See

*Curtis v. Morris*, 186 Ariz. 534, 534, 925 P.2d 259, 259 (1996). Where title is disputed, the defendant may seek relief in a separate civil action. See *Mason*, 195 Ariz. at 468, ¶ 8, 990 P.2d at 669. A forcible detainer action is available to one who purchases property at a trustee's sale. A.R.S. § 12-1173.01(A)(2) (2003). A deed issued at a trustee's sale raises the presumption of compliance with the statutory requirements of the sale and the requirements of the deed of trust regarding the exercise of the power of sale and the sale of the trust property. A.R.S. § 33-811(B) (2007).

¶12 Once a complaint for forcible detainer has been filed, the court determines if a legal defense to the claim exists by either reviewing the defendant's written answer or by questioning the defendant in court. See Ariz. R.P. Evict. Act. ("RPEA") 11(b)(1). "If the court determines that a defense or proper counterclaim may exist, the court shall order a trial on the merits." *Id.* If a jury trial is demanded, the court shall determine if factual issues exist to be presented to a jury. RPEA 11(d). If no such factual issues exist, the matter is tried to the court on the legal issues or may be disposed of by motion. *Id.* We review the trial court's decisions on legal issues *de novo*. *Inch v. McPherson*, 176 Ariz. 132, 136, 859 P.2d 755, 759 (App. 1992).

¶13 Appellants argue that the trial court wrongly entered judgment without hearing testimony or receiving evidence, and therefore the court had nothing on which to base its decision. We find that the court's decision was properly supported.

¶14 The court had before it a copy of the Trustee's Deed Upon Sale conveying the property to DLJ, which had been attached to DLJ's complaint. Pursuant to RPEA 11(b)(1), the court questioned Appellants' counsel to determine if a valid defense existed. Appellants' counsel began to argue that the deed of trust at issue was obtained through fraud and that the trust had been terminated before the trustee's sale; counsel conceded, however, that a trustee's sale had been held and offered no argument challenging the propriety of the conduct of the sale. The only issue before the court in the forcible detainer action was the right to possession. The Trustee's Deed Upon Sale established that DLJ was the owner of the property, and Appellants' defenses related to title issues into which the court generally could not inquire. Consequently, the court had sufficient evidence before it to award possession to DLJ.

¶15 Appellants also argue that the judgment in the civil action bars the forcible detainer action. Appellants contend that, because DLJ received a money judgment on the ground that it was equitably subrogated for the amount it paid to George



Ramirez's prior lienholder, the deed of trust on which the sale was held was effectively deemed legally invalid.

¶16 The doctrine of equitable subrogation allows a subsequent lender who pays off a primary and superior encumbrance to be substituted into the position of that primary lienholder despite an intervening lien. *Lamb Excavation, Inc. v. Chase Manhattan Mortgage Corp.*, 208 Ariz. 478, 480, ¶ 6, 95 P.3d 542, 544 (App. 2004). Appellants do not explain why the civil judgment finding equitable subrogation renders the deed of trust at issue invalid. In any event, this argument again concerns title to the property, which should be addressed in civil court rather than in a forcible entry and detainer proceeding.

¶17 Appellants next contend that this case was inappropriate for the summary proceeding of a forcible detainer action and so should have been dismissed. They argue that a genuine dispute exists over an issue whose resolution was a prerequisite to determining who was entitled to possession and that under those circumstances the summary proceeding had to be dismissed. In support, Appellants cite *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 101 P.3d 641 (App. 2004), and *Colonial Tri-City Limited Partnership v. Ben Franklin Stores, Inc.*, 179 Ariz. 428, 880 P.2d 648 (App. 1993).

¶18 Each of the cited cases involved a summary forcible detainer action in a landlord-tenant situation. In *United Effort Plan Trust*, this court found that a summary proceeding was inappropriate because one of the parties disputed the existence of a tenancy and the court found that a determination of the legal relationship of the parties was necessary to employ the forcible detainer remedy under the forcible detainer statute. 209 Ariz. at 350-51, ¶¶ 20-24, 101 P.3d at 644-45.

¶19 In *Colonial Tri-City*, this court found that summary proceedings were inappropriate because a question existed whether the parties had a valid lease, and the determination whether a valid lease existed was a prerequisite to determining which party was entitled to possession. 179 Ariz. at 433, 880 P.2d at 653. Consequently, the court ruled that the issue had to be resolved in a general civil action and not in a summary proceeding. *Id.*

¶20 We find neither of these cases useful as support for Appellants' position. In each of these cases the statutory basis of the forcible detainer action required the existence of a landlord-tenant relationship. Determining the existence of such a relationship was therefore a prerequisite to employing the summary proceeding based on the statute. See *United Effort Plan Trust*, 209 Ariz. at 350, ¶ 21, 101 P.3d at 644 ("Both A.R.S. § 12-1171 and 12-1173 apply only when the parties have a

landlord-tenant relationship."); *Colonial Tri-City*, 179 Ariz. at 433-34, 880 P.2d at 653-54 (requiring the existence of a landlord-tenant relationship to maintain a summary action under A.R.S. § 33-361).

¶21 Further, to the extent that fact of title was relevant as a matter incidental to demonstrate right of possession by DLJ, see *Curtis*, 186 Ariz. at 535, 925 P.2d at 260, DLJ presented evidence of its fact of title and right to possession. Specifically, DLJ provided a trustee's deed pursuant to a trustee's sale by which title to the property was conveyed to DLJ. See A.R.S. § 33-811(E). By statute, the forcible detainer proceeding is available to a person who obtains property sold through such a sale. See A.R.S. § 12-1173.01(A)(2). DLJ therefore met the prerequisite to use a forcible detainer action under the statute. The summary proceeding was not inappropriate.

¶22 Appellants further argue that they were denied their right to a jury trial pursuant to A.R.S. § 12-1176(B) (Supp. 2010),<sup>4</sup> which states, "If the plaintiff does not request a jury, the defendant may do so on appearing and the request shall be granted." Appellants appear to claim that, under this statute, they were entitled to a jury trial in the forcible detainer

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<sup>4</sup> We cite the current version of the applicable statute if no revisions material to our decision have since occurred.

action even if the court determined that no factual issues existed for a jury to consider.

¶123 We find no merit to this argument. Having the right to a jury trial does not preclude resolution of a dispute summarily if no issues of fact exist for a jury to decide. See *K.B. v. State Farm Fire & Cas. Co.*, 189 Ariz. 263, 268, 941 P.2d 1288, 1293 (App. 1997) (holding that summary judgment does not violate the constitutional right to a jury trial; "the Arizona Rules of Civil Procedure do not require a jury trial where there are no genuine fact disputes on relevant issues").

¶124 Moreover, Appellants do not address RPEA 11(d), which provides in part as follows:

At the initial appearance, if a jury trial has been demanded, the court shall inquire and determine the factual issues to be determined by the jury. If no factual issues exist for the jury to determine, the matter shall proceed to a trial by the judge alone regarding any legal issues or may [be] disposed of by motion or in accordance with these rules, as appropriate.

¶125 We consider related rules and statutes in conjunction with one another and harmonize them when possible. *Hornbeck v. Lusk*, 217 Ariz. 581, 583, ¶ 6, 177 P.3d 323, 325 (App. 2008). RPEA 11(d) and A.R.S. § 12-1176(B) are easily harmonized. Taken together, they provide that a defendant in a forcible detainer action who requests a jury trial is entitled to one provided the court determines that factual issues exist for the jury to

decide. If the court determines that no factual issues exist, the court decides the legal matters by trial or decides the matter by motion. Interpreting A.R.S. § 12-1176(B) to require a jury trial in all circumstances when requested would be contrary to the clear intent of the forcible detainer statutes - to provide a speedy, summary proceeding to recover property. See *Mason*, 195 Ariz. at 466, ¶ 5, 990 P.2d at 667.

**CONCLUSION**

¶26 The trial court's judgment is affirmed. Appellants are not the successful party; accordingly, their request for costs and attorneys' fees pursuant to A.R.S. §§ 12-341 (2003) and 12-341.01 (2003) is denied. DLJ has not requested attorneys' fees; accordingly, none are awarded. However, DLJ is awarded its costs upon compliance with Rule 21, ARCAP.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
PATRICIA K. NORRIS, Judge

\_\_\_\_\_/S/\_\_\_\_\_  
PATRICK IRVINE, Judge