

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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 01/31/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

VICKIE R. THOMPSON, a single woman, ) 1 CA-CV 11-0180  
)  
) DEPARTMENT D  
)  
Plaintiff/Appellant, )  
) **MEMORANDUM DECISION**  
)  
v. )  
) (Not for Publication -  
) Rule 28, Arizona Rules of  
STATE OF ARIZONA ex rel. LAUREN ) Civil Appellate Procedure)  
KINGRY, Superintendent of the )  
Arizona Department of Financial )  
Institutions, as Receiver for )  
LANDMARC CAPITAL & INVESTMENT )  
CO., an Arizona corporation, )  
)  
Receiver/Appellee. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause Nos. CV2009-020595 and CV2009-050052 (Consolidated)

The Honorable Sam R. Myers, Judge

**AFFIRMED**

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Vickie R. Thompson Peoria  
Plaintiff/Appellant *In Propria Persona*

Guttilla Murphy Anderson, P.C. Phoenix  
By Alisan M.B. Patten and Patrick M. Murphy  
Attorneys for Receiver/Appellee

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**B R O W N**, Judge

¶1 The State, ex rel. Lauren Kingry, Superintendent of the Arizona Department of Financial Institutions ("the Receiver"), was appointed Receiver of Landmarc Capital & Investment Co. ("Landmarc"). Vickie R. Thompson ("Thompson") appeals from the superior court's orders granting the Receiver permission to sell two parcels of Landmarc's real property to third parties. For the reasons stated below, we affirm.

#### **BACKGROUND**

¶2 In 2007, Landmarc loaned Thompson funds secured by a deed of trust on two parcels of real property. Thompson defaulted on the loan in mid-2008 and the trustee filed a notice of trustee's sale. Prior to the date of the sale, Landmarc and Thompson entered into a Forbearance Agreement ("the Agreement"). The trustee continued the noticed sale four times after the Agreement was signed.

¶3 Thompson made the first scheduled payment in accordance with the Agreement, but did not make the second payment on time. The trustee proceeded with the sale on the date in the most recent postponement, and Landmarc acquired title to both parcels.

¶4 Thompson filed a breach of contract and quiet title action in the superior court against Landmarc to void the foreclosure of these two parcels. Once Landmarc went into

receivership, the court consolidated Thompson's original action with the receivership action. Thompson then filed a motion for summary judgment disputing the foreclosure. The Receiver argued that Thompson's motion violated the stay of litigation as to Landmarc. The court agreed and denied Thompson's motion with permission to re-file if and when the stay was lifted.

¶15 The superior court entered an order establishing procedures for filing claims against receivership assets. Pursuant to the order, Thompson filed a claim regarding the two parcels of property. The superior court eventually denied Thompson's claim without explanation and approved the sale of both parcels to third parties. This timely appeal followed.

#### DISCUSSION

¶16 Thompson argues the foreclosure was improper because the trustee failed to issue a new notice of trustee's sale after she breached the Agreement. She asserts that execution of the Agreement cured the initial breach of the deed of trust and upon her *subsequent* breach of the Agreement, the trustee was required to file a *new* notice of trustee's sale.

¶17 The law governing a trustee's sale provides that a trustee has the power to sell the trust property "after a breach or default in performance of the contract or contracts, for which the trust property is conveyed as security, or a breach of

default of the trust deed." Ariz. Rev. Stat. ("A.R.S.") § 33-807(A) (2007). The trustee's power of sale "shall not be exercised before the ninety-first day after the date of the recording of the notice of the sale." A.R.S. § 33-807(D).

¶18 A sale may be postponed or continued by giving notice of the new date, time, and place by public declaration at the time and place last appointed for the sale. A.R.S. § 33-810(B) (2007). "No other notice of the postponed, continued or relocated sale is required except [for cases involving an unknown bankruptcy]." A.R.S. § 33-810(B), (C).

¶19 The Agreement states that failure to make the monthly payments on the due date

shall constitute a default and will entitle Lender to *complete* the Trustee's Sale. In the event of a default, the Trustee's Sale will be conducted on the date of sale established by the *most recent postponement* declaration. There shall be no requirement for the Lender or the Trustee to furnish notice of each successive postponement date to Debtors, but those dates shall be available upon inquiry during regular business hours of the Trustee.

(Emphasis added.) Thompson paid only the first monthly payment and was late making the second payment. Thus, Thompson was in default for failing to make the second monthly payment on time. This was not a default requiring a new notice of trustee's sale. Pursuant to the Agreement, the initial breach was not cured by

Thompson's timely monthly payments. The Agreement plainly states that the default is cured by payment of \$83,620.21, representing late payments and various charges. Thompson presented no evidence that she paid this amount. Thus, the initial breach was never cured.<sup>1</sup> Additionally, the Agreement recognizes the "pending" status of the initial breach and Notice of Sale. The sale was, therefore, subject to the statute governing a *continued* Trustee's Sale. See A.R.S. § 33-810(B).

¶10 Thompson argues that the notice of sale was defective because it did not state the time of the new sale. The Receiver correctly notes that Thompson's failure to obtain an injunction prior to the sale waives any deficiencies in the notice of sale pursuant to A.R.S. § 33-811(C) (2007). Thompson contends that she could not waive a defect when she had no reason to expect a sale to occur. However, Thompson's position is based on the erroneous assumption that the initial default was cured and thus the sale was improper. As discussed above, the sale was proper.

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<sup>1</sup> In support of her argument, Thompson cites an unpublished federal district court decision. Citation to unpublished decisions is inappropriate. See ARCAP 28(C); *Kriz v. Buckeye Petroleum Co., Inc.*, 145 Ariz. 374, 377 n.3, 701 P.2d 1182, 1185 n.3 (1985). Thus, we do not consider it.

Therefore, any objection to the notice of sale had to be made pursuant to A.R.S. § 33-811(C).<sup>2</sup>

¶11 Finally, Thompson suggests that the court erred in denying her claim because the Receiver did not provide required disclosure nor did it respond to Thompson's discovery requests. But Thompson has failed to identify any particular information she was seeking to obtain from the Receiver and how it would have supported her claim. See *Magellan S. Mountain Ltd. P'ship v. Maricopa County*, 192 Ariz. 499, 502, ¶ 10, 968 P.2d 103, 106 (App. 1998) (requiring party to furnish more than a vague summary of additional evidence when seeking to justify delay in ruling on motion for summary judgment). As noted above, the superior court properly resolved Thompson's claim based on the plain language of the Agreement. Thus, we reject Thompson's assertion that the court's summary disposition should have been postponed until after the Receiver had provided additional information to Thompson.

#### CONCLUSION

¶12 Based on the foregoing, we affirm the superior court's order denying Thompson's claim for quiet title against the

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<sup>2</sup> For the first time in the reply brief, Thompson argues that equitable considerations should invalidate the trustee's sale. We decline to consider issues raised for the first time in a reply brief. See *Phelps v. Firebird Raceway, Inc.*, 210 Ariz. 403, 404 n.1, 111 P.3d 1003, 1004 n.1 (2005).

Receiver and the orders approving the sale of the parcels at  
issue.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

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PETER B. SWANN, Presiding Judge

/s/

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JON W. THOMPSON, Judge