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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MICHAEL BENSON SPARLIN and SHARON JEANETTE SPARLIN, husband and wife, Plaintiffs/Appellants, v. BAC HOME LOANS SERVICING, L.P., RECONTRUST COMPANY, N.A., as Trustee; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC; LENNAR CORPORATION; U.S. HOME CORPORATION; GREENPOINT MORTGAGE FUNDING, INC.; COUNTRYWIDE HOME LOANS, INC.; and TITLE SECURITY AGENCY OF ARIZONA, Defendants/Appellees.	2 CA-CV 2010-0173 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20096997

Honorable Kenneth Lee, Judge

AFFIRMED

Michael B. Sparlin and Sharon J. Sparlin — Tucson
In Propria Personae

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K E L L Y, Judge.

¶1 Appellants Michael and Sharon Sparlin appeal from the dismissal of their amended complaint against, and/or the grant of summary judgment in favor of, appellees BAC Home Loans Servicing, L.P. (BAC), ReconTrust Company, N.A. (ReconTrust), Mortgage Electronic Registration Systems, Inc. (MERS), Universal American Mortgage Company, LLC (UAMC), Lennar Corporation (Lennar), U.S. Home Corporation (U.S. Home), Greenpoint Mortgage Funding, Inc. (Greenpoint), Countrywide Home Loans, Inc. (Countrywide) and Title Security Agency of Arizona (TSAA) in connection with loans obtained by the Sparlins to purchase two residential properties. The Sparlins

sought to prevent a trustee's sale of their properties based, in part, on their assertion that the defendants had not demonstrated they were entitled to foreclose. Having filed a separate notice of appeal, they also challenge the trial court's denial of their "motion to set aside sale." As to TSAA, Greenpoint, Lennar, UAMC and U.S. Home we find no error and therefore affirm. We conclude we lack jurisdiction to address any issues that relate to BAC, ReconTrust, MERS and Countrywide.

Background

¶2 In 2007, the Sparlins purchased two residential properties with loans secured by deeds of trust, which were recorded. The deeds listed UAMC as the lender and MERS as the beneficiary. The original trustees were North American Title Company and Stewart Title Company; however, MERS subsequently appointed ReconTrust as successor trustee for both properties and assigned one of the deeds of trust to BAC. Michael Sparlin signed promissory notes as to each property in favor of UAMC.

¶3 The Sparlins failed to repay the loans as agreed and notices of default and intent to accelerate the balances owed were mailed to them. The Sparlins did not cure the default and non-judicial foreclosure proceedings were instituted on each property. Before the foreclosure sale, the Sparlins filed a complaint as to each property against ReconTrust and BAC alleging the defendants were not entitled to foreclose unless they provided proof that they "still possesse[d] the original debt instrument."[1] The Sparlins later

[1]The amended complaints were later consolidated into a single action.

amended the complaints to raise additional claims and add defendants MERS, UAMC, Lennar, U.S. Home, Greenpoint,[2] Countrywide and TSAA.

¶4 Lennar, UAMC and U.S. Home filed a joint motion to dismiss the amended complaint. Greenpoint and TSAA each filed separate motions to dismiss. In March 2010, the trial court granted the motions to dismiss. The court entered a formal, final judgment as to Lennar, UAMC, and U.S. Home on July 27, 2010, and a similar judgment as to Greenpoint on July 30, 2010.

¶5 During the same time period, ReconTrust, BAC, and MERS filed a motion for summary judgment in which Countrywide joined. In a minute entry order dated July 27, 2010, the trial court granted summary judgment against the Sparlins and ruled on numerous additional issues. On August 12, 2010, the court issued an order denying the Sparlins' "motion to set aside sale." On August 9, 2010, the Sparlins filed a notice of appeal from the court's July 27, 2010, order in which they specified numerous rulings they wished to challenge. On August 23, 2010, the Sparlins filed an additional notice of appeal from the court's order denying their "motion to set aside sale." The court entered a formal judgment as to ReconTrust, BAC, MERS and Countrywide on September 10, 2010.

[2]Greenpoint was listed as a defendant as to only one of the properties.

Discussion

¶6 We note preliminarily, as did the trial court, that even though the Sparlins are unrepresented, they are held to the same standards as a "qualified member of the bar." *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983). A party proceeding in propria persona "is entitled to no more consideration than if he had been represented by counsel." *Id.* Therefore, the Sparlins are held to know the procedures, statutes, and rules necessary to pursue an action in this court. *See id.*

¶7 As the appellants, the Sparlins were obligated to "mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised." *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). The Sparlins did not provide the transcripts of any lower court proceedings on appeal. *See* Ariz. R. Civ. App. P. 11(b)(1). "We may only consider the matters in the record before us." *Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996). In the absence of a transcript, we must presume the record supports the trial court's ruling. *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005).

¶8 The *S*parlins filed their notice of appeal on August 23, 2010, challenging the trial court's August 12, 2010 order denying their "motion to set aside sale." We lack jurisdiction to address the propriety of this order. *See Robinson v. Kay*, 225 Ariz. 191, ¶ 4, 236 P.3d 418, 419 (App. 2010) (we are required to examine our own jurisdiction). "'[T]he right to appeal exists only by force of statute.'" *Grand v. Nacchio*, 214 Ariz. 9, ¶ 12, 147 P.3d 763, 769 (App. 2006), *quoting Cordova v. City of Tucson*, 15 Ariz. App.

469, 470, 489 P.2d 727, 728 (1971). "Section 12-2101, A.R.S., governs our appellate jurisdiction." *Id*. If the order appealed is not among the kinds of orders the statute specifies, we lack jurisdiction of the appeal and must dismiss it. *Kemble v. Porter*, 88 Ariz. 417, 418-19, 357 P.2d 155, 155 (1960). An order is final and appealable under § 12-2101(B) if it "'decides and disposes of the cause on its merits, leaving no question open for judicial determination.'" *Props. Inv. Enters., Ltd. v. Found. for Airborne Relief, Inc.*, 115 Ariz. 52, 54, 563 P.2d 307, 309 (App. 1977), *quoting Decker v. City of Tucson*, 4 Ariz. App. 270, 272, 419 P.2d 400, 402 (1966).

¶9 The August 12 order denying the motion to set aside sale is not a final, appealable order. Although it appears an order ultimately was signed by the trial court, it does not dispose of all issues in the case as mandated by § 12-2101(B). And, because the case involves multiple parties and the order does not dispose of all issues as to all parties, it could not be a final, appealable order without the court having expressly directed the entry of judgment as to the relevant parties and issues finally decided. *See* Ariz. R. Civ. P. 54(b). The order does not contain the requisite language from Rule 54(b). We therefore have no authority to review it as a separate, appealable order. *See Kinnear v. Finegan*, 138 Ariz. 34, 35-36, 672 P.2d 986, 987-88 (App. 1983) (judgment that did not dispose of all issues and did not include Rule 54(b) language not appealable); § 12-2101; Ariz. R. Civ. P. 54(b).

¶10 Nor was the order rendered appealable by either of the final judgments in the case. *See* § 12-2102(A) (on appeal from final judgment court "shall review

intermediate orders involving the merits of the action and necessarily affecting the judgment, and all orders and rulings assigned as error"); *Walls v. Ariz. Dep't of Pub. Safety*, 170 Ariz. 591, 596-97, 826 P.2d 1217, 1222-23 (App. 1991) (holding that upon entry of final judgment an earlier unsigned ruling became appealable). The August 12 order was not entered until after the July 30 entry of judgment and therefore could not have been rendered final by that earlier judgment. Nor do we have jurisdiction based on the September 10 formal judgment because the Sparlins never filed a notice of appeal from that judgment. We therefore lack jurisdiction to consider the court's August 12 ruling denying the motion to set aside sale.

I. Appellee TSAA

¶11 TSAA filed a motion to dismiss the Sparlins' amended complaint, which the trial court granted. The Sparlins do not raise any arguments in their opening brief regarding the propriety of the court's ruling with respect to TSAA. But in their reply brief, the Sparlins make a one-sentence request for "a default judgment" based on TSAA's failure to file an answering brief.

¶12 Even assuming arguendo we have jurisdiction[3] to address the propriety of the trial court's dismissal of TSAA, the argument is entirely without merit. To the extent the Sparlins are asking us to treat TSAA's failure to file an answering brief as a confession of error, we decline to do so. *See Gibbons v. Indus. Comm'n of Ariz.*, 197

[3]Because the trial court's ruling dismissing TSAA does not contain the requisite language from Rule 54(b), Ariz. R. Civ. P., and no separate judgment was entered as to TSAA, it does not appear that final judgment ever was entered as to TSAA.

Ariz. 108, ¶ 8, 3 P.3d 1028, 1031 (App. 1999) ("When a debatable issue is raised on [appeal], the failure to file an answering brief generally constitutes a confession of error."). Because the Sparlins presented no arguments, much less any debatable issues, as to TSAA in their opening brief, there was nothing to which TSAA was required to respond. The Sparlins therefore have abandoned any claims as to TSAA on appeal.

II. Appellees BAC, ReconTrust, MERS and Countrywide

¶13 In their August 9, 2010, notice of appeal, the Sparlins specified they were challenging the July 27, 2010, order granting summary judgment in favor of BAC, ReconTrust and MERS.[4] In their notice of appeal, they also specified they were challenging the award of attorney fees to BAC, ReconTrust, MERS and Countrywide in "the Court's Order of July 27, 2010." However, the court made no such award in its July 27 order. We therefore construe the Sparlins' notice to apply to the September 9 fee award.

¶14 After examining our own jurisdiction, as we are required to do, we conclude we lack jurisdiction as to these appellees. *See Robinson*, 225 Ariz. 191, ¶ 4, 236 P.3d at 419. Although the court signed the July 27 minute entry, it clearly was not a final, appealable order. That the trial court did not intend the minute entry to be the final order is apparent from the minute entry itself. With respect to Greenpoint, for example,

[4]Although Countrywide joined in the motion for summary judgment, the trial court noted "the Plaintiffs have no objection to the dismissal of . . . Countrywide." It appears the court dismissed Countrywide from the case, rather than granting summary judgment in favor of them. In any event, the Sparlins challenge neither the grant of summary judgment nor the dismissal as to Countrywide.

the court specified it was simultaneously signing and entering the formal form of judgment that Greenpoint had submitted, which contained the requisite language from Rule 54(b), Ariz. R. Crim. P., and a specific amount of Greenpoint's attorney fees and costs. The court noted in the minute entry that a formal judgment was to be submitted by BAC, ReconTrust, MERS and Countrywide. That judgment, which also contained Rule 54(b) language, was not lodged until August 13, 2010, and it was entered and signed on September 10, 2010. The August 9 notice of appeal thus was filed before entry of final judgment as to these appellees and no separate notice of appeal ever was filed for the September final judgment.

¶15 BAC, ReconTrust and MERS suggest we might, nevertheless, have jurisdiction pursuant to *Barassi v. Matison*, 130 Ariz. 418, 636 P.2d 1200 (1981). But *Barassi* is distinguishable. There, we dismissed an appeal for lack of jurisdiction on the ground that the notice of appeal was premature because the appellant had appealed from a minute entry order before formal judgment had been entered. *Id.* at 419, 636 P.2d at 1201. The supreme court vacated the dismissal and concluded that a premature appeal from a minute entry order need not be dismissed, provided no party had been prejudiced and a final, appealable judgment ultimately was entered. *Id*. at 422, 636 P.2d at 1204. In *Smith v. Arizona Citizens Clean Elections Commission*, 212 Ariz. 407, 415, 132 P.3d 1187, 1195 (2006), the court restated the rule it had set forth in *Barassi*, explaining *Barassi* had created a "limited exception to the final judgment rule that allows a notice of appeal to be filed after the trial court has made its final decision, but before it has entered

a formal judgment, if no decision of the court could change and the only remaining task is merely ministerial."

¶16 Here, as we noted above, the July 27 order was not the final decision in the case and more than merely "ministerial" acts were required before the order became final and appealable. The trial court acknowledged it was not the final order when it specified that it was simultaneously signing the separate judgments that Greenpoint, UAMC, Lennar and U.S. Home had submitted, and directed ReconTrust, BAC, MERS and Countrywide, to submit a formal judgment. In addition, after the court entered the July 27 order, the parties filed and the court ruled on several additional motions. Moreover, the parties filed memoranda and affidavits regarding attorney fees and costs and the court ruled on the issue before the formal judgment was submitted and entered on September 10.

¶17 To permit the filing of a premature appeal in this case would conflict with the rationale of *Barassi*. 130 Ariz. at 421, 636 P.2d at 1203. It would not promote efficiency, but rather would result in "constant disruption of the trial process" and our consideration of issues that may yet be addressed by the trial court. *Id.* We will "dismiss [a case] for lack of jurisdiction . . . where a litigant attempts to appeal where a motion is still pending in the trial court or where there is no final judgment." *Id*. at 422, 636 P.2d at 1204.

¶18 Therefore, the final judgment as to BAC, MERS, ReconTrust and Countrywide was the formal form of judgment filed September 10. The Sparlins did not

file a notice of appeal from the September judgment. Accordingly, we lack jurisdiction to address the claims specified in the August 9 notice of appeal that relate to these appellees.[5] § 12-2101; Ariz. R. Civ. App. P. 9; Ariz. R. Civ. P. 54(b).

III. Appellees Greenpoint, Lennar, UAMC and U.S. Home

A. Motions to Dismiss

¶19 In the notice of appeal the Sparlins challenge the July 27 order dismissing Greenpoint, Lennar, UAMC and U.S. Home as defendants.[6] We review a trial court's grant of a motion to dismiss for an abuse of discretion, but review issues of law de novo. *Dressier v. Morrison*, 212 Ariz. 279, ¶ 11, 130 P.3d 978, 980 (2006). We accept as true the facts alleged in the complaint and affirm the dismissal only if the "plaintiff[ ] would not be entitled to relief under any interpretation of the facts susceptible of proof." *Fidelity Sec. Life Ins. Co. v. State*, 191 Ariz. 222, ¶ 4, 954 P.2d 580, 582 (1998). We

[5]In their appeal from the July 27 order, the Sparlins also challenge the trial court's denial of their motion for a preliminary injunction against ReconTrust. As we lack jurisdiction over this appellee, we do not address this claim.

[6]The Sparlins claim they are challenging the trial court's grant of summary judgment in the July 27 order. But, none of these defendants filed a motion for summary judgment and the court did not treat their motions to dismiss as motions for summary judgment. *See* Ariz. R. Civ. P. 12(b); *Gatecliff v. Great Republic Life Ins. Co.*, 154 Ariz. 502, 508-09, 744 P.2d 29, 35-36 (App. 1987) (if motion to dismiss to be treated as motion for summary judgment, court must advise all parties and give reasonable opportunity to present underlying facts to court). The court granted the motions to dismiss in its March 15, 2010, minute entry and entered the formal judgment as to these defendants in July 2010. The Sparlins filed a timely notice of appeal from that judgment. *See* Ariz. R. Civ. App. P. 9(a). We therefore have jurisdiction to review the March 15 order, whether the defendants' motions are characterized as motions to dismiss or as motions for summary judgment. *See* § 12-2102(A).

resolve all reasonable inferences in favor of the plaintiff. *McDonald v. City of Prescott*, 197 Ariz. 566, ¶ 5, 5 P.3d 900, 901 (App. 2000).

¶20 The trial court granted the motions to dismiss based on its finding that the Sparlins' consumer fraud claims were time-barred and "not pled with the requisite particularity." Additionally, the court concluded that "[u]nder Arizona law, Defendants are not required to produce the note."

1. Consumer Fraud Claim

¶21 The Sparlins do not address the dismissal of their consumer fraud claim on appeal beyond claiming, without support, that "[b]y not rebutting these arguments, Defendants . . . concede[d] to them." They do not explain why the complaint is not time-barred, or why they believe it is pled with sufficient particularity. Consequently, they have waived any claims with respect to the trial court's ruling on the consumer fraud claims. *See* Ariz. R. Civ. App. P. 13(a)(6) ("An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."); *Polanco v. Indus. Comm'n of Ariz.*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (appellant's failure to develop and support argument waives issue on appeal).

2. Possession of Debt Instruments

¶22 In their amended complaint, the Sparlins claimed they sought to compel appellees to prove they were the owners of the original note. In dismissing the complaint, the trial court correctly concluded Arizona law does not require production of

the original promissory note before foreclosure. *See Mansour v. Cal-W. Reconveyance Corp.*, 618 F. Supp. 2d 1178, 1181 (D. Ariz. 2009) ("Arizona's judicial foreclosure statutes . . . do not require presentation of the original note before commencing foreclosure proceedings.").

¶23 On appeal, the Sparlins contend the trial court "abused its discretion when it failed to order Appellees to present the original promissory note as evidence of debt."[7] The Sparlins cite two unpublished Ninth Circuit memorandum decisions in support of their argument. Other than two exceptions not applicable here, unpublished decisions "shall not be regarded as precedent nor cited in any court." Ariz. R. Civ. App. P. 28(c). This prohibition extends to memorandum decisions issued by any court. *See Walden Books Co. v. Dep't of Revenue*, 198 Ariz. 584, ¶ 22, 12 P.3d 809, 814 (App. 2000). We therefore do not consider these decisions.

¶24 As the trial court correctly noted, Arizona law does not require production of the original promissory notes before foreclosure. *See Mansour*, 618 F. Supp. 2d at 1181 (Uniform Commercial Code as codified in A.R.S. § 47-3301 does not require production of original promissory note); *see also Diessner v. Mortgage Elec. Registration Sys.*, 618 F. Supp. 2d 1184, 1187 (D. Ariz. 2009) ("Arizona's non-judicial foreclosure statute . . . does not require presentation of the original note before commencing foreclosure proceedings."); A.R.S. § 33-807 (describing requirements for foreclosure of

[7]To the extent the Sparlins argued in their amended complaint that production of the original deed of trust was required before foreclosure, they do not raise this argument on appeal.

trust deed). Accordingly, the trial court correctly concluded that production of the original promissory notes was not required.

¶25 The Sparlins next appear to argue that even if § 47-3301 does not require production of the original promissory note, the trial court erred in implicitly finding that the appellees were entitled to enforce the instrument. We disagree. Section 47-3301 provides that a person may enforce the instrument if they are, inter alia, the "holder of the instrument [or] a nonholder in possession of the instrument who has the rights of a holder." The court was provided with copies of the deeds of trust and promissory notes.[8] The deeds of trust provide, "[t]he beneficiary of this Security Instrument is MERS . . . and the successors and assigns of MERS. . . . Borrower irrevocably grants . . . to Trustee, in trust, with power of sale, [the property.]" *See* A.R.S. § 33-807 (power of sale conferred upon trustee, property may be sold after default). The court also was provided with the documents in which MERS assigned successor interests to BAC and ReconTrust. *See* A.R.S. § 33-804 (describing process for appointment of successor trustee). Because Arizona law does not require production of the original instrument, we find the information provided to the court sufficient to satisfy the requirements of § 47-3301. *Mansour*, 618 F. Supp. 2d at 1181.

¶26 Finally, the Sparlins make numerous assertions regarding the legitimacy of the deeds of trust and promissory notes and the validity of their transfer. These assertions are undeveloped and largely unsupported by citations to authority. We therefore do not

[8]The Sparlins attached a copy of one of the deeds of trust to their amended complaint.

address them. Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2. The Sparlins have not demonstrated that the trial court abused its discretion in granting the motions to dismiss.

B. Award of Attorney Fees

¶27 The Sparlins challenge the trial court's award of attorney fees to Greenpoint, Lennar, UAMC and U.S. Home.[9] The court granted Greenpoint attorney fees in the amount of $8,027.50 and awarded $16,683.30 to Lennar, UAMC and U.S. Home. Although, as the Sparlins point out, the court did not specify the statutory or other basis for the award of attorney fees, some appellees requested attorney fees pursuant to A.R.S. § 12-341.01(A) and we assume the court based its award to all appellees on that ground.[10]

¶28 Section 12-341.01(A) provides that "[i]n any contested action arising out of contract, express or implied, the court may award the successful party reasonable attorney fees." A matter arises out of contract if it could not exist but for the contract, but it does not arise if the contract is not the essential basis of the action. *Kennedy v. Linda Brock Auto. Plaza, Inc.*, 175 Ariz. 323, 325, 856 P.2d 1201, 1203 (App. 1993). We review de novo whether an action arises out of contract under § 12-341.01(A). *Ramsey Air Meds, L.L.C. v. Cutter Aviation, Inc.*, 198 Ariz. 10, ¶ 12, 6 P.3d 315, 318 (App. 2000).

[9]The Sparlins do not challenge the costs awarded by the trial court.

[10]Greenpoint filed a separate motion to dismiss and requested fees in its form of judgment.

¶29 The Sparlins contend, as they did below, that because "[a]ppellees did not present the contract . . . [the] request for . . . fees has no contractual basis." We find this argument unconvincing. The trial court was provided copies of the deeds of trust and the promissory notes. A "deed of trust" is a deed "conveying trust property to a trustee or trustees . . . to secure the performance of a contract or contracts . . . ." A.R.S. § 33-801(8). This action is based on contracts to purchase real property. Because the matter presented would not exist but for the sales contracts, the matter arises out of the contracts. *Kennedy*, 175 Ariz. at 325, 856 P.2d at 1203. The Sparlins have not pointed us to any authority and we have found none suggesting that in this situation the prevailing party must produce the original contracts before attorney fees may be awarded pursuant to § 12-341.01(A). Accordingly, the court properly could have granted attorney fees based on § 12-341.01(A).

¶30 The Sparlins next claim the amount of fees awarded was unreasonable. We review an award of attorney fees under § 12-341.01(A) for an abuse of discretion. *Orfaly v. Tucson Symphony Soc'y*, 209 Ariz. 260, ¶ 18, 99 P.3d 1030, 1035 (App. 2004). We will affirm unless there is no reasonable basis in the record from which the trial court could award fees. *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570-71, 694 P.2d 1181, 1184-85 (1985).

¶31 The Sparlins contend the amount of attorney fees awarded was unreasonable because "[t]he billing statements . . . include matters . . . unrelated to the motion to dismiss." The Sparlins do not specify what work they believe is unrelated, or

to which appellees they are referring. They state only that "[c]ertain amounts billed for should not be billed for." Because the Sparlins have not developed this argument sufficiently, it is waived. Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2. In any event, we find no error. An award of attorney fees is not limited to fees for the motion on which the party ultimately prevails, rather the successful party is entitled to recover reasonable attorney fees "for all stages of the litigation." *Leo Eisenberg & Co. v. Payson*, 162 Ariz. 529, 535, 785 P.2d 49, 55 (1989). And, when a party has accomplished the result sought in the litigation, fees should be awarded for all time spent litigating the case, even attorney fees incurred in connection with legal theories that proved to be unsuccessful. *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 189, 673 P.2d 927, 933 (App. 1983).[11]

¶32 Finally, the Sparlins argue that the award of fees was improper because "[t]he [a]ffidavit presented in support of attorney fees is hearsay and inadmissible." Again, the Sparlins do not develop this argument adequately or provide support for their summary assertion that "[a]n attorney cannot provide an affidavit . . . to indicate what type of work another person did." The argument is therefore waived. Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2. In

[11]The Sparlins quote portions of *China Doll* without explanation or argument. 138 Ariz. 183, 673 P.2d 927. Based on the quoted language, the Sparlins appear to be arguing that the award of fees was unreasonable because the prevailing parties were only partially successful. This argument is likewise waived. Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489 n.2, 154 P.3d at 393 n.2. Even assuming arguendo that the argument was not abandoned by the lack of adequate argument, the trial court dismissed the case with prejudice and nothing in the record establishes the prevailing parties were only partially successful.

any event, in *China Doll* this court concluded an affidavit supporting an attorney fee application should include "the type of legal services provided, the date the service was provided, the attorney providing the service . . . and the time spent in providing the service." 138 Ariz. at 188, 673 P.2d at 932. The Sparlins have not directed us to, nor do we find, any requirement that each attorney who participated in the case file a separate affidavit. The argument is without merit.

IV. Motion to Vacate

¶33 In a May 7, 2010 order, Judge Stephen C. Villarreal, to whom this case previously was assigned, noted it had come to his attention "that certain defendants in this matter may be related [to] or owned by Bank of America." Based on his "long-term banking relationship" and purchase of "1,000 shares of common stock in Bank of America," Judge Villarreal recused himself from the case. He noted that, "[n]otwithstanding this conflict, none of the Court's previous rulings were the product of bias or prejudice."

¶34 The Sparlins filed a "motion to vacate judg[]ments due to bias and prejudice" in which they argued that because of Judge Villarreal's disclosed conflict of interest, all of his "rulings are void." The newly assigned judge denied the motion in the July 27 order.

¶35 "We review a trial court's ruling on claims of judicial bias for an abuse of discretion." *State v. Ramsey*, 211 Ariz. 529, ¶ 37, 124 P.3d 756, 768 (App. 2005). On appeal, the Sparlins do not directly address the denial of the motion to vacate, but rather

make general allegations that "the decisions of the Superior Court judges are biased." In support of their argument, the Sparlins cite the fact that the trial court "made rulings that were favorable to Appellees" and allege that the trial court "has not critically analyzed a single sentence." The Sparlins have not developed this argument or supported it with authority, rather they claim "[t]he rulings and orders of the [trial court] speak for themselves and there is no need to provide any further proof on the issue." Accordingly, we conclude this issue is waived.[12] Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.

V. Motions to Nullify Alleged Debt, Strike Notice of Trustee's sale

¶36 The Sparlins appeal from the trial court's July 27 order denying their motions to nullify alleged debt and strike the notice of trustee's sale. Both motions were based on the Sparlins' underlying claims that appellees were required to produce the original promissory notes and deeds of trust and were not entitled to enforce the instruments. On appeal, the Sparlins contend the court abused its discretion in denying the motions because they maintain there is no "evidence to prove [the debt] is owed to any of the Appellees." As discussed above, the court properly rejected this argument. We therefore reject the Sparlins' challenge to the denial of both motions.

[12]The Sparlins also claim "the Superior Court judges" violated particular ethical rules without further specification or explanation. This argument was not raised below and we generally do not consider issues raised for the first time on appeal. *K.B. v. State Farm Fire & Cas. Co.*, 189 Ariz. 263, 268, 941 P.2d 1288, 1293 (App. 1997). As these assertions are also conclusory and unsupported, we do not address them. Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.

VI. Notice of Mortgage Fraud

¶37 The Sparlins filed a document in the trial court entitled, "Plaintiff's notice of fraud," in which they informed the court they had filed a "notice of mortgage fraud . . . with the County Records Office." This document described the Sparlins' "recent discovery of various elements of fraud" on the part of appellees. BAC, ReconTrust, MERS and Countrywide filed a response asking the court to strike the notice from the case record and from the records of the County Recorder's office.[13] The court granted the motion to strike in its July 27 ruling. We review for an abuse of discretion the court's decision to strike pleadings. *Dowling v. Stapley*, 221 Ariz. 251, ¶ 45, 211 P.3d 1235, 1250 (App. 2009).

¶38 In the facts section of their opening brief, the Sparlins claim the trial court abused its discretion in granting the motion to strike the "notice of mortgage fraud." They follow this claim with numerous, largely one-sentence assertions regarding the validity of the deeds of trust, promissory notes and assignments and what they believe discovery established. It is not clear whether the Sparlins intended that these assertions in the recitation of facts constitute the arguments supporting their challenge of the striking of the notice of fraud. In any event, the Sparlins do not develop their claim as to the notice of fraud and we therefore do not address it. Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.

[13]Although this ruling affected BAC, ReconTrust, MERS and Countrywide, we do not address it as to them because, as discussed above, we lack jurisdiction of the appeal of any claims related to these appellees. Insofar as the ruling affected the remaining appellees, who were included in the July formal judgment, we address it.

VII. Motions to Compel Production of Documents, Take Judicial Notice

¶39 In their notice of appeal and opening brief the Sparlins state they are appealing the trial court's July 27 denial of their motion to compel production of documents, and motion to take judicial notice. The Sparlins do not develop either of these claims. The issues are therefore waived and we do not address them. Ariz. R. Civ. App. P. 13(a)(6); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.

VIII. Remaining Claims

¶40 We note the Sparlins raise other issues in their opening brief that were not specified in their notice of appeal. We consider only those issues properly designated in their notice of appeal from the July 27 order. *See* Ariz. R. Civ. App. P. 8(c) (requiring appellant to designate the judgment appealed from); *Premier Fin. Servs. v. Citibank*, 185 Ariz. 80, 87, 912 P.2d 1309, 1316 (App. 1995) (no jurisdiction to review rulings not contained in notice of appeal). Accordingly we do not consider these issues.

IX. Attorney Fees

¶41 BAC, ReconTrust, MERS, Greenpoint, Lennar, UAMC and U.S. Home have requested their attorney fees on appeal pursuant to § 12-341.01(A). Section 12-341.01(A) is discretionary and allows the successful party in an action arising out of contract to recover attorney fees. *See* § 12-341.01(A) ("[i]n any contested action arising out of a contract . . . court may award the successful party reasonable attorney fees"). In our discretion, we grant appellees' request for an award of attorney fees pursuant to § 12-341.01(A) contingent on their compliance with Rule 21(a), Ariz. R. Civ. App. P.

Disposition

¶42 In light of the foregoing we affirm the trial court's orders as to all appellees over which we have jurisdiction. We further affirm the awards of attorney fees to BAC, ReconTrust, MERS, Countrywide, Greenpoint, Lennar, UAMC and U.S. Home in the amounts ordered.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge