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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: 1/17/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

FEDERAL NATIONAL MORTGAGE) 1 CA-CV 11-0706
ASSOCIATION, its successors)
and/or assigns,) DEPARTMENT D
)
Plaintiff/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
LILLY WASHINGTON,) Procedure)
)
Defendant/Appellant.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-015598

The Honorable Michael L. Barth, Judge *Pro Tempore*

AFFIRMED

Lilly Washington Phoenix
In Propria Persona
Defendant/Appellant

Pite Duncan, L.L.P. Phoenix
By Eric L. Cook
and Carrie Thompson Jones
Attorneys for Plaintiff/Appellee

K E S S L E R, Judge

¶1 Lilly Washington ("Washington") appeals from the trial court's entry of judgment finding her guilty of forcible

detainer after a trustee's sale. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In May 2005, Washington purchased real property ("the Property") in Phoenix, Arizona. In August 2010, Federal National Mortgage Association ("FNMA") purchased the Property at a trustee's sale and obtained title through a Trustee's Deed Upon Sale ("Trustee's Deed"). In June 2011, FNMA served a written demand on Washington to vacate and surrender possession of the Property, but Washington refused to do so.

¶3 In August 2011, FNMA filed a forcible entry and detainer ("FED") complaint against Washington, attached to which was a copy of the Trustee's Deed. Washington submitted a document to the court titled "evidence" which stated that: (1) the trustee's sale was improper; (2) at the time the house was sold to FNMA, Washington was working on a loan modification with Bank of America; and (3) FNMA threw all of her belongings away while she was out of town visiting her son in the hospital. FNMA moved for judgment on the pleadings,¹ and a hearing was held in September 2011.² The trial court granted FNMA's motion and found Washington guilty of forcible detainer.

¹ The actual motion for judgment on the pleadings is not in the record, however, it is referenced in both the minute entry and judgment.

² A copy of the transcript is not in the record.

¶4 Washington timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003) and 12-2101(A)(1) (Supp. 2011).

ISSUES AND STANDARD OF REVIEW

¶5 Washington argues that because she was in the process of obtaining a loan modification, the trustee's sale was improper. Importantly, for our resolution of the appeal, Washington does not argue that the Trustee's Deed to FNMA was a forgery or did not exist. Nor did she argue in the trial court that the Trustee's Deed was not the actual deed issued as a result of the sale of the Property to FNMA.

¶6 A plaintiff in a FED action is entitled to judgment on the pleadings if the complaint sets forth a claim for relief and the answer does not contain a legally cognizable defense or does not effectively deny material allegations. *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376, 321 P.2d 1030, 1035 (1958); *Walker v. Estavillo*, 73 Ariz. 211, 215, 240 P.2d 173, 176 (1952). "We are not bound by the trial court's determination of questions of law" and review that determination *de novo*. *Barry v. Alberty*, 173 Ariz. 387, 389, 843 P.2d 1279, 1281 (App. 1992).

¶7 Thus, to defeat a plaintiff's motion for judgment on the pleadings in a FED case, a defendant must deny the truth of a material allegation in the complaint or assert a viable legal

defense on the issue of right of possession. A defendant's general denial is insufficient to avoid judgment on the pleadings when, as here, the complaint adequately alleges the facts necessary to prevail on a FED claim and attaches a copy of the trustee's deed.

DISCUSSION

¶8 A person who retains possession of real property after receiving a written demand of possession may be removed through a FED action if the owner has obtained title through a trustee's sale. A.R.S. § 12-1173.01(2) (2003). A FED action provides rightful owners with a "summary and speedy" means of attaining possession. *Andreola v. Ariz. Bank*, 26 Ariz. App. 556, 557, 550 P.2d 110, 111 (1976); see also *Colonial Tri-City Ltd. P'ship v. Ben Franklin Stores, Inc.*, 179 Ariz. 428, 433, 880 P.2d 648, 653 (App. 1993). The validity of a claim of title cannot be litigated in a FED action, and the court must refrain from exploring the merits of the title or any underlying disputes. A.R.S. § 12-1177(A) (2003); *Curtis v. Morris*, 186 Ariz. 534, 534, 925 P.2d 259, 259 (1996); *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 204, 167 P.2d 394, 397 (1946) ("It is plain from [the statutory] language that the right of actual possession is the only issue that can be raised in a [FED] action"); accord *Yale Tavern, Inc. v. Cosmopolitan Nat'l Bank*, 632 N.E.2d 80, 85 (Ill. Ct. App. 1994) ("Matters not germane to the issue

of possession may not be litigated in a [FED] action; the action should be 'unhampered and unimpeded by questions of title and other collateral matters.'" (citation omitted)).

¶19 Washington argues that the trustee's sale was improper because it was conducted while she was in the process of obtaining a loan modification. As discussed, we will not consider disputes concerning title or breach of contract in a FED action. See *supra* ¶ 8. This Court in *Curtis v. Morris* stated that such an inquest would be impermissible:

[P]ermitting an inquiry into the validity of title in a FED action would pose substantial difficulties for the parties. The short time permitted before trial would render adequate discovery in actions involving potentially complex issues such as fraudulent misrepresentations, loan transactions, or multiple transfers of title nearly impossible. Because [a] FED action does not bar subsequent proceedings between the parties to determine issues other than the immediate right to possession, those issues are better resolved in proceedings designed to allow full exploration of the issues involved.

184 Ariz. 393, 398, 909 P.2d 460, 465 (App. 1995), *aff'd*, 186 Ariz. 534, 925 P.2d 259; *cf. Hogan v. Wash. Mut. Bank, N.A.*, ___ Ariz. ___, ___, ¶ 8, 277 P.3d 781, 783 (2012) ("[T]he deed of trust statutes impose no obligation on the beneficiary to 'show the note' before the trustee conducts a non-judicial foreclosure. The only proof of authority the trustee's sales statutes require is a statement indicating the basis for the

trustee's authority."). Because Washington's argument addresses "the *validity* of [the trustee's] sale and title transfer," it is not proper for consideration in a FED action. *Curtis*, 184 Ariz. at 398, 909 P.2d at 465. Such challenges to the validity of the Trustee's Deed must be brought in an action to enjoin the foreclosure under A.R.S. § 33-811(C) (2007) or in an action to quiet title. See *Olds Bros.*, 64 Ariz. at 205, 167 P.2d at 398 ("[A] judgment in [a FED] action . . . is not a bar to a subsequent proceeding[] between the same parties in a quiet title suit for the reason that the adjudication of the title is not available in such an action.").³

¶10 We understand the stressful situation and unfortunate circumstances raised by this case, but as a matter of appeal the law is clear. Because Washington's argument was not triable in a FED action, the trial court did not err in granting judgment on the pleadings.

³ The parties have informed this Court that Washington has filed a federal action and an action in state court related to the FED and the trustee sale. Given the limited nature of an FED action, this decision in no way opines on the merits of those separate actions. Similarly, we have considered Washington's Motion to Stop and Stay Any FNMA's Actions, filed on December 11, 2012. Given the limited nature of an FNMA action, we deny that motion without offering any opinion on whether such motion should be brought in the pending federal or state actions or on the merits of such motion. Finally, we deny all other pending motions and vacate our order filed December 5, 2012, staying this appeal until further order of the court.

CONCLUSION

¶11 For the foregoing reasons, we affirm the trial court's judgment.

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
MICHAEL J. BROWN, Presiding Judge

/s/
ANDREW W. GOULD, Judge