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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: 11/01/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

THE BANK OF NEW YORK MELLON fka ) No. 1 CA-CV 11-0715  
The Bank of New York as Trustee )  
of the Certificateholders CWALT, ) DEPARTMENT E  
INC. Alternate Loan Trust 2005- )  
J14 Mortgage Pass-Through ) **MEMORANDUM DECISION**  
Certificates, Series 2005-J14, )  
) (Not for Publication -  
Plaintiff/Appellee, ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
v. )  
)  
JEANNIE T. JONES, )  
)  
Defendant/Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CV2011-014383

The Honorable Richard Nothwehr, Judge *Pro Tempore*

**AFFIRMED**

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Tiffany & Bosco PA  
By Leonard J. McDonald, Jr.  
David W. Cowles  
Attorneys for Plaintiff/Appellee

Phoenix

Jeannie T. Jones  
Appellant *in propria persona*

Scottsdale

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**J O H N S E N**, Judge

¶1 Jeannie T. Jones appeals the judgment entered in favor of The Bank of New York Mellon ("New York Mellon") in a forcible entry and detainer action. For the reasons set forth below, we affirm.

#### FACTS AND PROCEDURAL BACKGROUND

¶2 New York Mellon filed a complaint alleging Jones continued to occupy a home it had purchased in a trustee's sale. After Jones filed her answer, New York Mellon moved for judgment on the pleadings. Jones did not respond to the motion, but appeared at a hearing at which the superior court heard argument on the motion and granted it.

¶3 Jones timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (West 2012).<sup>1</sup>

#### DISCUSSION

¶4 A plaintiff 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). Because a moving party must be entitled to a judgment

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<sup>1</sup> Absent material revisions after the relevant date, we cite a statute's current version.

on the pleadings as a matter of law based solely on the content of the pleadings, we review the decision *de novo*. See *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 359, ¶ 2, 988 P.2d 143, 144 (App. 1999).

¶15 New York Mellon's verified complaint alleged it purchased the property at a trustee's sale on April 14, 2011. A copy of the trustee's deed was attached to the complaint, as were two copies of the written "notice of demand for possession." One copy of the notice recited it was mailed to the subject property directed to "Frank Jones AND/OR OCCUPANTS"; according to an accompanying affidavit, the other copy was hand-delivered to "Jane Doe."

¶16 Jones's answer asserted "insufficient service of process," and alleged that the notice attached to the complaint was insufficient because it named "Green River Capital" and "Bass Law" as the new owners of the property rather than New York Mellon. The answer also denied that the property had been sold at a trustee's sale and argued that the trustee's deed attached to the complaint was invalid because it contained a legend to the effect that it was "being recorded as an ACCOMMODATION ONLY, with no Representation as to its effect upon title." Jones also alleged that she had filed a separate action in the superior court to challenge the trustee's sale, as to which she had recorded a *lis pendens* prior to the date of the

sale. Her answer also alleged New York Mellon lacked standing because it "failed to perform duties under Deed of Trust" and that an invalid substitution of trustee had occurred.

¶7 Addressing first Jones's contention about service, the Arizona Rules of Procedure for Eviction Actions ("RPEA") allow service of process in a forcible detainer action on an individual by delivering a copy of the complaint and summons to the individual personally or leaving it with another person residing in the individual's dwelling house. RPEA 5(f); Ariz. R. Civ. P. 4.1(d). The affidavit of an authorized person serves as proof of service. See RPEA 5(f). New York Mellon offered an affidavit by an authorized person alleging that the complaint and summons were served at the property on "Jane Doe Occupant," who refused to give her name. Having complied with the requirements for service, New York Mellon properly served Jones.<sup>2</sup>

¶8 A person who retains possession of real property sold at a trustee's sale may be removed through an action for forcible detainer after receipt of written notice of demand of

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<sup>2</sup> Although the affidavit of service was not attached to the complaint, the court received the affidavit at the hearing on the motion for judgment on the pleadings, and the record does not reflect that Jones objected. Under the circumstances, we cannot conclude the court erred by considering the affidavit when ruling on the motion for judgment on the pleadings. Moreover, in a motion to dismiss that Jones filed with her answer, she made clear that her objection of insufficient service of process was that service was not effected on her late husband; she did not complain that she herself was not properly served.

possession. A.R.S. § 12-1173.01(A)(2) (West 2012). The complaint alleged Jones received New York Mellon's written notice of demand of possession. Jones's answer did not deny receiving the written notice; instead, without citing any authority, the answer questioned the legal sufficiency of the notice because the notice did not accurately identify the entity that purchased the property at the trustee's sale. Having failed to support her assertion with argument or authority for how the naming error rendered the notice insufficient, Jones has waived this argument on appeal. ARCAP 13(a)(6); *Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62, 211 P.3d 1272, 1289 (App. 2009) (because ARCAP 13(a)(6) requires appellant to provide citations to legal authorities, "failure to do so can constitute abandonment and waiver of that claim").

¶19 The superior court also properly rejected Jones's attack on the validity of the trustee's deed. The object of a forcible detainer action "is to provide a summary, speedy and adequate means for obtaining possession of premises by one entitled to actual possession." *Colonial Tri-City Ltd. P'ship v. Ben Franklin Stores, Inc.*, 179 Ariz. 428, 433, 880 P.2d 648, 653 (App. 1993). The only issue in a forcible detainer action is "the right of actual possession and the merits of title shall not be inquired into." A.R.S. § 12-1177(A) (West 2012).

¶10 New York Mellon attached to its complaint a notarized trustee's deed upon sale for the subject property. Further inquiry into the validity of the sale, compliance with the trust instrument or the pendency of another action to settle title was not necessary or appropriate. Moreover, the legend on the trustee's deed upon sale, likely affixed by the Maricopa County Recorder along with other legends evidencing proof of recording, in no way undermines the otherwise undisputed authenticity of the trustee's deed.

¶11 To have standing to bring an action, "a plaintiff must allege a distinct and palpable injury." *Sears v. Hull*, 192 Ariz. 65, 69, ¶ 16, 961 P.2d 1013, 1017 (1998). The complaint alleged New York Mellon purchased the property at a trustee's sale and Jones retained possession of the subject property after notice. New York Mellon therefore alleged sufficient injury to have standing.

¶12 For all these reasons, the superior court did not err in granting judgment on the pleadings in favor of New York Mellon. *See Walker v. Estavillo*, 73 Ariz. 211, 215, 240 P.2d 173, 176 (1952) (proper for superior court to grant plaintiff's motion for judgment on the pleadings where complaint sets forth a claim for relief and answer fails to show any defense thereto).

**CONCLUSION**

¶13 We affirm the judgment. Upon compliance with Arizona Rule of Civil Appellate Procedure 21, New York Mellon will be awarded its costs of appeal.

/s/  
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DIANE M. JOHNSEN, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
PATRICIA K. NORRIS, Presiding Judge

/s/  
\_\_\_\_\_  
JON W. THOMPSON, Judge