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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

FEDERAL NATIONAL MORTGAGE ASSOCIATION, its successors
and/or assigns, *Plaintiff/Appellee* ,

v.

KATHRINA H. TOBIAS, *Defendant/Appellant*.

No. 1 CA-CV 12-0845

FILED 12-5-2013

Appeal from the Superior Court in Maricopa County
CV2012-001773
The Honorable Michael L. Barth, Commissioner

AFFIRMED

COUNSEL

Pite Duncan, Phoenix
By Eric L. Cook

Counsel for Plaintiff/Appellee

Kathrina H. Tobias, Scottsdale

Defendant/Appellant in Propria Persona

FNMA v. TOBIAS
Decision of the Court

MEMORANDUM DECISION

Judge John C. Gemmill delivered the decision of the Court, in which Presiding Judge Maurice Portley and Judge Kent E. Cattani joined.

G E M M I L L, Judge:

¶1 Kathrina Tobias appeals from a Maricopa County Superior Court judgment finding her guilty in a forcible entry and detainer (“FED”) action. We affirm the judgment.

BACKGROUND

¶2 GMAC Mortgage, LLC (“GMAC”) purchased Tobias’s Scottsdale property in a June 2012 trustee’s sale. GMAC then sold the property to appellee Federal National Mortgage Association (“Fannie Mae”). Fannie Mae made a written demand dated July 18, 2012 for Tobias to deliver possession of the property, and the demand was sent to Tobias via first class mail on July 23, 2012.

¶3 Fannie Mae filed the FED action at issue in September, 2012. Tobias moved to dismiss the complaint. Fannie Mae responded and also moved for judgment on the pleadings. The trial court granted Fannie Mae’s motion for judgment on the pleadings in November 2012 and entered final judgment. Tobias timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(1) and 12-2101(A)(1).¹

ISSUES AND STANDARD OF REVIEW

¶4 Tobias argues that the trial court erred by granting judgment on the pleadings because she asserts that ownership of the property’s rightful title remains at issue. She also argues that the trial court violated several of her federal constitutional rights as well as the Arizona Rules of Evidence.

¹ We cite the current version of applicable statutes when no revisions material to this decision have occurred since the events in question.

FNMA v. TOBIAS
Decision of the Court

¶5 A FED action is a statutory proceeding meant to give the rightful owners of real property a “summary, speedy, and adequate remedy” for obtaining actual possession. *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 203-04, 167 P.2d 394, 397 (1946); *Andreola v. Arizona Bank*, 26 Ariz. App. 556, 557, 550 P.2d 110, 111 (App. 1976). Judgment on the pleadings for plaintiffs is proper when the complaint states a claim for relief and the answer does not raise a legally cognizable defense or effectively deny material allegations. *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376, 321 P.2d 1030, 1035 (1958). In reviewing a judgment on the pleadings, conclusions of law are not admitted and our review is de novo. *Young v. Bishop*, 88 Ariz. 140, 143, 353 P.2d 1017, 1019 (1960); *Mobile Community Council for Progress, Inc. v. Brock*, 211 Ariz. 196, 198, ¶ 5, 119 P.3d 463, 465 (App. 2005).

ANALYSIS

¶6 A FED action is proper when a tenant at sufferance refuses to surrender possession after receiving written notice. A.R.S. § 12-1173.01(A)(2); *Andreola*, 26 Ariz. App. At 558, 550 P.2d at 112 (FED actions are appropriate against parties who “wrongfully hold[] over after termination of his interest under a deed of trust”). A person or entity that purchases property at a trustee’s sale can bring a FED action when the former owner refuses to relinquish possession. A.R.S. § 12-1173.01(A)(2). Examining the merits of title ownership is beyond the scope of a FED action, and the court must refrain from examining such questions in a FED action. A.R.S. § 12-1177(A); *Curtis v. Morris*, 186 Ariz. 534, 925 P.2d 259 (1996).

¶7 Tobias disputes the merits of Fannie Mae’s title, claiming Fannie Mae obtained title by fraud.² Because issues concerning the merits of title fall outside the scope of a FED action, we do not consider such

² In June, 2011, Fannie Mae brought a FED action after it purchased Tobias’s property at a trustee sale and recorded a trustee’s deed. That action was dismissed at Fannie Mae’s request a few days after filing. Approximately two months later, the trustee’s deed recorded by Fannie Mae was rescinded for failure to give Tobias proper notice of the foreclosure sale. Tobias further asserts that Fannie Mae’s withdrawn FED action from June 2011 precludes the subsequent FED action, but the trustee’s deed obtained by Fannie Mae in June 2011 (and later rescinded) has no bearing on this appeal.

FNMA v. TOBIAS
Decision of the Court

arguments in this appeal. *Id.* We note, however, that a trustee's deed is conclusive evidence that a trustee's sale met all statutory requirements. A.R.S. § 33-811(B). Despite Tobias's claims of fraud, nothing in the record suggests Fannie Mae obtained their trustee's deed fraudulently.

¶8 Tobias also claims the trial court violated the Arizona Rules of Evidence by neither allowing the action to proceed to a jury nor taking testimony. We conclude otherwise. When resolving a motion for judgment on the pleadings, the trial court must examine the pleadings to determine if judgment is appropriate, and if no dispute is raised, the trial court can enter judgment without submitting the case to a jury or taking sworn witness testimony. *See Food for Health Co. Inc. v. 3839 Joint Venture*, 129 Ariz. 103, 106, 628 P.2d 986, 989 (App. 1981) (judgment on the pleadings "constitutes the required 'actual litigation'" necessary to resolve the matter).

¶9 Finally, Tobias asserts that Fannie Mae's actions violated several of her federal constitutional rights. These claims require action by a state or federal government actor, and several cases have held that Fannie Mae and similar entities are not government actors for purpose of such constitutional claims. *See e.g. Herron v. Fannie Mae*, 857 F.Supp.2d 87 (D.D.C. 2012); *American Bankers Mortgage Corp. v. Federal Home Loan Mortgage Corp.*, 75 F.3d 1401, 1405 (9th Cir. 1996); *In re Kapla*, 485 B.R. 136, 145-53 (Bankr. E.D. Mich. 2012).

CONCLUSION

¶10 Tobias has not raised a legally cognizable defense to the FED action, and judgment on the pleadings for Fannie Mae was proper. Accordingly, we affirm the superior court's judgment.



Ruth A. Willingham · Clerk of the Court
FILED : mjt