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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 04-13-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOYCE LUCIANO, a single woman) 1 CA-CV 08-0566
) 1 CA-CV 08-0678
Plaintiff/Appellant,) (Consolidated)
)
v.) DEPARTMENT D
)
WMC MORTGAGE CORP., a California) **MEMORANDUM DECISION**
corporation aka GE FINANCE; SELECT)
PORTFOLIO, a Utah corporation aka) (Not for Publication -
CREDIT SUISSE a Massachusetts) Rule 28, Arizona Rules of
corporation; JP MORGAN CHASE;) Civil Appellate Procedure)
QUALITY LOAN SERVICE CORPORATION,)
a California corporation; TNT)
PROPERTIES, L.L.C., an Arizona)
corporation,)
)
Defendants/Appellees,)
)
)
)
JOYCE LUCIANO, a single woman)
)
Plaintiff/Appellant,)
)
v.)
)
)
WMC MORTGAGE CORP., a California)
corporation aka GE FINANCE; SELECT)
PORTFOLIO, a Utah corporation aka)
CREDIT SUISSE a Massachusetts)
corporation; JP MORGAN CHASE;)
QUALITY LOAN SERVICE CORPORATION,)
a California corporation,)
)
)
Defendants/Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2005-051219

The Honorable Robert C. Houser, Judge

AFFIRMED

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In Propria Persona

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G E M M I L L, Judge

¶1 This appeal arises out of the award of summary judgment to WMC Mortgage Corporation ("WMC"), Select Portfolio Servicing, Inc. ("SPS"), JP Morgan Chase ("JPMC") collectively, and Quality Loan Service Corporation ("Quality") and TNT Properties, L.L.C. ("TNT") individually. The actions filed by Joyce Luciano ("Luciano") were essentially brought to enjoin and invalidate the trustee sale of Luciano's residential property, which occurred prior to the filing of the suit. For the

following reasons, we affirm the summary judgments in favor of all appellees.

FACTS AND PROCEDURAL HISTORY

¶2 In 1998 Luciano executed a note secured by a deed of trust on her principle residence with WMC. Over the course of the next few years Luciano failed to make payments on the note for three-month periods on several different occasions. WMC initiated procedures for a trustee's sale several times but Luciano cured the defaults, thus avoiding sale each time. On April 4, 2000, Luciano filed a complaint against WMC in the superior court seeking rescission of the note on the basis of numerous claims of fraud, misrepresentation and violation of federal truth in lending and home equity protection acts. After filing the suit, Luciano made no further payments on the note and WMC again initiated trustee's sale proceedings in June 2000.¹

¶3 In order to avoid the trustee's sale set for September 27, 2000, Luciano file a bankruptcy petition in the U.S. Bankruptcy Court for the District of Arizona on the day before the scheduled sale. Thereafter, on October 6, 2000, WMC removed the suit in the superior court to the bankruptcy court where it was reconvened as an adversary case. In the bankruptcy court Luciano sought to modify WMC's rights as a secured creditor

¹ In July 2000, SPS undertook to service the note on behalf of WMC pursuant to a private-label servicing agreement thus gaining an interest in the dispute.

under the note and deed of trust and eventually proposed that the dispute be resolved through an adversary proceeding to which WMC agreed. Thereafter, the bankruptcy court granted summary judgment to WMC on all counts in Luciano's adversary complaint and held that Luciano was not entitled to rescission. Luciano appealed the summary judgment to the District Court for the District of Arizona and then to the Ninth Circuit Court of Appeals, both of which affirmed the summary judgment in WMC's favor.

¶14 Subsequent to the entry of the summary judgment in WMC's favor, the bankruptcy court granted a motion for relief from stay in WMC's favor. The court's order specifically provided that WMC had a valid and enforceable security interest in the property that was not adequately protected, that Luciano was in default under the note secured by the property, and that Luciano had filed her bankruptcy petition in bad faith. Luciano's appeals of that decision were dismissed as moot due to the trustee's sale having already occurred.²

¶15 On February 28, 2005, Quality, on behalf of JPMC, noticed a fifth trustee's sale on the Property, set for May 31, 2005. On May 6, 2005, Luciano filed a complaint against JPMC

² It is at this point that Quality and JPMC gained interests in the dispute, due to the naming of Quality as trustee under the deed of trust and JPMC taking an assignment of the beneficial interest under the deed of trust.

seeking to enjoin JPMC from commencing the trustee's sale. On May 11, 2005, the superior court issued a temporary restraining order enjoining JPMC from commencing the trustee's sale. However, after a hearing on May 23, 2005, the court denied Luciano's request for a preliminary injunction, vacated the temporary restraining order, and thereafter Luciano did not prosecute the suit any further. Instead, Luciano filed a complaint for temporary restraining order in a California superior court, seeking to enjoin the trustee's sale. The temporary restraining order was eventually denied and the case dismissed as to Luciano.

¶6 On May 27, 2005, Appellant filed a second bankruptcy petition, despite the fact that her first bankruptcy remained pending. As a result of the filing, Quality continued the trustee's sale to June 2, 2005, on JPMC's behalf to allow JPMC time to obtain relief from the automatic stay. JPMC filed a motion for emergency relief from the automatic stay in the bankruptcy court and the court set a hearing on the motion for relief for June 9, 2005. On that basis Quality continued the trustee's sale to June 9, 2005, after the hearing. At the conclusion of the hearing, the court granted JPMC's motion for relief from the automatic stay, but allowed Luciano a period of ten days in which to sell her home. Quality continued the trustee's sale again to June 21, 2005, to coincide with the

expiration of the ten-day period. When Luciano failed to produce a buyer or signed contract for the sale of the property within 10 days, the bankruptcy court ordered that the trustee's sale should proceed on June 21, 2005.

¶17 On June 19, 2005, Luciano filed a complaint and request for temporary restraining order against SPS in U.S. District Court for the District of Arizona. After a hearing on June 21, 2005, the court denied the request for temporary restraining order and Quality proceeded with the sale through its authorized agent. Active Finance Group ("Active") purchased the property at the sale and SPS subsequently received all of the proceeds since the final sale price was less than the payoff on the note and deed of trust.

¶18 On June 22, 2005, Luciano filed another complaint and request for temporary restraining order, this time against JPMC seeking to invalidate the trustee's sale as illegal and improper. The superior court denied Luciano's request for temporary restraining order later that same day and Luciano did not pursue the case any further.

¶19 On June 28, 2005, Luciano filed yet another complaint seeking injunctive relief and a temporary restraining order against JPMC and others in the present action. She again alleged that the trustee's sale was illegal and improper and the Court again denied Luciano's request for temporary restraining

order. When Luciano filed a third bankruptcy petition, this action was removed to bankruptcy court and was reconvened as an adversary case. While in bankruptcy court, appellees WMC, SPS, and JPMC filed their answer to the June 28, 2005 complaint. The case was subsequently remanded to the superior court when the third bankruptcy case was dismissed with prejudice.

¶10 On December 23, 2005, Luciano filed applications and affidavits for default against WMC and SPS despite neither being named as defendants in the complaint. WMC and SPS each responded with a motion to dismiss which the court granted after hearing. The court also vacated any default that was "purported to be entered" against WMC and SPS. The court subsequently granted Luciano's motion to amend the complaint to, among other things, add WMC and SPS as defendant. WMC and SPS each filed an answer to Luciano's amended complaint.

¶11 WMC, SPS, and JPMC filed a joint motion for summary judgment and Luciano filed a motion to strike on the basis that the appellees had not filed their disclosure statement as required by Rule 26.1 of the Arizona Rules of Civil Procedure.³ In response, the appellees served their Rule 26.1 disclosure statement on Luciano and agreed to allow her additional time to respond to the joint motion for summary judgment if necessary.

³ All subsequent references to Rules will be to the Arizona Rules of Civil Procedure, unless otherwise noted.

Luciano filed her opposition and a cross motion for summary judgment, plus motions to summarily grant the cross motion and to strike the summary judgment motions. The court subsequently granted the appellees' motions and denied Luciano's.

¶12 Finally, Luciano filed a motion to reconsider which the trial court also denied. Luciano filed a notice of appeal from the order granting summary judgment in favor of Appellees. Luciano also filed a motion for summary judgment against Quality, and Quality responded with a cross-motion for summary judgment. The superior court again denied Luciano's motion for summary judgment and granted Quality's cross-motion. In the meantime, this court dismissed Luciano's appeal as premature because it was so intertwined with the claims against Quality, which were still pending determination on Quality's motion for summary judgment. Luciano filed motions for new trial against WMC, SPS, JPMC, and Quality. The trial court denied these motions. While those motions were pending, Luciano filed the notice of appeal for the present appeal.

¶13 We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

ANALYSIS

¶14 Luciano presents us with a variety of issues on appeal which we summarize as follows:

1. Did the trial court err when it granted

WMC's and SPS's motions to dismiss and vacated any default judgments against them?

2. Did the trial court err in determining that appellees had a valid lien on the property?

3. Did the trial court err in upholding the trustee's sale?

4. Did the trial court abuse its discretion by denying the motions for new trial?

5. Did the trial court abuse its discretion by not imposing sanctions for alleged disclosure violations?

6. Was the court correct in granting TNT's motion for summary judgment based on the record?

WMC and SPS's Motions to Dismiss

¶15 The first issue presented by Luciano questions the propriety of the superior court's granting WMC's and SPS's motions to dismiss and vacating any purported default judgments against them.⁴ We review the superior court's granting of a motion to dismiss for abuse of discretion. See *Franzi v. Superior Court*, 139 Ariz. 556, 561, 679 P.2d 1043, 1048 (1984).

¶16 Regarding motions to dismiss, Luciano misunderstands the application of Rule 12(b) with respect to how the trial court must consider such motions. In considering a motion to

⁴ While Luciano also refers to JPMC, we find no motion to dismiss filed by JPMC in the record or a grant thereof by the superior court and thus we assume this is simply a typographical error by Luciano.

dismiss, the trial court must presume the facts alleged in the complaint are true. *Jeter v. Mayo Clinic Arizona*, 211 Ariz. 386, 389, ¶ 4, 121 P.3d 1256, 1259 (App. 2005). However, courts do not accept as true "allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Id.* It is just such legal conclusions and inferences that Luciano argues the superior court must have accepted as true, thus making any grant of the motions to dismiss improper. On this point Luciano is mistaken.

¶17 As WMC and SPS point out, the original complaint for injunctive relief, upon which this appeal is based, did not name them as defendants. Thus when Luciano filed her applications for default judgment against them, they permissibly moved to be dismissed from the law suit under Rule 12(b)(6) as non-parties against whom Luciano failed to state a claim upon which relief might be granted.⁵ WMC and SPS are further correct that the superior court's grant of their motions to dismiss and vacation of any default judgment purported to be entered against WMC and

⁵ WMC and SPS also cited as a basis for dismissal Rule 12(b)(4), asserting a lack of proper service, which is self-evident from the failure to name them as parties in the complaint. They are further correct in their assertion that they timely responded to the applications for default judgment when they filed their respective motions to dismiss.

SPS was proper with respect to the first complaint filed by Luciano and that they became proper parties to the complaint only after Luciano filed her first amended complaint which named them as parties.

¶18 Thus we find that the superior court did not abuse its discretion when it granted the motions to dismiss WMC and SPS from the originally-filed suit and vacated any purported default judgments issued prior to WMC and SPS being properly identified and named as parties.

Lien on the Subject Property

¶19 Several of Luciano's identified issues on appeal (i.e., 5, 6, 7, 9 and 11) involve different aspects of the same challenge by Luciano to the validity of the lien on the subject property.⁶ JPMC, WMC, and SPS assert that validity of the note was previously adjudicated in the adversary case and stay proceedings in the bankruptcy court and thus, under the doctrines of res judicata and collateral estoppel, was a proper basis upon which to grant summary judgment in their favor. We agree.

¶20 As part of her original bankruptcy, Luciano had sought

⁶ Because the issue is raised in regard to the propriety of the granting of the appellees' motions for summary judgment, we review de novo whether the superior court correctly applied the law. *Tenet Healthsystem TGH, Inc. v. Silver*, 203 Ariz. 217, 219, ¶ 5, 52 P.3d 786, 788 (App. 2002).

rescission of the note and deed of trust on the basis that they were invalid as a result of alleged violations of the federal Truth in Lending Act, the Home Ownership and Equity Protection Act, and other federal laws.⁷ In response, WMC moved for summary judgment on the issue of rescission of the note and deed of trust. The court ruled in WMC's favor finding that Luciano was not entitled to rescission, and the federal district court and Ninth Circuit Court of Appeals both affirmed the ruling. The effect of the bankruptcy court's order is in fact res judicata in regard to WMC and its privies, and collateral estoppel in regard to the issues litigated.

¶21 We believe that Luciano's stated appeal issues are based on a misunderstanding of the doctrines of res judicata and collateral estoppel. These doctrines are expressed as follows.

Under the doctrine of res judicata an existing final judgment rendered upon the merits without fraud or collusion by a court of competent jurisdiction is conclusive as to every point decided and as to every point which could have been raised by the record, and decided with respect to the parties thereto. The doctrine of res judicata binds the same parties standing in the same capacity in the subsequent litigation on the same cause of action, not only upon the facts actually litigated, but also upon those points which might have been (even

⁷ In addition to alleging a lack of compliance with these statutes, Luciano specifically alleged fraud, misrepresentation, breach of contract, failure to pay off previous lien holders and other acts by WMC, JPMC, or SPS, all of which occurred prior to Luciano's filing for bankruptcy.

though not expressly) litigated. Generally, there must be mutuality, not only of the parties, but of the issues to invoke the doctrine of res judicata.

Di Orio v. City of Scottsdale, 2 Ariz. App. 329, 330, 408 P.2d 849, 850 (1965) (citations omitted). Under the doctrine of collateral estoppel,

[i]f a point or question was in issue and adjudicated in a former suit, a party bound by the judgment cannot escape the estoppel by producing at a second trial new arguments or additional or different evidence in support of the proposition which was decided adversely to him. Collateral estoppel will apply as to all issues which were in an earlier case even though some factual matters and legal arguments which could have been presented were not.

Barassi v. Matison, 134 Ariz. 338, 340-41, 656 P.2d 627, 629-30 (App. 1982) (citations omitted).

¶22 In this case, it is apparent that a final judgment was rendered in the bankruptcy court. The issue of the validity of the note was clearly raised by Luciano and disputed by WMC on the same bases as Luciano urged in the superior court below. These issues were decided, appealed,, and affirmed in the bankruptcy and federal district and appellate courts. The bar to re-litigating the validity of the note includes not only those theories presented by Luciano in the bankruptcy court but also those theories which she might have asserted in that action. See *id.* The res judicata bar applies to Luciano's

claims against WMC on this issue as well as any parties who are WMC's privies.

¶123 "Finding privity between a party and a non-party requires both a substantial identity of interests and a working or functional relationship in which the interests of the non-party are presented and protected by the party in the litigation." *Hall v. Lalli*, 194 Ariz. 54, 57, ¶ 8, 977 P.2d 776, 779 (1999) (quoting *Phinisee v. Rogers*, 582 N.W.2d 852, 854 (Mich. Ct. App. 1998)). As WMC points out, JPMC is the assignee of the beneficial interest under the note and deed of trust and thus stands in WMC's shoes. SPS is the contractual servicer of the note acting as WMC's authorized agent in those matters.⁸ These relationships are sufficient to show that JPMC's and SPS's interests were presented and protected by WMC in the litigation of the validity of the note in the bankruptcy court. Thus, the res judicata and collateral estoppel bars apply in this case and the superior court was correct in granting summary judgment in WMC's, JPMC's, and SPS's favor on the issue of the validity of the note on those bases.

Validity of the Trustee's Sale

¶124 Luciano asserts that the trustee's sale of the property was improper for lack of required notice and thus must

⁸ Luciano does not dispute the relationship between WMC, JPMC, and SPS.

be set aside. This issue involves the application of A.R.S. § 33-811 (2007), and is thus an issue of statutory interpretation that we review de novo. See *Tenet Healthsystem*, 203 Ariz. at 219, ¶ 5, 52 P.3d at 788. On the basis of A.R.S. § 33-811(C) (2007), WMC, JPMC, SPS, and Quality counter that Luciano waived any objection to the sale. Such an objection to the sale was waived by Luciano. Furthermore, it is also apparent from the record that proper notice of the trustee's sale was given.

¶25 A.R.S. § 33-811(C) states in pertinent part the following:

The trustor, its successors or assigns, and all persons to whom the trustee mails a notice of a sale under a trust deed pursuant to § 33-809 shall waive all defenses and objections to the sale not raised in an action that results in the issuance of a court order granting relief pursuant to rule 65, Arizona rules of civil procedure, entered before 5:00 p. m. Mountain standard time on the last business day before the scheduled date of the sale.

No published opinions have been issued by the Arizona state courts regarding the application of the relatively new A.R.S. § 33-811(C). We resolve questions of statutory construction de novo. See *Open Primary Elections Now v. Bayless*, 193 Ariz. 43, 46, ¶ 9, 969 P.2d 649, 652 (1998). We strive to give effect to the plain meaning of statutes and to each word of the statute as appropriate. See *Bilke v. State*, 206 Ariz. 462, 464-465, ¶ 11, 80 P.3d 269, 271-72 (2003).

¶126 In regard to the current action on appeal, it is undisputed that Luciano did not seek, much less obtain, a preliminary injunction pursuant to Rule 65 on the basis of improper notice of the trustee sale before the June 21, 2005 trustee sale of the subject property. Only after the sale did she seek such relief. Thus, by the statute's plain language, she waived any defense or objection to the sale. While a trustee's failure to comply with the provisions of A.R.S. § 33-811(C) is a defense or ground for objection to the sale, under A.R.S. § 33-811(C), the objecting party must seek an injunction pursuant to Rule 65 before the sale is held. To permit a trustor to void a sale based on a claim that those provisions were violated after the trustor failed to seek and obtain a preliminary injunction would render A.R.S. § 33-811(C) a practical nullity. See *Mejak v. Granville*, 212 Ariz. 555, 557, ¶ 9, 136 P.3d 874, 876 (2006) ("We must interpret the statute so that no provision is rendered meaningless, insignificant, or void.").

¶127 Furthermore, while Luciano asserts that A.R.S. § 33-811(C) does not apply because she did not receive notice of the sale, we observe that A.R.S. § 33-811(C) does not require that the trustor have had actual notice of the sale for its waiver provision to apply. Moreover, it is plain from the record, even when viewed in the light most favorable to Luciano, and from

Luciano's various attempts to enjoin or invalidate the trustee's sale, that she had actual notice of the sale for one or all of the times it was scheduled.

¶28 On these bases, summary judgment for JPMC, WMC, SPS, and Quality on the issue of the validity of the trustee's sale was proper.

Luciano's Motion for New Trial

¶29 We will not disturb a trial court's ruling on a motion for new trial absent an abuse of discretion. *Jimenez v. Wal-Mart Stores, Inc.*, 206 Ariz. 424, 426, ¶ 5, 79 P.3d 673, 675 (App. 2003). In regard to Luciano's motion for new trial against JPMC, WMC, and SPS, it is clear that this motion was untimely. Specifically, the superior court ruled on JPMC's, WMC's, and SPS's motions for summary judgment on September 7, 2007, and filed its order granting summary judgment on January 8, 2008. The court's order contains the clear language of finality required by Rule 54(b) necessary to terminate the action against some, but not all, of the defendants. Pursuant to Rule 59(d), a motion for new trial must be filed within 15 days of the entry of judgment. However, Luciano did not file her motion until May 7, 2008. The motion was not accompanied by any request to enlarge the time for its filing and we see no basis for such an extension in the record. Thus, in regard to appellees JPMC, WMC, and SPS, we need consider this issue no

further since we find that Luciano's motion for new trial was properly denied as untimely.

¶130 While Luciano's motion for new trial in regard to Quality was timely, the superior court did not abuse its discretion when it denied that motion either. The trial court's granting of a motion for new trial based upon newly discovered evidence is appropriate only if it appears that "(1) the newly discovered evidence could not have been discovered before the granting of judgment despite the exercise of due diligence, (2) the evidence would probably change the result of the litigation, and (3) the newly discovered evidence was in existence at the time of the judgment." *Boatman v. Samaritan Health Servs., Inc.*, 168 Ariz. 207, 212, 812 P.2d 1025, 1030 (App. 1990). A review of Luciano's motion for new trial against Quality makes clear that the "newly discovered evidence" that Luciano argues as the basis for her motion is neither new or, in many cases, even evidence, but is instead argument, legal conclusion, and observation of possible mistakes Luciano made in her previous responses to motions filed by Quality. As such, the "newly discovered evidence" clearly could have been discovered before the granting of judgment and would not have changed the result of the litigation. Furthermore, much of what Luciano presented was merely argument, not newly discovered evidence. On these bases, the superior court's denial of Luciano's motion for new

trial against Quality was also proper.

Denial of Luciano's Requests for Sanctions

¶31 We review a ruling denying a sanction for violation of Rule 26.1 for an abuse of discretion. *Jimenez*, 206 Ariz. at 426, ¶ 5, 79 P.3d at 675. On separate occasions, Luciano asked the superior court to strike JPMC's, WMC's, and SPS's joint motion for summary judgment and Quality's cross-motion for summary judgment on the basis that the various appellees had not properly complied with the disclosure requirements of Rule 26.1. However, as the appellees point out, the initial delay in the production of disclosures was the result of the case being almost immediately removed from the superior court to the bankruptcy court where it remained for nearly three months (i.e., past the Rule 26.1 disclosure deadlines). When JPMC, WMC, and SPS did provide their disclosures on May 25, 2007 (over three months prior to the hearing thereon), Luciano had yet to provide her disclosures and the appellees agreed to allow Luciano additional time to review the disclosures and respond to the joint motion for summary judgment. Furthermore, Quality argues, and Luciano does not dispute, that when Quality provided its disclosures only two days before the hearing on Luciano's motion for summary judgment and Quality's cross-motion, all of the documents pertinent to the summary judgment motions was already in Luciano's possession, having been utilized by the

other defendant's previously.

¶32 Rule 37(c) addresses untimely disclosure of information required by Rule 26.1. The section was intended to codify the holding of *Allstate Ins. Co. v. O'Toole*, 182 Ariz. 284, 896 P.2d 254 (1995). See Rule 37(c), Ariz. R. Civ. P., committee notes. Under *Allstate* and the amended rule, untimely disclosures require the exclusion of the disclosed information from evidence unless there is good cause for granting relief from the exclusion. Rule 37(c), Ariz. R. Civ. P.; *Allstate*, 182 Ariz. at 287-88, 896 P.2d at 258-59. A showing that the untimely disclosure is harmless constitutes grounds for granting relief from exclusion because "harmless" has been interpreted to mean that the other party has "a full and fair opportunity to investigate and rebut the new evidence." Rule 37(c), Ariz. R. Civ. P., committee notes. In this case, it is clear that JPMC, WMC, and SPS and the court allowed Luciano sufficient time after JPMC's, WMC's, and SPS's disclosures to investigate and rebut the information provided. While Quality's disclosures may have been more clearly untimely, the lack of timeliness by Quality appears harmless because the other defendants essentially relied on the same information in the first place. In addition, in either circumstance, if Luciano felt that she did not have sufficient time to prepare to address the joint motion for summary judgment or the counter-motion for summary judgment

against her, then it was incumbent upon her to file a motion under Rule 56(f) to request that the court grant "a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or . . . such other order as is just." We see no indication in the record that Luciano made such a request.

¶133 Because we see no evidence in the record that Luciano was harmed by the timing of JPMC's, WMC's, SPS's, or Quality's disclosures and because Luciano failed to request additional time for discovery pursuant to Rule 56(f), we conclude that the superior court did not abuse its discretion when it denied Luciano's motion to strike the joint motion or cross motion for summary judgment as a sanction for late disclosure.

Granting of TNT's Motion for Summary Judgment

¶134 As TNT points out, all of Luciano's claims for return of the property pre-existed the date of the trustee's sale. As such, under A.R.S. § 33-811, Luciano had no valid claim against TNT or basis for the lis pendens on the property. A.R.S. § 33-811(E) states as follows:

The trustee's deed shall operate to convey to the purchaser the title, interest and claim of the trustee, the trustor, the beneficiary, their respective successors in interest and all persons claiming the trust property sold by or through them, including all interest or claim in the trust property acquired subsequent to the recording of the deed of trust and prior to delivery of the

trustee's deed. That conveyance shall be absolute without right of redemption and clear of all liens, claims or interests that have a priority subordinate to the deed of trust and shall be subject to all liens, claims or interests that have a priority senior to the deed of trust.

In addition we agree with the holdings from a case in the bankruptcy court where the court found that,

Pursuant to A.R.S. § 33-811(B) a Trustee's Deed creates a "presumption of compliance" and "conclusive evidence" that the sale was conducted regularly in accordance with the required statutory notice provisions. Thus, a purchaser who purchases for value without actual notice of any alleged defect in the notice of the sale is held to hold good title by means of the Trustee's Deed issued in its favor. Accordingly, the sale as to a *bona fide*, third-party purchaser is valid. . . . [T]he Plaintiff's sole remedy, if he is able to prove that there were any irregularities with the sale, is to proceed against the secured creditor or the trustee under the secured creditor's deed of trust who allowed the agent to conduct the sale.

In re Hills, 299 B.R. 581, 585-86 (Bankr. D. Ariz. 2002) (citations omitted). Luciano presents no persuasive arguments in her briefs to refute the impact of A.R.S. § 33-811(B) and (E) in this case. Thus, we find that summary judgment in TNT's favor was proper.

CONCLUSION

¶135 For these reasons, we affirm the judgment of the superior court dismissing the actions against all of the appellees. Quality, JPMC, WMC, and SPS have requested an award

of attorneys' fees on appeal pursuant to A.R.S. § 12-341.01 (2003). In our discretion, we will award these parties an amount of reasonable attorneys' fees and costs upon their compliance with Arizona Rule of Civil Appellate Procedure 21(c).

_____/s/_____
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Judge

_____/s/_____
PATRICK IRVINE, Judge