IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 05-25-2010
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BY: GH

KEITH LESLIE DRUNASKY, Plaintiff-Appellant, v. COUNTRYWIDE HOME LOANS, INC.; and BANK OF AMERICA, N.A., Defendants-Appellees.	1 CA-CV 09-0347 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-070234

The Honorable Harriet E. Chavez, Judge

APPEAL DISMISSED

Keith Leslie Drunasky — Litchfield Park
Plaintiff-Appellant *In Propria Persona*

Bryan Cave LLP — Phoenix
By Robert W. Shely
Rodney W. Ott
Attorneys for Defendants-Appellees

P O R T L E Y, Judge

¶1 Keith Leslie Drunasky appeals from an order dismissing certain claims against Countrywide Home Loans, Inc., Bank of

America, N.A., and ReconTrust Company (collectively "the institutional defendants"). For the reasons that follow, we dismiss the appeal.

FACTS AND PROCEDURAL BACKGROUND

¶2 This action arises out of Drunasky's alleged purchase of residential property (the "property") from Jared and Cristina Taylor (the "Taylors") based on a written purchase contract dated April 28, 2007. The purchase contract, however, was not recorded.

¶3 The property was subject to two deeds of trust at the time of the written contract – the first held by Countrywide securing a $112,100 loan, and the second held by Bank of America securing a loan with a credit limit of $50,000. According to the contract, Drunasky was required to make monthly payments to the Taylors in the amount of $1336.92, and to ultimately pay off the Countrywide and Bank of America loans before May 1, 2008.

¶4 A fire occurred on the property in April 2008, and insurance settlement proceeds were allegedly paid to the Taylors. Drunasky then sued the Taylors for breach of contract and fraud, and recorded a notice of lis pendens against the property on June 12, 2008. He claimed that the Taylors made misrepresentations regarding the mortgages, fraudulently rewrote the Bank of America credit line after signing the purchase contract, failed to record the sale as required by Arizona

Revised Statutes ("A.R.S.") section 33-411.01 (2007), and misrepresented themselves as the property owners to obtain the insurance settlement proceeds. The Taylors answered on August 22, 2008, and asserted a breach of contract counterclaim against Drunasky for his alleged failures to make timely payments and pay rental taxes.

¶5 Three months later, Drunasky received a notice of trustee's sale, which stated that the property was scheduled to be sold on January 12, 2009.[1] Prior to the scheduled sale, Drunasky amended his complaint to join the institutional defendants, and sought, among other forms of relief, to permanently enjoin the trustee's sale.

¶6 The institutional defendants moved to dismiss any claims asserted against them with prejudice. They argued that Drunasky lacked standing to challenge the trustee's sale or the insurance settlement payment.

¶7 After argument, the trial court granted the motion and found that Drunasky "ha[d] no standing under contract or otherwise to challenge the Trustee[']s sale o[r] the application of insurance proceeds." The court's signed dismissal order stated, "Pursuant to Defendants' Motion to Dismiss[,] . . . this

[1] The notice listed ReconTrust as trustee.

action is dismissed, with prejudice, each side to bear its own fees and costs." This appeal followed.

DISCUSSION

¶8 The institutional defendants contend that this court lacks jurisdiction to review Drunasky's appeal because the dismissal order failed to dispose of all claims and all parties and contains no certification under Arizona Rule of Civil Procedure Rule 54(b). Drunasky does not dispute that the trial court only dismissed the claims against the institutional defendants, but argues that the dismissal was made appealable under Rule 54(b). We have a duty to review jurisdiction and, if found lacking, to dismiss the appeal. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997); *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991).

¶9 The right to appeal, absent constitutional authority, is statutory, and if no statute makes a judgment or order appealable, this court "[does] not have jurisdiction to consider the merits of the question raised on appeal." *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981); *see generally* A.R.S. § 12-2101 (2003). Pursuant to § 12-2101(B), we have jurisdiction to review final judgments. However, when a judgment does not dispose of all claims and all parties, the judgment is not final and appealable under § 12-2101(B) absent

express language of finality. *Pulaski v. Perkins*, 127 Ariz. 216, 217, 619 P.2d 488, 489 (App. 1980). Rule 54(b) permits a trial court to direct the entry of final judgment as to fewer than all claims or parties upon an express determination that there is no just reason for delay and express direction for the entry of judgment.

¶10 The institutional defendants argue that the dismissal order was entered in response to their motion to dismiss only the claims asserted against them. The Taylors contend that because the dismissal order did not apply to the claims made against them, and because language of finality was not included, the order is not appealable under § 12-2101(B). We agree.

¶11 Here, the dismissal order disposed of only the claims asserted against the institutional defendants. Although the trial court adopted broad language in "dismissing the action," it expressly did so "[p]ursuant to" the institutional defendants' motion to dismiss. The institutional defendants' motion only sought dismissal of the claims asserted against them, and the minute entry ruling on the motion only addressed the argument that Drunasky lacked standing to enjoin the trustee's sale or contest the insurance settlement payment. The conclusion that the order did not dismiss all claims against all parties is also supported by the court's statements that

Drunasky could still pursue his damages claims against the Taylors.

¶12 Although we lack jurisdiction under § 12-2101(B), certain interlocutory rulings are nevertheless appealable under various other subsections of § 12-2101.[2] Here, § 12-2101(F)(2) grants us jurisdiction to review a denial of injunctive relief. *See Bulova Watch Co. v. Super City Dep't Stores of Ariz., Inc.*, 4 Ariz. App. 553, 555, 422 P.2d 184, 186 (App. 1967) (holding that an order denying preliminary injunctive relief was appealable by statute and no Rule 54(b) findings were required). The trial court denied Drunasky's request for injunctive relief based upon the conclusion that he lacked standing to prevent the trustee's sale. Consequently, although we lack jurisdiction to review the other issues Drunasky raises on appeal, we have jurisdiction to review the denial of his request to enjoin the trustee's sale.

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[2] Alternatively, this court has discretion to review interlocutory rulings by taking special action jurisdiction. *See* A.R.S. § 12-120.21(A)(4) (2003). "Special action jurisdiction is appropriate when there is no plain, speedy and adequate remedy by way of appeal or in cases involving a matter of first impression, statewide significance, or pure questions of law." *Roman Catholic Diocese v. Superior Court*, 204 Ariz. 225, 227, ¶ 2, 62 P.3d 970, 972 (App. 2003) (quoting *State ex rel. Pennartz v. Olcavage*, 200 Ariz. 582, 585, ¶ 8, 30 P.3d 649, 652 (App. 2001)). Drunasky makes no argument why we should take special action jurisdiction, and because he has an adequate remedy by way of appeal, we decline to do so.

¶13 We need not review the court's denial of injunctive relief, however, because the property was sold at a trustee's sale on May 18, 2009. Consequently, the appeal is moot with respect to Drunasky's effort to enjoin the sale of the property, and we decline to address the substantive merits of the court's ruling. *See A Tumbling-T Ranches v. Flood Control Dist.*, 222 Ariz. 515, 545, ¶ 107, 217 P.3d 1220, 1250 (App. 2009) (declining to reach an issue found moot based upon a report by the Arizona Navigable Stream Adjudication Commission issued during the pendency of an appeal).

CONCLUSION

¶14 For the foregoing reasons, we dismiss the appeal.

/s/
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MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/
_____
LAWRENCE F. WINTHROP, Judge

/s/
_____
MARGARET H. DOWNIE, Judge