

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
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: 05-27-2010  
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BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

RON E. MEDLEY dba CONSUMER ) 1 CA-CV 09-0514  
FORECLOSURE SERVICES, an Arizona )  
company, ) DEPARTMENT A  
)  
Plaintiff/Appellant, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, ARCAP)  
)  
FIRST HORIZON HOME LOAN, a )  
division of FIRST TENNESSEE BANK )  
NATIONAL ASSOCIATION, )  
)  
Defendant/Appellee. )

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Appeal from the Superior Court in Maricopa County

Cause No. CV2008-093273

The Honorable Joseph C. Kreamer, Judge

**AFFIRMED**

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Ron E. Medley  
Plaintiff/Appellant *In Propria Person*

Queen Creek

Gust Rosenfeld P.L.C.  
by Christopher M. McNichol  
Attorneys for Defendant/Appellee

Phoenix

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W I N T H R O P, Judge

¶1 Ron E. Medley ("Appellant"), doing business as  
Consumer Foreclosure Services, appeals the superior court's

grant of First Horizon Home Loan's ("First Horizon") Rule 12(c) motion for judgment on the pleadings and award of appellee's attorneys' fees and costs. See Ariz. R. Civ. P. 12(c). For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶2 The property at issue in this case is located in Queen Creek, Arizona. On December 21, 2005, the owners of the residence ("the borrowers") obtained an adjustable rate loan secured by a deed of trust in favor of Homeowners Financial Group USA, LLC ("HFG"). On January 5, 2006, HFG both recorded its interest and assigned the deed to First Horizon, the appellee.

¶3 The borrowers defaulted on their loan and First Horizon commenced foreclosure proceedings. On April 16, 2008, it filed notice of a trustee's sale, and on July 25, 2008, the sale took place. First Horizon purchased the property at the sale, and recorded its ownership interest on August 6, 2008.

¶4 Nearly three months later, on October 28, 2008, Appellant filed the complaint at issue in this appeal. In it, he alleged that First Horizon wrongfully foreclosed on the property, thereby infringing on Appellant's "equitable" interest in the property. Appellant claimed that his interest arose when, on June 21, 2008, he entered into a purchase agreement

with the borrowers. Appellant asked the superior court to quiet title to the property in his name.

¶15 After answering Appellant's complaint, First Horizon moved for judgment on the pleadings pursuant to Rule 12(c) of the Arizona Rules of Civil Procedure. In a June 12, 2009 minute entry, the superior court granted First Horizon's motion, holding that the trustee's sale of the property extinguished any interest Appellant may have had in the property. Appellant subsequently filed a motion for reconsideration<sup>1</sup> and also lodged objections to First Horizon's proposed form of judgment and application for attorneys' fees and costs.

¶16 Appellant filed a notice of appeal on July 18, 2009, and on July 24, 2009, the superior court entered a final judgment consistent with its earlier minute entry order.<sup>2</sup> We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003) and 12-2101 (2003).

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<sup>1</sup> The superior court denied Appellant's "Motion for Reconsideration or Certification for Interlocutory Appeal" on July 22, 2009.

<sup>2</sup> Although Appellant's notice of appeal was premature, it was followed by entry of an appealable order. *Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981); *Schwab v. Ames Constr.*, 207 Ariz. 56, 58, ¶ 9, 83 P.3d 56, 58 (App. 2004). Accordingly, this appeal became effective on July 24, 2009, the date the appealable order was entered.

## ANALYSIS

### I. Judgment on the Pleadings

¶7 Appellant argues that the superior court erred in granting First Horizon's Rule 12(c) motion for judgment on the pleadings.<sup>3</sup> A motion for judgment on the pleadings "tests the sufficiency of the complaint," and requires a court to enter judgment for the defendant "if the complaint fails to state a claim for relief." *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 359, ¶ 2, 988 P.2d 143, 144 (App. 1999) (citations omitted). "In reviewing a judgment on the pleadings, we treat the allegations of the complaint as true," but will not accept conclusions of law. *Id.* (citation omitted).

¶8 In granting First Horizon's motion, the superior court found that "the Trustee's Sale extinguished any interest that [Appellant] might have" in the property. We agree.

¶9 With respect to trustee's sales, Arizona's statutory framework is explicit:

The trustee's deed shall operate to convey to the purchaser the title, interest and claim of the trustee, . . . their respective successors in interest

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<sup>3</sup> Although it was a motion for judgment on the pleadings, Appellant refers to the motion as a motion for summary judgment. If a court considers matters outside the record when reviewing a Rule 12(c) motion, then such motion is generally treated as one for summary judgment under Rule 56 of the Arizona Rules of Civil Procedure. See *Am. Fed'n of State, County & Mun. Employees, AFL-CIO, Council 97 v. Lewis*, 165 Ariz. 149, 151, 797 P.2d 6, 8 (App. 1990). In this case, the superior court's ruling was based upon the pleadings alone.

and all persons claiming the trust property sold by or through them. . . . 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.

A.R.S. § 33-811(E) (2007). First Horizon's interest in the property dates to 2006, when HFG transferred its interest in the property to First Horizon. First Horizon filed its notice of sale on April 16, 2008, and it was not until over two months later, June 21, 2008, that Appellant purportedly obtained his interest in the property. Under A.R.S. § 33-811(E), Appellant's interest, as the later-acquired and therefore subordinate interest, was extinguished by the trustee's sale. First Horizon's purchase of the property at the trustee's sale was "absolute" and "clear of all . . . interests that have a priority subordinate to the deed of trust." See A.R.S. § 33-412(A) (2007).

¶10 Further, Arizona's statutory scheme obviates any objection Appellant may have to the manner in which the sale was conducted. Under Arizona law, a trustee's deed creates a presumption of compliance, and is conclusive evidence that a trustee's sale of deed of trust property was conducted in accordance with the required statutory notice provisions. A.R.S. § 33-811(B); see *Triano v. First Am. Title Ins. Co. of Arizona*, 131 Ariz. 581, 583, 643 P.2d 26, 28 (App. 1982) (holding that issuance of trustee's deed to purchasers is

conclusive evidence that statutory requirements were satisfied). Moreover, Appellant waived any objections to the sale by failing to formally raise them before the sale took place. Section 33-811(C) confirms, "The trustor, its successors or assigns, and all persons to whom the trustee mails a notice of a sale under a trust deed . . . 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" before the scheduled sale. Section 33-809(B)(2) (Supp. 2009) details who is actually entitled to notice: "each person who, at the time of recording of the notice of sale, appears on the records of the county recorder in the county in which any part of the trust property is situated to have an interest in any of the trust property." Appellant was not entitled to receive notice of the sale under the statute because, on April 16, 2008, he had no interest in the property. Regardless of whether Appellant was entitled to notice, however, he is presumed to have received notice of the sale by virtue of its recordation.<sup>4</sup> In failing to intervene or otherwise obtain court-ordered relief, Appellant waived his objections to the sale.

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<sup>4</sup> Further, as a purported assignee of the borrowers, Appellant stands in their shoes and is therefore presumed to have received the same notice the borrowers received of the trustee's sale.

¶11 Finally, Appellant contends First Horizon had an obligation to voluntarily postpone the trustee's sale after he contacted First Horizon's trustee on June 22, 2008 - the day after obtaining his purported interest in the property - "regarding payoff and accounting of mortgage[.]" Merely contacting the trustee, however, does not change the fact that, without "a court order granting relief," Appellant, by operation of law, waived his objections to the trustee's sale of the property. See A.R.S. § 33-811(C).

¶12 For the foregoing reasons, we affirm the superior court's grant of First Horizon's motion. We also note that Appellant makes a series of additional arguments on appeal. To the extent that such arguments are discernible, they are either frivolous and/or mooted by operation of § 33-811(E).

## **II. Attorneys' Fees**

¶13 Appellant also argues that the superior court erred in awarding First Horizon a portion of its attorneys' fees and costs. An award of attorneys' fees and costs "is left to the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." *Hale v. Amphitheater School Dist. No. 10 of Pima County*, 192 Ariz. 111, 117, ¶ 20, 961 P.2d 1059, 1065 (App. 1998) (citation omitted); see also *McEvoy v. Aerotek*, 201 Ariz. 300, 302, ¶ 9, 34 P.3d 979, 981 (App. 2001) (citations omitted). Section 12-341 (2003)

provides, "The successful party to a civil action shall recover from his adversary all costs expended or incurred therein unless otherwise provided by law." Further, "In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees." A.R.S. § 12-341.01 (2003). As First Horizon successfully defended Appellant's challenge to its foreclosure action, the superior court was within its discretion when it awarded First Horizon attorneys' fees and costs. We will not disturb the award.

¶14 First Horizon also requests attorneys' fees on appeal. In the exercise of our discretion, we grant their request upon compliance with Rule 21 of the Arizona Rules of Civil Appellate Procedure.

#### CONCLUSION

¶15 For the aforementioned reasons, we affirm the superior court's order and judgment.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
PATRICIA A. OROZCO, Presiding Judge

\_\_\_\_\_/S/\_\_\_\_\_  
DANIEL A. BARKER, Judge