**IN THE COURT OF APPEALS**
**STATE OF ARIZONA**
**DIVISION ONE**

DIVISION ONE
FILED: 06/28/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

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| JAMES A. MONROE, an unmarried man, and KIMBERLEY MONROE PIRTLE, an unmarried woman, | ) | 1 CA-CV 10-0589 |
| | ) | DEPARTMENT B |
| Plaintiffs-Appellants, | ) | **AMENDED** |
| | ) | **MEMORANDUM DECISION** |
| v. | ) | |
| JAMES L. GAGAN and JANE DOE GAGAN, husband and wife; ROSS MILJENOVICH, an unmarried man, | ) | (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure) |
| Defendants-Appellees. | ) | |

Appeal from the Superior Court in Maricopa County

Cause Nos. CV 2007-016208 and CV 2007-016537

The Honorable J. Richard Gama, Judge
The Honorable Robert H. Oberbillig, Judge

AFFIRMED IN PART; REVERSED IN PART; REMANDED

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W E I S B E R G, Judge

**¶1** James A. Monroe and his daughter, Kimberley Monroe Pirtle, appeal from a final judgment denying their motion for partial summary judgment and dismissing their complaint with prejudice against James L. Gagan and Ross Miljenovich. For reasons that follow, we affirm in part, reverse in part, and remand for further proceedings.

PROCEDURAL HISTORY

**¶2** In 1994, Gagan obtained a judgment against Monroe and several others in the United States District Court for the Northern District of Indiana ("NDI"). Gagan registered the judgment in the United States District Court for the District of Arizona on March 28, 1995 and recorded it in Maricopa County on March 31, 1995. This prompted the filing of interrelated actions in state and federal court.

First State Court Action

**¶3** In 1999, Monroe's wife filed an action against Gagan for filing a false lien against property she and Monroe owned in Scottsdale. (CV 99-015822). She also sought indemnification for resulting damages from her husband. Monroe, as a named defendant, then filed a cross-claim and counterclaim against co-defendant Gagan in which he alleged that the NDI judgment had not been timely renewed under Arizona Revised Statutes

("A.R.S.") sections 12-1611 (2003) and -1612 (2003)[1] and was therefore unenforceable. Gagan later re-filed the NDI judgment in federal court on June 9, 2000 and re-recorded it in Maricopa County on October 25, 2000.

**¶4** Pursuant to Monroe's request for declaratory relief, the court entered a judgment in his favor. The court ruled that under A.R.S. § 33-964(A) (Supp. 2010), the recorded judgment "became a lien for a period of five years from the date it was given or until November 23, 1999" and that the "judgment was not renewed until June 9, 2000, nearly seven (7) months after it expired." The court also ruled that the original lien had not been revived by re-recording the judgment, and that the judgment lien was unenforceable.

**¶5** Gagan appealed to this court and we affirmed the judgment in Monroe's favor. *Gagan v. Monroe,* 1 CA-CV 02-0401 (Ariz. App. Jan. 21, 2003)(mem. decision). We noted that under Arizona law, "a foreign judgment registered in Arizona must comply with Arizona's renewal statutes to remain valid." *Id.* at 11, ¶ 21. We cited A.R.S. § 12-1551(B)(Supp. 2010), which

[1]Under A.R.S. § 12-1611, a "judgment may be renewed by action thereon at any time within five years after the date of the judgment." Under A.R.S. § 12-1612(A), a judgment entered by "the United States District Court or superior court" may be renewed "by filing an affidavit for renewal with the clerk of the proper court." The renewal affidavit may be filed "within ninety days preceding the expiration of five years." A.R.S. § 12-1612(B).

provides that "[a]n execution or other process shall not be issued upon a judgment after the expiration of five years from the date of its entry unless it is renewed by affidavit" or by action filed "within five years from the date of the entry of the judgment or of its renewal." *Id.* Also citing A.R.S. § 12-1612(A), we held that "[t]hese statutes read together evince a legislative intent that once a judgment is entered in Arizona, regardless of its origin, it becomes unenforceable after five years unless renewed in accordance with Arizona law." *Id.* We rejected the argument that the tardy re-recording of the judgment created a valid lien because "[b]y this time . . . the judgment was unenforceable and could not support a judgment lien." *Id.* at 12, ¶ 22.

**Federal Court Proceedings**

**¶6** On June 10, 2005, Gagan filed an affidavit for renewal of judgment in the United States District Court for the District of Arizona. On July 26, 2005, the district court denied Monroe's motions to quash writs of garnishment and the filing of the foreign judgment in this matter. In August 2006, Gagan obtained a writ of general execution authorizing a federal marshal to sell Monroe's Scottsdale property to satisfy the judgment. Monroe filed a motion to quash the writ of general execution and asked the federal district court to take judicial

notice of our decision, which he alleged had held that the NDI judgment was unenforceable because not timely renewed. He argued that the state court judgment had preclusive effect in the district court and that under *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983), the district court did not have jurisdiction to review a final judgment entered by a state court. ("*Rooker-Feldman* doctrine").

**¶7** The federal district court issued an order on October 17, 2006 denying Monroe's motion. Relying on its July 26, 2005 order denying Monroe's motions to quash writs of garnishment, the district court disagreed with Monroe's interpretation of our decision and determined that we had narrowly decided that the "judgment lien was unenforceable, *not* the judgment itself." The district court found that Gagan had renewed the judgment by action pursuant to A.R.S. § 12-1611 because he had "filed numerous applications for writs of garnishment and motions in this matter within five years of the date the judgment was entered." The court rejected the claim that it was bound by the decision because the issue of enforceability of the NDI judgment was not "'the same,' . . . 'precisely the same,' or 'identical'" to the issue actually litigated in state court. Thus, it declined to find that the *Rooker-Feldman* doctrine had a

preclusive effect in these circumstances and instead found it was not a bar to enforcement proceedings in federal court. The court noted that it "continues to have a fundamental disagreement with [Monroe's] reading of the state court decisions." The district court then issued a general writ of execution.

**¶8** Monroe requested certification from the federal district court for an interlocutory appeal of the July 26, 2005 and October 17, 2006 orders and moved to stay the general writ of execution.[2] Monroe sought to appeal "whether collection efforts constitute an 'action' sufficient to renew a judgment" under Arizona law. The district court found that although this was "an issue of first impression," there was not a "substantial ground for difference of opinion" warranting an interlocutory appeal. The district court therefore denied certification of an interlocutory appeal and the motion to stay. Monroe then filed a petition for writ of mandamus in the Ninth Circuit Court of Appeals and an emergency motion to stay the writ of execution. The Ninth Circuit denied the petition and motion.

[2]The record reflects that Monroe appealed the July 26, 2005 order to the Ninth Circuit Court of Appeals. Gagan argued in his responsive brief that an order denying a motion to quash is not a final order from which an appeal may be taken. Monroe agreed and moved to dismiss the appeal. On October 18, 2006, the Ninth Circuit Court of Appeals dismissed the appeal pursuant to Federal Rule of Appellate Procedure 42(b).

**¶9** In November 2006, Monroe's Scottsdale property was sold at public auction to Gagan for $560,000 as the highest bidder. In May, a Marshal's Deed was issued to Gagan. Despite demand, Monroe did not receive payment, either from the U.S. Marshall or from Gagan, of his homestead exemption of $150,000. In June 2007, Gagan entered into a contract to sell the property to Ross Miljenovich for $750,000. Monroe and Pirtle were later evicted from the property.

**Second State Court Action**

**¶10** In August 2007, Monroe and Pirtle filed a declaratory judgment, quiet title and tort action in the superior court against Gagan and Miljenovich (CV 2007-016208). They sought a judgment declaring that the NDI judgment was not enforceable and the subsequent sale of the property was void; that Gagan had refused to pay the $150,000 homestead exemption to Monroe as required by A.R.S. § 33-1101 to -05 (2007 & Supp. 2010)[3], which also rendered the sale void; that title should be quieted in his favor; and that Monroe and Pirtle were entitled to damages for wrongful eviction. At Miljenovich's request, the court consolidated this action with one he had filed against Gagan for breach of contract and failure to disclose that the property was

[3]Monroe also alleged that Gagan had prevented the U.S. Marshall from distributing the homestead exemption amount to him from the proceeds of sale.

subject to a homestead exemption in favor of Monroe (CV 2007 016537). Gagan unsuccessfully attempted to remove the consolidated action to federal court.

**¶11** Monroe filed a motion for partial summary judgment on all claims except for damages caused by wrongful eviction. He again argued that our decision in the first action that the NDI judgment was unenforceable was binding on the court and that the doctrine of res judicata precluded further litigation on issues he had raised in his cross-claim and counterclaim against Gagan. He also argued that the sale was invalid because Gagan has refused to pay him the homestead exemption.

**¶12** Gagan responded that "there have been multiple decisions rendered" in the federal district court "on the very issues that Monroe now attempts to place before this Court" and that the principles of res judicata, collateral estoppel and stare decisis barred Monroe from relitgating those issues in this action. Gagan also contended that Monroe was not entitled to the homestead exemption because he had to pay off Monroe's existing mortgage of over $97,000 and because Monroe and Pirtle had "laid waste to property," and he had to expend over $50,000 on repairs. He asserted that together these payments were "the near equivalent of Monroe's claim." Gagan submitted a copy of Monroe's mortgage statement dated May 22, 2007 showing as of

April 9, 2007 a principal balance due of $97,078.74, plus interest, but did not provide supporting documents for the costs of repairs.

**¶13** After a hearing, the trial court stated that it "concur[red] with the findings and holding of [the federal district court judge]"; that the NDI judgment had been renewed pursuant to A.R.S. § 12-1611; that the judgment was enforceable, except through enforcement of the original judgment lien; and that the sale of the property to Gagan was valid. The court did not rule on Monroe's claim that the sale was void because Gagan refused to pay the homestead exemption. The court entered a final judgment denying Monroe's motion for partial summary judgment and "dismissing [Monroe's] complaint in its entirety." Monroe timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(D) (2003).[4]

**DISCUSSION**

**¶14** Monroe argues that the trial court erred in denying his motion for partial summary judgment and dismissing his complaint. He asserts that the doctrine of res judicata

[4]Gagan argues that this court lacks jurisdiction over this appeal because the denial of a motion for summary judgment is not an appealable order. However, the judgment in this case also dismissed with prejudice all of the other claims against Gagan and Miljenovich. Thus, the judgment is final and appealable under A.R.S. § 12-2102(D) because it disposes of "all claims and all parties." *Garza v. Swift Transp. Co., Inc.,* 222 Ariz. 281, 284, ¶ 17, 213 P.3d 1008, 1011 (2009).

precludes relitigating the issue of enforceability of the NDI judgment in this second state court action because the issue was fully litigated and finally resolved in the first state court action. He maintains that the federal district court did not have legal authority to re-litigate issues of Arizona law previously decided by this court. He asserts the trial court erred when it relied on the federal district court order in its ruling because that order was interlocutory and therefore without preclusive effect. He also contends the sale was invalid because Gagan refused to tender the homestead exemption to him. Finally, he argues that the trial court erred on the merits of the case because collection efforts do not accomplish the renewal of a judgment by action under Arizona law.

Preclusive Effect of Federal Court Order in State Court

**¶15** Because this issue involves a question of law, our review is de novo. *Batty v. Glendale Union High Sch. Dist. No. 205,* 221 Ariz. 592, 594, ¶ 6, 212 P.3d 930, 932 (App. 2009). Federal law determines the preclusive effect of a federal court judgment in state court. *In re Gen. Adjud. of All Rights to Use Water in the Gila River Sys. & Source,* 212 Ariz. 64, 69, ¶ 13, 127 P.3d 882, 887 (2006) (citing *Semtek Int'l Inc. v. Lockheed Martin Corp*., 531 U.S. 496, 507 (2001)). Applying federal law to determine the preclusive effect of federal judgments maintains

the "integrity of federal judicial power" and "coherence of the federalist judicial system." *Maricopa-Stanfield Irr. & Drainage Dist. v. Robertson,* 211 Ariz. 485, 491, ¶ 38, 123 P.3d 1122, 1128 (2005). The defense of issue preclusion "bars a party from relitigating issues already settled in one case against a . . . party in another case." *Id.* at ¶ 39 *(*citing *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 329 (1979)). The party asserting the defense must show that "(1) the issue was fully litigated to a conclusion in a prior action, (2) the issue of fact or law was necessary to the prior judgment, and (3) the party against whom preclusion is raised was a party or privy to a party in the first case." *Id.* at 491-92, ¶ 39, 123 P.3d at 1128-29 (citing *Allen v. McCurry,* 449 U.S. 90, 94-95 (1980)).[5]

**¶16** Monroe argues that the October 17, 2006 district court order denying the motion to quash the writ of general execution did not have preclusive effect because it was an interlocutory, non-appealable order. He relies on *United States v. Moore,* 878

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[5]Issue preclusion (formerly known as collateral estoppel) is distinguished from claim preclusion (formerly known as res judicata*),* which similarly requires identity of claims, a final judgment on the merits, and identity or privity between parties. *In re Gen'l Rights of Gila River Sys.,* 212 Ariz. at 70, ¶ 16, n. 8, 127 P.3d at 888, n. 8; *Howell v. Hodap,* 221 Ariz. 543, 546, ¶ 17, n. 7, 212 P.3d 881, 884, n. 7 (App. 2009). Although Monroe argues that res judicata applies, he refers to the preclusive effect of both the final judgment on his counterclaim in the first action and the issues decided by the court in that action.

F.2d 331 (9th Cir. 1989), which summarily held that the denial of a motion to quash a writ of execution is not a final, appealable order. *Moore* relied on *Steccone v. Morse-Starrett Products Co.,* 191 F.2d 197 (9th Cir. 1951). There, Steccone moved to quash a writ of execution on the ground that no final judgment had been entered and also moved for entry of final judgment. The district court denied the motion, and Steccone appealed. *Id.* at 198. The Ninth Circuit Court of Appeals held that the order denying the motion to quash the writ of execution was appealable "inasmuch as the order appealed from is not one which finally disposes of an entire controversy between the parties." *Id.* at 199. The court treated the appeal as a petition for writ of mandamus and denied it. *Id.* at 201.

**¶17** However, the Ninth Circuit has distinguished *Steccone* and *Moore* and has concluded that it has appellate jurisdiction to consider a district court order denying a motion to dismiss a writ of garnishment when there are "no other matters before the district court" and there is "nothing for the court to do but execute the judgment." *United States v. Mays,* 430 F.3d 963, 965 (9th Cir. 2005), *cert. denied* 546 U.S. 1207 (2006) (quoting *Catlin v. United States,* 324 U.S. 229, 233 (1945)). In such circumstance, denial of the motion to quash a writ of garnishment is a final, appealable judgment. *Id.*

**¶18** In *United States v. Sloan,* 505 F.3d 685 (7th Cir. 2007), the Seventh Circuit Court of Appeals relied on *Mays* and held that "[b]ecause a garnishment order is a final appealable order," pursuant to 28 U.S.C. § 1291, "this court has jurisdiction to hear the appeal." *Id.* at 687. *Sloan* also cited *Central States Southeast and Southwest Areas Pension Fund v. Express Fright Lines, Inc.,* 971 F.2d 5 (7th Cir. 1992), which held that entry of a final money judgment "ends the proceeding to determine liability and relief, but it begins the collection proceeding if the defendant refuses to pay." Thereafter, "[a] contested collection proceeding will end in a judgment or a series of judgments granting supplementary relief to the plaintiff [and] [t]he judgment that concludes the collection proceeding is the judgment from which the defendant can appeal." *Id.* at 6. (citations omitted); *see also United States of Am. For the Use and Benefit of Hi-Way Elec. Co. v. Home Indem. Co.,* 549 F.2d 10, 12-13 (7th Cir. 1977)(holding that an order denying a motion to stay enforcement of a registered judgment is appealable because it is "a final disposition of a claimed right which is independent of and collateral to the cause of action in which the judgment was entered" and "there is nothing left to do in the case").

**¶19** Such was the case here. The NDI judgment had already been entered and disposed of the entire controversy between the parties. The court issued the writ of execution and then denied Monroe's motion to quash the writ. The October 17, 2006 order was a final disposition of the collection proceeding, independent of the underlying cause of action, and there was nothing left for the district court to do. The order was a final, appealable order having preclusive effect.

**¶20** However, even if we agreed with Monroe that the October 17, 2006 order was an interlocutory order from which he could not file a direct appeal, we would reach the same result. In *Southern Leasing Corp. v. Tufts,* 167 Ariz. 133, 135, 804 P.2d 1321, 1323 (App. 1991), Division Two of this court held that when a federal district court order "cannot be reviewed by a federal court of appeals *either by direct appeal or by mandamus*," the basis for the order has no preclusive effect in state court. (Emphasis added.) There, the federal district court had entered a remand order because the defendant had not timely removed the case to federal court after being served. In reaching this conclusion, the district court made a finding that the defendant had been properly served with process. *Id.* at 134, 805 P.2d at 1322. The court in *Southern Leasing Corp.* noted that under 28 U.S.C. §§ 1447 (c) and (d), the remand order

could not be reviewed by a federal court of appeals. *Id.* at 135, 805 P.2d at 1323.[6] The court concluded that because the defendant "could not have the federal district court's remand order reviewed in the federal system," the district's court's determination that service of process was proper had no preclusive effect and could be relitigated in the state court action. *Id.*

**¶21** In support, Division Two also cited the Restatement (Second) of Judgments § 28. *Id.* That provision states that an exception to issue preclusion exists when "(1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action[.]" Restatement (Second) of Judgments § 28 (1982). As explained in the comment to § 28, the reason for this exception is that the "availability of review for the correction of errors [is] critical to the application of preclusion doctrine." *Id.,* § 28 cmt. a. Importantly, this exception to issue preclusion does not apply "where review is available but is not sought" or "when there is discretion in the reviewing court to grant or deny review and review is denied" because "such denials by a first

[6] "28 U.S.C § 1447(d) prohibits review of all remand orders issued pursuant to section 1447(d) whether erroneous or not and whether review is sought by extraordinary writ or by any other means." *Whitman v. Raley's Inc.,* 886 F.2d 1177, 1180 (9th Cir. 1989)(citations omitted).

tier appellate court are generally tantamount to a conclusion that the questions raised are without merit." *Id.*

**¶22** Here, even assuming Monroe could not directly appeal the October 17, 2006 district court order under 28 U.S.C. § 1291, he had the right to and did request certification from the district court to file an interlocutory appeal of the order under 28 U.S.C. § 1292(b). He also sought relief from the order in the Ninth Circuit Court of Appeals by way of a petition for writ of mandamus. Although the district court in its discretion refused to permit the interlocutory appeal and the Ninth Circuit in its discretion denied his petition for writ of mandamus, the order was nonetheless reviewable in the federal system and thus had preclusive effect. *S. Leasing Corp.,* 167 Ariz. at 135, 804 P.2d at 1323. Therefore, the issues determined in the federal court proceeding, which were fully and fairly litigated, even if incorrectly decided, could not be relitigated in state court.[7] *See Montana v. United States,* 440 U.S. 147, 162 (1979)(issue

[7]Monroe asserts that state law, not federal law, applies in determining the preclusive effect of the federal court order in this case. However, "[t]he principle of finality is an essential element of a court's authority" and the rules of res judicata express the quality of a court's authority . . . ." Thus, in most cases, "there is little difference in the doctrine of res judicata as expounded in state and federal court" and it is "usually a moot question whether the effect of a federal judgment is determined by federal law or state law." *See* Restatement (Second) of Judgments § 87 cmt. a (1982).

litigated in prior action cannot be relitigated in subsequent action even if the earlier decision based on erroneous view of the law).[8]

**¶23** We note that in 2010, in answer to questions certified to it by the Ninth Circuit Court of Appeals, the Arizona Supreme Court held that "collection activities" to satisfy a judgment did not constitute an action on a judgment under A.R.S. §§ 12-1611 and 12-1551 and did not renew the judgment; rather, renewal by action required a "common law action on a judgment, which replaced the original judgment with a new judgment in the amount then owed." *Fid. Nat'l Fin., Inc. v. Friedman,* 225 Ariz. 307, 311, ¶¶ 24, 238 P.3d 118, 122 (2010). However, that case did not constitute a significant, intervening change of "controlling . . . legal principles" that triggers applying an exception to issue preclusion. *Corbett v. ManorCare of Am., Inc.,* 213 Ariz. 618, 626, ¶¶ 23-24, 146 P.3d 1027, 1035 (App. 2006)(quoting *Montana v. United States*, 440 U.S. at 155); *State v. Whelan,* 208 Ariz. 168, 172-73, ¶¶ 15-16, 91 P.3d 1011, 1015-16 (App. 2004)

[8]Monroe argues that the federal district court lacked authority to enter its orders because the district court was required to give full faith and credit to our decision according to state court principles of preclusion. *Marrese v. Am. Acad. of Orthopedic Surgeons,* 470 U.S. 373, 380 (1985). However, where matters are not decided by the state court, as the district court found in this case, issue preclusion does not apply. *Id.* at 382. In any event, Monroe litigated this issue in federal court to its conclusion, and we are bound by it.

(applying this exception to issue preclusion as set forth in Restatement (Second) of Judgments § 28). Prior to our supreme court's opinion in *Fidelity*, the applicable law was unsettled. *See Fid. Nat'l,* 225 Ariz. at 308, n.2, ¶ 5, 238 P.3d at 119. (Ninth Circuit "uncertain" about this issue). *Fidelity,* therefore, did not change any previously "controlling legal principles." The trial court did not err in granting summary judgment on this ground.

**Effect of Refusal to Pay Homestead Exemption**

**¶24** Although the court did not specifically rule on this issue, it nonetheless granted Gagan's motion for partial summary judgment on all claims except that of wrongful eviction. Summary judgment is appropriately granted only if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c); *Orme Sch. v. Reeves,* 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990). As explained below, the sale was not invalid because of Gagan's refusal to pay the homestead exemption. However, to the extent Monroe argues that he is entitled to payment of all or part of the $150,000 exemption, there exists a genuine issue of material fact precluding entry of summary judgment.

**¶25** Assuming for the purposes of summary judgment only that the homestead exemption was applicable, Monroe's property

was "exempt from . . . execution and forced sale," in an amount not exceeding $150,000. A.R.S. § 33-1101(A)(2007). "The homestead exemption . . . automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property." A.R.S. § 33-1101(C). The homestead is "exempt from process and from sale under a judgment or lien" with certain exceptions, including "[t]o the extent that a judgment or other lien may be satisfied from the equity of the debtor exceeding the homestead exemption." A.R.S. § 33-1103(A)(4)(Supp. 2010). A sale under a judgment or lien and not excepted under subsection A "is invalid and does not convey an interest in the homestead." A.R.S. § 33-1103(B). A judgment creditor "may elect to sell by judicial sale . . . the property in which the judgment debtor has a homestead . . . provided that the judgment debtor's interest in the property shall exceed the sum of the judgment debtor's homestead plus the amount of any consensual liens on the property having priority to the judgment." A.R.S. § 33-1105 (2007). From the sale proceeds, the officer conducting the sale "shall first pay the amount of the homestead to the judgment debtor plus the amount of any consensual liens on the property having a priority to the judgment and then pay the costs of the sale." A.R.S. § 33-1105.

**¶26** Here, excepting those facts not disputed for the purposes of summary judgment only, it is undisputed that Gagan purchased Monroe's property for $560,000 subject to a mortgage in an amount exceeding $97,000. Because the value of Monroe's property "exceed[ed] the value of the homestead exemptions over and above the liens and encumbrances" exempt from execution under A.R.S. § 33-1103(A), the property was subject to execution and sale. *Grand Real Estate, Inc. v. Sirignano,* 139 Ariz. 8, 13, 676 P.2d 642, 647 (App. 1983)(citing *Evans v. Young,* 135 Ariz. 447, 453, 661 P.2d 1148, 1154 (App. 1983)). Therefore, the sale was not invalid on the ground Monroe alleges. However, to the extent that Monroe claims he is entitled to payment of the $150,000 homestead exemption from the proceeds of sale, a fact issue remains on such claim because Gagan has asserted that he has offsets that "nearly equal[]" the amount of the homestead exemption. Because a dispute exists on whether Gagan owes Monroe all or part of the homestead exemption, summary judgment was improperly granted on this claim, and a remand is necessary to resolve this issue.[9]

**¶27** Gagan has requested attorney's fees on appeal but has not provided a substantive basis for a fee award, and we therefore deny his request. *Bed Mart, Inc. v. Kelley,* 202 Ariz.

[9]Given our holding in this matter, the wrongful eviction claim of Monroe and Pirtle has also been finally resolved.

370, 375, ¶ 24, 45 P.3d 1219, 1224 (App. 2002). We award Gagan his costs on appeal subject to compliance with Rule 21, Arizona Rules of Civil Appellate Procedure.

**CONCLUSION**

**¶28** For the reasons set forth above, we affirm the trial court's summary judgment declaring that the sale conducted pursuant to the federal court proceedings was valid. On the issue of payment of the homestead exemption to Monroe, we remand the matter to the trial court for further proceedings consistent with this court's decision.

/S/
SHELDON H. WEISBERG, Judge

CONCURRING:

/S/
DONN KESSLER, Presiding Judge

/S/
DIANE M. JOHNSEN, Judge