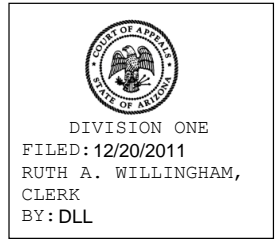


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DEUTSCHE BANK NATIONAL TRUST) 1 CA-CV 10-0401
COMPANY, as Trustee for WAMU)
2003-AR7, its successors and/or) DEPARTMENT B
assigns,)
)
Plaintiff/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
DOUGLAS C. RHOADS,)
)
Defendant/Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2010-005011

The Honorable David O. Cunanan, Judge *Pro Tem*

AFFIRMED

Pite Duncan, L.L.P. Phoenix
By Douglas A. Toleno, Christina M. Harper
and Carrie Thompson Jones
Attorneys for Plaintiff/Appellee

Law Offices of Kyle A. Kinney, P.L.L.C. Phoenix
By Kyle A. Kinney
Attorneys for Defendant/Appellant

K E S S L E R, Judge

¶1 This is a forcible entry and detainer ("FED") case. Douglas C. Rhoads ("Rhoads") challenges the judgment on the pleadings granted to Deutsche Bank National Trust Company, as Trustee for WAMU 2003-AR7, its successors and/or assigns ("Deutsche Bank"). We affirm for the reasons that follow.

FACTUAL AND PROCEDURAL HISTORY

¶2 Deutsche Bank purchased real property in Paradise Valley (the "Property") at a trustee's sale and obtained an Executed Trustee's Deed Upon Sale (the "Trustee's Deed"). Deutsche Bank served a written notice on Rhoads demanding delivery of the Property pursuant to Arizona Revised Statutes ("A.R.S.") section 12-1173.01(2) (2003), but Rhoads did not relinquish possession of the Property.

¶3 Deutsche Bank commenced this FED action by filing a complaint in Maricopa County Superior Court. The complaint incorporates copies of the Trustee's Deed, the written notice demanding delivery of the Property, and affidavit of service.

¶4 Rhoads moved to dismiss the FED complaint; demanded disclosure, discovery, and a jury trial; and moved to strike portions of the complaint. The appellate record does not contain the motion to dismiss. Deutsche Bank responded and also moved for judgment on the pleadings. In the "Controverting Statement of Facts" section of Rhoads's reply, he claimed that

Deutsche Bank is not the real party in interest; asserted defenses, including lack of standing; and denied the allegations in the complaint.

¶5 At oral argument, Deutsche Bank argued that the reply was in effect an answer. Rhoads complained that the Property was conveyed during an "illegal foreclosure sale." From the bench the superior court granted Deutsche Bank's motion for judgment on the pleadings and denied Rhoads's motion to dismiss.

¶6 Rhoads objected to Deutsche Bank's proposed form of judgment and moved for reconsideration. When Deutsche Bank filed an amended notice of lodging judgment that included judicial findings, Rhoads replied that the legality of the trustee's sale must be determined prior to entry of judgment.

¶7 The superior court rejected Rhoads's arguments and found Rhoads guilty of forcible detainer. Rhoads timely appealed. This Court has jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) (2003) and 12-2101(A)(1) (Supp. 2011).

DISCUSSION

¶8 The purpose of a FED action is to provide rightful owners with a "summary and speedy" means of obtaining possession. *Andreola v. Ariz. Bank*, 26 Ariz. App. 556, 557, 550 P.2d 110, 111 (1976). The validity of a plaintiff's claim of title cannot be litigated in an FED action. A.R.S. § 12-1177(A)

(2003); *Curtis v. Morris*, 186 Ariz. 534, 535, 925 P.2d 259, 260 (1996).

¶9 In resolving a plaintiff's motion for judgment on the pleadings, we consider as true those allegations in the complaint that the answer effectively admitted. *Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376, 321 P.2d 1030, 1035 (1958); *In re One Single Family Residence & Real Prop. Located at 15453 N. Second Ave.*, 185 Ariz. 35, 36 n.1, 912 P.2d 39, 40 n.1 (App. 1996). However, if the answer disputes the truth of a material allegation in the complaint or presents a viable defense, the plaintiff's motion must be denied. *Walker v. Estavillo*, 73 Ariz. 211, 215, 240 P.2d 173, 176 (1952); *Food for Health Co. v. 3839 Joint Venture*, 129 Ariz. 103, 106, 628 P.2d 986, 989 (App. 1981). Thus, to defeat a plaintiff's motion for judgment on the pleadings in an FED case, a defendant must deny the truth of a material allegation in the complaint or assert a viable legal defense on the issue of right of possession. The general use of the word "deny" based on the purported vagueness of the complaint is insufficient to avoid judgment on the pleadings when, as here, the complaint adequately alleges the facts necessary to prevail on an FED claim. We review the superior court's conclusions of law *de novo*. *Colonial Life & Accident Ins. V. State*, 184 Ariz. 533, 535, 911 P.2d 539, 541 (App. 1995).

¶10 Rhoads did not effectively deny the material facts in the complaint or assert a viable defense. Rhoads first challenges Deutsche Bank's standing to bring this FED action because he claims Deutsche Bank is not the real party in interest under Rule 5(b)(1) of the Arizona Rules of Procedure for Eviction Actions ("RPEA").¹ We disagree. Deutsche Bank holds the Trustee's Deed and thus is the real party in interest. See generally A.R.S. § 12-1173.01(A)(2) ("[A] person . . . who retains possession of . . . real property after he received written demand of possession may be removed through an action for forcible detainer . . . [i]f the property has been sold through a trustee's sale under a deed of trust").

¶11 Although at oral argument on appeal Rhoads argued there was no evidence of a trustee's deed because the deed was a forgery, Rhoads waived that argument by failing to raise it below. We do not construe Rhoads's arguments below that the process in which Deutsche Bank obtained the Trustee's Deed was flawed as an argument that the Trustee's Deed in the record was a forgery. In any event, Rhoads conceded at appellate oral

¹ Rhoads additionally relies upon Rules 17(a) of the Arizona Rules of Civil Procedure and 17(b) of the Federal Rules of Civil Procedure. We decline to address these rules, as the Rules of Procedure for Eviction Actions have not incorporated those rules. See RPEA 1 (stating that the eviction rules govern FED actions—with two exceptions not applicable here—unless the eviction rules expressly incorporate the Arizona Rules of Civil Procedure by reference).

argument that the deed of trust was attached to the verified complaint and that he had no evidence that it was not a copy of the true Trustee's Deed.

¶12 In addition, Rhoads contends that Deutsche Bank violated Rules of Procedure for Eviction Actions 5(a)(5) and 5(d)(2). Rule 5(a)(5) requires a Residential Eviction Procedures Information Sheet, which provides information to a tenant leasing a residential home, to be included in the summons. Like the superior court, we are not persuaded that the failure to give this information to Rhoads, who was not leasing a home from Deutsche Bank, is a fatal defect requiring reversal.

¶13 Rule 5(d)(2) requires the complaint to state "the reason for the termination of the tenancy with specific facts, including the date, place and circumstances of the reason for termination, so the tenant has an opportunity to prepare a defense." Here the complaint stated the reason for termination was the Trustee's Deed acquired by trustee's sale, but did not include the date, place and circumstances that caused the termination (that is, the non-payment of his mortgage that caused the trustee's sale). Rhoads knew the reason for termination was that his home had been sold by trustee's sale and he obviously prepared a defense. Thus, that Deutsche Bank's complaint omitted such facts is not a fatal defect that requires reversal.

¶14 Rhoads offers further arguments attacking the validity of the Trustee's Deed. Specifically, he argues that Deutsche Bank or another must prove the debt owed and that Deutsche Bank must establish its "authority to act on behalf of the holder in due course." Such arguments are not properly raised in a FED action but rather an action to quiet title. See A.R.S. § 12-1177(A).² Further, because these issues were not triable, the superior court did not err in granting judgment on the pleadings,³ which denied Rhoads a jury trial. See RPEA 11(d) (stating that if no factual issue exists, the Defendant is not entitled to a jury trial).

CONCLUSION

¶15 We affirm the superior court's judgment in favor of Deutsche Bank. Because Deutsche Bank has cited no substantive authority for its attorneys' fee request, we deny the request.

² Rhoads also argues that Deutsche Bank did not file this action in good faith pursuant to Rules of Procedure for Eviction Actions 4(a) and (b) and it should not have filed a verified complaint under Rule 5(b)(8) because Deutsche Bank should have known about the flaws in the trustee's sale that Rhoads alleges. We decline to address these arguments because they go to matters outside the scope of a FED proceeding.

³ Although there is a question of whether a judgment on the pleadings was procedurally proper because Rhoads did not file a formal answer to Deutsche Bank's complaint, Rhoads failed to object and thus has waived the issue.

