

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: 11/17/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DEUTSCHE BANK NATIONAL TRUST) No. 1 CA-CV 11-0070
COMPANY, as Trustee of the)
Residential Asset Securitization) DEPARTMENT E
Trust 2007-A7, Mortgage)
Pass-Through Certificates,) **MEMORANDUM DECISION**
Series 2007-G under the Pooling) (Not for Publication -
and Servicing Agreement dated) Rule 28, Arizona Rules
May 1, 2007, its assignees) of Civil Appellate
and/or successors-in-interest,) Procedure)
)
Plaintiff/Appellee,)
)
v.)
)
HENRY TAPPER, Occupants and)
Parties-in-Possession,)
)
Defendant/Appellant.)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2010-030347

The Honorable Jay L. Davis, Judge *Pro Tem*

The Honorable Richard L. Nothwehr, Judge *Pro Tem*

AFFIRMED

Campbell & Coombs P.C.
By Harold E. Campbell
Ryan M. Hicks
Attorneys for Defendant/Appellant

Mesa

D O W N I E, Judge

¶1 Henry Tapper appeals from the denial of his stay request in a forcible detainer action, as well as from the determination that he was guilty of forcible detainer. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Tapper owned real property subject to a \$750,000 promissory note in favor of IndyMac Bank that was secured by a deed of trust. Tapper defaulted on the loan, and a Notice of Trustee's Sale was recorded. Deutsche Bank was the successful bidder and recorded a Trustee's Deed. The bank served written demand on Tapper to vacate and surrender possession of the property, but he refused to do so.

¶3 In November 2010, Deutsche Bank filed a forcible entry and detainer complaint against Tapper. Tapper answered, asserting that the trustee's sale was "void for failure to follow proper procedures, failure to comply with [the Home Affordable Modification Program ("HAMP")] Supplemental Directive 10-02, failure to show [Deutsche Bank] is the owner of the Note." Deutsche Bank moved for judgment on the pleadings, arguing it was entitled to possession by virtue of the Trustee's

Deed and that disputes over title could not be litigated in a forcible detainer action.

¶14 Tapper admitted that IndyMac had complied with statutory requirements for the trustee's sale, but explained a perceived defect in IndyMac's authority to conduct the sale. Tapper urged the court to deny the motion for judgment on the pleadings because it would be "inequitable and unjust to allow [Deutsche Bank] to forcibly evict" him. Tapper also requested a stay of the forcible detainer proceedings until his separately-filed quiet title action was resolved. The superior court denied the stay request and found Tapper guilty of forcible detainer.

¶15 Tapper timely appealed.¹ We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-2101(A)(1) and -120.21(A)(1).

DISCUSSION

¶16 Tapper first challenges the denial of his stay request. "Whether to grant a stay is within the trial court's discretion." *State v. Ott*, 167 Ariz. 420, 428, 808 P.2d 305, 313 (App. 1990). We will affirm the superior court's exercise of discretion unless it is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."

¹ The court stayed issuance of the writ of restitution when Tapper filed this appeal and posted a supersedeas bond.

Quigley v. City Court of Tucson, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982).

¶7 A forcible detainer proceeding is an action created by statute to provide a summary, speedy remedy to gain possession of property. *Mason v. Cansino*, 195 Ariz. 465, 466, ¶ 5, 990 P.2d 666, 667 (App. 1999). As we discuss *infra*, the scope of the court's inquiry is quite narrow in a forcible detainer proceeding. It would be entirely inconsistent with the purposes and goals of forcible detainer proceedings to order them stayed pending resolution of disputes over title. We find no abuse of discretion in the denial of Tapper's stay request.

¶8 Tapper next contends the superior court failed to "hear arguments related to [the] HAMP violations." The alleged HAMP violations, though, were irrelevant to the narrow issue before the court in the forcible detainer action. The only issue to be litigated in that proceeding was the right of actual possession. See A.R.S. § 12-1177(A) (in a forcible detainer action, "the only issue shall be the right of actual possession and the merits of title shall not be inquired into").²

² Tapper's reliance on *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 101 P.3d 641 (App. 2004), is unpersuasive. In that case, Holm had permission to build a home on trust property, but no "tenancy contract" existed between the parties. *Id.* at 348-49, ¶¶ 5, 9, 101 P.3d at 642-43. This Court affirmed the dismissal of a forcible detainer action against Holm because it was based on statutes regulating landlord-tenant relationships, and it was unclear whether such a relationship existed. *Id.* at

¶9 Moreover, Tapper had available legal remedies that he could have pursued to enjoin the trustee's sale. His failure to do so waived any defenses or objections to the sale. A.R.S. § 33-811(C) (a trustor waives "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").

¶10 For similar reasons, we reject Tapper's argument that the court erred by failing to consider his title issues. Arizona statutes and case law make clear that the merits of title may not be litigated in forcible detainer actions. See A.R.S. § 12-1177(A); see also *Mason*, 195 Ariz. at 466, ¶ 8, 990 P.2d at 669 ("[o]ne cannot try title in a forcible detainer action."); *Holm*, 209 Ariz. at 351, ¶ 21, 101 P.3d at 645 ("The only issue to be decided . . . is the right of actual possession. Thus the only appropriate judgment is the dismissal of the complaint or the grant of possession to the plaintiff.").

350-51, ¶¶ 21, 24, 101 P.3d at 644-45. In the case at bar, there is no such threshold ambiguity. Tapper's loan default and the ensuing trustee's sale triggered application of the forcible detainer statutes when Tapper refused to vacate the premises. See A.R.S. § 12-1173.01(A) (defining forcible detainer to include situations where one holds over in possession after property has been sold through foreclosure or trustee's sale).

