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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

STEVEN MAHER, Plaintiff/Appellant, v. BANK ONE, N.A., a foreign corporation; BENJAMIN T. RUBAL and KATHY G. RUBAL, husband and wife, Defendants/Appellees.	2 CA-CV 2008-0193 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. CV2006-193

Honorable C. Robert Pursley, Judge Pro Tempore

AFFIRMED

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B R A M M E R, Judge.

¶1 This case arises from the foreclosure by appellee Bank One, N.A. (Bank One) of a deed of trust on a house owned by appellant Steven Maher, and the subsequent purchase of the house by appellees Benjamin and Kathy Rubal (the Rubals). Maher filed an action raising various claims against Bank One and the Rubals, and seeking to restore title to the house in his name and recover damages. On appeal, Maher asserts the trial court erred in granting summary judgment in favor of Bank One and the Rubals. We affirm.

Factual and Procedural Background

¶2 The following facts are undisputed. In 1999, Bank One, Arizona, N.A. (Bank One, Arizona) became the trustee under a deed of trust on Maher's house in Safford, Arizona, securing a home equity line of credit he had obtained from the bank. In March 2003, Maher stopped making payments on the line of credit's outstanding loan balance. Maher claimed the bank had given his wife information about the account and thereby violated its duty to maintain the confidentiality of his financial information. Maher asserted the provisions of his contract with Bank One, Arizona entitled him to withhold

payments when he had a billing dispute and that the alleged violation of his confidentiality created such a dispute.

¶3 From April through June 2003, Bank One, acting as successor in interest to Bank One, Arizona, sent Maher at least eight letters from its Wisconsin and Illinois offices, notifying him his account was past due and requesting he contact the bank so it could "discuss [his] situation and offer solutions to help resolve th[e] matter." The bank apologized for having sent Maher's wife information about his account and assured him it would no longer do so, but stated it would "not relieve [him] of [his] contractual obligation to satisfy the [loan]." In response, Maher alleged that, because he had only contacted Bank One representatives in Arizona and Illinois, he "ha[d] no idea" who had sent the Wisconsin letters or whether they were "for real." Maher stated he would "consider any future communications from [the Wisconsin office] as harassment" and refused to make any loan payments.

¶4 In July 2003, Bank One recorded a "Notice of Trustee's Sale," stating Maher's house would be sold at auction on October 16, 2003. Also in July, Bank One sent Maher several letters by certified mail informing him of the planned sale, but each letter was returned as "unclaimed." The bank published the notice of sale in the local newspaper in Safford once a week for four weeks in August and September 2003. In September, Bank One sent Maher a "remind[er]" that his house would be sold in October and requested that

he "vacat[e] the premises." Although Maher attended the trustee's sale and "object[ed] to it," his house was sold to Bank One.

¶5 After Maher failed to leave the house, Bank One filed a forcible detainer action against him. In response, Maher contested the validity of the trustee's sale, claiming that Bank One had no right to conduct the sale because it was a different entity than Bank One, Arizona, the entity with which he had contracted, and that Bank One had violated not only conditions of the contract but also Arizona law, federal law, and the bank's own charter. Maher admitted that he had violated the agreement by not making payments and did not claim he had any dispute about the amount owed.

¶6 The trial court found Maher guilty of forcible detainer and ordered him to vacate the premises. Thereafter, Bank One sold the house to the Rubals. On appeal from the trial court's decision, Maher argued, inter alia, that the trustee's sale was invalid and, therefore, the trial court had erred by terminating his right to possession because he had not received notice of Bank One's merger with Bank One, Arizona or notice of the trustee's sale, and because Bank One, Arizona's breach of confidentiality was a legitimate basis for him to withhold payments. In a memorandum decision, we determined that the "only issue to be decided in a forcible detainer action is whether the plaintiff has the right of actual possession" of the property. *Bank One, N.A. v. Maher*, No. 2 CA-CV 2004-0201, ¶ 7 (memorandum decision filed Sept. 30, 2005). And, "[b]ecause Bank One ha[d] sold the property to [the Rubals] and because dismissal of Bank One's complaint would not entitle

Maher to re-enter that third party's property, the appeal [wa]s moot." *Id.* We noted, however, that Maher could "litigate his other issues" in "a separate action to quiet title." *Id.* n.10.

¶7 In July 2006, Maher filed a complaint against Bank One seeking to quiet title to the house. As additional causes of action, Maher claimed Bank One had breached its contract with him; had trespassed on and wrongfully converted his property; had violated the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 through 1692p; and had violated various provisions of Title 33, A.R.S. Maher requested damages for each of these additional claims and also sought punitive damages "[a]s to all counts . . . in an amount sufficient to deter [Bank One] and others from similar acts in the future." He also asserted Title 33 required the court to "declare the . . . trustee's deed, and all subsequent conveyances, void and of no effect." Maher later amended his quiet title complaint to add the Rubals as defendants.

¶8 Maher moved for summary judgment on all counts, arguing the law and evidence showed: Bank One was not entitled to foreclose its deed of trust on his house because it was not the successor in interest to Bank One, Arizona; the Rubals were not bona fide purchasers of the house; Bank One improperly foreclosed its deed of trust while his dispute was still pending; Bank One had engaged in unfair debt-collection practices; and Bank One had failed properly to notify him of the trustee's sale. Bank One and the Rubals both filed cross-motions for summary judgment against Maher.

¶9 After oral argument, the trial court entered summary judgment in favor of Bank One and the Rubals, awarded them their costs and attorney fees, and ordered Bank One "to prepare a form of judgment, attaching thereto affidavits from both [it and the Rubals] regarding attorney's fees." Maher twice moved for a new trial pursuant to Rules 59 and 60, Ariz. R. Civ. P., and the court denied both motions. The court then entered final judgment in favor of Bank One and the Rubals, awarding them a collective total of $87,191.10 in costs and attorney fees. This appeal followed.

Discussion

¶10 Maher contends the trial court erred in granting summary judgment in favor of Bank One and the Rubals. Summary judgment is proper when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). A court should grant summary judgment "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). We review de novo whether there are any genuine issues of material fact and whether the trial court applied the law properly. *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, ¶ 8, 156 P.3d 1157, 1160 (App. 2007).

¶11 We first observe that, although all the parties generally requested judgment in their favor on all claims, none of the parties specifically discussed two of Maher's claims in

their summary judgment or new trial motions and responses filed below: Maher's claim that Bank One was liable for conversion and trespass for holding the trustee's sale, pursuing the forcible detainer action to evict him from the property, and subsequently selling the property to the Rubals; and his claim that Bank One breached its contract with him by "failing and refusing to send [him] notices . . . at his correct address" despite his having provided Bank One a new mailing address. Nor did the trial court discuss these claims in its orders granting Bank One's and the Rubals' motions for summary judgment or in denying Maher's motions for new trial. The court, nonetheless, granted final judgment in favor of Bank One and the Rubals on "the Complaint filed by . . . Maher." Because Maher does not argue on appeal that the court erred in doing so, he has abandoned these claims, and we do not address them.

Section 33-811(C), A.R.S.

¶12 Bank One and the Rubals assert that, pursuant to § 33-811(C), Maher waived his remaining claims by failing to seek a preliminary injunction before the sale.[1] Section 33-811(C) reads in pertinent part:

> The trustor, its successors or assigns, and all persons to whom the trustee mails a notice of a sale under a trust deed pursuant to [A.R.S.] § 33-809 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 pursuant to rule 65, Arizona rules of civil

[1]Although the Rubals raised § 33-811(C) below as a bar to Maher's claims, the trial court did not rely on that subsection in granting judgment in favor of the defendants. We may nonetheless affirm the court's ruling for any reason supported by the record. *City of Tempe v. Outdoor Sys., Inc.*, 201 Ariz. 106, ¶ 14, 32 P.3d 31, 36 (App. 2001).

> procedure, entered before 5:00 p. m. Mountain standard time on the last business day before the scheduled date of the sale.

¶13 It is undisputed that Maher did not seek, much less obtain, a preliminary injunction pursuant to Rule 65, Ariz. R. Civ. P, before the October 2003 trustee's sale. Thus, by the statute's plain language, he has waived any defense or objection to the sale. Maher asserts, however, that § 33-811(C) does not apply to his claims because the trustee's sale is void.[2] He reasons—absent any citation to authority—that "a procedural statute such as § 33-811[(C)] cannot create title where none exists" and "[t]he voidness of the sale can be raised at any time." *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief shall contain citation to authority). But Maher's proposed limitation on the scope of § 33-811(C) is unreasonable in any event.

¶14 It is true that the provisions governing trustee's sales must be strictly observed or any sale is void. *Patton v. First Fed. Sav. & Loan Ass'n of Phoenix*, 118 Ariz. 473, 476, 578 P.2d 152, 155 (1978). Thus, a trustee's failure to comply with those provisions is a defense or ground for objection to the sale, but, under § 33-811(C), the objecting party must seek an injunction pursuant to Rule 65 before the sale is held. To permit a trustor to void a sale based on a claim that those provisions were violated, after the trustor failed to seek and obtain a preliminary injunction, would render § 33-811(C) a practical nullity. *See Mejak v.*

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[2]Maher argues the sale is void for two reasons: (1) Bank One lacked authority to conduct the sale because it was not the same entity with which he had contracted, and (2) Bank One had failed to comply with various notice requirements enumerated in Title 33.

Granville, 212 Ariz. 555, ¶ 9, 136 P.3d 874, 876 (2006) ("We must interpret the statute so that no provision is rendered meaningless, insignificant, or void.").

¶15 Notably, subsection (C) was added to § 33-811 in 2002—nearly a quarter-century after *Patton* was decided. *See* 2002 Ariz. Sess. Laws, ch. 259, § 3. We presume the legislature is aware of existing law and of court decisions interpreting a statute and it intends to change the law when it amends a statute. *See Daou v. Harris*, 139 Ariz. 353, 357, 678 P.2d 934, 938 (1984) ("[W]e presume that the legislature, when it passes a statute, knows the existing laws."); *Ariz. Press Club, Inc. v. Ariz. Bd. of Tax Appeals*, 113 Ariz. 545, 548, 558 P.2d 697, 700 (1976) ("[I]t is a principle of statutory construction that the legislature is presumed to be aware of court decisions interpreting the language of [a] statute . . . ."); *State v. Hamblin*, 217 Ariz. 481, ¶ 11,176 P.3d 49, 52 (App. 2008) (we presume legislature intends to change law when it substantively changes statutory language). Therefore, given the legislature's awareness that certain objections or defenses to a trustee's sale would provide a basis to void the sale under *Patton*, had it intended for the waiver provision in § 33-811(C) not to apply to such objections and defenses, it would have said so specifically.

¶16 Moreover, Maher cites no authority suggesting a claim of title under an otherwise-invalid conveyance or deed cannot be validated by operation of statute; indeed, his position is contradicted by existing law. For example, a person may, with the passage of time, obtain good title to property, even when that person originally held void or defective title or even no title at all. *See* A.R.S. § 12-523(A) (prescribing statute of limitations for

"action to recover real property from a person in peaceable and adverse possession under title or color of title"); A.R.S. § 12-524 (statute of limitations to "recover a lot located in a city or town from a person having a recorded deed therefor, who claims ownership and has paid the taxes thereon"); A.R.S. § 12-526(A) (statute of limitations for action to recover land "from a person having peaceable and adverse possession thereof"); *Nicholas v. Giles*, 102 Ariz. 130, 133-34, 426 P.2d 398, 401-02 (1967) (void deed qualifies as recorded deed under § 12-524, which allows claimant to bring action for title after paying taxes on property); *Henderson v. Tejada*, 26 Ariz. App. 462, 466, 549 P.2d 242, 246 (1976) (color of title "requires a chain of title back to the sovereign of the soil, although the chain may be defective"). Thus, it is plainly within the legislature's power to allow a person to acquire good title to real property based on another's failure to act timely. We therefore find no reasoned basis to restrict the application of § 33-811(C) in the fashion Maher urges.

¶17 Maher additionally asserts § 33-811(C) does not apply to his claims because he "did not receive proper advance notice of the sale." But § 33-811(C) does not require that the trustor have had actual notice of the sale for its waiver provision to apply. We recognize, however, that the absence of a notice requirement in § 33-811(C) raises possible due process concerns.[3] *See Curtis v. Richardson*, 212 Ariz. 308, ¶ 16, 131 P.3d 480, 484 (App. 2006) ("Due process entitles a party to notice and an opportunity to be heard at a meaningful time

[3]To the extent Maher argues his due process rights would be violated if § 33-811(C) applied to bar his claims, he cites no supporting authority. *See* Ariz. R. Civ. App. P. 13(a)(6).

and in a meaningful manner."). But it is plain from the record—viewed in the light most favorable to Maher—that he had, at a minimum, actual notice of the sale approximately one month before it occurred. On September 28, 2003, Maher sent a letter to Bank One's attorney acknowledging his receipt of a letter dated September 16 reminding him of the date of the sale.

¶18 Bank One also complied with the requirement in A.R.S. § 33-809(C) that, within five days of recording the notice of sale, it mail a copy of the notice to Maher "by certified or registered mail." Maher failed to accept or claim the letter containing that notice or any of the subsequent correspondence sent to him by certified mail. But, in a July 16 letter to Bank One, he admitted he had received at least one notice from the United States Postal Service of a certified letter for him from Bank One's attorney. *Cf. Transamerica Fin. Servs., Inc. v. Lafferty*, 175 Ariz. 310, 313-14, 856 P.2d 1188, 1191-82 (App. 1993) (sending trustee's notice of sale to trustor's last known address complied with statutory requirements despite notice's being returned undelivered).

¶19 Plainly, any delay in Maher's receiving notice of the sale was a result of his intransigence and not Bank One's failure to comply with governing law. Thus, the lack of an explicit notice requirement in § 33-811(C) raises no due process concerns here. *See Dixon v. Picopa Constr. Co.*, 160 Ariz. 251, 261, 772 P.2d 1104, 1114 (1989) ("Due process commands that 'notice be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action . . . .'"), *quoting Mullane v. Cent. Hanover*

Bank & Trust Co., 339 U.S. 306, 314 (1950) (alteration in *Dixon*); *cf. Jay v. Kreigh*, 110 Ariz. 299, 303, 518 P.2d 122, 126 (1974) (party not injured by allegedly unconstitutional statute lacks standing to challenge its constitutionality).

¶20 Maher cites several cases in which a party was permitted to bring an action to set aside a trustee's sale after the sale had occurred, reasoning that § 33-811(C) therefore cannot bar his claims. But each of the cases Maher cites addressed events that occurred before § 33-811 was amended to add the waiver provision in subsection (C). *See* 2002 Ariz. Sess. Laws, ch. 259, § 3; *Krohn v. Sweetheart Props., LTD*, 203 Ariz. 205, ¶ 4, 52 P.3d 774, 775-76 (2002); *Eardley v. Greenberg*, 164 Ariz. 261, 263, 792 P.2d 724, 726 (1990); *In re Hills*, 299 B.R. 581, 582-83 (Bankr. D. Ariz. 2002). The cases are therefore inapposite. Accordingly, we conclude Maher has waived any objection or defense to the trustee's sale because he failed to seek a preliminary injunction pursuant to Rule 65 before the sale was held. We now examine each of his remaining claims in turn to determine if it is an objection or defense to the sale and therefore waived.

Quiet Title and Title 33 Claims

¶21 Maher's first claim, for quiet title, alleges Bank One was not the successor in interest to Bank One, Arizona and therefore lacked authority to conduct the trustee's sale. The relief Maher seeks is to have the sale set aside and title restored to him. His quiet title claim is clearly barred by § 33-811(C). He also seeks rescission of the sale as a remedy for Bank One's alleged violations of Title 33. He has waived that claim as well. That Maher

is also seeking damages for the alleged Title 33 violations does not change this result. Section 33-811(C) waives "all defenses and objections to the sale," without limiting that waiver to a particular action or according to the specific relief sought; it does not, for example, differentiate an action seeking to set aside a sale from an action seeking damages. We find no authority, and Maher cites none, suggesting we should interpret the waiver provision in § 33-811(C) so narrowly. Indeed, to do so would contravene the purpose of the statutes governing deeds of trust and trustee's sales—"to provide relatively inexpensive and speedy foreclosure proceedings." *Andreola v. Ariz. Bank*, 26 Ariz. App. 556, 559, 550 P.2d 110, 113 (1976); *see also LeDesma v. Pioneer Nat'l Title Ins. Co.*, 129 Ariz. 171, 173-74, 629 P.2d 1007, 1009-10 (App. 1981). Thus, because Maher has waived any defense or objection to the sale pursuant to § 33-811(C), we conclude he has also necessarily waived any claim for damages dependent on facts he could have raised as a defense or objection to the sale.

Contract Claims

¶22 Maher asserts Bank One breached the home equity loan agreement by instituting the trustee's sale despite his ongoing dispute with the bank over its disclosure of confidential account information to his spouse. Although he does not seek rescission of the sale as a remedy on this claim, the claim nonetheless requires Maher to prove the sale was improper. And, were the sale improper, he could have raised the impropriety in an action to enjoin the sale. *See generally* A.R.S. §§ 12-1801, 12-1805. He has therefore waived this

breach of contract claim.[4] *See* § 33-811(C). His remaining breach of contract claim—that Bank One violated the contract's terms by failing to notify him of Bank One's merger with Bank One, Arizona—would not, however, provide a valid defense to the sale. Therefore, his breach of contract claim based on that allegation is not barred by § 33-811(C).

¶23 Nonetheless, the trial court did not err in granting summary judgment in favor of Bank One on this claim. Maher's loan agreement with Bank One, Arizona states the contract "may not be supplemented or modified except in writing." Maher asserts this provision required Bank One to notify him of "material changes to the contract," specifically including its merger with Bank One, Arizona. But this provision cannot reasonably be read as requiring Bank One to give Maher notice of the merger. It instead is part of an integration clause that precludes as additional contract terms any previous extrinsic or collateral representations or any subsequent changes to the contract not agreed to by both parties in writing. *See generally* 6 Arthur L. Corbin, *Corbin on Contracts* § 578 (interim ed. 2002) ("If a written document . . . declares in express terms that it contains the entire agreement of the parties, and that there are no antecedent or extrinsic representations, warranties, or collateral provisions . . . , this declaration is conclusive . . . .").

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[4]This claim fails on its merits in any event. Maher asserts that, under the contract, he was permitted to withhold loan payments while any dispute with the bank was pending, and, therefore, he properly withheld loan payments because Bank One had not, at least to his satisfaction, resolved his complaint that it wrongly had disclosed confidential information to his spouse. But the contract provision on which Maher relies clearly applies only to disputes over the amount of the payment due and not to the type of dispute Maher describes.

¶24 Even assuming Bank One were required to notify Maher of any material change to the contract, the merger did not constitute such a change. Under federal law governing the merger and consolidation of banks, *see generally* 12 U.S.C. §§ 215 through 215c, Bank One is "deemed to be the same corporation" as Bank One, Arizona, with Bank One having the same "rights, franchises, and interests of [Bank One, Arizona] in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in [Bank One] by virtue of such consolidation without any deed or other transfer." 12 U.S.C. § 215(e); *cf.* A.R.S. § 6-212 (rights and liabilities of state bank merging with national bank "prescribed at the time of the action by the law of the United States"); A.R.S. § 6-216 (resulting bank "shall be considered the same business and corporate entity as each merging bank or converting bank").

¶25 Moreover, even if the merger could be considered a material change in the contract because it arguably transferred rights from Bank One, Arizona to Bank One, the contract expressly reserved to Bank One, Arizona the right to "sell or transfer [Maher's] Credit Lien Account to another lender, entity, or person, and to assign [its] rights under this Agreement and the Deed of Trust" "[w]ithout notice or prior approval from [Maher]." This specific provision qualifies any general duty Bank One might otherwise have had under the contract to notify Maher of the merger. *See Guo v. Maricopa County Med. Ctr.*, 196 Ariz. 11, ¶ 17, 992 P.2d 11, 15 (App. 1999) ("Where there is an inconsistency between two provisions in a contract, we will construe the more specific provision to qualify the more

general provision."). In short, under any reasonable interpretation of the contract, Bank One was not required to give Maher notice of the merger and could not have breached the contract by failing to do so.

FDCPA Claims

¶26 Last, Maher's damages claims in count four, alleging Bank One violated the FDCPA, would not provide a basis to prevent or set aside the trustee's sale; therefore, he has not waived these claims under § 33-811(C). This conclusion, however, does not end our inquiry. Maher's FDCPA claims concerned actions taken in 2003 by Bank One through its attorney Larry Folks. The trial court dismissed those claims after concluding, inter alia, that they were barred because Maher had failed to bring them within the applicable one-year statute of limitations. *See* 15 U.S.C. § 1692k(d). Maher does not dispute this conclusion in his opening brief. Nonetheless, he claims in his reply brief that the statute of limitations does not bar his FDCPA claims. Apparently referring to the fact that Folks was Bank One's attorney and had been named by the bank as the successor trustee on Maher's deed of trust, Maher argues that he "had no reason or way to know" the relationship between Folks and Bank One "until after he was able to conduct discovery."

¶27 We generally consider arguments raised for the first time in a reply brief waived. *See Duwyenie v. Moran*, 220 Ariz. 501, n.3, 207 P.3d 754, 756 n.3 (App. 2009). Maher, moreover, has failed to cite any authority in support of his argument or to develop it in any meaningful way. *See Lohmeier v. Hammer*, 214 Ariz. 57, n.5, 148 P.3d 101, 108 n.5

(App. 2006) (undeveloped arguments waived); *In re $26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 28, 18 P.3d 85, 93 (App. 2000) (same). In any event, even assuming Maher's knowing the nature of the relationship between Bank One and Folks was material to his discovering his FDCPA claims against the bank and that the statute of limitations should not begin to run until he learned that information, the trial court correctly concluded his claim was time-barred.

¶28 We review de novo a trial court's grant of summary judgment based on the statute of limitations. *See Andrews v. Eddie's Place, Inc.*, 199 Ariz. 240, ¶ 1, 16 P.3d 801, 802 (App. 2000). Generally, a plaintiff must file claims under the FDCPA within one year of the violation. 15 U.S.C. § 1692k(d). However, the statute of limitations under § 1692k(d) may be tolled until the plaintiff "discovered or had reasonable opportunity to discover" the facts underlying his or her claims. *Foster v. D.B.S. Collection Agency*, 463 F. Supp. 2d 783, 799-800 (S.D. Ohio 2006); *see generally CDT, Inc. v. Addison, Roberts & Ludvig, C.P.A., P.C.*, 198 Ariz. 173, ¶ 7, 7 P.3d 979, 982 (App. 2000) (under "discovery rule," statute of limitations begins to run when plaintiff knew or should have known of cause of action).

¶29 Maher does not specify when he "discover[ed]" the relationship between Bank One and Folks, other than asserting he did not learn of it "until soon before he filed the present lawsuit in 2006." But Maher cites, and we have found, nothing in the record supporting that assertion. In exhibits submitted to the trial court, Maher acknowledged receipt in July 2003 of a debt-collection letter from Folks, in which Folks identified himself

as an attorney "represent[ing] Bank One." In Maher's opening brief, filed in March 2004 in his previous appeal before this court, Maher noted that Folks had been appointed successor trustee under the deed of trust to Maher's house. Maher does not dispute that he knew all other facts necessary to the discovery of his FDCPA claims by at least that date. Thus, Maher had discovered the facts underlying those claims by March 2004 at the latest. But he did not file his complaint in this case until July 2006, more than two years after his FDCPA claims had accrued. Consequently, we cannot say the trial court erred in concluding § 1692k(d) barred Maher's FDCPA claims and therefore granting summary judgment in favor of Bank One on those claims.

Motion to Continue

¶30 Maher additionally argues the trial court erred in granting summary judgment "without requiring [Bank One] to provide relevant discovery." However, nothing in the record suggests that the evidence sought by Maher's pending discovery requests would have been relevant to his two claims not barred by § 33-811(C). Even assuming the evidence would be relevant to those claims, the trial court did not err. Before oral argument on the motions for summary judgment, Maher asked the court to delay its decision on those motions to give Bank One more time to respond to his pending discovery requests, asserting the requested information was relevant to his claims. But a party seeking to defer a summary judgment ruling because it "cannot . . . present by affidavit facts essential to justify [its] opposition" to summary judgment, Ariz. R. Civ. P. 56(f), must file an affidavit in support of

that request "specifically describing the reasons justifying delay," including what the party believes the evidence would reveal. *Grand v. Nacchio*, 214 Ariz. 9, ¶ 72, 147 P.3d 763, 783 (App. 2006); *see also Magellan S. Mountain Ltd. P'ship v. Maricopa County*, 192 Ariz. 499, ¶ 10, 968 P.2d 103, 106 (App. 1998). Maher filed no such affidavit.

¶31 Moreover, the information he sought was equally relevant to his own pending motion for summary judgment, which he had filed before either Bank One or the Rubals had filed their motions. Rule 56(f) only permits granting a continuance to a party opposing summary judgment. The trial court was not required to delay its ruling because Maher had insufficient evidence available to support his position on factual issues he initially had raised in his own motion for summary judgment. For these reasons, the trial court did not abuse its discretion in denying Maher's request to delay its ruling on the summary judgment motions. *See Maricopa County v. Kinko's Inc.*, 203 Ariz. 496, ¶ 19, 56 P.3d 70, 75 (App. 2002) ("We apply an abuse of discretion standard of review to a denial of relief under Rule 56(f).").

Disposition

¶32 We affirm the trial court's grant of summary judgment in favor of Bank One and the Rubals. We grant Bank One's request for reasonable attorney fees on appeal pursuant to the provisions of the contract and deed of trust, pending Bank One's compliance with Rule 21(c), Ariz. R. Civ. App. P. We deny the Rubals' request for attorney fees made pursuant to A.R.S. § 12-349. Maher's arguments on appeal, although unavailing, were not frivolous, and nothing in the record suggests he brought this appeal "solely or primarily for delay or

harassment" or that he "[u]nreasonably expand[ed] or delay[ed] the proceedings." § 12-349(A). And, in our discretion, we deny the Rubals' request for attorney fees pursuant to A.R.S. § 12-341.01.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge