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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 CESAR F. SILVAS,

No. CV-09-265-PHX-GMS

10 Plaintiff,

ORDER

11 vs.

12 GMAC MORTGAGE, LLC;
13 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
14 FIRST NATIONAL BANK OF
ARIZONA; RESIDENTIAL FUNDING
15 COMPANY, LLC; RESIDENTIAL
ACCREDIT LOANS, INC.; GMAC-RFC
16 SECURITIES; RALI SERIES 2007-QA3
TRUST; DEUTSCHE BANK TRUST
17 COMPANY AMERICAS; HSBC BANK
USA, N.A.; EXECUTIVE TRUSTEE
18 SERVICES, LLC; JP MORGAN CHASE
BANK, N.A.; JOHN DOES AND JANE
19 DOES 1-1000; ABC CORPORATIONS I-
XX; AND XYZ PARTNERSHIPS I-XX,

20 Defendants.
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23 Pending before the Court is the Motion to Set Aside Foreclosure Proceedings and
24 Vacate Forcible Detainer Judgment and Void Any Granting and Conveyance of the Property
25 of Plaintiff Cesar Silvas. (Dkt. # 52.) For the reasons set forth below, the Court denies the
26 motion.

27 In 2006, Plaintiff refinanced real property located at 1041 South Edith Court,
28 Chandler, AZ 85286. (Dkt. # 39 ¶ 16.) The financing for the property was obtained in the

1 amount of \$375,641.00 pursuant to a promissory note that was secured by a deed of trust.
2 (*Id.* ¶ 19.) On June 29, 2009, a trustee’s sale was held and the property was sold. (Dkt. # 52
3 at 2-3.) On July 7, 2009, a forcible detainer judgment was apparently obtained against
4 Plaintiff and he was forced to vacate the property. On July 30, 2009, Plaintiff filed this
5 motion, arguing that, pursuant to Federal Rule of Civil Procedure 60(b), the Court has
6 authority to set aside the June 29 trustee’s sale, vacate the forcible detainer judgment, and
7 void any granting and conveyance of the property . (Dkt. # 52 at 5.) Defendants argue that
8 Rule 60(b) does not permit this Court to grant the relief requested by Plaintiff. (Dkt. # 53 at
9 2.)

10 Federal Rule of Civil Procedure 60(b) states that “on motion and just terms, the court
11 may relieve a party or its legal representative from a final judgment, order, or proceeding .
12 . . .” Fed. R. Civ. P. 60(b); *see also* 11 Charles Alan Wright, Arthur R. Miller & Mary Kay
13 Kane, *Federal Practice and Procedure* § 2851 (2d ed. 1995) (“Rule 60 regulates the
14 procedures by which a party may obtain relief from a final judgment.”).

15 Arizona law confers power of sale upon the trustee holder of a deed of trust
16 independent of the judicial system. Ariz. Rev. Stat. § 33-807; *see also In re Krohn*, 203 Ariz.
17 205, 208, 52 P.3d 774, 777 (2002) (citing *Patton v. First Fed. Sav. & Loan Ass’n*, 118 Ariz.
18 473, 477, 578 P.2d 152, 156 (1978)) (“A mortgage generally may be foreclosed only by
19 filing a civil action while, under a Deed of Trust, the trustee holds a power of sale permitting
20 him to sell the property out of court with no necessity of judicial action.”). “[N]onjudicial
21 foreclosure statutes . . . reflect a carefully crafted balancing of the interests of beneficiaries,
22 trustors, and trustees. Trustees . . . need to have clearly defined responsibilities to enable
23 them to discharge their duties efficiently and to *avoid embroiling the parties in time-*
24 *consuming and costly litigation.*” *TransAmerica Fin. Serv., Inc. v. Lafferty*, 175 Ariz. 310,
25 314, 856 P.2d 1188, 1192 (Ct. App. 1993) (emphasis added) (citing *I.E. Assoc. v. Safeco Title*
26 *Ins. Co.*, 702 P.2d 596, 600 (Cal. 1985)).


27 Here, Plaintiff does not seek relief from a final judgment, order, or proceeding of this
28 Court. Rather, Plaintiff seeks relief from a nonjudicial trustee’s sale that proceeded

1 independent of any Court involvement and the subsequent conveyance of title to the
2 property. Federal Rule of Civil Procedure 60(b) is not applicable in such circumstances. To
3 the extent Rule 60(b) may be an appropriate vehicle for obtaining relief from the forcible
4 detainer judgment, Plaintiff should direct his motion to the court issuing that judgment.

5 **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Set Aside Foreclosure
6 Proceedings and Vacate Forcible Detainer Judgment and Void Any Granting and
7 Conveyance (Dkt. # 52) is **DENIED**.

8 DATED this 21st day of August, 2009.

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G. Murray Snow
United States District Judge