

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Steve G. Thomas,

10 Plaintiff,

11 vs.

12 Wells Fargo Bank, N.A., et al.,

13 Defendants.
14
15

No. CV-10-901-PHX-GMS

ORDER

16
17 Pending before the Court is Defendant's Motion to Quash Lis Pendens brought
18 pursuant to A.R.S. § 33-420 (B) (2007), Doc. 57. This statute allows the beneficial title
19 holder of real property to bring an action "to clear title to the real property" that has had an
20 unmerited lis pendens placed upon it. For the reasons state below, that motion is granted.

21 Plaintiff filed a lis pendens with the Maricopa County Recorder's office on April 21,
22 2010 on 3644 E. Maffeo Road in Phoenix, Arizona 85050 – the property that is at issue in
23 this case. The lis pendens states "this litigation relates to the title of the following described
24 real property." As the text of Plaintiff's lis pendens suggests, "[i]t is well established that a
25 lis pendens may not be predicated on an action or suit for money damages but applies only
26 to an action or suit which directly affects the title to the real property." *Coventry Homes, Inc.*
27 *v. Scottscom P'ship*, 155 Ariz. 215, 217, 745 p.2d 962, 964 (Ct. App. 1987), *see also Santa*
28 *Fe Ridge Homeowners' Ass'n v. Bartschi*, 219 Ariz. 391, 395, 199 P.3d 646, 650 (Ct. App.

1 2008).

2 In the matter pending before this Court, Plaintiff has some remaining claims for
3 damages, but claims in which Plaintiff made a claim to title to the property have all been
4 dismissed. Doc. 18. Further, pursuant to Arizona statute, Plaintiff has no right to challenge
5 the trustee's sale and hence can raise no claims to title.

6 A.R.S. § 33-811(C) (2007) specifies that:

7 The trustor, its successors or assigns, . . . shall waive all defenses and
8 objections to the sale not raised in an action that results in the issuance of a
9 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 schedule date of the sale.

10 The record in fact reveals that Plaintiff did not obtain injunctive relief against any of
11 the Defendants prior to the foreclosure sale.

12 Plaintiff's argument concerning the applicability of this statute is that the lis pendens
13 is only notice of an action, not an action itself, and hence is unaffected by A.R.S. 33-811(C).
14 Plaintiff further asserts that the action does involve title to the property.¹ These arguments
15 are unpersuasive. Section 33-811(C) prevents Plaintiff from challenging the trustee's sale.
16 Plaintiff has asserted no other basis on which it can challenge the title to the property. If
17 Plaintiff has no right to challenge the title to the property, he has no right to file a notice of
18 a legal challenge to the title to the property.

19 Plaintiff asserts that he did not have time to request an injunction at state court.
20 Nevertheless, the statute puts the burden on the Plaintiff to prepare the necessary evidence
21 to obtain a preliminary injunction or a temporary restraining order, and bring it before the
22 court, if necessary in an emergency motion, so that the court can rule prior to the occurrence
23 of the foreclosure sale.

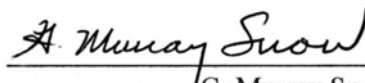
24 Arizona courts "give effect to the plain meaning of [this] statute" and thus Plaintiff's
25 failure to seek an injunction pursuant to Rule 65 before the sale was held, "waived any
26

27 ¹ Plaintiff's other arguments are all subsumed in his failure to obtain preliminary
28 injunctive relief.

1 defense or objection to the sale.” *Luciano v. WMC Mortgage Corp.*, 2010 WL 1491952
2 (Ariz. Ct. App. April 13, 2010). This Court does not make and cannot alter state law, rather
3 it applies it. The law in question does not provide leeway for self-representing homeowners.
4 Thus, no arguments or assertions raised by Plaintiff, even if true, can be used to contest the
5 non-judicial foreclosure of the subject property. Therefore, Plaintiff can assert no claim to
6 title in the subject property, despite the fact that he may have remaining damage claims.

7 **IT IS THEREFORE ORDERED** granting the Motion to Quash Lis Pendens (Doc.
8 57) and quashing the lis pendens recorded with the Maricopa County Recorder’s Office on
9 April 21, 2010, regarding the property located at 3644 E. Maffeo Road, Phoenix, Arizona
10 85050, bearing recording number 20100336001. Defendant is awarded its attorneys’ fees
11 incurred in bringing this motion upon its compliance with LRCiv. 54.2.

12 DATED this 29th day of August, 2011.

13
14 
15 _____
16 G. Murray Snow
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28