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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 IN THE MATTER OF:

10 In re Iveyfund, LLC,

11 Debtor.

No. CV14-02791-PHX-DGC

BK NO. 2:14-bk-12802-DPC

12 Iveyfund, LLC,

13 Appellant,

14 v.

15 MZ2, LLC,

16 Appellee.

ORDER

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18 Appellee MZ2, LLC has filed a motion to dismiss Appellant Iveyfund, LLC's
19 bankruptcy appeal. Doc. 5. MZ2 argues that Iveyfund's appeal is equitably moot,
20 statutorily moot, and untimely. The Court will grant MZ2's motion on the ground that
21 Iveyfund's appeal is moot.

22 **I. Background.**

23 This case involves two parcels of vacant property that formerly belonged to
24 Iveyfund, LLC. In August of 2014, Iveyfund filed a Chapter 11 bankruptcy petition.
25 Doc. 1. At that time, MZ2, LLC held promissory notes secured by deeds of trust for the
26 two properties belonging to Iveyfund. Doc. 5 at 37. Wanting to foreclose on these
27 properties, MZ2 filed a motion asking the bankruptcy court to dismiss the case, terminate
28 the stay, or grant adequate protection. *Id.* at 13. Over the next two months, and with the

1 bankruptcy court's approval, Iveyfund unsuccessfully attempted to sell the properties to a
2 different buyer. *Id.* at 12-32. On December 10, the bankruptcy court granted MZ2's
3 motion for relief from the automatic stay protecting the two properties. Doc. 1 at 7. The
4 order stated:

5 Any and all stays against lien enforcement, including the automatic stay of
6 11 U.S.C. § 362(a) and the automatic injunction of 11 U.S.C. § 524(a), are
7 hereby vacated and annulled with respect to the [two parcels of property in]
8 Scottsdale, Arizona . . . MZ2, LLC, its assignees and/or successors in
9 interest, may proceed with a foreclosure of and hold the Trustee Sales
and/or Judicial Foreclosures with respect to the properties . . . on December
29, 2014 pursuant to state law[.]

10 *Id.* at 7-8. A trustee's sale was held on December 29, 2014, and MZ2 purchased the
11 properties. Doc. 5 at 38-40. On that same day, Iveyfund filed a notice of appeal from the
12 bankruptcy court's order. Doc. 1.

13 **II. Mootness.**

14 “[W]hen an appellant fails to obtain a stay from an order that permits a sale of the
15 debtor's asset, the appeal will be rendered moot regardless of whether the purchaser has
16 taken irreversible steps following the sale. This mootness rule applies even where the
17 buyer is a party to the appeal.” *In re Vista Del Mar Assocs., Inc.*, 181 B.R. 422, 424
18 (B.A.P. 9th Cir. 1995) (citing *In re Onouli-Kona Land Co.*, 846 F.2d 1170, 1172 (9th Cir.
19 1988)).¹ “Whether an order directly approves the sale or simply lifts the automatic stay,
20 the mootness rule dictates that the appellant's failure to obtain a stay moots the appeal.”
21 *Suter v. Goedert*, 504 F.3d 982, 986 (9th Cir. 2007) (quoting *In re Onouli-Kona*, 846 F.2d
22 at 1171). “There are two recognized exceptions to this mootness rule: (1) where the
23 debtor has a statutory right of redemption, and (2) where other state law would permit the

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25 ¹ MZ2 refers to this doctrine as “equitable mootness.” The courts that have
26 applied it, however, have referred to it as “[b]ankruptcy's mootness rule,” *In re Onouli-*
27 *Kona*, 846 F.2d at 1171, or “bankruptcy sale mootness,” *In re Bronson*, No. BAP AZ-12-
28 1368-MKDJU, 2013 WL 2350810, at *4 (B.A.P. 9th Cir. May 29, 2013). Courts have
explained that this mootness rule “did not originate in the Bankruptcy Rules. Rather, it is
a judicial doctrine which developed from the general rule that the occurrence of events
which prevent an appellate court from granting effective relief renders an appeal moot,
and the particular need for finality in orders regarding stays in bankruptcy.” *Algeran,*
Inc. v. Advance Ross Corp., 759 F.2d 1421, 1424 (9th Cir. 1985).

1 sale to be set aside.” *In re Vista Del Mar Assocs, Inc.*, 181 B.R. at 425 (citing *In re*
2 *Ewell*, 958 F.2d 276, 280 (9th Cir. 1992)). The party asserting mootness has the “heavy
3 burden” of establishing that the appeal is moot. *Suter*, 504 F.3d at 986.

4 Here, the bankruptcy court entered an order that permitted the sale of the two
5 properties belonging to Iveyfund. Doc. 1 at 7-8. Iveyfund failed to obtain a stay from
6 this order and MZ2 completed the sale. Iveyfund’s appeal from the order is therefore
7 moot. Furthermore, neither of the two exceptions to this mootness rule applies. “In
8 Arizona, the debtor has no right of statutory redemption after the deed of trust is
9 foreclosed by trustee’s sale.” *Mid Kansas Fed. Sav. & Loan Ass’n of Wichita v. Dynamic*
10 *Dev. Corp.*, 804 P.2d 1310, 1315 n.3 (Ariz. 1991) (citing A.R.S. § 33-811). Also, there is
11 no other state law that would permit the sale to be set aside because “Arizona law
12 explicitly provides that the foreclosure sale itself cut off any such rights that [Appellant]
13 otherwise might have asserted.” *In re Bronson*, 2013 WL 2350810, at *4 (citing A.R.S. §
14 33-811(C)).

15 Iveyfund makes various arguments regarding the mootness of this appeal, but cites
16 no authority in support of those arguments. *See* Doc. 7, § II(A). The Court concludes
17 that the authorities cited above control.

18 **IT IS ORDERED:**

- 19 1. Appellee’s motion to dismiss (Doc. 5) is **granted**.
20 2. The Clerk is directed to terminate this case.

21 Dated this 27th day of March, 2015.

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26 David G. Campbell
27 United States District Judge
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