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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Sherwin Dennis Robertson, et al.,

No. CV-12-8033-PCT-LOA

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Plaintiff,

ORDER

11

vs.

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DLJ Mortgage Capital, Inc., et al.,

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Defendants.

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This matter is before the Court on Plaintiffs’ Motion for Permission to Appeal In Forma Pauperis. (Doc. 69)

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I. Background

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Plaintiffs filed their Complaint to Quiet Title to Real Property; Judgment Divesting Title; Forcible Entry and Detainer on February 22, 2012. (Doc. 1) Plaintiffs paid the filing fee at that time. (*Id.*) The parties agreed to jurisdiction before a magistrate judge on February 28, 2012. (Docs. 4, 14) After several preliminary matters, the Court granted Defendants’ Motion to Dismiss Plaintiffs’ *pro se* Amended Complaint for failure to state a plausible claim upon which relief may be granted. (Doc. 66) The Clerk entered judgment on October 11, 2012. (Doc. 67) On November 5, 2012, Plaintiffs filed a Notice of Appeal of that judgment, doc. 68, and the pending Motion for Permission to Appeal In Forma Pauperis, doc. 69.

1 **II. Discussion**

2 Plaintiffs did not initially seek *in forma pauperis* status in filing this action; rather,
3 they paid the filing fee in full. (Doc. 1) Nonetheless, Rule 24(a)(1), Federal Rules of
4 Appellate Procedure (“Fed.R.App.P.”), provides that a party may proceed *in forma pauperis*
5 on appeal if he or she files a motion in district court and attaches an affidavit that:

- 6 (A) shows in the detail prescribed by Form 4 of the Appendix of Forms
7 the party’s inability to pay or give security for fees or costs;
- 8 (B) claims an entitlement to redress; and
- 9 (C) states the issues that the party intends to present on appeal.

10 However, Rule 24(a)(1), Fed.R.App.P., is limited by 28 U.S.C. § 1915(a)(3) of the Prison
11 Litigation Reform Act (“PLRA”), applicable to all *in forma pauperis* appeals, not just those
12 filed by prisoners, which provides that “[a]n appeal may not be taken in forma pauperis if
13 the trial court certifies in writing that it is not taken in good faith.” *See O’Neal v. Price*, 531
14 F.3d 1146, 1149 (9th Cir. 2008); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en
15 banc) (“[S]ection 1915(e) applies to all in forma pauperis complaints, not just those filed by
16 prisoners.”).

17 The PLRA further provides that “[n]otwithstanding any filing fee, or any portion
18 thereof, that may have been paid, the court shall dismiss the case at any time if the court
19 determines that -- . . . (B)(i) the action or appeal is frivolous or malicious” 28 U.S.C.
20 § 1915(e)(2)(B)(i); *see also Plain Feather v. Preite*, 2010 WL 3037530, at *1 (D. Mont.
21 Aug. 4, 2010); *Magee v. Hatch*, 26 F. Supp. 2d 153, 155 (D.D.C. 1998) (“An *in forma*
22 *pauperis* proceeding is not taken in good faith if it is ‘frivolous or malicious.’”) (quoting 28
23 U.S.C. § 1915(e)(2)). The good faith standard is an objective one. *Coppedge v. United*
24 *States*, 369 U.S. 438, 445 (1962). An appeal is frivolous if it lacks any arguable basis in law
25 or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221,
26 1225 (9th Cir. 1984). “Additionally, section 1915(e)(2)’s term ‘frivolous,’ when applied to
27 a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual
28 allegation.” *Magee*, 26 F. Supp. 2d at 155 In other words, “a legal claim may be deemed

1 frivolous if it is wholly unsupported by law or facts.” *Id.*

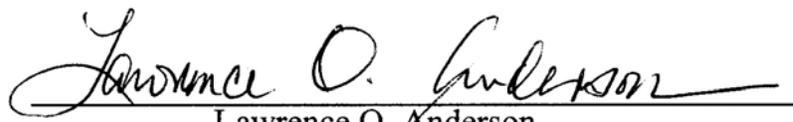
2 Here, the Court finds and certifies in writing that Plaintiffs’ appeal is not taken in
3 good faith under 28 U.S.C. § 1915(a)(3). The Court’s October 11, 2012 Order explained in
4 detail why Plaintiffs’ causes of action challenging the trustee’s sale of the property and the
5 validity of the various documents relating to the property’s title and deed are without any
6 arguable legal or factual merit. *See Robertson v. DLJ Mortg. Capital, Inc.*, 2012 WL
7 4840033 (D. Ariz. Oct. 11, 2012). The Court’s finding, however, does not prevent Plaintiffs
8 from filing a motion to proceed on appeal *in forma pauperis* in the Ninth Circuit Court of
9 Appeals pursuant to, and in compliance with, Rule 24(a)(5), Fed.R.App.P. *O’Neal*, 531 F.3d
10 at 1150 (citations omitted).

11 Accordingly,

12 **IT IS ORDERED** that the Court certifies that this appeal is not taken in good faith.

13 **IT IS FURTHER ORDERED** that Plaintiffs’ Motion for Permission to Appeal In
14 Forma Pauperis, doc. 69, is **DENIED**.

15 Dated this 13th day of November, 2012.

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18 Lawrence O. Anderson
19 United States Magistrate Judge
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