

The Honorable David W. Garbarino, Judge *Pro
Tempore*

James W. Bonham, Glendale

Defendant/Appellant

Williams Zinman & Parham PC, Scottsdale By Scott E.

Williams, Mark B. Zinman *Counsel for*

Plaintiffs/Appellees

SUTTO, JR., et al. v. BONHAM Decision of the Court

MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the
decision of the Court, in which Judge Lawrence F.
Winthrop and Judge Michael J. Brown joined.

CAMPBELL, Judge:

¶1 James Bonham appeals from the superior court's
judgment in favor of John Sutton, Jr., et al., in this

forcible detainer action. "On the trial of an action of forcible entry or forcible detainer, the only issue shall be the actual possession and the merits of title shall not be inquired into." A.R.S. § 12-1177(A); *Curtis v. Morris*, 186 Ariz. 534, 535 (1996). Because Bonham in this appeal only raises challenges to the merits of title, we affirm the superior court's judgment.

BACKGROUND

¶2 In March 2005, Bonham executed a promissory note secured by a deed of trust on real property located in Glendale, Arizona ("the property"). On February 27, 2019, John and Holly Sutto purchased the property at a trustee's sale and the duly appointed trustee conveyed the property to them through a trustee's deed. On the same date, the Suttos served Bonham with a "Written Demand of Surrender and Possession," notifying him that they had purchased the property through a

trustee's sale and demanding that he vacate the premises immediately.

¶3 Bonham did not vacate the premises, and nine days later, the Suttos sued Bonham for forcible detainer. Moving to dismiss that complaint, Bonham asserted the superior court lacked jurisdiction over the forcible detainer action because he had a pending bankruptcy case in the federal court. In a separate answer, Bonham reasserted his claim that the superior court lacked jurisdiction and cited A.R.S. § 39-161 as an affirmative defense, without providing any explanation. See A.R.S. § 39-161 (criminalizing certain transactions involving false or forged instruments).

¶4 After a bench trial, the superior court denied the motion to dismiss and entered judgment in favor of the Suttos, finding Bonham guilty of forcible detainer. Bonham timely appealed.

SUTTO, JR., et al. v. BONHAM Decision of the Court

DISCUSSION. I. Validity of Underlying Trustee's Sale

¶5 Arguing the superior court improperly found him guilty of forcible detainer, Bonham contends that the underlying trustee's sale violated A.R.S. § 39-161. According to Bonham, this purported statutory violation voids the trustee's sale and the Suttos therefore have no lawful claim against him.¹

¶6 A forcible detainer action is a statutory proceeding, "the object of which is to provide a summary, speedy and adequate means for obtaining possession of premises by one entitled to actual possession." *Heywood v. Ziol*, 91 Ariz. 309, 311 (1962). We review the superior court's application of the relevant statutes de novo. See *City of Tucson v. Pima County*, 190 Ariz. 385, 386 (App. 1997). Under A.R.S. § 12-1173.01(A)(2), "a person . . . who retains possession of . . . real property after he

receives written demand of possession may be removed through an action for forcible detainer . . . [i]f the property has been sold through a trustee's sale under a deed of trust"

¶7 Contrary to Bonham's contention, A.R.S. § 39-161 provides no defense to a forcible detainer action because the only issue in a forcible detainer action is actual possession, not the merits of title. A.R.S. § 12-1177(A); *Curtis*, 186 Ariz. 534, 535 (1996). To find otherwise "would convert a forcible detainer action into a quiet title action and defeat its purpose as a summary remedy." *Curtis*, 186 Ariz. at 535. Because Bonham challenges only the validity of the underlying trustee's sale and does not otherwise dispute the superior court's finding that he is guilty of forcible detainer, we cannot say the court erred by entering judgment in favor of the Suttos.

Bonham also asserts the superior court improperly denied his motion to dismiss. Although we may review the denial of a motion to dismiss as part of an appeal from a final judgment, *see Sanchez v. Coxon*, 175 Ariz. 93, 94 (1993), Bonham challenged only the superior court's jurisdiction in his motion to dismiss, not the validity of the trustee's sale. Because Bonham does not reassert his jurisdiction claim on appeal, we do not consider the court's denial of the motion to dismiss.

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II. Attorney Fees Incurred on Appeal

¶8 Citing A.R.S. §§ 12-341.01, 12-349, 12-1178, 33-1315, and Arizona Rule of Civil Procedure ("Rule") 11, the Suttos request an award of their attorney fees incurred on appeal. Under A.R.S. § 12-341.01(A), a court may award attorney fees to the prevailing party in a dispute that arises out of a contract. A forcible detainer action, however, does not arise out of contract.

Bank of New York Mellon v. Dodev, 246 Ariz. 1, 11-12, ¶ 38 (App. 2018); *Carrington Mortg. Servs. v. Woods*, 242 Ariz. 455, 457, ¶ 14 (App. 2017). While a “party who had a lawful possessory interest in property and who continues in possession of the property after [that] interest is terminated by a trustee’s sale becomes a tenant at sufferance[,] . . . [a] contract does not exist between a landlord and a tenant at sufferance.” *Bank of New York Mellon*, 246 Ariz. at 12, ¶ 38 (internal quotations omitted). For this reason, A.R.S. § 33-1315(A)(2), which permits an award of attorney fees for a forcible detainer action arising out of a rental agreement, likewise provides no basis for an attorney fees award in this case.

¶9 Under A.R.S. § 12-1178(A), the superior court may award attorney fees to a party who successfully prosecutes a forcible detainer action. But A.R.S. § 12-1182(B), which governs appeals from a forcible detainer

judgment, only authorizes an award of costs, rent, and damages, not attorney fees. *Bank of New York Mellon*, 246 Ariz. at 12, ¶ 40. “As noted in our previous caselaw, costs and damages do not include attorney fees[,]” and A.R.S. § 12-1178 therefore provides no basis for an attorney fees award on appeal. *Id.*

¶10 Finally, Rule 11 and A.R.S. § 12-349 authorize a sanction-based award of attorney fees. Citing *Villa De Jaraines Ass'n v. Flagstar Bank, FSB*, 227 Ariz. 91, 96, ¶ 13 (App. 2011), the Suttos contend sanctions are warranted because: “[1] there was no reasonable inquiry into the basis for [the appeal]; (2) there was no chance of success under existing precedent; and (3) there was no reasonable argument to extend, modify, or reverse the controlling law” The Suttos also assert that sanctions are appropriate under A.R.S. § 12-349(A) because Bonham appealed the judgment “without any justification” and for the sole “purpose of delaying” the

Suttos from obtaining possession of the property. Although A.R.S. § 12-1173.01(A)(2) presupposes a valid trustee's sale and transfer of deed of trust, Bonham did not argue that the question of title was so intertwined with the issue of possession that title had to be determined before possession could be adjudicated in the forcible detainer action. Nonetheless, we do not find Bonham's challenge to the validity of the underlying trustee's sale as a defense to the forcible detainer action manifestly unreasonable and thus we decline to award attorney fees as a sanction. *See Bank of New York Mellon*, 246 Ariz. at 12, ¶ 39 (noting this court imposes sanctions "only with great reservation") (internal quotation omitted).

CONCLUSION

¶ 11 For the foregoing reasons, we affirm. As the successful parties on appeal, we award the Suttos their costs, conditioned upon compliance with ARCAP 21.

APPENDIX B

CV 2019-004326

HONORABLE DAVID W. GARBARINO

JOHN S SUTTO JR., et al.

v.

JAMES W BONHAM

Clerk of the Superior Court * Electronically Filed *****

04/01/2019 8:00 AM

03/28/2019

CLERK OF THE COURT L. Brown

Deputy

SCOTT E WILLIAMS

JAMES W BONHAM

6635 W HAPPY VALLEY RD # A104- 166

GLENDAL AZ 85310

COMM. GARBARINO

MINUTE ENTRY

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Prior to the commencement of today's hearing,
Plaintiffs exhibits 1-7 are marked for identification.
Courtroom: ECB 813. 3:34 p.m.

This is the time set for Forcible Detainer Trial.
Plaintiffs John S. Sutto and Holly Sutto are
represented by counsel, Scott Williams. Defendant,
James W. Bonham, is present on his own behalf.

A record of the proceedings is made digitally in lieu of a
court reporter. John S. Sutto is sworn and testifies.
David Reynolds is sworn and testifies.

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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

CV 2019-004326 03/28/2019

Plaintiff's exhibits 1-7 are received in evidence. Based upon matters, testimony and evidence presented to the Court,

IT IS ORDERED denying Defendant's Motion to Dismiss Plaintiff's Summons and Complaint for Lack of Jurisdiction.

IT IS FURTHER ORDERED denying Defendant's Oral Motion for jury trial as untimely.

IT IS FURTHER ORDERED granting judgment against Defendant, James Bonham, in accordance with the formal written Judgment signed by the Court, as modified, on March 28, 2019 and filed

(entered) by the Clerk on March 28, 2019. Defendant presents a Motion for Stay of the Writ of Restitution and Setting of Bond.

IT IS FURTHER ORDERED staying execution of the writ of restitution pending a resolution of the Motion for Stay of Writ of Restitution and Setting of Bond.

IT IS FURTHER ORDERED setting a Hearing on April 5, 2019 at 10:30 a.m., in this division:

Maricopa County Superior Court East Court Building
Courtroom 813, 101 West Jefferson St. Phoenix, AZ
85003 4:51 p.m. Matter concludes.

Docket Code 049

Form V000A

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APPENDIX C

Arizona Supreme Court

State of Arizona

Robert Brutinel, Chief Justice

Janet Johnson, Clerk

Arizona State Court Building

1501 West Washington Street, Suite 402

Phoenix Arizona 85007-3231

Telephone (602) 452-3396

May 28, 2020

RE: John S. Sutto Jr. et ux v James W Bonham

Arizona Supreme Court No. CV-20-0016-PR

Court of Appeals, Division One No. 1 CA-CV 19-0278

Maricopa County Superior Court No. CV 2019-004326

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 28, 2020, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Vice Chief Justice Timmer and Justice Bolick, Justice Gould and Justice Montgomery participated in the determination of this matter.

To: Scott E Williams
Mark Zinman
James W Bonham
Amy M. Wood

PROOF OF SERVICE

I James Bonham, declare on this date as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows:

WILLIAMS, ZINMAN & PARHAM P.C.
SCOTT E. WILLIAMS #012417
MARK B. ZINMAN #024028
CLERKOF COURT@WZPLEGAL.COM
7701 E. Indian School Rd. Suite J
Scottsdale, Arizona 85251
Attorneys for Plaintiff

I declare under penalty of perjury that the foregoing is true and correct. August 18, 2020

James W. Bonham



Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

JANET JOHNSON
Clerk of the Court

May 28, 2020

RE: JOHN S SUTTO JR et ux v JAMES W BONHAM
Arizona Supreme Court No. CV-20-0016-PR
Court of Appeals, Division One No. 1 CA-CV 19-0278
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Janet Johnson, Clerk

TO:
Scott E Williams
Mark B Zinman
James W Bonham
Amy M Wood
ga

