

APPENDIX A

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME
COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED ONLY AS
AUTHORIZED BY RULE.

**IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE**

US BANK NATIONAL ASSOCIATION,

Plaintiff/Appellee,

v.

AUDIE JAY REYNOLDS, *Defendant/Appellant.* No.

1 CA-CV 18-0689

FILED 12-26-2019

Appeal from the Superior Court in Navajo County

No. S0900CV201800002

The Honorable Robert J. Higgins, Judge

AFFIRMED

COUNSEL

Bryan Cave Leighton Paisner LLP, Phoenix By Sean
K. McElenney, Daniel P. Crane *Counsel for*

Plaintiff/Appellee

Audie Jay Reynolds, Scottsdale

Defendant/Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the
Court, in which Presiding Judge Maria Elena Cruz
and Judge Michael J. Brown joined.

US BANK v. REYNOLDS

Decision of the Court

C A T T A N I, Judge:

US BANK v. REYNOLDS Decision of the Court

¶1 Audie Reynolds appeals the superior court's
judgment finding him and his wife guilty of forcible
detainer and awarding U.S. Bank National
Association, as Trustee for Residential Asset
Mortgage Products, Inc., Mortgage Asset-Backed
Pass-Through Certificates, Series 2006-NC2 ("US
Bank") immediate and exclusive possession of a
residence in Overgaard. For reasons that follow, we
affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 In December 2017, US Bank purchased Reynolds's residence at a trustee's sale and promptly recorded the trustee's deed. Later that month, US Bank mailed and personally served Reynolds with a notice to vacate the premises. Reynolds did not leave, and US Bank filed this forcible entry and detainer ("FED") action.

¶3 Reynolds answered US Bank's complaint with general denials, pointed out that the complaint listed the wrong entity as successor trustee, and proffered alleged defects in the trustee's sale as affirmative defenses. US Bank moved to amend the complaint to reference the correct successor trustee and separately moved for judgment on the pleadings. Reynolds did not file a new answer, but rather opted to rely on oral argument at the forcible detainer hearing.

¶4 Relying on US Bank's superior right to possession under the trustee's deed, the superior court found Reynolds and his wife guilty of forcible detainer and entered judgment in favor of US Bank for immediate possession of the property. The court later stayed the judgment pending appeal, conditioned on Reynolds paying into court the rental value of \$1,000 per month. *See* A.R.S. § 12-1182(b). Reynolds appealed.

DISCUSSION

¶5 Reynolds argues the superior court erred by entering judgment in favor of US Bank. First, he claims that US Bank was not "executor, administrator, guardian, bailee, or grantee" of the trustee's deed and thus could not prosecute the FED action as real party in interest. But US Bank—specifically, "U.S. Bank National Association,

as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass- Through Certificates, Series 2006-NC2”—was expressly designated as grantee under the trustee’s deed. And as owner of the property by virtue of the trustee’s deed, US Bank established its right to possession. *See Carrington Mortg. Servs. LLC v. Woods*, 242 Ariz. 455, 457, ¶ 12 (App. 2017).

¶6 Second, Reynolds urges that defects in the trustee’s sale render the trustee’s deed invalid and thus undermine US Bank’s asserted right to possession. But the merits of US Bank’s title are beyond the scope of an FED action. *See* A.R.S. § 12-1177(A) (“[In an FED action], the only issue shall be the right of actual possession and the merits of title shall not be inquired into.”); *see also Curtis v. Morris*, 186 Ariz. 534, 534 (1996). The only issue was the right of possession, and as described above, US Bank had the right of possession under the trustee’s deed.

¶7 Any challenge to the trustee's sale—such as Reynolds's claim that the successor trustee was not authorized to act as a trustee under Arizona law—must be pursued before the sale has been completed; the trustor may not challenge the completed sale based on pre-sale objections. *See* A.R.S. § 33-811(C); *BT Capital, LLC v. TD Serv. Co. of Ariz.*, 229 Ariz. 299, 301, ¶ 11 (2012). And here, Reynolds apparently attempted to halt the trustee's sale before it went forward based on similar objections to the successor trustee, but he was unsuccessful. *Reynolds v. Ocwen Loan Servicing, LLC*, 719 Fed. Appx. 673 (9th Cir. 2018) (mem.), *aff'g Reynolds v. Ocwen Loan Servicing LLC*, CV-17-08123-PCT-JJT, 2017 WL 4653037 (D. Ariz. Aug. 18, 2017). To the extent he now attempts to raise new issues, the trustee's deed raised a presumption that the sale comported with statutory requirements, *see* A.R.S. § 33-811(B), and Reynolds has offered no basis to overcome either this presumption or waiver under § 33-811(C).

¶8 Finally, Reynolds's challenge to the successor trustee is factually flawed. He notes that the trustee's deed is signed by "C. Scott 'Trustee Sale Assistant'" and argues that "Assistant Trustees" are not qualified to conduct trustee's sale under Arizona law. But the trustee was "Western Progressive – Arizona, Inc.," not "C. Scott." *See also Reynolds*, 719 Fed. Appx. 673. "C. Scott" did not substitute as trustee, but rather was a "duly-authorized" agent signing on behalf of the corporate successor trustee. *See Samaritan Found. v. Goodfarb*, 176 Ariz. 497, 502 (1993) (noting that a corporation "can only act through its agents"); *Best Choice Fund, LLC v. Low & Childers, P.C.*, 228 Ariz. 502, 510, ¶ 26 (App. 2011) (as amended). Western Progressive remained the successor trustee, and Reynolds's challenge to that entity's authority to act as a trustee under Arizona law has already been resolved against him. *See Reynolds*, 719 Fed. Appx. 673 (affirming dismissal of Reynolds's challenge to the trustee's sale "because

Reynolds failed to allege facts sufficient to show that Western Progressive— Arizona, Inc. was not a proper trustee authorized to initiate the non-judicial foreclosure process under Arizona state law”).

CONCLUSION

¶9 We affirm the forcible detainer judgment. US Bank requests an award of attorney’s fees on appeal but cites no authority for its request. Although we may award fees as a sanction for a frivolous appeal, in an exercise of discretion, we decline to do so. As the prevailing party on appeal, US Bank is entitled to an award of costs upon compliance with ARCAP 21.

CV201800002
IN THE SUPERIOR COURT OF THE STATE OF
ARIZONA
IN AND FOR THE COUNTY OF NAVAJO
US BANK NATIONAL ASSOCIATION
Plaintiff,
Vs.
Audie J. Reynolds, et al.,
Defendants.

After a review of the pleadings and a final hearing on June 14, 2018, the Court submits the following ruling. Out of an abundance of caution the court allowed the maximum time for Mr. Reynolds to Answer the Plaintiffs Motion to Amend the Complaint. Mr. Reynolds chose not to Answer in writing but to simply "Answer" in Court via oral argument on June 14, 2018. Based on the pleadings, oral argument at the hearing and exhibits entered at that hearing, the court finds the following:

1. A recorded "Trustee's Deed Upon Sale" dated 12/7/17 was properly entered into as evidence as

Exhibit 1 and the document accurately describes the property which is the subject of this litigation.

2. A "Notice to Vacate" was served on Mr. Reynolds via certified letter and regular first class mail letter dated December 14, 2017.

3. Despite the Trustees Deed Upon Sale and the Notice to Vacate, Mr. Reynolds has not vacated the property.

4. Mr. Reynolds has made untimely and irrelevant attacks on the Trustee's Deed Upon Sale. See A.R.S. 33-811(c).

5. Based on the foregoing, Plaintiffs are entitled to a judgment on the pleadings. The Court therefore enters the following Order:

A. That each Defendant is found guilty of forcible detainer:

B. That the Defendants and all persons occupying the Property are ordered to vacate the Property immediately and that Plaintiff is awarded immediate

and exclusive possession thereof. That in the event the Defendants refuse to obey said order and upon the request of Plaintiff, the Clerk of the Navajo County Superior Court shall issue a Writ of Restitution after the fifth calendar day following the date of the judgment commanding the Sheriff of Navajo County, Arizona to execute the Writ of Restitution and assist in removing Defendants from the property.

C. That Plaintiff is awarded reasonable rental value of the Property during the period of time of Defendants forcible detainer, in an amount to be determined at the preliminary hearing or trial, based upon the amount of the monthly payment due under the Note or the fair rental value, whichever is higher, from the date of the Trustee's Sale pro-rated until the date of the judgment:

D. That Plaintiff is awarded its reasonable attorney's fees incurred herein in an amount not to be less than \$750.00.

E. That Plaintiff is awarded its court costs incurred and accruing costs; and

F. For interest on the outstanding balance amount of the judgment at the rate of 10% per annum until paid.

Done this 7th day of August, 2018

Honorable Robert Higgins

Navajo County Superior Court

Copies of the foregoing mailed/delivered this 14th day of August, 2018 to:

Joseph J. Tirello

Audie Reynolds

P.O. Box 13442

Scottsdale, AZ

85267

Case Flow Manager

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
Telephone (602) 452-3396

August 26, 2020
RE: US BANK NATIONAL ASSOCIATION v AUDIE
JAY REYNOLDS Arizona Supreme Court No. CV-20-
0005-PR

Court of Appeals, Division One No. 1 CA-CV 18-0689
Navajo County Superior Court No.
S0900CV201800002

GREETINGS:

The following action was taken by the Supreme
Court of the State of Arizona on August 26, 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 Lopez and Justice Beene participated in the determination of this matter.

Janet Johnson, Clerk

To:

Audie Jay Reynolds

Sean K McElenney

Daniel P Crane

Amy M Wood

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PROOF OF SERVICE

I Audie Reynolds, 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:

Counsel: Eric L. Cook (#020797)

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Joseph J. Tirelo (#033371)

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Attorneys for Plaintiff

Audie Reynolds

/s/ Audie Reynolds