



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

TRACIE K. LINDEMAN
Clerk of the Court

May 10, 2021

RE: CAMMIE L MARCEAUX v TIFFANY & BOSCO PA et al
Arizona Supreme Court No. CV-20-0303-PR
Court of Appeals, Division One No. 1 CA-CV 19-0600
Maricopa County Superior Court No. CV2019-000496

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 10, 2021, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Chief Justice Brutinel, Justice Bolick, Justice Beene, and Justice Montgomery participated in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:
Cammie L Marceaux
Leonard J McDonald Jr
Michael F Bosco
Jamey A Thompson
Brian J Cosper
Andrew M Jacobs
Daniel J Inglese
Amy M Wood
pm

The foregoing instrument is a full, true and correct copy of the original on file in this office

ATTEST
Tracie K. Lindeman, Clerk of the Supreme Court
State of Arizona

By JMA Deputy

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CAMMIE L. MARCEAUX, *Plaintiff/Appellant*,

v.

TIFFANY & BOSCO, P.A., et al., *Defendants/Appellees*.

No. 1 CA-CV 19-0600
FILED 6-25-2020

Appeal from the Superior Court in Maricopa County
No. CV2019-000496
The Honorable Roger E. Brodman, Judge

AFFIRMED

COUNSEL

Cammie L. Marceaux, Fred, TX
Plaintiff/Appellant

Tiffany & Bosco, PA, Phoenix, AZ
By Leonard J. McDonald, Jr, Michael F. Bosco
Counsel for Appellee Tiffany & Bosco, PA

Fidelity National Law Group, Phoenix, AZ
By Jamey A. Thompson, Brian J. Cosper
*Counsel for Defendants/Appellees Fidelity National Title Agency Inc., Lawyers
Title Agency*

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Snell & Wilmer, LLP, Phoenix, AZ
By Andrew M. Jacobs, Daniel J. Inglese
Counsel for Defendants/Appellees Wells Fargo Bank, NA and U.S. Bank National Association

MEMORANDUM DECISION

Presiding Judge David D. Weinzwieg delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge James B. Morse Jr. joined.

WEINZWIEG, Judge:

¶1 Cammie L. Marceaux appeals the superior court's order dismissing her lawsuit against Wells Fargo Bank, N.A. ("Wells Fargo"), U.S. Bank National Association ("U.S. Bank"), Tiffany & Bosco, P.A., Fidelity National Title Agency, Inc. ("Fidelity") and Lawyers Title Agency ("Lawyers Title").¹ We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Marceaux bought a home in 2006 and financed the purchase with a loan. She secured the debt by giving a deed of trust on the home. Wells Fargo became the servicer on the loan. In 2017, the deed of trust was assigned to U.S. Bank, who became the beneficiary.

¶3 Marceaux tried selling the home in 2017 but discovered a cloud on her title and the sale fell through. Marceaux defaulted on her loan payments. She filed a claim with her title insurer, Fidelity, alleging that her title was defective. Fidelity covered the claim, concluding that a previous owner still held title because earlier deeds had not been recorded. Fidelity procured and recorded a quitclaim deed for Marceaux and settled her claim.

¶4 Marceaux sued various defendants in a July 2017 lawsuit, including Fidelity, Wells Fargo and U.S. Bank, alleging fraud and quiet title

¹ Wells Fargo Bank, N.A. is the successor by merger with Wells Fargo Home Mortgage, Inc.

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and claiming her title was still clouded (“first lawsuit”).² Wells Fargo initiated a trustee’s sale on the home because Marceaux remained in default on her loan payments. Wells Fargo appointed Leonard McDonald of Tiffany & Bosco as trustee. Marceaux sold the home before any trustee’s sale occurred. Lawyers Title was the escrow agent. The superior court granted motions to dismiss the first lawsuit with prejudice.

¶5 Marceaux appealed the dismissal of her first lawsuit and filed a second lawsuit against Wells Fargo, U.S. Bank, Fidelity, Lawyers Title and TB (“second lawsuit”), again stemming from her now-former home, again alleging fraud and claiming the defendants forced her to sell the home under duress with threats of foreclosure. During the appeal, this court affirmed the superior court’s dismissal of the first lawsuit, *Marceaux v. Baker*, 1 CA-CV 18-0542, 2019 WL 5701736 (Ariz. App. Nov. 5, 2019) (mem. decision). The superior court then granted motions to dismiss the second lawsuit with leave to amend. Marceaux amended her complaint, which the court dismissed with prejudice. Marceaux appeals. We have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶6 The superior court’s ruling on a Rule 12(b)(6) motion to dismiss is reviewed de novo, *Coleman v. City of Mesa*, 230 Ariz. 352, 355-56, ¶ 7 (2012), and the motion is granted if the complaint fails to state a claim upon which relief can be granted. The court “assume[s] the truth of all well-pleaded factual allegations and indulge[s] all reasonable inferences from those facts,” *id.* at ¶ 9, but does not accept as true “allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts,” *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005).

¶7 We address two preliminary issues. First, Marceaux’s opening and responsive briefs contain undeveloped arguments, unsupported facts and inadequate record citations as required under Arizona Rule of Civil Appellate Procedure 13(a). Marceaux was told about this court’s procedural requirements in her earlier appeal, where her briefs had similar defects. *Marceaux*, 1 CA-CV 18-0542, at *2, ¶ 8. Even so, we

² We grant Wells Fargo and U.S. Bank’s motion to take judicial notice of documents filed by Marceaux in the first lawsuit.

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consider the merits of her appeal in our discretion. See *Lederman v. Phelps Dodge Corp.*, 19 Ariz. App. 107, 108 (1973).

¶8 Second, the superior court found that Marceaux had not complied with Arizona Rule of Civil Procedure 8(a) and dismissed her claims against defendants Tiffany & Bosco, Fidelity and Lawyers Title on that basis, among others. We agree that Marceaux's amended complaint is "garbled and difficult to follow," but will construe it as best we can to do justice under Rule 8(f).

I. Wells Fargo and U.S. Bank

¶9 The superior court dismissed Marceaux's claims against Wells Fargo and U.S. Bank on grounds of res judicata and for failure to state a claim. The doctrine of res judicata promotes finality in litigation, the prevention of harassment and judicial economy. *Circle K Corp. v. Indus. Comm'n of Ariz.*, 179 Ariz. 422, 426 (App.1993). "[Res judicata] is a question of law and is therefore reviewed de novo." *Pettit v. Pettit*, 218 Ariz. 529, 531, ¶ 4, 189 P.3d 1102, 1104 (App. 2008).

Under the doctrine of res judicata, a judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. This doctrine binds the same party standing in the same capacity in subsequent litigation on the same cause of action, not only upon facts actually litigated but also upon those points which might have been litigated.

Id.

¶10 Marceaux's first lawsuit alleged that Wells Fargo and U.S. Bank covered up a title defect and improperly assigned her mortgage. The superior court dismissed the first lawsuit and we affirmed. *Marceaux*, 1 CA-CV 18-0542, at *4, ¶ 22. Her second lawsuit then alleged that Wells Fargo and U.S. Bank conducted an "illegal foreclosure through fraud and forgery," again premised on the alleged improper and invalid assignment. Res judicata bars the claim. *Dressler*, 212 Ariz. at 282, ¶ 15; Ariz. R. Civ. P. 41(b) (dismissal with prejudice "operates as an adjudication on the merits"); *Cochise Hotels, Inc. v. Douglas Hotel Operating Co.*, 83 Ariz. 40, 47-48 (1957) (stating that dismissal of complaint with prejudice in previous action is res judicata on all issues raised or that could have been determined). We affirm.

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¶11 The superior court also dismissed the lawsuit against Wells Fargo and U.S. Bank for failure to state a claim. We affirm because Arizona courts have not yet recognized a claim for wrongful foreclosure, *Zubia v. Shapiro*, 243 Ariz. 412, 417, ¶ 29 (2018), and because there was no foreclosure in this case.

II. Tiffany & Bosco

¶12 The superior court dismissed the claims against Tiffany & Bosco as trustee for failure to state a claim. Marceaux alleged that the trustee “neglectfully” “conduct[ed] an illegal foreclosure” that ultimately forced her to sell her home against her will. But Arizona law grants a trustee the “absolute right to rely upon any written direction or information furnished to him by the beneficiary.” A.R.S. § 33-820(A). Marceaux defaulted on her loan. The trustee performed as the beneficiary directed. We affirm.

III. Fidelity and Lawyers Title

¶13 Marceaux’s first and second lawsuit alleged that Fidelity failed to disclose title defects related to her home and committed unspecified fraud. The superior court dismissed the claims with prejudice in the first lawsuit. Res judicata applied and the claims were correctly dismissed in the second lawsuit. *Dressler*, 212 Ariz. at 282, ¶ 15. We affirm.

¶14 Marceaux’s claims against Lawyers Title and Fidelity also fail for failure to state a claim. She alleges these defendants coerced her into selling the house. Marceaux was in default at the time, however, and a threat of foreclosure does not constitute duress unless the threat is wrongful. See *Dunbar v. Dunbar*, 102 Ariz. 352, 356 (1967). Marceaux also failed to plead the alleged fraud with particularity. Her amended complaint alleges no specific facts, only conclusory allegations. Ariz. R. Civ. P. 9(b). We affirm.

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CONCLUSION

¶15 We affirm the superior court's decision. We award reasonable attorney fees and costs to Tiffany & Bosco under A.R.S. § 33-807(E). We award costs on appeal to Fidelity and Lawyers Title as the prevailing parties, A.R.S. § 12-342, but decline in our discretion to sanction Marceaux for attorney fees, ARCAP 25.



AMY M. WOOD • Clerk of the Court
FILED: AA

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 10/3/19
AMY M. WOOD,
CLERK
BY: RB

CAMMIE L. MARCEAUX,)
) Court of Appeals
Plaintiff/Appellant,) Division One
) No. 1 CA-CV 19-0600
)
v.) Maricopa County
) Superior Court
TIFFANY & BOSCO PA, et al.,) No. CV2019-000496
)
Defendants/Appellees.)

CLERK OF THE SUPERIOR COURT
FILED

10.3.19 4:11 pm
C. Ghosting, Deputy

ORDER STAYING APPEAL

The court has reviewed the record pursuant to its duty to determine whether it has jurisdiction over this appeal. See *Sorensen v. Farmers Ins. Co.*, 191 Ariz. 464, 465 (App. 1997).

Arizona Rule of Civil Procedure (Rule) 54(c) provides that "[a] judgment as to all claims and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 54(c)." See *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 421, 427, ¶ 6 (App. 2016). The judgment from which appellant appeals cites Rule 54(c) but does not recite that no further matters remain pending. Therefore, pursuant to Arizona Rule of Civil Appellate Procedure 3(b),

IT IS ORDERED staying this appeal to and including November 4, 2019, and revesting jurisdiction in the Superior Court of Maricopa County to permit that court to consider a motion by appellant for a signed judgment

with a certification of finality pursuant to Rule 54(c). It is appellant's responsibility to promptly apply to the superior court for such judgment. This order does not constitute an expression of opinion by this court as to the merits of the motion.

IT IS FURTHER ORDERED that the superior court is authorized to rule on the motion.

IT IS FURTHER ORDERED that if the superior court grants the motion, appellant shall file a copy of the judgment within 10 days after its entry. Once the clerk of this court has received the judgment, the appeal shall be automatically reinstated.

IT IS FURTHER ORDERED that if the appeal has not been reinstated by the filing of a judgment with Rule 54(c) finality language by November 4, 2019, appellant shall file a request to continue the stay of the appeal that describes the status of the motion. If appellant does not file a request to continue the stay, the appeal may be dismissed.

IT IS FURTHER ORDERED that if a Rule 54(c) judgment has been filed prior to November 4, 2019, the case management statement shall be due on November 14, 2019, and the opening brief shall be due on December 4, 2019.

IT IS FURTHER ORDERED that, in addition to the usual distributions, the clerk of this court shall send copies of this order to the Honorable Roger E. Brodman and to the clerk of the superior court.

 /s/
Melina Brill, Judge Pro Tempore

A copy of the foregoing
was sent to:

Cammie L Marceaux
Leonard J McDonald Jr
Michael F Bosco
Patrick J Davis
Jamey A Thompson
Gregory J Marshall
Hon Roger E Brodman
Jeff Fine

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-000496

07/19/2019

HONORABLE ROGER E. BRODMAN

CLERK OF THE COURT
M. Corriveau
Deputy

CAMMIE L MARCEAUX

CAMMIE L MARCEAUX
P O BOX 335
FRED TX 77616

v.

TIFFANY & BOSCO L L P, et al.

LEONARD J MCDONALD

JAMEY ANDERSON THOMPSON
JOSHUA ZIMMERMAN

RULING ON MOTIONS TO DISMISS

The Court has before it three motions to dismiss: 1) Tiffany & Bosco, PA's motion to dismiss filed May 17, 2019; 2) Fidelity National Title Agency, Inc. and Lawyers Title Agency's motion to dismiss filed June 3, 2019; and 3) Wells Fargo Bank N.A.'s motion to dismiss filed May 22, 2019. The Court reviewed Ms. Marceaux's oppositions and the replies. The Court reviewed the Complaint and the Amended Complaint. The Court also had access to the original motions to dismiss and plaintiff's response to those motions.

Both the Complaint and Amended Complaint are garbled and difficult to follow. Based on a review of records attached to plaintiff's Complaint and Amended Complaint, it looks like the following happened: plaintiff owned a home in Surprise. She bought the home in 2006 for \$182,800 with \$58,000 down. Due to a medical issue with her son, she tried to sell the home in 2017. When she tried to sell it, she learned that there was some sort of a title defect. The sale price was for \$205,000. She did not sell the home. Plaintiff alleges the failure to sell was the result of the failure of Fidelity as title insurer and a conspiracy between defendants. The title

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insurance company claims that the sale failed because there were problems with the property. This apparently occurred while plaintiff was living in Texas and renting her home. She alleges her tenants moved out in preparation for the sale.

In any event, plaintiff later says she was happy that the sale didn't go through and the failure was a godsend. *See* Plaintiff's Response to the first motion to dismiss dated April 7, 2019 at page 4. After the sale fell through, plaintiff, who had been living in Texas, decided to return to Arizona. But in the summer of 2017, plaintiff was in default on her mortgage payments. *See, e.g.,* Amended Complaint Exh. 7 (June 15, 2017 letter). She applied for refinancing with Wells Fargo. Wells Fargo denied her requests for refinancing because she did not have sufficient demonstrable income. *See* April 7, 2019 Response at Attachment 8.

Wells Fargo's records indicate that plaintiff fell behind on her mortgage payments. In an earlier pleading, plaintiff acknowledged that by August 2017 she was three months behind on her mortgage payments. *See* April 7, 2019 Response at page 6. In March 2018, the Wells Fargo defendants initiated a trustee's sale. Tiffany & Bosco was the trustee for the sale. The notice of trustee's sale was filed on March 9, 2018 in document 2018 - 0180618. Under the threat of a trustee's sale, it appears plaintiff sold the house on her own to F&F 3, LLC on March 8, 2018. Lawyers Title served as escrow agent for the transaction. The gross proceeds of the sale were \$177,500. *See* Exh. 23 to the Amended Complaint. Because plaintiff sold the property, the trustee's sale was cancelled. In the sale to F&F, plaintiff netted \$16,196 above the mortgage.

Plaintiff now alleges that she was forced to sell the house because of the defendants' conduct and she did so under duress.

Plaintiff's claim appears to be that she was forced to sell her home at great loss due to the actions of defendants. She claims she had paid \$58,000 down on the home and had fully paid \$38,000 for a pool. She alleges that she had \$100,000 of equity in the home. She claims that the Wells Fargo defendants had no right to initiate foreclosure proceedings and she alleges that the defendants conspired to fraudulently steal her home.

1. Tiffany & Bosco's Motion to Dismiss

This is Tiffany & Bosco's second motion to dismiss. On April 24, 2019, this Court granted Tiffany & Bosco's motion to dismiss with leave to amend. In response to that motion, plaintiff filed the Amended Complaint. The Amended Complaint does not cure the deficiencies.

The Court grants Tiffany & Bosco's motion for reasons set forth in the Reply. The Amended Complaint continues to violate Rule 8. It is not a "short and plain statement of the claim showing that the pleader is entitled to relief."

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In ruling on a motion to dismiss, the Court will assume the truth of well-pled factual allegations and indulge all reasonable inferences therefrom. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). Nevertheless, conclusory allegations and unwarranted deductions are not sufficient to state a cause of action. *Id.* at 419. Here, plaintiff has failed to set forth sufficient non-conclusory facts that support the claim that Tiffany & Bosco failed to comply with any obligations set forth in Arizona's deed of trust statutes or in the Deed of Trust itself. Arizona law provides protection to the trustees, permitting absolute reliance on the direction or information provided to them by the beneficiary. See A.R.S. §33-820(A); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F. 3d 1034, 1045 (9th Cir. 2001). Section 33-820 provides that a trustee, when acting in good faith, shall have "the absolute right to rely upon any written direction or information furnished to him by the beneficiary." There is no question that plaintiff was in default of her mortgage payments and that Tiffany & Bosco was operating under instructions of the beneficiary. The so-called "Attorney Manual" is not the basis of a claim by plaintiff against the trustee.

2. Fidelity's and Lawyers Title's Motion to Dismiss

Fidelity and Lawyers Title also filed a prior motion to dismiss. The Amended Complaint still does not clearly set forth a cause of action. The Court grants Fidelity's and Lawyers Title's motion under Rule 8.

Moreover, Fidelity was a defendant in a prior action, CV 2017-053676. Plaintiff sued Fidelity for fraud, and Judge Hannah dismissed that action with prejudice on February 8, 2018. Judge Hannah also dismissed the claim that that Fidelity, as title insurer, negligently failed to discover a title defect. *Id.* at page 3. The claims against Fidelity in the instant case are barred by *res judicata*.

Finally, plaintiff was in default of her mortgage. The threat of foreclosure does not constitute duress. The Amended Complaint does not allege facts that reasonably support the conclusion that Lawyers Title threatened or conspired against plaintiff. Plaintiff's own documents show that Lawyers Title simply acted as the escrow agent for plaintiff's sale of the property to a third party. Plaintiff's conspiracy claim is based on unsupported speculation and illogical conclusions. Plaintiff is alleging that defendants were engaged in a conspiracy to defraud her. Fraud must be pled with particularity, but she has failed to plead non-conclusory facts with particularity.

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3. Wells Fargo's Motion to Dismiss

Plaintiff filed an earlier case against Wells Fargo in CV2017-053676. Maricopa County Superior Court Judge Hannah granted Wells Fargo's motion to dismiss that case with prejudice. *See* Minute Entry dated February 8, 2018. In so ruling, he determined that plaintiff did not explain "with particularity" what Wells Fargo did that constitutes fraud. Judge Hannah found that plaintiff failed to allege facts suggesting that Wells Fargo was in any way responsible for problems with the title. The issue of Wells Fargo's ability to foreclose was at issue in that case because Judge Hannah denied plaintiff's request for "an order that would prohibit Wells Fargo from exercising its rights as a secured creditor." *Id.* at page 2. Plaintiff apparently has appealed Judge Hannah's ruling.

Plaintiff's claims against Wells Fargo are barred by *res judicata*. In both cases, plaintiff alleged that the Assignment of the Deed of Trust was forged or invalid, which made the foreclosure proceedings improper. In both cases, plaintiff claimed that Wells Fargo could not enforce its rights as a secured creditor. In both cases, plaintiff challenged the ability of Wells Fargo to institute a trustee's sale.

In short, there has been "a final judgment on the merits in a prior suit involving the same parties or their privies [which] bars [this] second suit based on the same claim." *Dressler v. Morrison*, 212 Ariz. 279, 282, ¶ 15 (2006).

The Court adopts the arguments made by Wells Fargo in the Reply. Plaintiff's liability under the note remains the same no matter who was assigned as the beneficiary, or when. There is nothing illegal about securitization, and securitization does not affect the validity of the Deed of Trust. Wells Fargo is the servicer on the note and entitled to enforce the Deed of Trust upon plaintiff's default. The Court rejects plaintiff's claim that the Wells Fargo Defendants could not initiate the trustee's sale because they had never loaned plaintiff money.

ORDERS

IT IS ORDERED that Tiffany & Bosco's motion to dismiss is granted with prejudice.

IT IS ORDERED that Fidelity's and Lawyers Title's motion to dismiss is granted with prejudice.

IT IS ORDERED that Wells Fargo's motion to dismiss is granted with prejudice.

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IT IS FURTHER ORDERED that, within 10 days of the filed date of this Order, the defendants consult with each other and submit a single, proposed final judgment applicable to all three defendants containing Rule 54(c) language.

IT IS FURTHER ORDERED that any party seeking an award of fees or costs should submit its claim within 10 days of the filed date of this Order; otherwise the claim will be waived.

**Additional material
from this filing is
available in the
Clerk's Office.**