Appendix A

Decision of State Court of Appeals

PETER M. PILAT
and SHEILA PILAT
v.

MRH SUB I, LLC, as
successor-in-interest
to CitiMortgage, Inc.

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MRH SUB I, LLC, as successor-in-interest to CitiMortgage, Inc.,
Plaintiff/Appellee,

v.

PETER M. PILAT and SHEILA PILAT, *Defendants/Appellants.*

No. 1 CA-CV 14-0573
FILED 2-23-2017

Appeal from the Superior Court in Maricopa County
No. CV2010-016616
The Honorable Katherine M. Cooper, Judge

AFFIRMED

COUNSEL

Tiffany & Bosco, Phoenix
By Leonard J. McDonald, Jr., Kevin P. Nelson, Michael J. Rogers
Counsel for Plaintiff/Appellee

Peter M. Pilat, Sheila Pilat, Mesa
Defendants/Appellants

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Paul J. McMurdie joined.

N O R R I S, Judge:

¶1 In this appeal, Defendants/Appellants Peter and Sheila Pilat argue the superior court should not have entered a judgment in favor of the predecessor in interest to Plaintiff/Appellee MRH Sub I, LLC ("MRH") because they timely exercised their rescission rights under the Truth in Lending Act ("TILA"), 15 U.S.C.A. § 1601 et seq. The Pilats also challenge several post-judgment orders entered by the superior court. Because the Pilats did not appeal the judgment we do not have jurisdiction to address their first argument and neither the record nor applicable law support their challenges to the post-judgment orders. Accordingly, we affirm the superior court's post-judgment orders.

FACTS AND PROCEDURAL BACKGROUND

¶2 On January 5, 2006, Peter Pilat executed a promissory note secured by a deed of trust on residential real property in Maricopa County, Arizona. The lender identified in the note and deed of trust subsequently assigned its interest to CitiMortgage, Inc. ("CitiMortgage"). After Peter defaulted on his obligations under the note and deed of trust, CitiMortgage sued to judicially foreclose the deed of trust and Peter's interest in the property. Peter answered and counterclaimed. Although Peter was the sole borrower identified in the promissory note and deed of trust, Sheila filed a separate counterclaim.

¶3 In both counterclaims the Pilats alleged, in part, that Peter had exercised his right of rescission under the TILA because he had sent CitiMortgage a rescission letter on January 2, 2009—within the TILA's three-year rescission period—and, thus, had rescinded the "loan transaction," more specifically, the promissory note and deed of trust. *See* 15 U.S.C.A. § 1635 (2011); *Jesinoski v. Countrywide Home Loans, Inc.*, __ U.S. __, 135 S. Ct. 790, 792, 190 L. Ed. 2d 650 (2015) (under 15 U.S.C.A. § 1635(f) of the TILA, borrower has a conditional right to rescind for three years after the date of the consummation of the transaction or sale of the property, whichever comes first, if the lender does not satisfy the TILA's disclosure

requirements; borrower has no right to rescind after three year period expires); *McOmie-Gray v. Bank of Am. Home Loans*, 667 F.3d 1325, 1328 (9th Cir. 2012) (15 U.S.C.A. § 1635(f) is three year statute of repose). The Pilats further alleged they were entitled to damages because CitiMortgage had "failed to release the security on [Peter's] property, and return all of his payments" as required by the TILA. *See* 15 U.S.C.A. § 1635(b).

¶4 CitiMortgage moved for summary judgment on its complaint and the counterclaims filed by the Pilats arguing, in part, that Peter was not entitled to rescission under the TILA. The Pilats jointly opposed the motion, arguing that because they had exercised their right of rescission, under the TILA "the lien and security [interest] ceased as an operation of law" and thus they were entitled to quiet the title to the property.

¶5 The superior court granted CitiMortgage's motion for summary judgment on the complaint and counterclaims. On October 16, 2012, the superior court entered a judgment in favor of CitiMortgage ("2012 judgment"). The 2012 judgment awarded CitiMortgage judgment in the principle sum of $479,800.00, foreclosed Peter's interest in the property, foreclosed the lien created by the deed of trust, declared CitiMortgage's interest superior to all other liens, and authorized the Maricopa County Sheriff to sell the property pursuant to a writ of special execution.

¶6 Even though the superior court had granted CitiMortgage the relief it had requested, on March 29, 2013, the superior court dismissed the case without prejudice for lack of prosecution. Almost a year later, on March 13, 2014, MRH moved to reinstate the case ("reinstatement motion"). It explained it had acquired the 2012 judgment from CitiMortgage and asked the court to reinstate the case so it could obtain a writ of special execution and proceed with the Sheriff's sale. MRH also simultaneously moved to become the real party in interest ("substitution motion") pursuant to Arizona Rule of Civil Procedure 25, and to substitute counsel on an ex parte basis ("ex parte motion").[1] The superior court granted the ex parte motion and, over the Pilats' objections, granted the reinstatement motion and the substitution motion.

¶7 As discussed in more detail below, the Pilats filed six post-judgment motions, and one of the motions extended their time to appeal. The superior court denied the motions in six unsigned orders. On

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[1]All citations to the Arizona Rules of Civil Procedure are to the rules in effect when the parties filed the pleading, motion, or response.

November 21, 2014, however, the superior court signed the six orders and the Pilats timely appealed the orders in December 2014.

DISCUSSION

I. The 2012 Judgment

¶8 On appeal, the Pilats raise a number of arguments challenging the merits of the 2012 judgment dismissing their TILA allegations even though they acknowledge they failed to list the 2012 judgment in their December notices of appeal. Because the Pilats failed to appeal the 2012 judgment we do not have jurisdiction to address their arguments challenging the 2012 judgment. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (court of appeals acquires no jurisdiction to review matters not contained in a notice of appeal) (citation omitted). Nevertheless, the Pilats argue we do have jurisdiction to review the 2012 judgment because "the intent of [the] notice[s] of appeal was of course to appeal everything that was appealable." Our supreme court has held an appellate court may deem a defective notice of appeal sufficient when the record "discloses" that the appellant intended to appeal the judgment and the defect in the notice of appeal neither misleads nor prejudices the appellees. *Hill v. City of Phoenix*, 193 Ariz. 570, 572-73, ¶ 10, 975 P.2d 700, 702-03 (1999) (quotations and citation omitted). Here, the record fails to show the Pilats intended to appeal the 2012 judgment.

¶9 After the superior court entered the 2012 judgment, the Pilats filed a timely motion under Arizona Rule of Civil Procedure 59(l). That motion therefore extended the Pilats' time to appeal the 2012 judgment. *See* ARCAP 9. Thus, after the superior court entered a signed minute entry on November 21, 2014, denying that motion, the Pilats still could have appealed the 2012 judgment when they appealed in December 2014. *See supra* ¶ 7.

¶10 The Pilats filed two notices of appeal in December 2014. Neither notice identified the 2012 judgment. Instead, the two notices of appeal identified the six signed orders denying the Pilats' six post-judgment motions—none of which raised any argument concerning the TILA and instead were focused on delaying or avoiding the Sheriff's sale.[2]

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[2]The Pilats initially attempted to appeal the orders denying their six post-judgment motions before the superior court signed them.

Thus, the post-judgment orders entered by the superior court were not part of and related to the substantive basis of its ruling rejecting the Pilats' TILA arguments. *Cf. Desert Palm Surgical Group, P.L.C., v. Petta*, 236 Ariz. 568, 576-77, ¶¶ 17-19, 343 P.3d 438, 446-47 (App. 2015) (appellant's failure to include amended final judgment in notice of appeal did not mislead or prejudice appellee; final judgment and post-judgment orders were included in notice of appeal and amended judgment "[was] part of the same determination on the same claims"). In short, given their actions, nothing in the record demonstrates the Pilats intended to appeal the merits of the 2012 judgment. Accordingly, we do not have jurisdiction to consider the Pilats' challenges to the 2012 judgment.

¶11 The Pilats also argue that because they timely exercised their right of rescission under the TILA[3], *see* 15 U.S.C.A. § 1635(f), and CitiMortgage neither challenged the rescission nor complied with the statutory requirements of the TILA, both the note and deed of trust were void and, therefore, the superior court lacked subject matter jurisdiction to enter the 2012 judgment. Thus, the Pilats reason that because subject matter jurisdiction can be raised at any time, *see State v. Buckley*, 153 Ariz. 91, 93, 734 P.2d 1047, 1049 (App. 1987), this court has jurisdiction to consider the merits of their TILA arguments challenging the 2012 judgment. We reject this argument.

¶12 Jurisdiction is a question of law that we review de novo. *Ader v. Estate*, 240 Ariz. 32, 43, ¶ 37, 375 P.3d 97, 108 (App. 2016) (citation omitted). Here, whether the Pilats had a valid rescission claim under the TILA did not affect the superior court's subject matter jurisdiction to rule on the merits of CitiMortgage's claim and the Pilats' counterclaims. *See id.* at 44, ¶ 43, 35 P.3d at 109 ("[S]ubject matter jurisdiction refers to a court's statutory or constitutional power to hear and determine a particular type of case.") (quotations and citations omitted).

¶13 Additionally, as other courts have recognized, 15 U.S.C.A. § 1635(f) does not impose a jurisdictional bar. *See McOmie-Gray*, 667 F.3d at 1329 (15 U.S.C.A. § 1635(f) is a statute of repose that creates three year right of rescission that although mandatory and enforceable is not a jurisdictional

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Because the orders had not been signed that notice of appeal was premature. We note, however, the Pilats also failed to list the 2012 judgment in that notice of appeal.

[3]We express no opinion on whether the Pilats timely exercised any right of rescission under the TILA.

bar); *Doss v. Clearwater Title Co.*, 551 F.3d 634, 638 (7th Cir. 2008) (rejecting lender's argument district court lacked subject matter jurisdiction because borrower sold property before exercising rescission right; "the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction") (citation omitted); *see also Perez v. PBI Bank, Inc.*, 69 F. Supp. 3d 906, 910 (N.D. Ind. 2014) ("[W]hen a party seeks dismissal of a lawsuit based on a statute of repose [such as TILA], it is seeking a judgment on the merits which necessarily involves the power of the court to decide the matter in the first place.") (citation omitted).

¶14 Accordingly, this court lacks jurisdiction to consider the Pilats' TILA arguments challenging the 2012 judgment.

II. Order Denying Pilats' Rule 60(c)(6) Motion and Request for New Hearing

¶15 After the superior court granted CitiMortgage's motion for summary judgment, the Pilats filed a "Motion for Rule 60(c)(6) Relief from Judgment and/or in the Alternative Grant a New Hearing." In that motion, they argued their attorney had not properly represented them in the case and had been ineffective. The superior court denied the motion.

¶16 Although the grant or denial of a motion under Arizona Rule of Civil Procedure 60(c) is appealable as a special order after final judgment, *M & M Auto Storage Pool v. Chem. Waste Mgmt., Inc.*, 164 Ariz. 139, 141, 791 P.2d 665, 667 (App. 1990), in their briefing on appeal the Pilats fail to raise any argument pertaining to the superior court's order denying this motion. Accordingly, the Pilats have waived any appellate challenge to the superior court's order denying this motion. *Hahn v. Pima Cty.*, 200 Ariz. 167, 172, ¶ 13, 24 P.3d 614, 619 (App. 2001) (failure to raise issue in superior court or in briefs on appeal constitutes waiver).

III. Order Denying Pilats' Motion for Relief from Judgment/Order Pursuant to Rule 60(c)(1) and Motion for a New Hearing

¶17 After the superior court granted CitiMortgage's motion for summary judgment, the Pilats also filed a "Motion for Relief from Judgment/Order Pursuant to Rule 60(c)(1) and Motion for a New Hearing." In that motion they argued "mistake," *see* Ariz. R. Civ. P. 60(c)(1) (court may relieve party from final judgment for reasons including "mistake"), asserting the superior court had denied them due process because, as it turned out, the oral argument on CitiMortgage's summary judgment motion had not been recorded ("missing recording"). Further, they argued the superior court had ruled without the "benefit of the recording which

[the judge] had stated she needed to review." Reviewing the superior court's ruling denying that motion for an abuse of discretion, we reject these arguments. *State ex rel. Brnovich v. Culver*, 240 Ariz. 18, 19-20, ¶ 4, 375 P.3d 83, 84-85 (App. 2016) ("We review a trial court's ruling on a motion for relief from judgment under Rule 60(c) for an abuse of discretion.") (citation omitted).

¶18 First, before the superior court granted CitiMortgage's motion for summary judgment it reviewed all of the briefing submitted by the parties concerning that motion. Second, in denying the Pilats' Rule 60(c)(1) motion the superior court implicitly rejected their assertion that it had determined it could not rule on CitiMortgage's summary judgment motion without first reviewing what the parties had presented at the oral argument. Third, in their briefing on the Rule 60(c)(1) motion the Pilats failed to point to anything arguably said at the oral argument that would have affected the superior court's resolution of CitiMortgage's summary judgment motion. Fourth, the Pilats reliance on *State v. Masters*, 108 Ariz. 189, 494 P.2d 1319 (1972) is misplaced. In *Masters*, our supreme court ruled that the superior court should have granted a new trial when, through no fault of the defendant, the trial transcript was unavailable and the defendant had shown a "credible and unmet allegation of reversible error" because he had established a prima facie case of a conflict of interest with his counsel. *Id.* at 192, 494 P.2d at 1322. *Masters* is distinguishable; there, the appellate court needed to review the transcript to rule on the conflict of interest argument, while here the parties had fully briefed CitiMortgage's summary judgment motions and the issues raised involved legal, not factual, issues. Thus, unlike the defendant in *Masters*, the Pilats have failed to establish a credible allegation of reversible error. Accordingly, we reject their challenges to the superior court's order denying their rule 60(c)(1) motion.

IV. Order Denying the Pilats' Motion to Amend or Alter the Judgment Pursuant to Rule 59(l) and for Relief from Judgment Pursuant to Rule 60(c)(3)

¶19 After the superior court entered the 2012 judgment, the Pilats filed "Motions to Amend or Alter the Judgment Pursuant to Rule 59(l) and for Relief from Judgment Pursuant to Rule 60(c)(3)." Again arguing the superior court had denied them due process, *see supra* ¶ 17, they also accused the superior court of judicial misconduct, asserting it had conducted an ex parte phone call with CitiMortgage's counsel. On appeal, however, the Pilats only reassert their due process argument regarding the

missing recording. *See supra* ¶ 17. Accordingly, for the reasons discussed, *see supra* ¶18, the superior court did not abuse its discretion when it denied this motion. *See Englert v. Carondelet Health Network*, 199 Ariz. 21, 25, ¶ 5, 13 P.3d 763, 767 (App. 2000) (appellate court reviews denial of motion under Rule 59 of Ariz. R. Civ. P. for an abuse of discretion) (citation omitted).

V. Order Denying the Pilats' Emergency Motion for Reconsideration Pursuant to Rule 59(l) of Order Denying Defendants' Motion for Change of Judge for Cause Pursuant to Rule 42(f) and A.R.S. § 12-409(A), (B)(5)

¶20 The Pilats also filed an "Emergency Motion for Reconsideration Pursuant to Rule 59(l), A.R.C.P. of Order Denying Defendants' Motion for Change of Judge for Cause Pursuant to Rule 42(f) A.R.C.P. and A.R.S. § 12-409(A) & (B)(5)" ("first emergency motion") challenging an order entered by the presiding judge of the superior court denying their motion for a change of judge.[4] In their first emergency motion, they again alleged judicial misconduct based on the alleged ex parte phone call between the judge assigned to the case and CitiMortgage's counsel and the missing recording. Although the ruling denying the first emergency motion is listed in their second December notice of appeal, they do not raise any arguments on appeal concerning the order and, thus, have waived any appellate challenge to this order. *Hahn*, 200 Ariz. at 172, ¶ 13, 24 P.3d at 619.

VI. Orders Granting the Reinstatement Motion and the Substitution Motion

A. Reinstatement Motion

¶21 After the superior court dismissed the 2012 judgment, MRH filed the reinstatement motion, *supra* ¶ 6, and argued the superior court should not have dismissed the case. In their response to the reinstatement motion, the Pilats raised several arguments opposing reinstatement. On appeal, the Pilats raise the same arguments. An order to set aside a dismissal order is appealable as a special order after final judgment. *Johnson v. Elson*, 192 Ariz. 486, 488, ¶ 6, 967 P.2d 1022, 1024 (App. 1998) (citations omitted). As discussed in more detail below, we reject each of the Pilats' arguments.

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[4]In his ruling, the presiding superior court judge concluded that no hearing, telephonic or otherwise, had occurred and the Pilats were "mistaken" in concluding the alleged ex parte phone call had occurred.

¶22 First, the Pilats generally challenge the superior court's order granting the reinstatement motion under Arizona Rule of Civil Procedure 60(c)(6). Under Rule 60(c)(6) the superior court, on motion from a party, may relieve the party from final judgment for "reason[s] justifying relief from the operation of the judgment." "[T]o obtain relief under 60(c)(6), the movant must show 1) extraordinary circumstances of hardship or injustice justifying relief and 2) a reason for setting aside the judgment other than one of the reasons set forth in the preceding five clauses of rule 60(c)." *Davis v. Davis*, 143 Ariz. 54, 57, 691 P.2d 1082, 1085 (1984) (citations omitted).

¶23 Here, in granting MRH's reinstatement motion, the superior court concluded it had "erred in dismissing the case for lack of prosecution," and noted all "substantive and legal issues have been decided," and the only item that remained was "enforcement of its Judgment." The superior court then reinstated the case so that MRH could obtain a writ of special execution and proceed with a Sheriff's sale.

¶24 As discussed above, *see supra* ¶¶ 5-6, the 2012 judgment was a final judgment on the merits and it resolved the complaint and counterclaims. Thus, there were no pending proceedings warranting dismissal. Under these circumstances, as the superior court recognized, it should not have dismissed the case for lack of prosecution. *Cf. Davis*, 143 Ariz. at 57, 691 P.2d at 1085 (reversing superior court's denial of Rule 60(c)(6) relief when "uncontroverted facts" demonstrated circumstances warranting relief). Accordingly, the superior court did not abuse its discretion in granting the reinstatement motion under Rule 60(c)(6).

¶25 Second, the Pilats argue the superior court "relinquished jurisdiction" when it dismissed the case and thus could not reinstate it. Under Rule 60, the superior court has continuing jurisdiction to rule on post-dismissal motions.

¶26 Third, the Pilats argue the superior court should not have reinstated the case because MRH lacked standing to file the reinstatement motion because CitiMortgage, its predecessor in interest, did not have standing to pursue the 2012 judgment as they had rescinded under the TILA. Therefore, the Pilats argue the superior court violated their due process rights when it reinstated the case. These arguments, however, rest on the merits of their TILA arguments challenging the 2012 judgment. These arguments are not properly before us on appeal. *See supra* ¶¶ 8-14.

¶27 Fourth, the Pilats argue the superior court should not have granted the reinstatement motion because the motion failed to comply with

Arizona Rule of Civil Procedure 7.1(a), which established briefing requirements for civil motions. But, Rule 7.1(b) did not require the superior court to deny the reinstatement motion for non-compliance with the briefing requirements. In its reply in support of the reinstatement motion, MRH corrected the deficiencies in the motion and the superior court rejected the Pilats' motion to strike MRH's reply. Because the superior court had discretion to rule on the reinstatement motion despite its original deficiencies under Ruler 7.1(a), and given the circumstances here, *see supra* ¶¶ 23-24, the superior court did not abuse its discretion in granting MRH's reinstatement motion. *See Strategic Dev. and Constr., Inc. v. 7th & Roosevelts Partners, LLC*, 224 Ariz. 60, 65, ¶ 17, 226 P.3d 1046, 1051 (App. 2010) (superior court had discretion under Rule 7.1(b) to summarily grant motion when opposing party failed to timely file response).

¶28 Fifth, they also argue that MRH failed to comply with Arizona Rule of Civil Procedure 5(c)(4) when it failed to serve them with the reinstatement motion. The superior court corrected any arguable prejudice that would have otherwise occurred because of MRH's initial failure to comply with Rule 5(c)(4) when it ordered MRH to serve the Pilats with the reinstatement motion. Further, it did not rule on the reinstatement motion until after MRH had served the Pilats with the motion.

B. Substitution Motion

¶29 After MRH filed the substitution motion, *see supra* ¶ 6, the Pilats filed a response arguing the superior court no longer had jurisdiction to grant the substitution motion and asserting MRH could not move to substitute under Rule 25 because the court had dismissed the case. On appeal, the Pilats raise these same arguments. We reject them. *See supra* ¶¶ 23-24.

¶30 The Pilats also argue the superior court should not have granted the substitution motion because MRH lacked standing based on their timely rescission. For the reasons already discussed, *see supra* ¶ 26, we reject this argument.

¶31 Additionally, for the first time on appeal, the Pilats argue the superior court should not have granted the substitution motion because MRH failed to submit any evidence that CitiMortgage had transferred its interest in the 2012 judgment to it and thus, MRH did not have standing to enforce the 2012 judgment. Because the Pilats did not challenge the substitution motion on this ground in the superior court, they have waived this argument on appeal. *Hahn*, 200 Ariz. at 172, ¶ 13, 24 P.3d at 619.

VII. Order Denying Emergency Motion to Vacate Void Order for Lack of Jurisdiction and Failure to Comply with Ariz. R. Civ. P. 5.1(a)(2)(A) and (B)

¶32 After the superior court granted MRH's ex parte motion, *see supra* ¶ 6, the Pilats filed an "Emergency Motion to Vacate Void Order for Lack of Jurisdiction and Failure to Comply with Ariz. R. Civ. Proc. 5.1(a)2(A) and (B)" ("second emergency motion"). In that motion, the Pilats asked the court to vacate the order granting the ex parte motion. The Pilats argued the superior court should not have granted the ex parte motion because, in dismissing the case, it had relinquished jurisdiction and, further, the ex parte motion did not comply with Arizona Rule of Civil Procedure 5.1(a)(2)(A) as CitiMortgage had not signed or approved of the ex parte motion and the Pilats had not received notice from the withdrawing attorney. They further argued the ex parte motion failed to comply with Rule 5.1(a)(2)(B), which applies when an application for substitution of counsel is not approved by the client. The superior court denied the second emergency motion after finding the ex parte motion "was proper" and the Pilats did "not have standing" to contest MRH's choice of counsel or counsel's appearance in the case. On appeal, they raise these same arguments.

¶33 The superior court did not abuse its discretion when it denied the Pilats' second emergency motion. First, for the reasons discussed above, *see supra* ¶¶ 23-25, the superior court had not relinquished jurisdiction.

¶34 Second, the ex parte motion, filed concurrently with the reinstatement motion and the substitution motion, was signed by MRH and by counsel for both MRH and for CitiMortgage. Under these circumstances, and as the superior court determined, the ex parte motion was proper and the Pilats were not entitled to object to MRH's choice of counsel.

CONCLUSION

¶35 For the foregoing reasons, we affirm the post-judgment orders entered by the superior court and grant MRH its costs on appeal contingent upon its compliance with Arizona Rule of Civil Appellate Procedure 21.

Appendix B1

Decision of State Court Trial Court

PETER M. PILAT
and SHEILA PILAT
v.

MRH SUB I, LLC, as
successor-in-interest
to CitiMortgage, Inc.

Michael K. Jeanes, Clerk of Court
*** Filed ***
6/21/12 8:00am

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-016616

06/19/2012

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
A. Melchert
Deputy

CITIMORTGAGE INC

SCOTT A KLUNDT

v.

PETER M PILAT, et al.

DOUGLAS C RHOADS

SHEILA PILAT
3561 N PASCO DEL SOL
MESA AZ 85207

RULING

The Court has reviewed Plaintiff Citimortgage's Motion for Summary Judgment Against Peter and Sheila Pilat, Defendants' Response, Plaintiff's Reply, the parties' Statement of Facts and exhibits and the applicable law.

Plaintiff moves for summary judgment on the Complaint and Defendants' counterclaims. This case concerns a loan made January 5, 2006 for $480,000 to Defendant Pilat. The Note and Deed of Trust on the loan were assigned to CitiMortgage. Defendant Pilat made payments directly to CitiMortgage. Defendant stopped making payments in April 2008. In 2008 and 2009, Defendants conveyed the property securing the loan through a couple of family trusts and then back to themselves. In February, 2009, Mr. Pilat executed a release as "attorney in fact" for Plaintiff, asserting that the indebtedness secured by the Deed of Trust had been paid "fully satisfied" and releasing Plaintiff's lien on the property. It is undisputed that Plaintiff did not authorize the filing of this release and that the loan amount has not been satisfied.

Defendant contends that Plaintiff is not the holder of the note and, therefore, has no standing to bring this action. Defendant offers no evidence to contradict the Declaration of John Linnenbrink with CitiMortgage that states that the note was assigned to Plaintiff.

Defendants also argues that they are entitled to rescission under the provisions of the Truth in Lending Act (TILA) based on Plaintiff's alleged failure to respond to Defendant's "Qualified Written Request" letter. Assuming the facts regarding the QWR as alleged by Defendant to be true, a lender's duty to respond to a QWR is governed by the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §2605(e). RESPA does not provide rescission rights to a borrower. Rescission is a remedy provided under the TILA and requires that a borrower show that the lender failed to make a material disclosure to the borrower at the time of the loan closing. Defendants do not assert a right of rescission based on a lack of disclosure. Also, a claim for rescission carries a three-year statute of repose that mandates dismissal of such claim if brought more than three years after the consummation of the loan secured by the first trust deed. 15 U.S.C. §1635(f). Since this loan was made January 5, 2006, the statute of repose bars any claim for rescission.

THE COURT FINDS no material issues of fact precluding summary judgment.

IT IS HEREBY ORDERED granting Plaintiff CitiMortgage summary judgment on the Complaint and Defendants' counterclaims.

IT IS FURTHER ORDERED signing this minute entry as the formal order of this Court.

HONORABLE KATHERINE COOPER
JUDICIAL OFFICER OF THE SUPERIOR COURT

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

Appendix B2

Decision of State Court Trial Court

PETER M. PILAT
and SHEILA PILAT
v.

MRH SUB I, LLC, as
successor-in-interest
to CitiMortgage, Inc.

Michael K. Jeanes, Clerk of Court
*** Filed ***
NOV 2 1 2014 8:00am

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-016616 11/19/2014

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
D. Harding
Deputy

CITIMORTGAGE INC

LEONARD J MCDONALD

v.

PETER M PILAT, et al.

PETER M PILAT
3561 N PASEO DEL SOL
MESA AZ 85207

SHEILA PILAT
3561 N PASCO DEL SOL
MESA AZ 85207
APPEALS-CCC

MINUTE ENTRY

The Court entered an order on July 28, 2014 but did not sign the order. Therefore,

This minute entry is issued to add a signature line to the order entered on July 28, 2014, pursuant to Defendants' September 29, 2014 Motion for Entry of Signed Final Orders. The entire content of the July 28, 2014 order is included in this minute entry below:

On June 3, 2014, the Court granted Plaintiff's Motion for Alternative Service. On June 12, 2014, an Affidavit of Service of Process regarding alternative service (by posting at Defendants' residence and mailing by certified and regular mail) was filed with the Court. The Court now rules on the following motions:

Plaintiff's Motion to Reinstate Case: Granted.

The Court has reviewed Plaintiff's Motion filed March 13, 2014; Defendants' Response filed June 25, 2014; and the Reply filed July 11, 2014; and Defendants' Motion to Strike MRH Sub I, LLC's Reply. Oral argument was not requested.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-016616 11/19/2014

For the reasons stated in Plaintiff's Motion, the Court reinstates this case pursuant to Rule 60(c)(6). The Court erred in dismissing the case for lack of prosecution on March 27, 2014. The dismissal was procedural and without prejudice. Plaintiff has obtained a judgment on the merits. All substantive and legal issues have been decided and Defendants have had the opportunity to be heard on these issues. The only item remaining is Plaintiff's enforcement of its Judgment. The case is reinstated solely for the purpose of obtaining a writ of special execution to conduct a Sheriffs sale.

Additional briefing is not necessary and will not be accepted regarding Defendants' Motion to Strike. The Court grants Plaintiff's Motion to Substitute Real Party in Interest, making attorney Michael J. Rogers counsel for MRH. Defendants' Motion to Strike is denied as moot.

Plaintiff's Motion to Substitute Real Party in Interest: Granted.

The Court has reviewed Plaintiff's Motion filed March 13, 2014; Defendants' Response filed June 25, 2014; and the Reply filed July 11, 2014. Oral argument was not requested.

Original plaintiff CitiMortgage has transferred its interests and rights in this litigation to MRH Sub I, LLC. Defendants contend that, because the case was dismissed without prejudice, CitiMortgage cannot transfer any interest to another entity. Defendants do not dispute that, if a transfer can be made, MRH is the real party in interest. Dismissal does not affect CitiMortgage's ability to transfer any interest it has in the claims or judgment against Defendants.

HONORABLE KATHERINE COOPER
JUDICIAL OFFICER OF THE SUPERIOR COURT

Appendix C

Decision of State Supreme Court Denying Review

PETER M. PILAT
and SHEILA PILAT
v.

MRH SUB I, LLC, as
successor-in-interest
to CitiMortgage, Inc.

SCOTT BALES
CHIEF JUSTICE

JANET JOHNSON
CLERK OF THE COURT

Supreme Court

STATE OF ARIZONA
ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007-3231

TELEPHONE: (602) 452-3396

August 17, 2017

RE: MRH SUB I LLC v PETER PILAT/SHEILA PILAT
Arizona Supreme Court No. CV-17-0107-PR
Court of Appeals, Division One No. 1 CA-CV 14-0573
Maricopa County Superior Court No. CV2010-016616

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 17, 2017, in regard to the above-referenced cause:

ORDERED: Petition for Review of a Memorandum Decision of the Court of Appeals, Division 1 = DENIED.

A panel composed of Chief Justice Bales, and Vice Chief Justice Pelander, and Justice Gould and Justice Lopez participated in the determination of this matter.

Janet Johnson, Clerk

TO:
Peter M Pilat
Sheila Pilat
Kevin P Nelson
Michael A Wrapp
Justin P Nelson
Amy M Wood
bp