

SUPREME COURT OF ARIZONA

BT Capital, LLC v. TD Service Company of Arizona

229 Ariz. 299 (2012) (Ariz. 2012) · No. CV-11-0308-PR · Decided May 4, 2012

SUMMARY

The Supreme Court of Arizona held that litigation concerning competing claims arising from trustee's sales of commercial property became moot after a later, lawfully conducted trustee's sale conveyed the property to the deed-of-trust beneficiary. The court concluded that the lis pendens did not preserve the claimant's objections or establish priority over the pre-existing deed of trust, and that no viable statutory or contract damages claim remained.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Bales, Justice; Rebecca White Berch, Chief Justice; Andrew D. Hurwitz, Vice Chief Justice; A. John Pelander, Justice; Robert M. Brutinel, Justice
JURISDICTION	Arizona
DECIDED	May 4, 2012
DOCKET	CV-11-0308-PR
DISPOSITION	vacated
PROCEDURAL POSTURE	BT Capital appealed the superior court's summary judgment for Point Center Financial and TD Service Company. The court of appeals reversed and remanded. The Arizona Supreme Court granted review and resolved the appeal en banc.
STANDARD OF REVIEW	The opinion does not state a separately labeled standard of review. The court reviewed the mootness issue and the superior court's summary judgment ruling as legal questions.
PRECEDENTIAL VALUE	published, precedential Arizona Supreme Court opinion; en banc
PARTIES	BT Capital, LLC v. TD Service Company of Arizona, RCS-Chandler, LLC, Point Center Financial, Inc.

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QUESTIONS PRESENTED

1. Whether the July 2010 trustee's sale rendered BT Capital's appeal moot.
2. Whether Arizona's deed-of-trust statutes waived BT Capital's objections to the July 2010 trustee's sale after BT received notice, attended the sale, and failed to obtain injunctive relief or a stay.
3. Whether a lis pendens preserved BT Capital's claimed interest or gave its claim priority over the pre-existing deed of trust.
4. Whether BT Capital could maintain statutory or common-law contract claims for damages after the July 2010 trustee's sale.

HOLDINGS

1. The lawful July 2010 trustee's sale rendered BT Capital's appeal moot because the sale eliminated any practical effect that a decision concerning the earlier sale could have on the parties' rights to the property.
2. A person subject to A.R.S. § 33-811(C) who fails to obtain an order granting relief under Arizona Rule of Civil Procedure 65 before the scheduled trustee's sale waives all defenses and objections to the completed sale.
3. The trustee's deed from the July 2010 sale conveyed the property to PCF clear of BT Capital's subordinate claims or interests.
4. Recording a lis pendens gave constructive notice of BT Capital's lawsuit but did not establish the validity of its claim, create a substantive right, or give the claim priority over PCF's pre-existing deed of trust.
5. BT Capital had no viable statutory or common-law contract claim for damages against TD or PCF in these circumstances, and any statutory claim to compel completion of the 2009 sale was mooted by the 2010 sale.

KEY QUOTATIONS

"We hold that this case was rendered moot when the property was purchased by the beneficiary at a third trustee's sale in 2010." (275 P.3d at 599)

"Where, as here, a trustee's sale is completed, a person subject to § 33-811(C) cannot later challenge the sale based on pre-sale defenses or objections." (275 P.3d at 600)

"Although filing the lis pendens provided constructive notice of the lawsuit, it did not establish the validity of BT's claim or give it priority over the pre-existing deed of trust for purposes of § 33-811(E)." (275 P.3d at 600)

FACTUAL BACKGROUND

Point Center Financial held a deed of trust securing a \$32 million loan on commercial property, and TD Service Company was the trustee. After an initial trustee's sale on June 15, 2009, TD conducted a second auction that afternoon; BT bid \$1,000,001, but TD mistakenly failed to make a further bid for PCF and announced BT as the winner. TD rejected BT's tender of the balance, and while BT's litigation was pending, PCF acquired the property at a third trustee's sale in July 2010.

PROCEDURAL HISTORY

BT Capital sued the trustee and beneficiary after TD refused to complete a purported trustee's-sale purchase following a second auction in June 2009. The superior court held that the second auction was void, granted summary judgment for PCF and TD, and dismissed BT's tort claims. While BT's appeal was pending, PCF purchased the property at a third trustee's sale in July 2010. The court of appeals rejected mootness, reversed, and remanded; the Arizona Supreme Court vacated that decision and affirmed the superior court.

DISPOSITION

vacated

CASES CITED

- In re Vasquez, 228 Ariz. 357, 359 ¶ 4, 266 P.3d 1053, 1055 (2011)
- In re Krohn, 203 Ariz. 205, 208 ¶ 9, 214 ¶ 38, 52 P.3d 774, 777, 783 (2002)
- Sedona Private Property Owners Association v. City of Sedona, 192 Ariz. 126, 127, 961 P.2d 1074, 1075 (App. 1998)
- Kelly v. Perry, 111 Ariz. 382, 385, 531 P.2d 139, 142 (1975)
- Vinson v. Marton & Associates, 159 Ariz. 1, 5, 764 P.2d 736, 740 (App. 1988)
- BT Capital, LLC v. TD Service Co., 228 Ariz. 188, 191-92 ¶¶ 11-14, 196-97 ¶ 39, 265 P.3d 370, 373-74, 378-79 (App. 2011)