

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

LORI ZELTWANGER, *Defendant/Appellant*.

No. 1 CA-CV 15-0577
FILED 10-25-2016

Appeal from the Superior Court in Yavapai County
No. V1300CV201580223
The Honorable Jeffrey G. Paupore, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Lori Zeltwanger, Sedona
Defendant/Appellant

McCarthy & Holthus, LLP, San Diego, CA
By Melissa Robbins Coutts
Counsel for Plaintiff/Appellee

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which
Presiding Judge Diane M. Johnsen and Judge Jon W. Thompson joined.

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T H U M M A, Judge:

¶1 Lori Zeltwanger appeals from a judgment, entered after a bench trial, granting trustee U.S. Bank National Association (U.S. Bank) possession of certain Sedona, Arizona real property in this forcible entry and detainer action. Because Zeltwanger has shown no error, the judgment is affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 U.S. Bank purchased the real property at a trustee's sale in March 2015. After Zeltwanger was given notice to vacate, but refused to do so, U.S. Bank filed this action in July 2015. The complaint attached a copy of the recorded trustee's deed conveying the property to U.S. Bank as trustee. Zeltwanger filed an answer and affirmative defenses, claiming lack of service, foreclosure defects and lack of standing.

¶3 After a continuance, the superior court held a bench trial where Zeltwanger testified. After considering the evidence and argument, the court found Zeltwanger guilty of forcible detainer and entered judgment in favor of U.S. Bank. This court has jurisdiction over Zeltwanger's timely appeal pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes (A.R.S.) sections 12-201(A)(1) and -120.21(A)(1) (2016).²

DISCUSSION

¶4 Zeltwanger cites Arizona Rule of Civil Procedure 56 in claiming material issues of disputed fact precluded a grant of summary judgment. The judgment from which she appeals, however, was entered after a bench trial, not pursuant to a Rule 56 motion. Accordingly, Zeltwanger's argument regarding summary judgment is not relevant here.

¹ Because this appeal follows a bench trial, the facts are viewed in the light most favorable to sustaining the judgment. *See Southwest Soil Remediation v. City of Tucson*, 201 Ariz. 438, 440 ¶ 2 (App. 2001).

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated. Although judgment also was entered as to a co-defendant, that co-defendant did not appeal and is not a party to this appeal.

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¶5 To the extent Zeltwanger seeks to dispute the testimony at trial, she did not provide a trial transcript. Accordingly, this court assumes the transcript supports the judgment. *See Johnson v. Elson*, 192 Ariz. 486, 489 ¶ 11 (App. 1998). In addition, Zeltwanger’s brief on appeal does not cite the record as is required. *See Ariz. R. Civ. App. P. 13(a)*; *see also Ritchie v. Krasner*, 221 Ariz. 288, 305 ¶ 62 (App. 2009) (noting such failure “can constitute abandonment and waiver of [a] claim”).

¶6 Zeltwanger argues U.S. Bank lacked “the capacity to initiate a lawsuit” because it is a foreign company and “the Arizona Corporation Commission has no record of this entity.” Because Zeltwanger has not shown she raised this issue with the superior court, it is waived. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994). Moreover, on the merits, Zeltwanger has shown no error.

¶7 Under Arizona law, “[a] foreign corporation transacting business in this state without a grant of authority shall not be permitted to maintain a proceeding in any court in this state until it is authorized to transact business.” A.R.S. § 10-1502(A). By statute, however, the following activities “do not constitute transacting business within the meaning of” this prohibition: “[c]reating or acquiring indebtedness, mortgages and other security interests in real . . . property;” “[s]ecuring or collecting debts or enforcing mortgages and security interests in property securing the same” or “[o]wning, without more, real or personal property.” A.R.S. § 10-1501(B)(7)-(9). Because Zeltwanger failed to show that U.S. Bank took any actions in Arizona that do not fall within these exceptions, she has failed to show that U.S. Bank could not file this case.

¶8 Zeltwanger argues in the alternative that U.S. Bank lacked standing to file this case. As applicable here, a forcible detainer complaint must be “brought in the legal name of the party claiming entitlement to possession of the property.” Ariz. R.P. Evict. Action 5(b)(1). The complaint named as the sole plaintiff, U.S. Bank, as trustee for Wells Fargo Asset Securities Corporation Mortgage Pass-Through Certificate Series 2006-AR4, and a trustee’s deed attached to the complaint stated U.S. Bank, as trustee for the same entity, had purchased the property for valuable consideration at a trustee’s sale in March 2015. Zeltwanger concedes that the trustee’s deed “provides prima facie proof of ownership” by U.S. Bank. Moreover, there is nothing in the record on appeal showing that this presumption properly was rebutted during the evidentiary hearing before the superior court. Accordingly, Zeltwanger has not shown that U.S. Bank lacked standing to file this case.

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¶9 Finally, Zeltwanger argues there were defects in the trustee's deed. "On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into." A.R.S. § 12-1177(A). Zeltwanger's argument goes to the "merits of the title" and is not properly at issue in this case. *See Mason v. Cansino*, 195 Ariz. 465, 468 ¶ 8 (App. 1999) ("[O]ne cannot try title in a forcible detainer action."); *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 351 ¶ 21 (App. 2004) ("The only issue to be decided [in a forcible detainer action] is the right of actual possession. Thus the only appropriate judgment is the dismissal of the complaint or the grant of possession to the plaintiff.").

¶10 Although Zeltwanger requests fees and costs on appeal, because she is not the successful party, her requests are denied. U.S. Bank is awarded taxable costs on appeal, contingent upon its compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶11 Because Zeltwanger has shown no error, the judgment is affirmed.



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