



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**MARIA CARMEN ZUBIA v. DAVID SHAPIRO et al.  
CV-16-0255-PR**

**PARTIES:**

*Petitioner:* Maria Carmen Zubia

*Respondents:* David Shapiro, Ilana Shapiro, and The Shapiro Trust Dated February 14, 2006

**FACTS:**

Zubia and her husband, Jose Juan Pena, held title to certain property as joint tenants with right of survivorship. Zubia and Pena separated in 2006. In 2008, Pena borrowed \$150,000, and executed a Promissory Note and a Deed of Trust on the property in favor of Shapiro and Advanced Capital Group, LLC. Zubia has alleged that she had no knowledge of the loan until years later, and that someone forged her signature on the Note and Deed of Trust.

In 2013, the loan went into default. A Notice of Trustee's Sale was recorded in November 2013. Soon after that, Pena quitclaimed his joint tenancy interest to Zubia. In a separate action, Zubia sued Pena, Shapiro, Advanced, and others, alleging that someone had forged her signatures on the Note and Deed of Trust. She asked the trial court to convey the property to her, but never sought to enjoin the trustee's sale. That suit was eventually dismissed for lack of prosecution. As soon as that suit was dismissed, Shapiro moved forward on the Trustee's Sale, and noticed the sale for January 12, 2015. Zubia received notice of the sale, but did not seek an injunction. The sale took place on January 12, 2015, and Shapiro purchased the property for a credit bid. Zubia then filed this lawsuit against Shapiro, Advanced, and others reasserting her forgery allegations. Zubia sought damages under A.R.S. § 33-420(A), alleging that Pena improperly recorded the deed of trust and that either Shapiro or Pena improperly recorded the trustee's deed. The suit also sought to void the trustee's sale.

The trial court dismissed Zubia's complaint under A.R.S. § 33-811(C), finding that she waived her claims by not obtaining injunctive relief before the January 2015 sale took place. The trial court entered final judgment pursuant to Arizona Rule of Civil Procedure 54(b).

Zubia appealed. The court of appeals affirmed the trial court's judgment.

**ISSUE ON WHICH REVIEW WAS GRANTED:**

Does the failure of a non-defaulting homeowner to obtain injunctive relief pursuant to A.R.S. § 33-811 bar an action for damages against the beneficiary who knew the title holder's name was forged on the Deed of Trust?

**RELEVANT STATUTE:**

**A.R.S. § 33-811(C) provides:**

C. The trustor, its successors or assigns, and all persons to whom the trustee mails a notice of a sale under a trust deed pursuant to § 33-809 shall waive all defenses and objections to the sale not raised in an action that results in the issuance of a court order granting relief pursuant to rule 65, Arizona rules of civil procedure, entered before 5:00 p.m. mountain standard time on the last business day before the scheduled date of the sale. A copy of the order, the application for the order and the complaint shall be delivered to the trustee within twenty-four hours after entering the order.

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