

## ***Zubia v. Shapiro***

**Citation:** 408 P.3d 1248 (Ariz. 2018).

**Date Filed:** January 12, 2018

**Author:** Justice Brutinel

**Joined By:** Chief Justice Bales, Vice Chief Justice Pelander, and Justices Timmer, Bolick, Gould, and Lopez.

**Facts:** Maria Zubia and her husband, Jose Pena acquired a single-family home as joint tenants in 1995. Zubia and Pena subsequently separated in 2006. In 2008, Pena executed a \$150,000 Promissory Note in favor of David Shapiro, Ilana Shapiro, the Shapiro Trust, and Advanced Capital Group, LLC (“Advanced”). To secure the loan, Pena also executed a Deed of Trust on the Property. The note and the Deed of Trust were allegedly signed by both Pena and Zubia, although Zubia alleges that her signature was forged, and she was unaware of the loan.

The loan went into default in 2013. In August 2013, Advanced assigned its interest in the Property to Shapiro. Shapiro then substituted Empire West Title Agency, LLC (“Empire”) as the trustee of the Deed of Trust. Empire then recorded a notice of trustee’s sale stating that the Property was to be sold at public auction in February 2014.

In January 2014, Pena quitclaimed his joint tenancy interest to Zubia. Zubia subsequently filed an action against Pena, Shapiro, Advanced, Empire, and others, claiming that her signatures on the Note and Deed of Trust were forged and seeking quiet title to the property. However, her claims were dismissed without prejudice for lack of prosecution.

In January 2015, Empire conducted a trustee’s sale and Empire purchased the property on a credit bid. After the trustee’s sale, Zubia once again filed suit against Pena, Shapiro, Advanced, and others, in which she reasserted her forgery allegations. She sought damages under A.R.S. § 33-420(A) and quiet title to the property in her name. Zubia also added a wrongful foreclosure claim, asking the court to invalidate the 2015 sale and enjoin future trustee’s sales.

**Procedural History:** The trial court dismissed Zubia’s complaint under Arizona Rule of Civil Procedure 12(b)(6), ruling that under A.R.S. § 33-811(C), she had waived her claims by not obtaining injunctive relief before the January 2015 sale.

Zubia appealed the dismissal at the Arizona Court of Appeals, which affirmed, finding that § 33-811(C) bars all claims that are dependent on the trustee’s sale unless an injunction is obtained before the sale.

The court further found no error in the trial court’s dismissal of the wrongful foreclosure claim. It held that Arizona has not recognized a cause of action for wrongful foreclosure, and even assuming such a cause of action exists, would remain subject to A.R.S. § 33-811(C), and would also be precluded due to Zubia’s failure to obtain injunctive action. The court of

appeals also found that Zubia’s claim for damages under A.R.S. § 33-420(A) was likewise precluded because the claim could not succeed without proving that the sale was improper.

**Issue:** Does a homeowner’s failure to obtain injunctive relief under A.R.S. § 33-811(C) result in the waiver of her damages claim arising from a trustee’s sale, where the homeowner alleges that her name was forged on the promissory note and deed of trust.

**Holding:** Yes. Zubia’s claims are precluded because she failed to obtain an injunction before the trustee’s sale.

**Disposition:** Appeal from the Superior Court in Maricopa County is affirmed. Memorandum Decision of the Court of Appeals, Division One, is affirmed.

**Rule:** Failing to obtain an injunction before the trustee’s sale results in the waiver of any damage claims dependent on the validity of the sale.

**Discussion:**

- **Post-Sale Damage Claims:** The court begins the discussion by laying out the law regarding objections and defenses to trustee’s sales.<sup>1</sup> The court found that the plain language of A.R.S. § 33-811(C) dictated that it precludes not only actions to void the sale, but all actions arising out of the sale.<sup>2</sup> A.R.S. § 33-811(C) states that “the trustor . . . shall waive all defenses and objections to the sale not raised in an action that results in the issuance of [an injunction].”<sup>3</sup> Because the statute does not limit the preclusion to a specific type of case, it applies to all claims, not just those seeking to void the sale.<sup>4</sup> However, the court elaborated that actions independent of the trustee’s sale were still valid, and it examined the holdings in three cases to determine whether Zubia’s cases were independent.<sup>5</sup>

1. **Comparison to *Madison*:** The court examined the Arizona Court of Appeals case of *Madison v. Groseth*.<sup>6</sup> In *Madison*, a trustor sued for conversion, fraud/deceit, and trespass after a trustee’s sale, alleging that the property had been wrongly sold.<sup>7</sup> The trustor had not obtained an injunction.<sup>8</sup> The Court held that because the trustor could not prevail on the claims without proving that the sale was invalid, the claims were waived.<sup>9</sup>

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<sup>1</sup> Zubia v. Shapiro, 408 P.3d 1248, 1251 (Ariz. 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1250–51 (quoting ARIZ. REV. STAT. ANN. § 33-811(C) (2018)).

<sup>4</sup> *Id.* at 1251.

<sup>5</sup> *Id.* at 1251–52.

<sup>6</sup> *Id.* at 1252.

<sup>7</sup> *Id.* (citing *Madison v. Groseth*, 279 P.3d 633, 637 (Ariz. Ct. App. 2012)).

<sup>8</sup> *Id.* (citing *Groseth*, 279 P.3d at 637).

<sup>9</sup> *Id.* (citing *Groseth*, 279 P.3d at 638).

2. **Comparison to *Gotses*:** In the Arizona Court of Appeals case of *Morgan AZ Financial, L.L.C. v. Gotses*, the successor in interest filed an action seeking a deficiency judgement after the trustee's sale.<sup>10</sup> The trial court found that the trustors' defenses to the deficiency judgement were void.<sup>11</sup> However, the Court of Appeals reversed, holding that A.R.S. § 33-811(C) only applied to defenses and objections to the sale, not to the independent defense to a post-sale deficiency claim by the lender.<sup>12</sup>
  3. **Comparison to *Sitton*:** In *Sitton v. Deutsche Bank National Trust Co.*, the trustor unsuccessfully attempted to obtain an injunction before the sale.<sup>13</sup> She later brought a claim for monetary damages for false recording and an order quieting her title to the property.<sup>14</sup> The Court of Appeals found that quieting of title would have required a finding invalidating the sale, but the false recording claim was based on alleged misstatements and defects that existed irrespective of the trustee's sale.<sup>15</sup> The court, therefore, held that the claim to quiet title was precluded, but her claim to monetary damages could proceed.<sup>16</sup>
  4. **Zubia's claims:** The court held that Zubia's claims are precluded by A.R.S. § 33-811(C).<sup>17</sup> Zubia's claimed that 1) Pena had forged her signature on the note and the Deed of Trust, and 2) that the trustee's deed was, therefore, fraudulently recorded, that the sale was invalid, and title should be returned to her.<sup>18</sup> The claim that the trustee's deed was falsely recorded requires a determination that the asset's sale was invalid in order to succeed.<sup>19</sup> Thus, the court held that the fraudulent recording claim was precluded.<sup>20</sup> The court further held that to allow such an action would permit a loophole to avoid the statute and to undercut its purpose of providing for expeditious foreclosures.<sup>21</sup>
- **The Wrongful Foreclosure Claim:** While the court did not preclude the possibility that Arizona courts might recognize a wrongful foreclosure claim, it declined to do so here.<sup>22</sup> Like the damage claims, the wrongful foreclosure claim depended on a finding

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<sup>10</sup> *Id.* (citing *Morgan AZ Fin., L.L.C. v. Gotses*, 326 P.3d 288, 290 (Ariz. Ct. App. 2014)).

<sup>11</sup> *Id.* (citing *Morgan AZ Fin., L.L.C.*, 326 P.3d at 290).

<sup>12</sup> *Id.* (citing *Morgan AZ Fin., L.L.C.*, 326 P.3d at 290–91).

<sup>13</sup> *Id.* (citing *Sitton v. Deutsche Bank Nat'l Trust Co.*, 311 P.3d 237, 239 (Ariz. Ct. App. 2013)).

<sup>14</sup> *Id.* (citing *Sitton*, 311 P.3d at 239).

<sup>15</sup> *Id.* (citing *Sitton*, 311 P.3d at 240).

<sup>16</sup> *Id.* (citing *Sitton*, 311 P.3d at 240).

<sup>17</sup> *Id.* at 1253.

<sup>18</sup> *Id.* at 1252–53.

<sup>19</sup> *Id.* at 1253.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1253–54.

that the trustee's sale was invalid.<sup>23</sup> Because the claim arises out of the execution and recording of a trustee's deed, her claim is an objection to the validity of sale, and therefore precluded.<sup>24</sup>

- **Possibility of Other Claims:** Finally, the court specified that its holding in this case did not preclude potential claims against Pena and others related to the alleged forgery, as these claims are independent of the trustee's sale.<sup>25</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1254.