

FEB 19 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DUANE VARBEL,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED; CWABS INCORPORATED,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 12-16389

D.C. No. 2:12-cv-00662-NVW

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Neil V. Wake, District Judge, Presiding

Submitted February 11, 2013\*\*

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Duane Varbel appeals pro se from the district court’s judgment dismissing his diversity action arising out of foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. Appellees have filed a motion to dismiss this appeal as

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

moot because the trustee has now sold the property to a third party. We grant the motion and dismiss the appeal.

Varbel failed to obtain injunctive relief before the trustee's sale of the property. Under Arizona statutes governing the trustee's sale, Varbel has now waived his defenses and objections to the sale. *See* Ariz. Rev. Stat. § 33-811(C) (defenses and objections to a trustee's sale are waived if they are not raised in an action resulting in injunctive relief before the sale); *BT Capital, LLC v. TD Serv. Co. of Ariz.*, 275 P.3d 598, 600 (Ariz. 2012) (en banc) ("Where . . . 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."). Because the foreclosure sale has been completed, Varbel no longer has any effective remedy. We therefore dismiss Varbel's appeal as moot. *See Am. Cas. Co. of Reading, Pa. v. Baker*, 22 F.3d 880, 896 (9th Cir. 1994) (a case is moot when there is no longer a present controversy as to which effective relief can be granted).

Appellees' request for judicial notice of the Deed Upon Sale is granted.

The district court's order granting defendants' motion to dismiss, District Court Docket Item No. 17, is vacated. *See ACLU of Nev. v. Masto*, 670 F.3d 1046, 1065 (9th Cir. 2012).

**DISMISSED.**