

MAR 24 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DENA POPE, a married woman dealing in
her sole and separate property,

Plaintiff - Appellant,

v.

AEGIS WHOLESALE CORPORATION,
a Delaware corporation; U.S. BANK NA,
not in its individual capacity but solely as:
trustee of Certificate Holders of Maiden
Lane Trust, Asset-Backed Securities 1,
Series 2007; NATIONSTAR
MORTGAGE, LLC; BLACKROCK
FINANCIAL MANAGEMENT
INCORPORATED; FEDERAL
RESERVE BANK OF NEW YORK, a
single member Delaware limited liability
company; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,

Defendants - Appellees.

No. 12-16413

D.C. No. 2:11-cv-02050-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, Senior District Judge, Presiding

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

Submitted March 14, 2014**
San Francisco, California

Before: FISHER and BERZON, Circuit Judges, and QUIST, Senior District Judge.***

Dena Pope appeals from the district court's dismissal of her first amended complaint for failure to state a claim in this action arising out of foreclosure proceedings. Appellees have moved to dismiss this appeal as moot because the trustee has now sold the property to an independent third party. We grant the motion and dismiss the appeal.

Pope failed to obtain injunctive relief before the trustee's sale of the property. Under Arizona law, she has now waived any 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, 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.”). In light of the foreclosure, the remedy Pope seeks in her first

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

*** The Honorable Gordon J. Quist, Senior District Judge for the U.S. District Court for the Western District of Michigan, sitting by designation.

amended complaint is therefore 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).

The district court's order granting defendants' motion to dismiss is vacated. *See ACLU of Nev. v. Masto*, 670 F.3d 1046, 1065 (9th Cir. 2012).

DISMISSED.