

on August 16, 2017, and the Association filed a notice of cross-appeal on August 31, 2017.

Generally, neither a default judgment nor an order denying a motion to set aside the entry of default is appealable; although, a party may appeal an order setting aside or refusing to set aside a default judgment. See *Sanders v. Cobble*, 154 Ariz. 474, 475-76, 744 P.2d 1, 2-3 (1987). Mejia did not file a motion to set aside the default judgment.

Nevertheless, a default judgment is appealable, without the filing of a motion to set aside, if there is a question regarding personal or subject matter jurisdiction. *Kline v. Kline*, 221 Ariz. 564, 568, ¶ 11 (App. 2009).

Mejia asserts he did not have to file a motion to set aside because the superior court lacked jurisdiction to order the remedy of foreclosure. The appropriateness of the foreclosure remedy is not a jurisdictional challenge because the superior court had both personal and subject matter jurisdiction in the underlying action. Cf. *Industrial Comm'n v. Parise*, 13 Ariz. App. 522, 522-23 (App. 1970) (concluding the Industrial Commission had the right to appeal from a default judgment without filing a motion to set aside because it argued the superior court lacked subject matter jurisdiction); see also *State v. Bryant*, 219 Ariz. 514, 517-18, ¶¶ 13-15 (App. 2008) (explaining that when a court has jurisdiction over the parties and subject matter but makes an erroneous ruling, the order is voidable, not void). Therefore, the panel rejects this argument.

Mejia also argues a motion to set aside would serve no purpose because he had already presented his arguments to the superior court in his motion to set aside the entry of default and at the damages hearing. See *Parise*, 13 Ariz. App. at 523-24 (noting the purpose of a motion to set aside a default judgment is to give the superior court an opportunity to rule on a point of law not taken into consideration because of the default). Although Mejia already presented his arguments to the superior court, existing authority requires a motion to set aside under these circumstances.

The Association states it will withdraw its cross-appeal if the appeal is dismissed. The panel determining the court lacks jurisdiction over the appeal,

IT IS ORDERED terminating the stay of this appeal and dismissing this appeal for lack of jurisdiction.

IT IS FURTHER ORDERED directing the Association to file a motion to withdraw the cross-appeal within ten days from the date of this order.

_____/s/_____
Lawrence F. Winthrop, Presiding Judge

A copy of the foregoing
was sent to:

Chad M Gallacher
Jonathan A Dessaules
Jacob A Kubert
Hon Margaret Benny

The foregoing instrument is a full, true and correct
copy of the original on file in this office.

ATTEST 01-17-2018

AMY M. WOOD, CLERK OF THE COURT
of Division One Court of Appeals,
State of Arizona

BY _____ DN _____

IN THE
COURT OF APPEALS

STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 12/20/17
AMY M. WOOD,
CLERK
BY: RB

LAVEEN MEADOWS HOMEOWNERS)
ASSOCIATION,)
)
Plaintiff/Appellee/)
Cross-Appellant,)
)
v.)
)
CARLOS MEJIA,)
)
Defendant/Appellant/)
Cross-Appellee.)
)

) Court of Appeals
) Division One
) No. 1 CA-CV 17-0539
)
) Maricopa County
) Superior Court
) No. CV2016-094391
)
)
)
)
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ORDER DISMISSING CROSS-APPEAL

The court has considered appellee/cross-appellant's Motion to Withdraw Cross-Appeal.

IT IS ORDERED granting the motion and dismissing the cross-appeal.

_____/s/_____
Melina Brill, Judge Pro Tempore

A copy of the foregoing was sent to:

Chad M Gallacher
Jonathan A Dessaulles
Jacob A Kubert
Margaret Benny

The foregoing instrument is a full, true and correct copy of the original on file in this office.

ATTEST 01-17-2018

AMY M. WOOD, CLERK OF THE COURT
of Division One Court of Appeals,
State of Arizona

BY _____ DN _____