

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2012-000694-001 DT

04/03/2013

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT

J. Eaton

Deputy

HORACE DEWEY JR.  
KATHERINE DEWEY

APRIL A SPEELMON

v.

SHEILA SAUNDERS (001)

GUY P WOLF

REMAND DESK-LCA-CCC

UNIVERSITY LAKES JUSTICE COURT

RECORD APPEAL RULING / REMAND

**Lower Court Case No. CC2012 021514 RC.**

Defendant-Appellant Sheila Saunders (Defendant) appeals the University Lakes Justice Court's determination granting Plaintiffs summary judgment and awarding them (1) their security deposit; (2) double the amount of the security deposit; and (3) attorneys' fees. Defendant contends the trial court erred. For the reasons stated below, the court affirms the trial court's judgment.

**I. FACTUAL BACKGROUND.**

On April 11, 2011, Plaintiffs—Horace and Katherine Dewey—entered into a rental agreement with Defendant. As part of the rental agreement, Plaintiffs paid a refundable security deposit of \$1,450.00. After renting the home, Plaintiffs became dissatisfied with the home's condition and contacted Defendant. On October 17, 2011, Plaintiff Horace Dewey wrote to Defendant and informed her she needed to correct various “noncompliances” with the rental agreement. The letter was sent by certified mail and stated:

Pursuant to A.R.S. §§ 33–1361 and 33–1902 you are hereby informed you must correct the noncompliances with my family's rental agreement including any material falsification of written information provided and incorporating your duty to maintain the premises specified on the attached list. Should you fail to remedy these breaches on or before ten (10) days from your receipt hereof, my family's rental agreement shall terminate upon a date not less than ten (10) days from your receipt hereof.

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The List of Noncompliances [sic] listed—among others—#554 which stated:

Pursuant to A.R.S. § 33-1902 and City of Tempe Ordinance Section 21–25, you are required to provide to the county assessor an accurate, updated name, address and telephone number of the owner, as well as an accurate, updated statutory agent, name, address and telephone number, and you have yet to do so. This is a breach of the law to which you must comply.

Defendant responded to the Plaintiffs of October 27, 2011. Included in Defendant’s responsive missive were the following sentences:

The residential lease agreement that was used is an industry standard document with a copy right [sic] by the Arizona Association of Realtors. The rental property is registered, a business license has been obtained and taxes are currently paid to date.

Debra Jacobson, a designated broker with Neighborhood Realty, sent a letter to Defendant detailing the results of her October, 2011, inspections. In that letter, Ms. Jacobson stated she “found no condition to substantiate an early termination of rent.” In the same letter, Ms. Jacobson also informed Defendant:

Regarding the Residential Lease Agreement used, it is an industry standard document and is copyrighted by the Arizona Association of Realtors. All necessary disclosures have been included. The property is properly registered as a rental property with the Maricopa County Assessor and property ownership information is available on the County Assessor’s website.

Ms. Jacobson’s letter is not dated.

Defendant did not work to remedy any of the alleged “noncompliances” and Plaintiffs—on November 5, 2011—informed Defendant they would be vacating the home. In that letter, Plaintiff Horace Dewey wrote:

This is to notify you that my family’s lease has been terminated and, moreover, is ineffective by virtue of the premises being illegal for rental habitation, and that no later than November 30, 2011, we intend to vacate the premises.

Plaintiff Horace Dewey sent an additional letter on November 5, 2011, informing Defendant he was terminating the lease because of continuing breaches that had “previously been brought to your attention.” He listed the numbers for the “noncompliances.” Number 554 was included in the list. He ended this letter with the following:

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Consequently, given my previous notice correspondences to you dated October 17, 2011, my family and I will be vacating the premises and have notified you under separate cover as to the move-out date. I will **not** continue to be responsible for keeping the electricity on, cleaning the property beyond the period of our residency, paying rent until the property is leased again, or paying for administrative of leasing fees. Of course, the premises will be cleaned prior to my leaving.

This letter was mailed by certified mail together with the other November 5, 2011, letter.

Plaintiffs left the home on November 24, 2011, and returned the keys on November 30, 2011. On November 30, 2011, Plaintiffs gave written demand for their security deposit. Defendant responded to the demand on December 8, 2011, and asserted she was keeping the security deposit to offset December rent and as a deposit for the costs of marketing and releasing the premises. Thereafter, on January 30, 2012, Plaintiffs sued for the return of the security deposit.

Plaintiffs filed a motion for summary judgment. Although Defendant opposed this Motion,<sup>1</sup> the trial court granted the motion following oral argument. At the May 31, 2012, hearing on the Summary Judgment Motion,<sup>2</sup> Plaintiffs' counsel argued (1) Defendant failed to properly register the property with the County Assessor; and (2) A.R.S. § 33-1902 afforded her clients the right to terminate the lease.<sup>3</sup> Plaintiffs' counsel added Tempe City Ordinance 21-25 also required that the property be registered with the County Assessor.<sup>4</sup>

Plaintiffs' counsel argued Plaintiffs were entitled to a refund of their security deposit per A.R.S. § 33-1321 and asserted Plaintiffs had no obligation to pay either (1) December rent or utilities because they vacated the premises on November 30, 2011; or (2) a cleaning deposit because the landlord (Defendant) failed to itemize the areas to be cleaned or provide a dollar figure for the cleaning.<sup>5</sup> Plaintiffs' counsel requested double damages and attorneys' fees.

In response, defense counsel argued the October 17, 2011, letter did not specifically reference the need to register property with the County Assessor since the letter omitted any specific reference to the terms "County Assessor" or "register" and only included a statutory citation to A.R.S. § 33-1902.<sup>6</sup> Defense counsel argued Defendant was not put on reasonable notice of Plaintiffs' complaints or allegations;<sup>7</sup> and double damages were inappropriate because the lease

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<sup>1</sup> Plaintiffs also filed a Reply to Defendant's Response to the summary judgment motion.

<sup>2</sup> Hearing transcript for May 31, 2012.

<sup>3</sup> *Id.*, at p. 6, ll. 5-11.

<sup>4</sup> *Id.* at p. 7, ll. 10-18.

<sup>5</sup> *Id.* at p. 8, ll. 1-25; p. 9, ll. 1-25.

<sup>6</sup> *Id.* at p. 13, ll. 11-16.

<sup>7</sup> *Id.* at p. 13, ll. 17-25; p. 14, ll. 1-8.

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was not properly terminated.<sup>8</sup> Defense counsel also argued the Tempe City Ordinance was a red herring as the Ordinance did not allow for an early lease termination.<sup>9</sup>

Plaintiffs' counsel responded the second letter Plaintiffs sent specifically referenced the need to register the property and the letters from (1) Defendant's agent—Debra Jacobson—; and (2) Defendant; stated the property had been registered.<sup>10</sup>

In rebuttal, defense counsel asserted Plaintiffs needed to do more than give a statutory citation as notice, particularly since the County Assessor's website is not always accurate and Defendant could fairly assume that because her taxes increased, her property was properly registered.<sup>11</sup>

At the hearing's conclusion, the trial court granted Plaintiffs' summary judgment motion and awarded Plaintiff (1) the original security deposit of \$1,450.00; (2) additional damages of \$2,900.00; (3) costs; and (4) attorneys' fees. The trial court noted the damages were per A.R.S. § 33-1321 and added a note that:

[t]he determining factor for the issue of "proper notice" is the letter from Debra Jacobson (Ex. 1 of Plaintiff's Reply) in which Ms. Jacobson, a DB, shows her understanding of the Notice in the last paragraph.

The trial court then dismissed the Counterclaim, vacated the trial date, and ordered Plaintiffs to submit "appropriate pleadings in accordance with these rulings."

Defendant filed a timely appeal. Plaintiffs Horace and Katherine Dewey filed a responsive memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

## II. ISSUES:

*A. Did The Trial Court Err In Finding Plaintiffs' Notice Was Sufficient To Terminate The Lease.*

### Standard of Review

Plaintiffs were awarded summary judgment on their claims. On appeal, summary judgments are reviewed *de novo* for both the factual and legal determinations. In *Aranki v. RKP Investments, Inc.* 194 Ariz. 206, 208, 979 P.2d 534, 536 (Ct. App. 1999) the Arizona Court of Appeals stated:

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<sup>8</sup> *Id.* at p. 15, ll. 11-16.

<sup>9</sup> *Id.* at p. 16, ll. 14-21.

<sup>10</sup> *Id.* at p. 17, ll.15-25; p. 18, ll. 1-25; p. 19, ll. 1-11.

<sup>11</sup> *Id.* at p. 20, ll.1-25.

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Our standard of review for a grant of summary judgment is *de novo* for both factual and legal determinations. See *Kiley v. Jennings, Strouss & Salmon*, 187 Ariz. 136, 139, 927 P.2d 796, 799 (App. 1996), Summary judgment should be granted “if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P. 2d 1000, 1008 (1990). We view the evidence and reasonable inferences in the light most favorable to the non-moving party. See *Thompson v. Better-Bilt Aluminum Products, Co., Inc.* 171 Ariz. 550, 558, 832 P.2d 203, 211 (1992).

Thus, this Court reviews *de novo* whether (1) any material issues of fact exist; and (2) whether the trial court erred in its application of the law. *Saenz v. State Fund Workers’ Comp. Ins.*, 189 Ariz. 471, 473, 943 P.2d 831, 833 (Ct. App. 1997).

**Summary Judgment**

Although summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Orme School v. Reeves*, 166 Ariz. 301, 802 P.2d 1000 (1990), in reviewing a summary judgment, the reviewing court must view the facts and the reasonable inferences to be drawn from the facts in the light that is most favorable to the party against whom judgment was entered. *Maycock v. Asilomar Dev. Inc.*, 207 Ariz. 495, 496 ¶ 2, 88 P.3d 565, 566, ¶ 2 (Ct. App. 2004). Therefore, this Court must view the facts in the light that most favors the Defendant. The majority—if not all—of the material facts in this matter are uncontested. There is no issue about if the various letters were sent. Indeed, the parties agree about the notices Plaintiffs sent and the only disagreement—on appeal—revolves around if the County Assessor’s website indicated the property was registered. Defense counsel mentioned the website was often inaccurate and suggested Defendant had a right to rely on her belief that an increase in her taxes was equivalent to proper registration for the property. However, defense counsel did not suggest the County Assessor’s website inaccurately indicated the property was not registered when it had been. In contrast, Plaintiffs indicated the property was not registered until February—the month after they filed their Complaint. The question is whether this is a material fact and pits Defendant’s belief against Plaintiffs’ print-out of the County Assessor website indicating the property was first registered on February 13, 2012, at 17:37:26—almost four months after Plaintiffs first wrote to Defendant informing her that she failed to comply with the mandates of A.R.S. § 33–1902.

In a summary judgment motion, the only facts that are material are facts that might affect the outcome of the lawsuit. In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986) the U.S. Supreme Court stated:

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Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

This Court has examined the record. The County Assessor's website clearly indicates the property was not registered until February, 2012, several months after Plaintiffs wrote to Defendant and informed her about A.R.S. § 33-1902. This fact is not in dispute.

Similarly, the parties do not dispute that Plaintiffs sent a letter indicating there was a problem with Defendant's compliance with A.R.S. § 33-1902. What the parties contend are not the facts but the legal significance accorded these facts. Plaintiffs asserted they provided adequate notice of the defects by listing them by statutory citation and Defendant claimed listing A.R.S. § 33-1902 failed to give her adequate notice of the claimed violation.

**Notice**

Defendant alleges Plaintiffs' Notice was not legally sufficient because it failed to specify Defendant's need to properly register the property since it merely alleged a violation by its statutory citation instead of describing the violation in words. However, our courts have recognized statutory citations do provide adequate notice of a claim. In *State v. Paredes*, 181 Ariz. 47, 51, 887 P.2d 577, 581 (Ct. App. 1994), the Arizona Court of Appeals held—in a criminal context—

A citation to the statute provides sufficient notice of the state's intent to seek an enhanced sentence on grounds of dangerousness.

*Accord, State v. Burge*, 167 Ariz. 25, 28, 804 P.2d 754, 757 (1990) where the Arizona Supreme Court held:

We now believe it clear that § 13-604(K)'s plain language authorizes the grand jury to allege dangerousness in the indictment. Thus, we hold that an allegation of dangerousness in a grand jury indictment, such as the citation to § 13-604 in the indictment here, is sufficient to invoke § 13-604's sentence enhancement provisions.

The use of a statutory citation is sufficient to apprise a criminal defendant about the charged offense. By extension, the use of a statutory citation should be sufficient to apprise a civil defendant about a claim.

Defendant claimed otherwise. Defendant asserted A.R.S. § 33-1361 (A) required Plaintiffs to specify the acts and omissions and argued the term “specify” means to describe in detail. The statute states—in relevant part:

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Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement, including a material falsification of the written information provided to the tenant, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten days after receipt of the notice if the breach is not remedied in ten days

Ariz. Rev. Stat. Ann. § 33-1361. Defendant then maintained Plaintiffs' notice was not sufficiently detailed because it did not include the terms "register, rental, property, or Maricopa County Assessor's Office."<sup>12</sup> While Defendant is correct in that Plaintiffs' letter notification did not include the listed words, the statutory reference should have apprised Defendant of her need to check the requirement the statute imposed. A.R.S. § 33-1902 (A) states:

A. An owner of residential rental property shall maintain with the assessor in the county where the property is located information required by this section in a manner to be determined by the assessor. The owner shall update any information required by this section within ten days after a change in the information occurs. The following information shall be maintained:

1. The name, address and telephone number of the property owner.
2. If the property is owned by a corporation, limited liability company, partnership, limited partnership, trust or real estate investment trust, the name, address and telephone number of any of the following:
  - (a) For a corporation, a corporate officer.
  - (b) For a partnership, a general partner.
  - (c) For a limited liability company, the managing or administrative member.
  - (d) For a limited partnership, a general partner.
  - (e) For a trust, a trustee.
  - (f) For a real estate investment trust, a general partner or an officer.
3. The street address and parcel number of the property.
4. The year the building was built.

Ariz. Rev. Stat. Ann. § 33-1902 (C) states:

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<sup>12</sup> Appellant's Opening Memorandum at p. 5. Appellant failed to include either page or line references in her Opening Memorandum.

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C. Residential rental property shall not be occupied if the information required by this section is not on file with the county assessor. If the owner has not filed the information required by this section with the county assessor and the residential rental property is occupied by a tenant and the tenant chooses to terminate the tenancy, the tenant shall deliver to the landlord, owner or managing agent of the property a written ten day notice to comply with this section. The notice shall be delivered by certified mail, return receipt requested, or by hand delivery. If the owner does not comply with this section within ten days after receipt of the notice, the tenant may terminate the rental agreement and the landlord shall return all prepaid rent to the tenant. Security deposits shall be returned in accordance with § 33-1321, subsection D. The landlord shall return those monies by certified mail, return receipt requested, or by hand delivery to the tenant within ten days after the termination of the rental agreement. This subsection applies to any existing lease and to any new lease after August 25, 2004. Notwithstanding this subsection, an owner is in compliance with this subsection only if the owner had filed the information required by subsection A of this section with the county assessor.

Ariz. Rev. Stat. Ann. § 33-1902 (C) includes specific language providing for “a written ten day notice to comply with this section.” The statute does not require the notice include mention of the terms “register, rental, property, or Maricopa County Assessor’s Office.” Instead, the statute requires the tenant inform the landlord it must comply “with this section.” Because Plaintiffs informed Defendant to comply with the statute, Plaintiffs met their duty to inform Defendant about her lapse. Defendant was—or should have been—able to locate the statute and read its requirements. The statute does not impose a burden on tenants to use specific language and Plaintiffs did not fail to meet the requirements of A.R.S. § 33–1902 by citing to the statutory citation.

*B. Did The Trial Court Err By Ignoring Defendant’s “Offer Of Proof” That She Registered The Property With The County Assessor.*

Defendant claimed she made an “offer of proof” that she “had, in fact, registered the property, but that the County Assessor’s website failed to acknowledge it.” This is inaccurate. While defense counsel asserted there was a problem with the County Assessor’s website, Defendant offered no proof about the website—not even an Affidavit—that (1) Defendant attempted to register the property with the County Assessor during the 10 day period after Plaintiffs notified her there were problems with her compliance with A.R.S. § 33–1902; or (2) that there were problems with the County Assessor’s website. Defense counsel provided no foundation for the statements about (1) the County Assessor’s website; or (2) problems other landlords may have experienced. Defense counsel did not request any ruling about this alleged “offer of proof.” In *Molloy v. Molloy*, 158 Ariz. 64, 68, 761 P.2d 138, 142 (Ct. App. 1988), the Arizona Court of Appeals addressed offers of proof and said:

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Wife waived the opportunity to appeal the ruling because she made no offer of proof of what such testimony would have been.

Offers of proof are controlled by Rule 103, Arizona Rules of Evidence, which states:

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . .

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Offers of proof serve the dual function of enabling the trial court to appreciate the context and consequences of an evidentiary ruling and enabling the appellate court to determine whether any error was harmful. *See Jones v. Pak-Mor Manufacturing Co.*, 145 Ariz. 121, 129, 700 P.2d 819, 827, *cert. denied*, 474 U.S. 948, 106 S. Ct. 314, 88 L.Ed.2d 295 (1985) (citing *M. Udall & J. Livermore*, Arizona Practice—Law of Evidence § 13 (2d ed. 1982).) Though offers of proof are usually prerequisite to appellate argument against the exclusion of evidence, *Montano v. Scottsdale Baptist Hospital, Inc.*, 119 Ariz. 448, 581 P.2d 682 (1978), there are exceptions to the rule. “Where the purpose and substance of the testimony expected is obvious, as when ... the court has ruled broadly that no evidence is admissible in support of the theory or fact sought to be established—then an offer may not be necessary.” *M. Udall & J. Livermore*, Arizona Practice—Law of Evidence § 13 (2d ed. 1982) (citing *Greco v. Manolakos*, 24 Ariz. App. 490, 539 P.2d 964 (1975); *State v. Kaiser*, 109 Ariz. 244, 508 P.2d 74 (1973); *Peterson v. Sundt*, 67 Ariz. 312, 195 P.2d 158 (1948); *Watson v. Southern Pacific Co.*, 62 Ariz. 29, 152 P.2d 665 (1944).)

Ariz. R. Evid. Rule 103, requires the party to make an offer of proof. The rule states:

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

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(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record--either before or at trial--a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) Taking Notice of Fundamental Error. A court may take notice of an error affecting a fundamental right, even if the claim of error was not properly preserved.

Although Defense counsel stated:

And if you give us a chance to go to trial, my client will show - - tell you that she, in fact, did register the property three years prior to this herself, but the computer didn't take it apparently. She saw her taxes increase and assumed that she had properly registered it. And the evidence will show that this is common with the County's attorney - - County Assessor's website. That landlords go in there all the time, register their property and it doesn't take, it doesn't change anything but their bills go up.<sup>13</sup>

However, defense counsel failed to inform the trial court this was an offer of proof. Defense counsel did not offer anything to show an increase in taxes was related to a registration of property or that it is common for the County Assessor's website to be incorrect. Similarly defense counsel did not offer to show "landlords go in there all the time, register their property and it doesn't take." The only offer of proof defense counsel asserted was Defendant's potential testimony that she tried to register her property three years earlier. Here, however, Defendant did not inform the court how this evidence is relevant to Defendant failing to ascertain the status of her property after Plaintiffs informed her there was a problem in following A.R.S. § 33-1902.

In *Jones v. Pak-Mor Mfg. Co.*, 145 Ariz. 121, 129, 700 P.2d 819, 827 (1985) the Arizona Supreme Court described an offer of proof and held:

The vice in this offer of proof, however, is quite different. The offer indicates the nature of the proposed evidence. The problem is that defendant has made no showing that the testimony would be admissible even under the rule which we recognize today. Offers of proof serve a two-fold purpose:

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<sup>13</sup> Hearing transcript, *id.* at p. 20, ll. 12-21.

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First, the description puts the trial judge in a better position to determine whether his initial ruling was erroneous and to allow the evidence to be introduced if he decides it was. Second, the appellate court will be able from the description to determine whether any error was harmful in the context of the case.

Here, Defendant failed to show the verdict would have been changed had Defendant been able to introduce testimony that she believed she had registered the property. She did not assert she believed the property to be registered in her October 27, 2011, correspondence. Instead, she maintained the property was registered. Because (1) Plaintiffs informed her of the statutory requirement; (2) Defendant apparently failed to check to see if her property was properly registered; and (3) Defendant did not properly register her property until February, 2012; this Court finds the trial court did not err by ignoring Defendant's "offer of proof."

*C. Did The Trial Court Err By Awarding Plaintiffs Treble Damages.*

Defendant's third claim is the trial court erred by awarding treble damages pursuant to A.R.S. § 33-1321 (E) because Defendant provided Plaintiffs an itemized statement following Plaintiffs' termination of tenancy. The essence of this claim is that Defendant informed Plaintiffs Defendant was keeping the security deposit to pay for December rent as well as costs to re-let the premises and this statement was the itemized statement required by law. However, Defendant did not assert the security deposit was ever intended to be used to reimburse the landlord for unpaid rent or for costs of re-letting the premises.

In contrast, Plaintiffs stated Defendant wrote a "security deposit disposition" letter, and thereby agreed Defendant sent the security deposit disposition mandated by A.R.S. §33-1321 (E). Here, the issue is whether Plaintiffs are entitled to the additional \$2,900.00 the trial court awarded. Defendant asserted the additional sum was incorrectly ordered because it was allegedly based on Defendant's failure to provide security deposit information. Plaintiffs maintained they were entitled to the additional \$2,900.00 awarded to them as additional damages and cited *Lisa v. Strom*, 183 Ariz. 415, 904 P.2d 1239 (Ct. App. 1995) as authority for this proposition. In *Lisa v. Strom, id.*, the landlords withheld a major portion of the tenants' security deposit for charges for painting the home, replacing the front door, and replacing a lock. The court found these charges were unwarranted; determined the money was wrongfully withheld; and awarded the tenants treble damages. In making the award, the Court of Appeals held:

Upon termination of a residential tenancy, the landlord must return so much of the security deposit as is not available to the landlord as damages for the tenant's failure to keep the premises in good condition. A.R.S. § 33-1321(C).

*Lisa v. Strom, id.*, 183 Ariz. at 421, 904 P.2d at 1245. In the case before this Court, the landlord withheld the security deposit as compensation for allegedly unpaid rent and for the costs of re-letting the premises. These charges are not necessarily charges the security deposit was intended to cover. Indeed, A.R.S. § 33-1321 (D) refers to money held as prepaid rent and security.

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Because the statute refers to two types of money withheld by the landlord—(1) prepaid rent and (2) security—the landlord could not withhold the security deposit to cover allegedly assessed rent charges unless the lease provided the two types of payments must be lumped together. Defendant did not make this allegation. Therefore, Defendant erred by withholding the security deposit to cover these alleged charges. In *Lisa v. Strom, id.*, 183 Ariz. at 421, 904 P.2d at 1245, the Court of Appeals also stated:

If the landlord fails to return the security deposit, “the tenant may recover the ... money due him together with damages in an amount equal to twice the amount wrongfully withheld.” A.R.S. § 33-1321(D). The statute therefore allows the tenant to recover a judgment equal to three times the amount wrongfully withheld: first, the tenant can recover the money wrongfully withheld and still due; second, the tenant is allowed to receive as damages an additional amount equal to twice the amount withheld.

Although Defendant correctly asserted *Lisa v. Strom, id.*, is distinguishable from the current case because *Lisa v. Strom, id.*, was not a case involving a disposition notification, *Lisa v. Strom, id.*, is on point where it addressed the ability of the trial court to assess treble damages. Consequently, even if the trial court erred by finding Defendant failed to prepare a disposition letter—when it had prepared such letter—the trial court did not err in assessing damages pursuant to A.R.S. § 33-1321 (D) for failing to properly return the security deposit. As the Arizona Supreme Court stated in *City of Phoenix v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985):

We recognize the obligation of appellate courts to affirm where any reasonable view of the facts and law might support the judgment of the trial court. This rule is followed even if the trial court has reached the right result for the wrong reason.

The trial court did not err in assessing the damages.

*D. Did The Trial Court Abuse Its Discretion By Failing To Strike Plaintiffs’  
Untimely Summary Judgment Motion.*

Plaintiffs’ Summary Judgment Motion was untimely. In asking the trial court to strike the motion, Defendant requested alternative relief; either that the motion be stricken or that Defendant be given additional response time. The trial court granted the additional response time. Furthermore, while Plaintiffs did not file their Reply brief until the morning of the argument, Defense counsel did not ask the trial court to continue the oral argument to allow defense counsel the opportunity to consider the Reply brief.

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Defendant asserted the late filing of Plaintiffs' summary judgment motion prejudiced her. However, Defendant failed to develop the type of prejudice she suffered other than to say she did not have time to prepare her response. Plaintiffs filed the Summary Judgment Motion on April 23, 2012. The trial court set oral argument for May 31, 2012 on April 26, 2012. Consequently Defendant knew—more than a month ahead of time—there was a possibility the trial court would consider Plaintiffs' summary judgment. With this knowledge, Defendant should have been able to foresee the possibility of needing to be prepared for oral argument. Although the trial court did not rule on Defendant's motion to strike until May 29, 2012, Defendant knew there was a possibility the summary judgment would proceed as scheduled. Thus, even though the trial court granted an unspecified amount of additional time—which Defendant may not have been able to use—Defendant was in no worse position than if the trial court had denied both of Defendant's requests. Consequently, Defendant was not “forced to submit its Response to the Court with little or no warning” as Defendant had been apprised of the possibility of the summary judgment for more than one month.

Defendant also alleged the trial court's late ruling on her Motion To Strike left her with insufficient time to review Plaintiffs' Reply which was submitted the morning of oral argument. Defense counsel did not address this argument to the trial court and did not object to the oral argument proceeding despite his having received the Reply brief only minutes before argument. Instead, he responded to her argument. The failure to raise an argument with the trial court results in a failure to be able to appeal the issue. Defendant cannot introduce new claims on appeal. Absent due process errors, a party cannot raise an issue for the first time on appeal. *State v. Gatliff*, 209 Ariz. 362, 364, ¶ 9 102, P.3d 981, 983 ¶ 9 (Ct. App. 2004); *Romero v. SW Ambulance*, 211 Ariz. 200, 203–04, ¶ 6, 119 P.3d 467, 470–71 ¶ 6 (Ct. App. 2005) “The only objection which may be raised on appeal ... is that made at trial.” In *State v. Gendron*, 168 Ariz. 153, 154, 812 P.2d 626, 627 (1991) the Arizona Supreme Court stated:

Absent a finding of fundamental error, failure to raise an issue at trial, including failure to request a jury instruction, waives the right to raise the issue on appeal.

Defendant's new allegation is not a due process claim. Therefore Defendant is precluded from raising this claim for the first time on appeal and Defendant's claim fails.

*E. Did The Trial Court Err By Considering And Relying On Hearsay Evidence In Making Its Ruling.*

Defendant argued the trial court impermissibly considered the statement of Debra Jacobson in making its ruling. Defendant did not object to the introduction of this letter. Furthermore, while the letter is an out of court statement, it was not offered for the truth of the matter asserted: that the property was registered or not registered. Instead, it was offered to show Defendant knew the possible lack of registration was one issue Plaintiffs complained about.

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While most hearsay is inadmissible because there is a problem in determining its reliability, there are exceptions to the hearsay rule. In *State v. Rivera*, 139 Ariz. 409, 413-14, 678 P.2d 1373, 1377-78 (1984) the Arizona Supreme Court stated:

It is correct that the hearsay rule does not apply when an extrajudicial utterance is not offered as proof of the truth of the matter asserted, 6 Wigmore, *supra* § 1766 at 250. The hearsay rule is inapplicable where the statements are offered for some valid purpose other than to prove the matter asserted in the statement.

The Supreme Court cautioned that care must be taken when admitting extrajudicial statements and remarked on four categories of instances where the hearsay rule does not apply. The Supreme Court said:

Evidence commentators generally divide the situations where the hearsay rule is inapplicable into four categories. Udall and Livermore, *supra* § 122.

1) The words sought to be admitted have independent legal significance. The classic examples of this category are utterances of contract, marriage promise, defamation, discharges of legal duty (notice). The utterance in question has no independent legal significance.

2) Words or writings offered to prove the effect on the hearer or reader are admissible where offered to show their effect on one whose conduct is in issue. In the case at bench, neither the mother's conduct, nor Vicky's, are in issue. The reason the mother took her daughter to the hospital is not relevant to the legal issues of the molestation charge.

3) If the statement is used to show knowledge it may be admitted if knowledge is an element of the charge or defense. This, too, is inapplicable to the case at bench. Also, even though knowledge is not an element, non-hearsay proof of knowledge may be used to permit inferences that *are* relevant. Again, the substance of Vicky's statement to her mother affords no such *relevant* inference. *Cf. Bridges v. State*, 247 Wis. 350, 19 N.W.2d 529 (1945), where the child victim's pretrial statements to her mother and police officer gave a precise description of the house where the crime had been committed, thus permitting an inference that she had been in that house. The statement was admitted after the introduction of proof that defendant's house fit the description and that the girl had no other way of having obtained knowledge about the house.

4) Declarations offered as circumstantial evidence of the declarant's feelings or state of mind are admissible where the mental state of the declarant at a particular time is in issue. Vicky's mental state is not an issue in the case at bench.

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These categories are not an exhaustive list of non-hearsay uses. However, relevancy is the unifying requisite factor for the admissibility of statements for non-hearsay purposes.

*State v. Rivera, id.*, 139 Ariz. at 414, 678 P.2d at 1378.

Defendant also relied on *Arizona Land Title & Trust Co. v. Safeway Stores, Inc.* 6 Ariz. App. 52, 59, 429 P. 2d 686 (Ct. App. 1967) and *Mason v. Bulleri*, 25 Ariz. App. 357, 359, 543 P.2d 478, 480 (Ct. App. 1975) and asserted “these cases specifically preclude the use and reliance of hearsay in hearing or granting summary judgment.”<sup>14</sup> Defendant erred in making this allegation. *Arizona Land Title & Trust Co. v. Safeway Stores, Inc., id.*, states hearsay evidence would not control on a motion for summary judgment and not that hearsay evidence is inadmissible or precluded. Similarly, in *Mason v. Bulleri, id.*, the Arizona Court of Appeals ruled:

Initially we note that the appellants are correct in their contention that summary judgment is permissible only if supported by facts which would be admissible in evidence, *7-G Ranching Company v. Stites*, 4 Ariz. App. 228, 419 P.2d 358 (1966), and that in reaching its decision the Court should exclude from its consideration extrinsic evidence which would violate the parol evidence rule. *Briskman v. Del Monte Mortgage Company*, 10 Ariz. App. 263, 458 P.2d 130 (1969). However, appellants refuse to recognize that one of the basic issues raised in the pleadings by way of defensive matter was the issue of the alleged breach by appellants of their fiduciary duties to defendants.

Evidence of conversations and negotiations between the plaintiff brokers and the buyers relating to the proposed contract were admissible on this issue and therefore appellants' parol evidence contentions must fail.

*Mason v. Bulleri, id.*, 25 Ariz. App. at 359, 543 P.2d at 480. These cases do not support Defendant's claim.

Because (1) Plaintiffs did not use the letter to demonstrate the property was registered, but instead, offered it to show Defendant's agent wrote to Plaintiffs about the registration of the property; (2) the letter was used to indicate Defendant—or her agent—understood the reference in Plaintiffs' letter to A.R.S. § 33-1902; and (3) Defendant did not object to the use of the hearsay exhibit or move to strike it at oral argument; the trial court did not err in admitting the evidence.

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<sup>14</sup> Appellant's Reply Memorandum, at p. 12, ll. 4-5. As with the initial memorandum, Appellant failed to put page numbers on this memorandum.

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III. CONCLUSION.

Based on the foregoing, this Court concludes the University Lakes Justice Court did not err.

**IT IS THEREFORE ORDERED** affirming the judgment of the University Lakes Justice Court.

**IT IS FURTHER ORDERED** remanding this matter to the University Lakes Justice Court for all further appropriate proceedings.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

/s/ Myra Harris

THE HON. MYRA HARRIS

Judicial Officer of the Superior Court

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