

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000697-001 DT

04/30/2012

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
K. Waldner
Deputy

ANDREW ASH

RAYA TAHAN

v.

EDWARD BALL (001)
J D BALL (001)
LISA BALL (001)

EDWARD BALL
23623 N SCOTTSDALE RD #D3-168
SCOTTSDALE AZ 85255
J D BALL
23623 N SCOTTSDALE RD #D3-168
SCOTTSDALE AZ 85255
LISA BALL
23623 N SCOTTSDALE RD #D3-168
SCOTTSDALE AZ 85255

DESERT RIDGE JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2011114227EA.

Defendant Appellant J.D. Ball (Defendant) requests a rehearing on this matter pursuant to Rule 14, Superior Court Rules of Appellate Practice—Civil (SCRAP—Civ.) because Defendant contends the Superior Court erred in adopting the trial court's determination (1) there was a contemporaneous writing and (2) deciding the Plaintiff could proceed with the eviction action despite Defendant paying a portion of his past due rent. For the reasons stated below, the court denies Defendant's motion

I. FACTUAL BACKGROUND.

On March 13, 2012, the Superior Court reviewed the trial court's determination that found Defendant guilty of a forcible detainer. The Superior Court affirmed in part and reversed in part the trial court's action. On April 12, 2012, Defendant filed a Motion To Reconsider the Superior Court's determination.

II. RULING:

Appeals to the Superior Court are governed by SCRAP—Civ. The Superior Court ruled on this case on March 13, 2012. Litigants are granted 14 days in which to file a motion for

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rehearing. Defendant filed his motion requesting reconsideration on April 12, 2012—more than 14 days after the Superior Court’s ruling. Defendant’s request is untimely and is denied.

Additionally, while Rule 12(b) grants the Superior Court the authority to decide all questions of law and fact, appellate courts do not normally re-weigh evidence to see if the appellate court would reach the same conclusion as the original trier of fact. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). A trial court judgment is not disturbed if there is any substantial legal evidence to support it. *Corn v. Branche*, 74 Ariz. 356, 357, 249 P.2d 537, 538 (1952). In this case, the Superior Court’s ruling was primarily a ruling on factual—as opposed to legal—questions.

This Court notes that Defendant provided this Court with little in the way of analysis or precedent to support his contention. In his Motion, Defendant claimed the Superior Court erred in affirming the trial court’s decision allowing the Plaintiff to proceed with the forcible detainer action against Defendant. Defendant asserted (1) the trial court—and the Superior Court—could not accept an e-mail as a contemporaneous writing and (2) because Plaintiff accepted some part of a past due payment, this qualified as current rent and foreclosed Plaintiff’s ability to evict Defendant. At trial, the Desert Ridge Justice Court—trial court—was confronted with these questions. The trial court determined the sums paid in May covered past due rent for several months preceding the date of the 5-day notice. The trial court also determined the e-mails were contemporaneous writings. These are fact questions. The Superior Court—in its appellate capacity—accepted the trial court’s factual determination and cited to the standard established by *State v. Guerra, id.*, 161 Ariz. at 293, 778 P.2d at 1189 that the appellate court will not re-weigh the evidence to see if it would reach the same conclusion as the original trier of fact. The Superior Court also referred to *T.H. Properties v. Sunshine Auto Rental, Inc.*, 151 Ariz. 444, 446, 728 P.2d 663, 665 (Ct. App. 1986) and its holding that acceptance of rent which accrued before the time the grounds for forfeiture arose did not operate as a waiver of the landlord’s right to forfeit the lease. The Superior Court also referred to the requirements of RPEA, Rule 5(d).

In his appellate memorandum, Defendant argued the e-mail could not be used as evidence because he placed a notice on his e-mail restricting its use. The trial court allowed the use of the e-mail as a contemporaneous writing. Defendant provided no authority indicating his notice precluded the trial court from considering the e-mails as contemporaneous writing. Having failed to properly argue this point, Defendant cannot now raise it and the trial court’s factual determinations stand.

III. CONCLUSION.

Based on the foregoing, this Court denies Defendant’s Motion For Rehearing.

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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