

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000393-001 DT

01/22/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

BARCELONA CONDOMINIUM
ASSOCIATION

CHAD M GALLACHER

v.

NICK XENOS (001)
KATHY XENOS (001)

F ROBERT CONNELLY II

MCDOWELL MOUNTAIN JUSTICE
COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

Lower Court Case No. CC2016-058901

The Court has considered the Motion to Dismiss Defendants' Untimely Appeal filed by Appellee Barcelona Condominium Association ("the Association") and the Response filed by Appellants Nick and Kathy Xenos ("Appellants").

The parties do not dispute that the trial court entered an order denying Appellants' Motion to Vacate and Set Aside Judgment and for New Trial on May 4, 2017, but did not mail it to the parties until June 1, 2017. Appellants filed their Notice of Appeal on June 14, 2017, 13 days later.

Under the applicable rule, a notice of appeal must be filed within 14 calendar days after entry of the order. Rule 4, Superior Court Rules of Appellate Procedure – Civil. According to the Association, the appeal must therefore be dismissed.

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But that argument ignores the fact that Appellants did not know that the trial court had denied their motion until the trial court sent notice to them.

A party should be able to rely upon the mail for notice and should not be required to contact the Justice of the Peace every day to ascertain if judgment has been entered. We believe that upon a proper showing that notice of judgment was received so late as to make appeal within the statutory time limit impossible, that the Superior Court could relieve the appealing party from strict application of the [time limit].

DNB Const., Inc. v. Superior Court, 125 Ariz. 61, 63 (1980).

Based on the foregoing,

IT IS ORDERED denying the Motion to Dismiss the appeal.

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

/s/ Patricia A. Starr

THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. **Therefore, you will have to deliver to the Judge a conformed courtesy copy of any new filings.**