

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000042-001 DT

03/23/2017

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
T. DeRaddo
Deputy

CORONADO RANCH COMMUNITY
ASSOCIATION

ANJALI J PATEL

v.

RACHELLE JOHNSON (001)

RACHELLE JOHNSON
613 W DRAGON TREE AVE
QUEEN CREEK AZ 85140

REMAND DESK-LCA-CCC
SAN TAN JUSTICE COURT

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2015-048817

Defendant-Appellee Rachelle Adey—formerly Johnson—(Defendant) filed a procedural motion to dismiss Plaintiff-Appellant’s Coronado Ranch HOA’s (Plaintiff) appeal. Defendant contends there are matters pending before the trial court which are unresolved and Plaintiff’s appeal was prematurely filed. Defendant responded to Plaintiff’s procedural motion and requested that this Court stay Plaintiff’s appeal pending the trial court’s resolution of pending matters. This Court grants Defendant’s procedural motion.

I. FACTUAL BACKGROUND.

On January 10, 2017, counsel for Plaintiff filed a Notice of Appeal. The Notice of Appeal was signed on January 9, 2017, and date stamped by the San Tan Justice Court on January 10, 2017. Defendant Rachelle Adey filed a Procedural Motion on January 6, 2017, alleging the Plaintiff’s Notice of Appeal was (1) dated January 3, 2017; and (2) improper because the Notice of Appeal was premature. Defendant relied on to Justice Court Rules of Civil Procedure (JCRC) Rule 139(b) as support for her contention.¹

¹ The trial court has not yet forwarded the entire case file. The proffered documents indicate a received date of Jan. 10, 2017, for Plaintiff’s Notice of Appeal. Defendant’s procedural motion is date stamped Jan. 6, 2017 by the San Docket Code 506 Form L512 Page 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000042-001 DT

03/23/2017

Defendant, in her procedural motion, claimed that although Plaintiff filed an Application for Default on May 11, 2016, no default had been entered against her co-Defendant James Johnson. She also maintained (1) she had a pending cross-claim against her co-Defendant; and (2) the case was not ripe for appeal.

On January 30, 2017, Plaintiff opposed this motion and requested that this Court stay Plaintiff's appeal pending resolution of the following: (1) the Association's request for Rule 139(B) Certification; (2) the trial court's ruling on the Plaintiff's request for a default judgment; and (3) the trial court's resolution of attorneys' fees and costs. Plaintiff also requested that this court sever Defendant Rachelle Adey's claims against her co-defendant because Defendant Adey had not taken further action on her cross claim since she amended her cross-claim in June, 2016. Plaintiff asserted there was no just reason for delay in securing final judgment with respect to the Plaintiff's claims and the Plaintiff should be allowed to proceed with its appeal. Plaintiff requested that this Court certify the case.

Defendant filed a Reply to Plaintiff's responsive motion. She maintained (1) Plaintiff's response to her procedural motion was untimely because Plaintiff was only afforded a 14 calendar day window in which to respond to Defendant's procedural motion and more than 14 days had elapsed; and (2) Plaintiff's appeal was premature since there was no final judgment and discretionary rulings were needed.

This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUES:

A. Did Plaintiff Timely Oppose Plaintiff's Motion

Defendant, in her Reply, raised the issue of an untimely response. Because this Court determined it lacks the jurisdiction to hear the appeal, this issue is moot.

B. Is This Case Ripe For Appeal.

Defendant requested that this Court dismiss Plaintiff's appeal as premature while Plaintiff requested that this Court stay the appeal and rule on issues related to the underlying Justice Court action such as Plaintiff's request for attorneys' fees; need for certification; and Plaintiff's request to sever Defendant Adey's cross-claim against Defendant Johnson from this proceeding. Plaintiff asserted it was in the interest of justice for this Court to assume jurisdiction over the appeal because the trial court allegedly "has disposed of Plaintiff's claims with finality and forcing the Association to wait until Co-Defendant Adey's cross-claims against Co-Defendant James

Tan Justice Court. Despite the proffered Notice of Appeal indicating Jan. 10, 2017, as the date for Plaintiff's Notice of Appeal, Defendant's procedural motion referenced the date of January 3, 2017, as the date for Defendant's Notice of Appeal. This Court has no documents with which to resolve this conundrum.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000042-001 DT

03/23/2017

Johnson would not serve the ends of justice.”² Plaintiff asserted it would be more efficient and cost effective for Plaintiff to be permitted to appeal the trial court’s decision.³

The question this Court must resolve is whether this Court has subject matter jurisdiction over the appeal. A court has the duty to determine whether it has jurisdiction over an appeal. *Baker v. Bradley*, 231 Ariz. 475, 296 P.3d 1011 ¶ 8 (Ct. App. 2013). Our Supreme Court addressed the appellate court’s possible jurisdiction over an appeal where the notice of appeal was prematurely filed and held that while a premature appeal may be allowed where (1) there was no prejudice to the appellee; and (2) a final judgment was subsequently entered—*Barassi v. Matison*, 130 Ariz. 418, 636 P.2d 1200 (1981)⁴—Plaintiff failed to establish that (1) Defendant would suffer no prejudice; or (2) a final judgment was subsequently entered. Generally appellate courts do not find jurisdiction in the absence of a final judgment from the trial court.

Generally, this court's jurisdiction is limited to appeals from final judgments which dispose of all claims and parties

Baker v. Bradley, id., at ¶ 9. Our Supreme Court further explored the *Barassi* exception in *Craig v. Craig*, 227 Ariz. 105, 253 P.3d 624 (2011) and held:

We repeat what we said in *Smith: Barassi* “create[d] only a *limited exception* to the final judgment rule that allows a notice of appeal to be filed after the trial court has made its final decision, but before it has entered a formal judgment, if no decision of the court could change and the only remaining task is merely ministerial.” 212 Ariz. at 415 ¶ 37, 132 P.3d at 1195 (emphasis added). **In all other cases, a notice of appeal filed in the absence of a final judgment, or while any party's time-extending motion is pending before the trial court, is “ineffective” and a nullity.** See *id.* at 415 ¶ 39, 132 P.3d at 1195; *Engel*, 221 Ariz. at 509 ¶ 13, 212 P.3d at 847 (“[O]utside the slim exception announced in *Barassi*, premature notices of appeal are ineffective because they disrupt the court process and prevent two courts from assuming jurisdiction and acting at the same time.”).

Craig v. Craig, at ¶ 13 (emphasis added). Plaintiff did not obtain a final judgment against Co-Defendant James Johnson before filing its Notice of Appeal.⁵ Plaintiff also failed to resolve the

² Plaintiff’s Response To Motion To Dismiss Appeal And Request For 139B Certification of Justice Court Order at p. 3, ll. 10–14.

³ *Id.* at p. 3, ll. 21–23.

⁴ In *Barassi*, the Arizona Supreme Court addressed a Notice of Appeal from an unsigned minute entry. However, the Supreme Court held that appeals would be dismissed for lack of jurisdiction where the litigant attempted to appeal while a motion was still pending or there was no final judgment.

⁵ Defendant Johnson allegedly was served or Plaintiff would not have filed for a default judgment. Plaintiff, however, never received the default judgment and the case against Co-Defendant Johnson is still pending. Co-Defendant Johnson is more than a potential party

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000042-001 DT

03/23/2017

issue of attorneys' fees prior to filing its Notice of Appeal. In addition, Defendant Adey has a pending unresolved cross-claim against Co-Defendant Johnson allegedly stemming from the same litigation. Because Plaintiff failed to obtain a final judgment that comported with the mandates of JCRCP, Rule 139(a) deciding "all of the claims in the lawsuit"; or with JCRCP, Rule 139(b) finding there was "no just reason for delay" and specifically directing the entry of final judgment, there is no final judgment. All of the issues in the case have not been resolved. Because discretionary tasks remain, this Court lacks the jurisdiction to handle the appeal. Accordingly, this Court dismisses the appeal for lack of jurisdiction.

III. CONCLUSION.

Based on the foregoing, this Court concludes it lacks the jurisdiction to handle the appeal and the case is dismissed for lack of jurisdiction.

IT IS THEREFORE ORDERED dismissing the appeal for lack of jurisdiction.

IT IS FURTHER ORDERED remanding this matter to the San Tan 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

032320171139

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 filings.