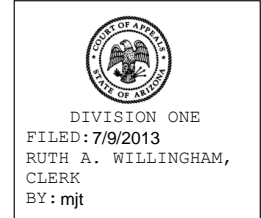


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

HERNDON EUGENE ELDRIDGE, a) 1 CA-CV 12-0568
single man,)
) DEPARTMENT A
Plaintiff/Counterdefendant/)
Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
) Procedure)
GORENTER.COM, L.L.C., an Arizona)
limited liability company,)
)
Defendant/Counterclaimant/)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-001642

The Honorable Hugh E. Hegyi, Judge

AFFIRMED

Jennings Strouss & Salmon, PLC Phoenix
By John G. Sestak, Jr.
Attorneys for Plaintiff/Appellee

Mack Watson & Stratman, PLC Phoenix
By Daxton R. Watson
Michael H. Orcutt
Attorneys for Defendant/Appellant

C A T T A N I, Judge

¶1 GoRenter.com, L.L.C., appeals from the superior court's judgment awarding damages, attorney's fees, and costs to Herndon Eugene Eldridge. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 In 2004, Eldridge purchased a four-unit apartment complex in Phoenix. Initially, Eldridge managed the property, but he decided to hire GoRenter to manage the complex in 2010. At an initial meeting with GoRenter's representative, Shawn Battershaw, Eldridge discussed GoRenter's tenant-screening process and Eldridge's expectation that GoRenter obtain the first month's rent and a security deposit equivalent to the first month's rent, but never less than \$500, prior to the tenants receiving keys to the properties. The parties also discussed the importance of not leasing to a tenant with a criminal history.

¶3 At the conclusion of this meeting, Eldridge and GoRenter entered into a property management agreement (the "Agreement") under which GoRenter agreed to manage, lease, secure tenants, maintain, collect rents, and otherwise have full operational control of the apartment units. Paragraph 3 of the

¹ In an appeal from a jury verdict, we review the evidence in the light most favorable to upholding the jury verdict. *Warrington v. Tempe Elementary Sch. Dist. No. 3*, 197 Ariz. 68, 69, ¶ 4, 3 P.3d 988, 989 (App. 1999).

Agreement provided in particular as follows: "In order to secure a suitable tenant, [GoRenter] will conduct a reasonable and customary tenant screening process which will include: (1) credit report; (2) criminal background report; (3) employment verification; (4) rental database (eviction) search; and (5) current landlord/residence check."

¶14 Within weeks after entering into the Agreement, GoRenter leased and secured tenants for the two unoccupied units. Tenant One leased Unit 101 on July 27, 2010, with the lease commencing on July 28, 2010. Tenant Two leased Unit 102 on August 24, 2010, with the lease commencing that same date. Prior to leasing these two units, GoRenter performed, to some degree, the five tasks mentioned in Paragraph 3 of the Agreement but, according to Eldridge, failed to properly scrutinize the prospective tenants' background information before leasing the units.

¶15 GoRenter's credit search indicated that both tenants had negative credit histories with various collection and delinquency matters. GoRenter's background search revealed that Tenant One had civil traffic violations, which were later dismissed; and Tenant Two had two theft-related convictions within the previous ten years. GoRenter's background search regarding Tenant One did not reveal any criminal convictions,

although Tenant One admitted a felony drug conviction on her tenant application.

¶16 GoRenter's eviction search did not yield any relevant records, although a later public record search by Eldridge revealed that both tenants had previous forcible detainer/eviction proceedings in Maricopa County.

¶17 GoRenter's first accounting statement did not specify whether GoRenter had obtained the required security deposits from Tenant One and Tenant Two. When asked about the security deposit for Tenant One, Battershaw initially indicated that he was not sure if the security deposit had been collected, but he noted that GoRenter generally required such a deposit. Battershaw subsequently stated that Tenant One had paid a \$500 security deposit. Signed addendums to the lease agreements, however, indicated that portions of the required security deposits were not received prior to lease commencement.

¶18 Within 60 days, both tenants failed to pay rent and caused significant damage to the units. Both tenants were evicted.

¶19 Eldridge filed a complaint alleging negligence and breach of contract against GoRenter in Maricopa County Superior Court. GoRenter counterclaimed for breach of contract, breach of implied covenant of good faith and fair dealing, and unjust enrichment. The case proceeded to compulsory arbitration in

which Eldridge was awarded damages, attorney's fees, and costs on the breach of contract claim.² After arbitration, GoRenter appealed the arbitration award in Eldridge's favor, but not the denial of its counterclaim.

¶10 The case proceeded to a jury trial on Eldridge's breach of contract claim. At the close of Eldridge's case, GoRenter moved for judgment as a matter of law pursuant to Arizona Rule of Civil Procedure 50(a). The trial court denied the motion, and the jury ultimately found GoRenter in breach of contract and awarded Eldridge damages in the sum of \$11,100. GoRenter renewed its motion for judgment as a matter of law, which the trial court denied. The trial court entered judgment for Eldridge and awarded him damages, costs, and fees totaling \$34,441.

¶11 GoRenter timely appealed. We have jurisdiction under Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1).³

DISCUSSION

¶12 GoRenter raises three issues on appeal, whether: (1) under Arizona law, Eldridge's claim sounds in tort, not contract; (2) the trial court erred by denying GoRenter's motion

² During arbitration, Eldridge dismissed the negligence claim.

³ Absent material revisions after the relevant date, statutes cited refer to the current version unless otherwise indicated.

and renewed motion for judgment as a matter of law; and (3) GoRenter is entitled to recover attorney's fees if successful on appeal.

I. Tort or Contract.

¶13 GoRenter asserts that its contract to provide property management services involved professional services by an entity licensed to do so. Relying on *Collins v. Miller & Miller, Ltd.*, GoRenter argues that the only appropriate cause of action for such alleged professional malpractice is a tort claim for negligence. See 189 Ariz. 387, 395, 943 P.2d 747, 755 (App. 1996) ("[W]here there is an express contract between the professional and the client, an action for breach of that contract cannot be maintained if the contract merely requires generally that the professional render services.").

¶14 Preliminarily, we disagree that the contract at issue necessarily contemplates professional services as referenced in *Collins*. Unlike the legal services at issue in *Collins*, property management services can be performed by licensed or unlicensed agents. See A.R.S. § 32-2121(A)(6) (detailing persons who may manage residential rental property without being subject to licensing requirements). Accordingly, the contract between GoRenter and Eldridge can be viewed through the lens of professional or non-professional services.

¶15 Moreover, even assuming the claim at issue involves an allegation of professional malpractice, Eldridge's contract claim remains viable. Although claims for professional malpractice are generally tort claims, such claims may nonetheless arise out of contract if the agreement imposes additional duties beyond those implied by law. *Ramsey Air Meds, L.L.C. v. Cutter Aviation, Inc.*, 198 Ariz. 10, 15, ¶ 26, 6 P.3d 315, 320 (App. 2000); see also *Collins*, 189 Ariz. at 395, 943 P.2d at 755 (noting that an action involving negligence by an attorney can sound in contract if the claim is based on nonperformance of a specific promise contained in the contract).

¶16 The Agreement in the instant case required specific tasks that went beyond a general duty of care. In particular, Paragraph 3 of the Agreement provided that GoRenter would secure a credit report, a criminal background report, and an employment verification, and would conduct a rental database (eviction) search and a current landlord/residence check. These enumerated tasks go beyond the general fiduciary duty or standard of practice required of real estate professionals. See Ariz. Admin. Code R4-28-1101(A), (H). Thus, the nonperformance of those tasks gives rise to a breach of contract claim. See also *Sparks v. Republic Nat'l Life Ins. Co.*, 132 Ariz. 529, 543, 647 P.2d 1127, 1141 (1982) (noting that a single act can constitute both a tort and a breach of contract, and holding that fees may

be awarded under a breach of contract theory "as long as the cause of action in tort could not exist *but for* the breach of the contract" (emphasis added)).

¶17 GoRenter further urges that under *Keonjian v. Olcott*, 216 Ariz. 563, 567, ¶ 17, 169 P.3d 927, 931 (App. 2007), Eldridge can only prevail on a contract-based claim by proving that GoRenter failed entirely to perform a specific contractual obligation. In *Keonjian*, after rejecting a legal malpractice tort claim on statute of limitation grounds, this court rejected a corresponding breach of contract claim because "the essence of [the] claim [was] that [the attorney] performed negligently, not that he failed to perform at all." *Id.* at ¶ 18.

¶18 We do not read *Keonjian* as holding that mere commencement of performance immunizes a party from liability for nonperformance of contractual obligations. This court in fact found specifically in that case that "the underlying facts do not entail the nonperformance of a *specific promise* necessary to a breach of contract claim." *Id.* (emphasis added). A promise presumably contemplates completed tasks.

¶19 Here, although Eldridge acknowledged that the five tasks specified in the contract were done to a certain degree, he did not stipulate that GoRenter completed the tasks. In fact, Eldridge presented evidence that GoRenter failed to timely collect the required deposits and failed to conduct the promised

tenant-screening process to secure a "suitable tenant" under the Agreement. The contract contemplated completed tasks, not just steps taken in that direction. Thus, Eldridge's allegations involved "nonperformance of [] specific promise[s]," *id.*, and the trial court properly rejected GoRenter's assertion that Eldridge's claim sounds only in tort and not in contract.

II. Rule 50(a) and (b) Motions.

¶20 GoRenter contends that the trial court should have granted its Rule 50 motions, arguing that no evidence was presented at trial to support Eldridge's breach of contract claim. We disagree.

¶21 We review the grant or denial of a motion for judgment as a matter of law de novo. *See Gemstar Ltd. v. Ernst & Young*, 185 Ariz. 493, 505, 917 P.2d 222, 234 (1996). A trial court may only grant a Rule 50 motion "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." *Acuna v. Kroack*, 212 Ariz. 104, 110-11, ¶ 24, 128 P.3d 221, 227-28 (App. 2006) (citation omitted). We will affirm the denial of a Rule 50 motion if, viewing the evidence and reasonable inferences therefrom in the light most favorable to the party opposing the motion, any substantial evidence supports

the ruling and the subsequently-rendered verdict. *Id.* at 111, ¶ 24, 128 P.3d at 228.

¶22 Eldridge presented sufficient evidence such that a reasonable person could find GoRenter failed to timely collect required security deposits and to conduct or complete the promised tenant-screening process, which resulted in GoRenter renting to unsuitable tenants.

¶23 Although GoRenter obtained reports contemplated in Paragraph 3 of the Agreement, a reasonable person could nevertheless conclude that GoRenter failed to complete all of the agreed upon tasks. As Eldridge testified, a public record search revealed that both tenants had forcible detainer proceedings against them, which GoRenter failed to find. Thus, a reasonable person could find that GoRenter breached the tenant-screening provision in the Agreement. Likewise, a reasonable person could find that GoRenter breached the Agreement by leasing the property to individuals with criminal records, significant delinquency, and collections issues. Accordingly, the trial court did not err by denying GoRenter's motion and renewed motion for judgment as a matter of law.

III. Attorney's Fees.

¶24 GoRenter seeks an award of its attorney's fees and costs expended at trial and on appeal pursuant to A.R.S. § 12-341.01. Because GoRenter did not prevail at trial or on appeal,

its request for fees and costs is denied. Eldridge also requests attorney's fees on appeal on the same basis. Exercising our discretion, we award Eldridge attorney's fees on appeal subject to compliance with ARCAP 21. As the prevailing party, Eldridge is entitled to his costs on appeal upon compliance with ARCAP 21.

CONCLUSION

¶25 For the foregoing reasons, we affirm the judgment.

/S/

KENT E. CATTANI, Judge

CONCURRING:

/S/
PATRICIA A. OROZCO, Presiding Judge

/S/
PETER B. SWANN, Judge