DIVISION ONE
FILED: 04-22-2010
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SUSANA BROWN, Plaintiff/Appellant, v. MATTHEW HENSON APARTMENTS; JILL DAVENPORT, SABRINA LORA; TAYSHIA FLANAGAN; ENA CASTILLO; SCOTT CLARK, PAUL HENDERSON, MCCORMACK BARON RAGAN; CITY OF PHOENIX HOUSING DEPARTMENT; KIM DORNEY; and RICHARD BEARDSLEY, Defendants/Appellees.	)	1 CA-CV 09-0416 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication – Rule 28, ARCAP)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-003368

The Honorable A. Craig Blakey, II, Judge
The Honorable Eileen S. Willett, Judge

AFFIRMED

Susana Brown — Phoenix
Plaintiff/Appellant *In Propria Persona*

Law Offices of Scott M. Clark, P.C. — Phoenix
by Paul A. Henderson
Attorneys for Defendants/Appellees

W I N T H R O P, Judge

¶1 Susana Brown appeals the trial court's entry of judgment as a matter of law in favor of the appellees. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 Susana Brown, Matthew Henson Apartments ("MHA"), and McCormack Baron Ragan ("MBR"), MHA's managing agent, were parties to a public housing residential lease contract – Brown as the tenant, and MHA and MBR as the landlords. In October 2007, MBR sent Brown a thirty-day notice of lease termination, alleging harassment of the apartment community's residents and management staff. Pursuant to housing regulations, Brown contested the decision to terminate her lease by requesting an informal hearing. The informal hearing officer and MHA area manager, Jill Davenport, upheld the termination. Brown then requested a formal grievance hearing. The City of Phoenix declined her request for a continuance, Brown did not appear for the scheduled hearing, and the panel upheld termination of her lease. Brown vacated her apartment on December 28, 2007.

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[1] Neither party's briefs contain citations to the record, and therefore do not comply with Arizona Rule of Civil Appellate Procedure ("ARCAP") 13(a)(4). Unless a party's brief is "totally deficient," we "prefer to decide each case upon its merits rather than to dismiss summarily on procedural grounds." *Adams v. Valley Nat'l Bank of Arizona*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (citation omitted). Accordingly, we must rely on our own review of the record.

¶3 On February 19, 2008, Brown filed the first of many lawsuits related to her eviction. These actions were either consolidated or dismissed over the course of the litigation.

¶4 After a December 2008 settlement conference apparently failed to resolve the matter, appellees brought their motion for summary judgment, which the trial court granted.[2] A different judge entered judgment as a matter of law in favor of appellees, and denied Brown's various post-trial motions, further awarding appellees costs and reasonable attorneys' fees.

¶5 Brown appealed after the ruling granting the motion, but before the entry of judgment. Despite the premature nature of Brown's appeal, we may review it. *See Performance Funding, L.L.C. v. Barcon Corp.*, 197 Ariz. 286, 288, ¶ 5, 3 P.3d 1206, 1208 (App. 2000) ("courts strive to dispose of cases on their merits rather than on harmless technical errors. Premature appeals are not necessarily jurisdictionally defective and need not always be dismissed." (citations omitted)). We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

ANALYSIS

¶6 Brown disputes the trial court's grant of summary judgment, and raises the following arguments: (1) that

[2] A settlement conference was scheduled, but aside from a statement in Appellees' answering brief, there is no indication that the conference actually took place.

appellees breached the lease contract by refusing to accept Brown's October 2007 rent check, (2) that appellees released Brown's credit report to unauthorized parties, (3) that appellees sabotaged her ability to obtain housing after eviction, (4) the court erred in declining to order damages in Brown's favor, and (5) Brown was entitled to a jury trial.

¶7 When reviewing a grant of summary judgment, we take the facts in the light most favorable to the non-moving party and will affirm "if the evidence produced in support of the defense or claim has so little probative value that no reasonable person could find for its proponent." *State Comp. Fund v. Yellow Cab Co. of Phoenix*, 197 Ariz. 120, 122, ¶ 5, 3 P.3d 1040, 1042 (App. 1999). We review *de novo* the trial court's grant of summary judgment and whether there are any genuine issues of material fact or errors in the court's application of the law. *Eller Media Co. v. City of Tucson*, 198 Ariz. 127, 130, ¶ 4, 7 P.3d 136, 139 (App. 2000).[3]

¶8 In its minute entry, the trial court explained that "[Brown's] filings do not establish a genuine issue of material fact." We agree. Brown's filings consist of unsupported allegations and inferences, many of which are nearly impossible

[3] Without objection from either party, the court decided the motion for summary judgment without oral argument. As we have not received copies of transcripts from any proceedings, the scope of our review is limited to both parties' motions and pleadings, and the court's written rulings.

to discern. The trial court properly disposed of her claim, as no "reasonable jury, based upon the record, could resolve this case in [Brown's] favor."

1. October 2007 Rent Check

¶9 The landlord's lease termination notice cited harassment of community residents and management staff as the reasons for eviction, not non-payment of rent. Thus, the landlord's refusal to accept Brown's October rent payment is immaterial to this dispute and creates no issue of material fact. *See* A.R.S. §§ 33-1368(A) (2007) & 33-1377(E)-(F) (2007).

2. Release of Credit Report to Unauthorized Parties

¶10 Brown argues that the appellees disclosed her private credit reports to unauthorized parties. She does not, however, specify who these parties were, nor does she offer evidence to contradict Jill Davenport's sworn affidavit. *See Stevens v. Anderson*, 75 Ariz. 331, 334, 256 P.2d 712, 714 (1953) (noting that a pleader cannot create a genuine issue of material fact simply by making a contradictory statement, where motion for summary judgment is supported by "facts in the form of affidavit"). Davenport asserts that MHA disclosed information from Brown's tenant file to "legal counsel, to the City of Phoenix Housing Department, at trial in the Downtown Precinct of the Maricopa County Justice Courts, to the Civil Rights Division of the Arizona Attorney General's Office, and to Ms. Brown

herself[,]" and explains why that information was released.[4] Further, Davenport denies disclosing Brown's financial information to other apartment communities.

¶11 Brown's bare allegations fail to create an issue of material fact sufficient to overcome a properly supported motion for summary judgment.

3. Inability to Find Housing

¶12 Next, Brown argues, without any factual proof in the form of admissible evidence, that MHA's landlord verifications of her rental history presented her to prospective landlords in a negative light and prevented her from obtaining housing. The Davenport affidavit and supporting documents indicate otherwise. Davenport personally responded to three separate requests for information regarding Brown. She "provided specifics concerning Ms. Brown's period of tenancy and the amounts of rent she paid. No details were issued in these verification reports regarding Ms. Brown's negative history with site employees and neighbors," nor did she editorialize her responses. Davenport did, however, "report, truthfully, problems regarding [Brown's] payment

[4] The City of Phoenix received information from Brown's tenant file, possibly including a credit report, because she benefited from City-administered public housing. MHA introduced letters from Brown's file, but no credit report, as evidence related to various injunctions against harassment in justice court. The attorney general, in its capacity as investigator of civil rights complaints that Brown submitted against the appellees, may have received Brown's credit report because it was part of the housing application review process.

history." Our review of the landlord verification forms supports Davenport's statements.

¶13 Further, one of the complexes, Kivel Manor Apartment Homes, approved Brown to reside in their community after receiving Davenport's verification form. In her affidavit, Rita Console, a Kivel employee, stated, "None of Ms. Davenport's comments discouraged my employer from leasing an apartment to Ms. Brown." On Brown's scheduled move in date, however, she "failed to accept the apartment" because she "did not want to live at Kivel."

¶14 The fact that Kivel Manor Apartment Homes offered Brown an apartment after receiving verification from MHA belies Brown's contention that MHA sabotaged her ability to find housing.

4. Damages

¶15 Brown seeks $5700 in punitive damages and a refund of $325.80 for rent overpayments. Her refund request is unsubstantiated, and, given this decision, she has failed to prove by clear and convincing evidence that she is entitled to punitive damages. *See Walter v. Simmons*, 169 Ariz. 229, 240, 818 P.2d 214, 225 (App. 1991).

5. Jury Trial

¶16 Because the trial court disposed of Brown's claim on summary judgment and because we are affirming the trial court's

judgment, we need not reach the question of whether Brown was entitled to a jury trial.

CONCLUSION

¶17 For the foregoing reasons, we affirm the trial court's entry of judgment as a matter of law in favor of the appellees. Further, we grant appellees' request for attorneys' fees upon compliance with ARCAP 21(c).

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
MAURICE PORTLEY, Presiding Judge

_____/S/_____
MARGARET H. DOWNIE, Judge