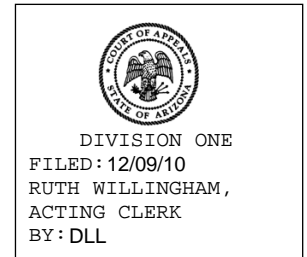


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



NEIL RAND and SHIRLENE RAND, ) 1 CA-CV 10-0027  
husband and wife, )  
)  
Plaintiffs-Appellants, )  
) **MEMORANDUM DECISION**  
v. )  
)  
PORSCHE FINANCIAL SERVICES, ) (Not for Publication -  
) Rule 28, Arizona Rules  
Defendant-Appellee. ) of Civil Appellate Procedure)  
)  
)

---

Appeal from the Superior Court in Maricopa County

Cause No. CV 2005-070012

The Honorable Harriet Chavez, Judge

**AFFIRMED**

---

Neil Rand, Appellant  
*In Propria Persona* Buckeye

Shirlene Rand, Appellant  
*In Propria Persona* Buckeye

Jennings, Strouss & Salmon, P.L.C.  
by John G. Sestak, Jr.  
Attorneys for Appellee Phoenix

---

W E I S B E R G, Judge

¶1 Neil Rand and Shirley Rand appeal from a judgment in favor of Porsche Financial Services, Inc. ("PFS") following a jury trial on their claims of trespass and civil rights violations. For reasons that follow, we affirm.

#### PROCEDURAL BACKGROUND

¶2 The underlying facts of this action are set forth in detail in this court's decision in *Rand v. Porsche Financial Services*, 216 Ariz. 424, 167 P.3d 111 (App. 2007). In that case, we reversed the trial court's grant of partial summary judgment in favor of PFS on the Rands' claims of trespass and civil rights violations under 42 U.S.C. § 1983. The claims arose out of the Rands' lease of a Porsche financed by PFS, and the repossession and sale of the Porsche by PFS after the Rands failed to make four monthly lease payments. *Id.* at 426-27, ¶¶ 1-3, 167 P.3d at 113-14.

¶3 As to those claims, we stated that the Rands had alleged in their complaint that:

PFS hired a car repossession company and authorized that company to enter his property to remove the vehicle. In so doing, the complaint further alleged that the repossession company breached the peace and committed trespass. Finally, the complaint alleged that, because he physically resisted the repossession, the Glendale police were called, that police involvement constituted state action, and that Rand[s]' civil rights were therefore violated pursuant to 42 U.S.C. § 1983.

*Id.* at 427, ¶ 4, 167 P.3d at 113. We affirmed the trial court's grant of summary judgment to PFS on its counterclaim for a deficiency judgment against the Rands. *Id.* at 434, ¶ 39, 167 P.3d at 121.<sup>1</sup>

¶4 On remand, following a trial, the jury entered verdicts in favor of PFS. The court entered a final judgment against the Rands and awarded PFS its costs and attorneys' fees. The Rands timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B)(2003).

#### **DISCUSSION**

¶5 Defendant raises seven issues on appeal. Because none of them has merit, we uphold the jury verdicts and affirm the trial court's judgment.

#### **Irregularities in Proceedings**

¶6 The Rands assert that "irregularities in the proceedings" denied them the right to a fair and impartial trial. Specifically, they allege that PFS filed untimely replies to a motion for reconsideration and an objection to a deposition and claim that the trial court erred in failing to

---

<sup>1</sup>Seeking to rescind the lease agreement, the Rands also filed an action against the dealership and others, alleging consumer fraud, deceptive lease practices, breach of the duty of good faith, and conspiracy. The trial court entered summary judgment in favor of the defendants, and on appeal, we affirmed. *Rand v. United Auto Group, Inc. et.al*, 1 CA-CV 05-0608 (Ariz. App. July 11, 2006) (mem. decision).

strike them. Assuming that the replies were not timely filed, and overlooking that they apparently did not move to strike either, the Rands have not provided any evidence that they were prejudiced by the late filings. *Cf. Zimmerman v. Shakman*, 204 Ariz. 231, 235, ¶ 14, 62 P.3d 976, 980 (App. 2003)(party seeking sanction for untimely disclosure must show that delay caused prejudice). The Rands have not shown that they were denied a fair and impartial trial on this ground.

#### **Motion in Limine**

¶7 PFS filed a pre-trial motion in limine asking the court to preclude evidence of, among other things, any previous dealings, contracts, communications, lawsuits or disputes between the Rands and PFS and/or the Porsche dealership, which occurred prior to the date of the transactions that were the subject matter of this action. PFS alleged that, except for the trespass and § 1983 claims, all other issues involving the parties had been finally adjudicated by this court. The court granted the motion in part.

¶8 On appeal, the Rands claim the trial court erred because evidence of the parties' "history underlying the controversy" was relevant to whether PFS had the right to repossess the Porsche. PFS argues that this court's prior

opinion was law of the case and that admission of this evidence would have confused the jury.

¶19 We review the trial court's evidentiary rulings for an abuse of discretion. *Golonka v. Gen. Motors Corp.*, 204 Ariz. 575, 580, ¶ 9, 65 P.3d 956, 960 (App. 2003). The law of the case doctrine "describes the judicial policy of refusing to reopen questions previously decided in the same case by the same court or a higher appellate court." *Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 278, 860 P.2d 1328, 1331 (App. 1993). Here, the issue of PFS's legal right to repossess the vehicle after the Rands defaulted on the lease was previously decided by this court. See *Rand*, 216 Ariz. at 434, ¶ 37 n.6, 167 P.3d at 121. The only remaining issues were whether PFS committed trespass and/or violated the Rands' civil rights when it did so. Evidence of prior dealings, contracts and communications between the Rands, PFS, and/or the dealership disputing the right of repossession was excludable on this basis and was otherwise irrelevant and inadmissible. See Ariz. R. Evid. P. 401, 402. The trial court did not abuse its discretion in granting the motion in limine.

#### **Motion for Reconsideration of the Statement to the Jury**

¶10 The Rands argue that the court erred by granting PFS's "Motion for Reconsideration of its Request for Statement to the

Jury of the Case Issues" in which PFS asked the court for permission to tell the jury that the Rands had defaulted, that a deficiency judgment had been entered against them, and that PFS had a legal right to repossess the Porsche. The Rands claim this allowed PFS to "cut and paste" the lease agreement and precluded them from introducing evidence of the entire contract. They allege that allowing the jury to consider only the "redacted" version of the lease violated Rule 106, Arizona Rules of Evidence. PFS states, and the record supports this, that the lease agreement was "Rands' Exhibit 1, and all terms and conditions of the lease agreement were before the jury in that admitted exhibit."

¶11 Evidence Rule 106 provides in part that "[w]hen a writing . . . is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing . . . which ought in fairness to be considered contemporaneously with it." The rule codifies the "doctrine of completeness [under which] the excluded portions of a writing may be required to be read, if necessary, to explain the admitted portion, place the admitted portion in context, avoid misleading the trier-of-fact, and insure a fair and impartial understanding of the writing." *State v. Dunlap*, 187 Ariz. 441, 454-55, 930 P.2d 518, 531-32 (App. 1996) (citation omitted).

¶12 Rule 106 does not apply to these facts as the entire lease agreement was admitted into evidence. Rather, the Rands' complaint that the court permitted PFS to inform the jury that they were in default and "disallowed evidence of the 'dispute'" between the parties is a variation of the Rands' previous argument. For the reasons explained above, there was no error.

#### **Preclusion of Expert Witness**

¶13 The Rands argue that the trial court erred by granting PFS's two motions to strike the use of their expert witness for failure to comply with the disclosure requirements of Rule 26.1, Arizona Rules of Civil Procedure. They claim that expert testimony was necessary to explain to the jury the complexity of "auto sales contracts, leasing, auto fraud, finance companies and vehicle repossessions" as well as prevailing legal standards and practices for "self-help, replevin actions, and breach of the peace and due process rights arising out of a police department participation in a private repossession".

¶14 The record reveals that in March 2008, the Rands first disclosed the name of the expert they intended to use at trial. In December 2008, in an amended disclosure of witnesses, the Rands disclosed the expert's address and stated he would testify about the "PFS leasing agreement; the relationship between PFS and the repossession company, Interstate Recovery of Arizona,

Inc.; the repossession of the 2003 Porsche Turbo vehicle." They attached the expert's resume to the amended disclosure. Although the trial did not begin until September of 2009, and despite being advised by the judge to "read the rule regarding details necessary for disclosure," the Rands did not further amend their disclosure of the expert witness.

¶15 Rule 26.1(a)(6) requires that a party disclose, among other things, "the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion . . . and the name and address of the custodian of copies of any reports prepared by the expert." Other than the name and address of the expert witness and the subject matter on which the expert was expected to testify, the Rands failed to disclose the additional information required. The trial court did not abuse its discretion in granting the motions to strike.<sup>2</sup> See Ariz. R. Civ. P. 37(a)(2)(A), 37(b)(2)(C); *Olson v. Walker*, 162 Ariz. 174, 184, 781 P.2d 1015, 1025 (App. 1989)(trial court has broad discretion in admitting or precluding evidence at trial of undisclosed expert testimony).

---

<sup>2</sup>The Rands also allege the jury may have believed that the police officers who testified for PFS were expert witnesses because when some jurors asked them questions about the elements of the "torts," the court responded that the jury instructions would answer their questions, but the court did not give such instructions. PFS asserts that the officers did not testify as experts and that the jury instructions on credibility of witnesses correctly stated the law. There was no error.



## **Jury Instructions**

¶16 The Rands allege that the court erred in refusing to give their proposed jury instructions on trespass, violation of civil rights, and breach of the peace. They contend the instructions the court gave did not permit the jury to understand the elements of their claims because they were "confusing, misleading and unconstitutionally vague". In order to preserve an objection to jury instructions on appeal, a party must state "distinctly the matter objected to and the grounds of the objection." *Ariz. R. Civ. P. 51(a); S. Dev. Co. v. Pima Capital Mgmt. Co.*, 201 Ariz. 10, 19, ¶ 20, 31 P.3d 123, 132 (App. 2001). The Rands have not, however, provided this court with a record of their objections to the final jury instructions or the grounds on which the objections, if any, were made. Further, "[a]n instruction will only warrant reversal if it was both harmful to the complaining party and directly contrary to the rule of law." *Powers v. Taser Int'l., Inc.*, 217 Ariz. 398, 400, ¶ 12, 174 P.3d 777, 779 (App. 2007). There is nothing in the record to suggest that the instructions given were either harmful to the Rands or contrary to law. There was no error.

## **Application of Law to Facts**

¶17 The Rands' next set of arguments appear to be an aggregate of their previous arguments. In addition to the

discussions on each issue set forth above, we note that “[w]hen no transcript is provided on appeal, the reviewing court assumes that the record supports the trial court’s decision.” *Kline v. Kline*, 221 Ariz. 564, 572, ¶ 33, 212 P.3d 902, 910 (App. 2009)(citation omitted). Also, the arguments are not supported by “citations to the authorities, statutes and parts of the record relied upon” as required by Rule 13(a)(6), Arizona Rules of Civil Appellate Procedure, and thus we cannot address them. *Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62, 211 P.3d 1272, 1289 (App. 2009).

#### **Verdicts Result of Passion or Prejudice**

¶18 Finally, the Rands also assert that the jury verdicts were the result of passion and prejudice because “PFS was allowed to deceive the jury into believing that a ‘default’ gave rise to the requisite ‘legal’ permission to conduct the repossession as described in the Complaint and the verdict was predicated upon misleading and deceptive versions of facts.” They contend that this entitled them to a new trial. Nothing in the record supports this allegation. See *Verdugo v. Po Shing Gee*, 4 Ariz. App. 113, 115, 417 P.2d 747, 749 (1966)(general, unsupported allegation that verdict rendered in favor of defendant was result of passion or prejudice insufficient to warrant new trial). There was no error.

**CONCLUSION**

¶19 For the foregoing reasons, we affirm the judgment in favor of PFS. Neither party has requested attorneys' fees on appeal. We award PFS its costs on appeal, subject to compliance with Rule 21(a), Arizona Rules of Civil Appellate Procedure.

/s/ \_\_\_\_\_  
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/ \_\_\_\_\_  
PHILIP HALL, Presiding Judge

/s/ \_\_\_\_\_  
PETER B. SWANN, Judge