

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

INTERNATIONAL SONORAN DESERT ALLIANCE, D/B/A
CURLEY SCHOOL ARTISAN APARTMENTS,
Plaintiff/Appellee,

v.

MARLA ETTENBERG,
Defendant/Appellant.

No. 2 CA-CV 2016-0233
Filed June 20, 2017

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20160604
The Honorable Richard E. Gordon, Judge

APPEAL DISMISSED

COUNSEL

Hull, Holliday & Holliday, PLC, Phoenix
By Kevin W. Holliday, Andrew M. Hull, and Denise M. Holliday
Counsel for Plaintiff/Appellee

Marla Ettenberg, Miami, Florida
In Propria Persona

INT'L SONORAN DESERT ALLIANCE v. ETTENBERG
Decision of the Court

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Judge Espinosa and Judge Vásquez concurred.

M I L L E R, Judge:

¶1 Marla Ettenberg appeals from a superior court ruling affirming a justice court's judgment of eviction against her. Because we lack jurisdiction, we dismiss the appeal.

Factual and Procedural Background

¶2 In October 2015, International Sonoran Desert Alliance (ISDA) filed an eviction action against Ettenberg in Ajo Justice Court. ISDA alleged Ettenberg had breached her lease by repeatedly propping open a door leading from an interior hallway to the outside of the apartment building. Ettenberg contested the allegation and asserted other defenses. The justice court held a bench trial and entered judgment in ISDA's favor. Ettenberg appealed to Pima County Superior Court, which affirmed the justice court judgment, and thereafter entered a judgment awarding ISDA attorney fees and costs.¹ See Ariz. Super. Ct. R. App. P. – Civ. 12(d) (requiring entry of judgment pursuant to Rule 58, Ariz. R. Civ. P.). This appeal followed.

Appellate Jurisdiction

¶3 We have an independent duty to confirm appellate jurisdiction, and we do not consider the merits of an appeal over which we lack jurisdiction. *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981). Our jurisdiction over an appeal originating in a justice court extends only to an "action involv[ing] the validity of a tax, impost, assessment, toll, municipal fine or statute." A.R.S. § 22-375(A); see also Ariz. Super. Ct. R. App. P. – Civ. 14(b). In such cases, "[o]ur jurisdiction is limited to reviewing the facial

¹The superior court also considered and ultimately denied a number of post-ruling motions filed by Ettenberg. None require discussion in light of our lack of jurisdiction.

INT'L SONORAN DESERT ALLIANCE v. ETTENBERG
Decision of the Court

validity of” the law or action being challenged, and does not extend to “as applied” challenges. *State v. Burke*, 238 Ariz. 322, ¶ 3, 360 P.3d 118, 121 (App. 2015).

¶4 Our jurisdiction over an appeal from the superior court encompasses “a final judgment entered in an action or special proceeding commenced in a superior court, or brought into a superior court from any other court.” A.R.S. § 12-2101(A)(1). But this provision applies only to cases brought into superior court by some process “other than by appeal,” such as a transfer following a counterclaim in an amount exceeding the jurisdictional limit of the lower court. *Morgan v. Cont'l Mortg. Inv'rs*, 16 Ariz. App. 86, 91-92, 491 P.2d 475, 480-81 (1971). Moreover, contrary to Ettenberg’s assertion, § 12-2101(A)(1) does not allow a second appeal of an eviction action that originated in justice court, regardless of the annual rental value. *Morgan*, 16 Ariz. App. at 92, 491 P.2d at 481 (“[W]here a forcible detainer action was originally filed in the justice court and then appealed to the Superior Court the appellate relief has been exhausted and there is no Court of Appeals jurisdiction to entertain a further appeal.”).

¶5 Here, Ettenberg essentially reasserts arguments she made in the superior court. Specifically, she claims the superior court erred by rejecting her arguments concerning: (1) her allegations the trial judge should have recused himself, (2) her claim the door closure requirement was invalid and its promulgation and enforcement was presumptive retaliation, (3) the trial court’s admission and weighing of evidence, and (4) alleged procedural deficiencies in ISDA’s eviction complaint. None of these issues involves a challenge to the facial validity of “a tax, impost, assessment, toll, municipal fine or statute.” § 22-375(A). We therefore lack jurisdiction.

Attorney Fees

¶6 Although we lack jurisdiction over the appeal, we nevertheless have the authority to grant ISDA’s request for an award of attorney fees. *In re Marriage of Kassa*, 231 Ariz. 592, ¶¶ 6-7, 299 P.3d 1290, 1292 (App. 2013) (considering attorney fees despite lack of appellate jurisdiction). ISDA requests fees pursuant to A.R.S. § 12-341.01, the parties’ lease agreement, and Rule 21(c), Ariz. R. Civ. App. P. We will not award fees pursuant to the lease agreement

INT'L SONORAN DESERT ALLIANCE v. ETTENBERG
Decision of the Court

because the fee provision contained within it benefits the landlord only, and non-mutual fee provisions are generally prohibited in residential leases.² See A.R.S. § 33-1315(A)(2). And, in our discretion, we decline to award ISDA attorney fees pursuant to § 12-341.01(A). ISDA is, however, entitled to its costs on appeal pursuant to A.R.S. § 12-341, subject to its compliance with Rule 21, Ariz. R. Civ. App. P. See *Robinson v. Kay*, 225 Ariz. 191, ¶ 8, 236 P.3d 418, 420 (App. 2010) (prevailing party entitled to costs when appeal dismissed).

Disposition

¶7 For the foregoing reasons, we dismiss Ettenberg's appeal.

²Although neither the justice court nor the superior court specified the basis for their fee awards, we presume both were discretionary awards pursuant to § 12-341.01(A). See *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 193, 836 P.2d 404, 406 (App. 1992) (appellate court required to affirm trial court ruling if legally correct for any reason).