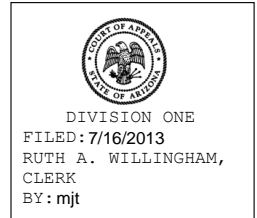


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



ESTATE OF SALVATORE BALESTRIERI,) No. 1 CA-CV 12-0089
)
Plaintiff/Appellant,) DEPARTMENT C
)
v.) Maricopa County
) Superior Court
DAVID A. BALESTRIERI,) No. CV2011-070011
)
Defendant/Appellee.) **DECISION ORDER RE:**
) **MOTION FOR RECONSIDERATION**
) **AND ORDER TO SHOW CAUSE**
)
)
)
_____)

The court, Presiding Judge Samuel A. Thumma and Judges Michael J. Brown and Diane M. Johnsen, participating, has received Appellant Estate of Salvatore Balestrieri's Motion for Reconsideration and Appellee David A. Balestrieri's Response to the motion.

The May 9, 2013 Memorandum Decision affirmed the superior court's dismissal of Appellant's complaint ("Original Lawsuit") for lack of personal jurisdiction and awarded Appellee his costs and attorney's fees on appeal. On April 29, 2013, just prior to the issuance of the Memorandum Decision, Appellee filed a complaint ("New Lawsuit") against the Estate in Maricopa County

superior court. In its current motion, Appellant argues Appellee "rendered this appeal moot" by filing the New Lawsuit and thereby submitting himself to personal jurisdiction in Arizona.

By filing the New Lawsuit in Arizona while the Original Lawsuit was pending, Appellee committed a voluntary act submitting himself to the jurisdiction of the court. See *Adam v. Saenger*, 303 U.S. 59, 67-68 (1938) (voluntary act of filing suit renders plaintiff subject to jurisdiction of the court "for all purposes for which justice to the defendant requires"); *Gen. Contracting & Trading Co., LLC v. Interpole, Inc.*, 940 F.2d 20, 23 (1st Cir. 1991) (party consents to jurisdiction in first lawsuit by commencing second lawsuit in forum while the first is pending); *Praetorian Specialty Ins. Co. v. Auguillard Constr. Co.*, 829 F. Supp. 2d 456, 463-65 (W.D. La. 2010) (same). For this reason, the Arizona court properly may exercise personal jurisdiction over Appellee in this matter.

Accordingly,

IT IS ORDERED vacating the May 9, 2013 Memorandum Decision;

IT IS FURTHER ORDERED vacating the superior court judgment appealed from;

IT IS FURTHER ORDERED remanding this matter for further proceedings;

IT IS FURTHER ORDERED that each party shall bear his or its

own costs and attorney's fees on appeal.

_____/S/_____
DIANE M. JOHNSEN, Judge