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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 4/23/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

GREATER GLENDALE FINANCE,) No. 1 CA-CV 12-0592
L.L.C.,)
) DEPARTMENT B
Plaintiff/Appellant,)
) **MEMORANDUM DECISION**
v.) Not for Publication
) (Rule 28, Arizona Rules
HON. MYRA A. HARRIS, Commissioner) of Civil Appellate Procedure
of the Superior Court of the)
State of Arizona, in and for the)
County of Maricopa,)
)
Defendant/Appellee,)
)
and)
)
JAMES MUIGA NDEGWA and SUSAN N.)
MUIGA, husband and wife,)
)
)
Real Parties in Interest)
Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2012-053052

The Honorable Michael R. McVey, Judge

AFFIRMED

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By: Scott J. McWilliams
Attorneys for Plaintiff/Appellant

Phoenix

Bellah & Associates, PLLC
By: Richard Bellah
Lisa Tibbedeaux

Glendale

G E M M I L L, Judge

¶1 Appellant Greater Glendale Finance, L.L.C. ("GGF") appeals the superior court's dismissal of its special action complaint. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In January 2010, GGF filed a breach of contract action in the Manistee Justice Court against James Ndegwa and Susan N. Muiga ("Ndegwa") for breach of contract, alleging a deficiency remaining from an automobile financing contract. GGF alleged that Ndegwa became delinquent under the contract in July 2005. On June 14, 2011 the Manistee Justice Court held a trial on the matter and entered a judgment in favor of GGF.

¶3 Ndegwa timely appealed the decision to superior court. On January 17, 2012 Commissioner Myra Harris reversed the judgment of the lower court. Commissioner Harris concluded that GGF's claim was barred by the statute of limitations. On April 12, 2012 GGF filed a special action in this court.¹ This court declined to exercise special action jurisdiction in the matter.

¹ GGF acknowledged in its petition for special action to this court that it did not have a further remedy by appeal. Arizona Revised Statutes § 22-375(B) (2013) provides: "there shall be no appeal from the judgment of the superior court given in an action appealed from a justice of the peace or a police court." Similarly, Rule 14(b), Superior Court Rules of Civil Appellate Procedure, provides: "No further appeal may be taken from a

¶14 GGF subsequently filed a Complaint for Special Action in superior court on May 14, 2012. GGF argued principally that Commissioner Harris erred in applying a de novo standard to review the decision of the justice court. Commissioner Harris filed a motion to dismiss GGF's complaint, arguing GGF was seeking an improper horizontal appeal.² Ndegwa, the real party in interest, filed a motion to join Commissioner Harris' motion to dismiss. Superior Court Judge Michael McVey granted the motion dismissing GGF's special action. GGF timely appeals this ruling. We have jurisdiction pursuant to Arizona Revised

final decision or order of the superior court under these rules, except where the action involves the validity of a tax, impost, assessment, toll, statute or municipal ordinance."

² Neither party challenged Commissioner Harris' standing to file a responsive pleading, and thus the propriety of her appearance in the special action proceeding is not before us. In most special actions, a judicial officer is named as a mere formality and the officer has no valid reason to respond to the special action. See Ariz. R.P. Spec. Act. 2(a); *Riley, Hoggatt & Suagee, P.C. v. English*, 177 Ariz. 10, 13-14, 864 P.2d 1042, 1045-46 (1993). In some circumstances, however, a judicial officer may appropriately respond. In *Hurles v. Superior Court*, 174 Ariz. 331, 333, 849 P.2d 1, 3 (App. 1993), we held that:

[I]t is proper for a judge named as a respondent in a special action to file a responsive pleading if the purpose of the response is to explain or defend an administrative practice, policy, or local rule, but that it is improper for a judge to respond merely to advocate the correctness of an individual ruling in a single case.

Statutes ("A.R.S.") § 12-121.21(A)(1) (2003) and Ariz. R.P. Spec. Act. 8(a).

DISCUSSION

¶15 The only issue on appeal is whether the superior court erred in dismissing GGF's special action complaint. "We review questions of law de novo." *In re Brittany Y.*, 214 Ariz. 31, 32, § 6, 147 P.3d 1047, 1048 (App. 2006). Subject matter jurisdiction is a question of law that is reviewed de novo. *State v. Dixon*, ___ Ariz. ___, ___, § 3, 294 P.3d 157, 158 (App. 2013).

¶16 We conclude that the superior court did not abuse its discretion in dismissing GGF's complaint because the superior court does not have jurisdiction to entertain special actions challenging other superior court rulings.

¶17 The Arizona Constitution and the Arizona Revised Statutes limit the appellate jurisdiction of the superior court. See Ariz. Const. art. 6, § 16 ("The superior court shall have appellate jurisdiction in cases arising in justice and other courts inferior to the superior court as may be provided by law."); A.R.S. § 12-124(A) (2003) ("The superior court shall have appellate jurisdiction in all actions appealed from justices of the peace, inferior courts, boards and officers"); A.R.S. § 12-124(B) ("The superior court may issue writs of certiorari to inferior courts, boards or officers to compel a

return of their proceedings, examine or try such proceedings and give any judgment or make any order necessary in furtherance of justice."). Arizona law does not grant jurisdiction to the superior court to rule on a petition for special action challenging a ruling from another superior court judge. See *Green v. Thompson*, 17 Ariz. App. 587, 591, 499 P.2d 715, 719 (1972). A special action filed in superior court is only proper if the complaint challenges the ruling of an inferior court. See *Dunlap v. Superior Court*, 169 Ariz. 82, 86, 817 P.2d 27, 31 (App. 1991) (holding superior court may review a special action challenging a ruling from a magistrate, an inferior officer).

¶18 In *Green*, we addressed whether a superior court judge could review a court commissioner's ruling via a special action petition. 17 Ariz. App. at 588, 499 P.2d at 716. First, we concluded that the authority of a court commissioner is equivalent to a superior court judge. *Id.* at 590, 499 P.2d at 718; *Smoolle v. Maricopa Cnty.*, 177 Ariz. 185, 186, 866 P.2d 167, 168 (Tax Ct. 1993) (confirming a judge pro tem has "all the powers of a regularly elected judge"). Next, we reviewed the Arizona law, finding that "there is no indication of an intent to give the superior court appellate jurisdiction over its own commissioners." *Green*, 17 Ariz. App. at 591, 499 P.2d at 719. Because the superior court lacks appellate jurisdiction over superior court judgments, we concluded "that power should not be

created through the use of special action proceedings." *Id.* We also noted that "[i]f facts justifying and requiring special action relief from the acts of a court commissioner occur, that relief can be obtained from this Court." *Id.*

¶19 These principles from *Green* and *Dunlap* make clear that the superior court does not have jurisdiction to entertain special actions arising from a superior court commissioner's rulings. In this case, GGF's special action complaint requests that the superior court review a final decision from a court commissioner. Arizona law does not authorize the superior court to exercise jurisdiction in such matters. GGF's special action is an unauthorized attempt to seek appellate review in superior court of a final decision entered by a superior court commissioner. The superior court did not err in dismissing GGF's special action complaint.

CONCLUSION

¶10 Because a special action cannot be brought in superior court to challenge a ruling of a superior court judge or commissioner, the superior court correctly dismissed this special action.

¶11 Ndegwa requests costs and attorneys' fees on appeal. Regarding fees, Arizona Rule of Civil Appellate Procedure ("ARCAP") 21(c)(1) provides that all claims for attorneys' fees "must specifically state the statute, rule, decisional law,

contract, or other provision authorizing an award of attorneys' fees." Ndegwa does not identify any substantive basis for an award of fees and we deny the request. We will, however, award Ndegwa their taxable costs on appeal upon their compliance with ARCAP 21.

/s/

JOHN C. GEMMILL, Judge

CONCURRING:

/s/

RANDALL M. HOWE, Acting Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge