

NOTICE: NOT FOR PUBLICATION.  
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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SOLCOM ENTERPRISES, INC. a Canadian corporation, *Plaintiff/Appellee/  
Cross-Appellant,*

*v.*

ROBERT L. GENDLER and YORKYS RAMIREZ, husband and wife,  
*Defendants/Appellants/Cross-Appellees.*

No. 1 CA-CV 13-0171

FILED 11-26-2013

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Appeal from the Superior Court in Pima County  
No. C20102797  
The Honorable Jan E Kearney, Judge

**AFFIRMED**

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COUNSEL

Rusing, Lopez & Lizardi, PLLC, Tucson  
By Edward Moomjian, II

*Counsel for Plaintiff/Appellee/Cross-Appellant*

Robert L. Gendler, Benson

*In Propria Persona*

SOLCOM v. GENDLER  
Decision of the Court

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**MEMORANDUM DECISION**

Chief Judge Diane M. Johnsen delivered the decision of the Court, in which Acting Presiding Judge Patricia K. Norris and Judge Kenton D. Jones joined.

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**J O H N S E N**, Chief Judge:

¶1 Robert Gendler appeals from judgment entered against him after a bench trial. For the reasons stated below, we affirm the judgment.

**FACTS AND PROCEDURAL HISTORY**

¶2 Solcom Enterprises, Inc. contracted with Top Stone, Inc. to buy decorative stone items, and gave a deposit of \$40,350. The written contract stated an estimated shipping date of eight to ten weeks. Top Stone had a few of the items in stock and delivered them to Solcom. Most of the items, however, had to be ordered from China. Solcom filed suit against Top Stone and its principals, Gendler and his spouse, Yorkys Ramirez, ten months after entering the contract because Top Stone had not delivered the remaining items and refused to refund the remainder of the deposit.

¶3 Default judgment was entered against Ramirez and Top Stone. After a three-day bench trial, the superior court found Gendler liable for the acts of Top Stone on Solcom's alter-ego claim and entered judgment against Gendler personally on Solcom's claims for consumer fraud, negligent misrepresentation and punitive damages.

¶4 Gendler, Ramirez and Top Stone appealed. We have jurisdiction over Gendler's timely appeal pursuant to Arizona Revised Statutes ("A.R.S.") § 12-2101(A)(1) (2013).<sup>1</sup> This court earlier dismissed Top Stone's appeal because it was unrepresented by counsel. We now dismiss Ramirez's appeal for lack of jurisdiction. Except under circumstances not present here, a defaulted party may not appeal the entry of default. Such a party must move to set aside the judgment or

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<sup>1</sup> Absent material revision after the relevant date, we cite a statute's current version.

SOLCOM v. GENDLER  
Decision of the Court

move for a new trial under Arizona Rules of Civil Procedure 55(c), 59 or 60(c); the party then may appeal the denial of that motion. *See Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 311, 666 P.2d 49, 56 (1983). Because Ramirez did not move for relief from the default judgment, we lack jurisdiction to hear her appeal. *See Soltes v. Jarzynka*, 127 Ariz. 427, 430-31, 621 P.2d 933, 936-37 (App. 1980).

**DISCUSSION**

¶5 Solcom asks us to affirm the judgment against Gendler based upon the default judgment entered against Top Stone and the superior court's finding (which Gendler does not dispute on appeal) that Gendler is liable for the acts of Top Stone under the alter-ego doctrine. We agree that the judgment piercing the corporate veil rendered Gendler personally liable for the judgment against Top Stone; thus, regardless of the outcome of his appeal of the judgment entered against him personally, Gendler remains liable for the judgment entered against Top Stone. On appeal, Gendler does not dispute the amount of damages, costs and attorney's fees the court imposed on Top Stone and for which he is liable pursuant to the alter-ego doctrine.

¶6 In any event, we affirm the judgment entered against Gendler personally. On appeal from a judgment rendered after a bench trial, we review the record in a light most favorable to upholding the superior court's judgment and resolve all inferences against the appellant. *In re Estate of Thurston*, 199 Ariz. 215, 217 n.1, 16 P.3d 776, 778 n.1 (App. 2000).

¶7 The superior court heard testimony over three days, then made extensive factual findings in concluding Gendler was liable for consumer fraud, negligent misrepresentation and punitive damages, and that the corporate veil should be pierced. We will not set aside the court's findings unless they are clearly erroneous and unsupported by any credible evidence, and we give due weight to the court's opportunity to assess the credibility of witnesses. *City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 486, 803 P.2d 891, 897 (1990).

¶8 Gendler has not provided us with a transcript of the bench trial. It is an appellant's duty to make sure that the appellate court receives a complete record. *See* ARCAP 11(b); *Rancho Pescado, Inc. v. Northwest Mut. Life Ins. Co.*, 140 Ariz. 174, 189, 680 P.2d 1235, 1250 (App. 1984). If an appellant fails to provide the transcript of a proceeding at which testimony was given, this court will assume the evidence supported

SOLCOM v. GENDLER  
Decision of the Court

the superior court's findings. *Renner v. Kehl*, 150 Ariz. 94, 97 n.1, 722 P.2d 262, 265 n.1 (1986) (“Without a record we must presume that . . . there was substantial evidence in the complete record to support the findings of the trial court.”); *Retzke v. Larson*, 166 Ariz. 446, 449, 803 P.2d 439, 442 (App. 1990).<sup>2</sup>

¶9 Because Gendler did not provide us with a transcript of the trial, we presume that the evidence the superior court heard supports its findings and conclusions and affirm the judgment on that basis.<sup>3</sup>

CONCLUSION

¶10 For the foregoing reasons we affirm the judgment of the superior court. We also grant Solcom its reasonable attorney's fees, pursuant to A.R.S. § 12-349(A)(1) (2013), and its costs, contingent on compliance with Arizona Rule of Civil Appellate Procedure 21(c).



Ruth A. Willingham · Clerk of the Court  
FILED: mjt

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<sup>2</sup> Although Gendler suggests there is in the record a narrative statement in lieu of a transcript, the record discloses no statement that complies with Arizona Rule of Civil Appellate Procedure 11(a)(1).

<sup>3</sup> Gendler also appears to argue that because of the recusal of the judge who presided over the trial, he is deprived of raising certain post-trial rulings on appeal. The record, however, does not demonstrate that the court recused itself. In any event, at issue here is Gendler's appeal from the judgment, not from any post-judgment proceedings.