

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

SMART RENTALS, LLC, *Plaintiff/Appellant*,

v.

DUSTIN TERVELT, *Defendant/Appellee*.

No. 1 CA-CV 21-0119
FILED 11-30-2021

Appeal from the Superior Court in Maricopa County
No. CV2020-010172
The Honorable Sally Schneider Duncan, Judge

AFFIRMED

COUNSEL

Frazer Ryan Goldberg & Arnold, LLP, Phoenix
By James M. Cool
Counsel for Plaintiff/Appellant

Klauer & Curdie, Phoenix
By Brandon R. Curdie, Richard L. Klauer
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Judge David B. Gass delivered the decision of the court, in which Presiding Judge D. Steven Williams and Judge James B. Morse Jr. joined.

G A S S, Judge:

¶1 Smart Rentals, LLC appeals the superior court’s dismissal of its complaint against its former employee Dustin Tervelt. The only issue we address is the award of attorney fees in the superior court, which we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Smart Rentals sued Tervelt seeking repayment of advances on future sales commissions. Tervelt moved for dismissal under Rule 12(b)(6) of the Arizona Rules of Civil Procedure, arguing the matter was not ripe for adjudication. After briefing and argument, the superior court dismissed the complaint and awarded Tervelt attorney fees under A.R.S. § 12-341.01. Smart Rentals timely appealed the dismissal and the superior court’s award of attorney fees to Tervelt.

¶3 Before Smart Rentals appealed, Tervelt repaid the advances. Both parties now agree the issue of repayment is moot. Smart Rentals, nonetheless, invites us to address whether it could compel Tervelt to sign a promissory note under the unique facts of this case. We decline the invitation. This court has jurisdiction over the remaining issue under article VI, section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21.A.1, and 12-2101.A.1.

ANALYSIS

¶4 Smart Rentals contends the superior court erred in finding Tervelt the successful party for the purpose of awarding attorney fees under § 12-341.01. Instead, Smart Rentals argues it was the successful party because it fulfilled its goal by receiving timely repayment.

¶5 The superior court has discretion to award attorney fees to the successful party under § 12-341.01.A. *Dooley v. O’Brien*, 226 Ariz. 149, 152, ¶ 9 (App. 2010). Determining “who is the successful party for purposes of awarding attorney[] fees is within the sole discretion of the [superior] court.” *Berry v. 352 E. Va., L.L.C.*, 228 Ariz. 9, 13, ¶ 21 (App. 2011) (citations

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omitted). This court will not disturb an award on appeal “if any reasonable basis exists for it.” *Id.* (citation omitted). This court affords significant deference because the superior court “is better able to evaluate the parties’ positions during the litigation and to determine which [party] has prevailed.” *Id.* at ¶ 22.

¶6 Here, Tervelt established Smart Rentals filed its complaint prematurely. *See Fulton Homes Corp. v. BBP Concrete*, 214 Ariz. 566, 572, ¶ 24 (App. 2007) (party who succeeded in getting claims against it dismissed was the successful party). We cannot say the superior court exceeded the bounds of reason in finding Tervelt to be the successful party. Accordingly, the superior court did not abuse its discretion.

¶7 In its supplemental briefing, Smart Rentals urges us to exercise our discretion to determine whether Smart Rentals contractually could require employees to execute an additional promissory note. In our discretion, we decline to address this issue. *See Kondaur Capital Corp. v. Pinal County*, 235 Ariz. 189, 192-94, ¶¶ 8-12 (App. 2014) (this court generally declines to apply the public-interest exception to moot issues if “an appellant’s argument is grounded on events that occurred in the specific case”); *see also Contempo-Tempe Mobile Home Owners Ass’n v. Steinert*, 144 Ariz. 227, 229 (App. 1985) (declining to address an “abstract question” raised by an otherwise moot case).

ATTORNEY FEES

¶8 Tervelt requests awards of sanctions under ARCAP 25 and attorney fees on appeal under A.R.S. § 12-341.01.A. Although we agree the arguments made by Smart Rentals lacked merit, we do not find them frivolous. Accordingly, we decline to impose ARCAP 25 sanctions on Smart Rentals and its counsel. After consideration, we award Tervelt his reasonable contract-based attorney fees and costs upon compliance with ARCAP 21. *See* A.R.S. §§ 12-341.01, -342.

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CONCLUSION

¶9

We affirm the superior court's attorney-fees judgment.



AMY M. WOOD • Clerk of the Court
FILED: AA