

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



DIVISION ONE  
FILED: 12/15/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

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

JONATHAN WAGNER, a single man,  
  
Plaintiff/Appellant,

v.

JIMMY JORDAN, Trustee of the  
William A. Cavalliere Family Trust;  
JIMMY JORDAN and JANE DOE JORDAN,  
his wife,  
  
Defendants/Appellees.

1 CA-CV 10-0662

DEPARTMENT A

**MEMORANDUM DECISION**

(Not for Publication -  
Rule 28, Arizona Rules  
of Civil Appellate  
Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2005-092467

The Honorable John R. Ditsworth, Judge

**AFFIRMED**

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Jonathan Wagner  
Plaintiff/Appellant Pro Se

Mesa

Bryon H. Goff, Jr.  
Attorney for Defendants/Appellees

Phoenix

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**I R V I N E**, Judge

¶1 Jonathan Wagner ("Wagner") timely appeals from  
judgment in favor of William Cavalliere's estate ("Cavalliere")

on his claims for fraud and breach of contract. For the reasons that follow, we affirm.

### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

¶2 Wagner entered into a commercial lease with Cavalliere in November 2004. Wagner owned a towing business and informed Cavalliere that he planned to use the vacant lot to store cars and equipment for his towing business. Wagner heard about the availability of the property from the previous lessee, who had been using the lot as a tow yard prior to Wagner signing the lease.

¶3 The lease stated that Wagner "shall use and occupy the premises for towing + st[o]rage of cars and equi[p]ment" and that the "[l]essor represents that the premises may lawfully be used for such purpose." The lease further stated that the "[l]essee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force." The parties agreed to rent of \$300 per month, and Wagner agreed to pay the property taxes.

¶4 Sometime immediately before or after signing the lease, Wagner contacted the city zoning department to verify

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<sup>1</sup> We note that Cavalliere's attorney failed to comply with Arizona Rules of Civil Appellate Procedure 14(a) and 6(c), which require that appellate briefs be double spaced.

that the property could be used for a tow yard. The city zoning department replied that the property was properly zoned for use as a tow yard. Wagner did not, however, contact the city building department to find out whether the lot complied with city building codes.

¶15 Wagner testified that he did not contact the city building department because there were no buildings on Cavalliere's property, and Wagner had leased two other tow yards with similar designs, and there was no need to contact the city building department on those occasions. At the time the lease was signed, Cavalliere did not tell Wagner that improvements needed to be made to the property to comply with city building codes.

¶16 A few months after Wagner moved into the property, he received a letter from Cavalliere's assistant stating that the property did not comply with city building codes. The city also sent Wagner a letter stating that the property did not comply with code. Wagner testified that he went to the city to ask about the code violations, and he was told that there were building code violations with the previous tenant. Wagner testified that he would have to spend over \$40,000 to bring the property up to code.

¶17 A succession of legal proceedings followed beginning with an action for forcible entry and detainer ("FED") in the

justice court to determine which party had the right to possession. Cavalliere testified at the FED hearing that he did not tell Wagner about any violations of the building code because he was unaware of any such violations.

¶8 The first FED action determined that Cavalliere had the right to possession because Wagner failed to comply with the lease provision requiring him to abide by all city ordinances. Wagner was evicted for failure to pay rent following the third and final FED action.

¶9 Wagner brought a separate action for fraud and breach of contract in the superior court. The superior court found that Wagner failed to prove his claims because Wagner did not prove that Cavalliere knew that there were code violations or that he intended to deceive Wagner.

¶10 Wagner timely appeals.

#### **DISCUSSION**

¶11 Wagner argues that the superior court had no reasonable basis to find that Cavalliere was unaware of existing code violations at the time he leased the property to him because there was "no factual dispute on the evidence." Despite Wagner's claim, we find that there was a factual dispute over whether Cavalliere knew about existing code violations.

¶12 During one portion of the hearing, Cavalliere was asked, "Was it your intent when you rented the property in

November of 2004 to have Mr. Wagner . . . bring the land . . . into Code?" Cavalliere responded, "Yes." Wagner relies on this testimony to support his argument that Cavalliere knew about the code violations at the time he leased his property to him. In a different portion of the hearing, however, Cavalliere was asked, "You knew prior to Mr. Wagner that the property wasn't in City Code?" Cavalliere responded, "No I didn't." Cavalliere again repeated his assertion during the hearing that he was unaware of existing code violations. Indeed, the primary issue being litigated in the first FED hearing was whether Cavalliere knew about the existing code violations.

¶13 Accordingly, we find that the testimony was inconsistent, so the trial court had a reasonable basis to conclude that Cavalliere was unaware of any existing building code violations. Additionally, Cavalliere was approximately ninety years old and in poor health when he testified at the first FED hearing. Any inconsistency in his testimony is therefore understandable.

¶14 Wagner also argues that the superior court should not have relied on the findings of the justice court in the first FED action because the justice court lacked subject-matter jurisdiction. Wagner relies on the following statement made during the justice court's oral ruling to support his claim that the justice court did not have subject-matter jurisdiction: "I

guess in it's [sic] purest form we don't really have a forcible detainer [but] what we have is a civil lawsuit for the cost of moving in and then moving out when you find you can't do business there . . . ." Wagner claims the superior court "should have recognized that the justice court exceeded its subject matter jurisdiction and redetermined [sic] the contract issue."

¶15 In a forcible entry and detainer case, justice courts only have jurisdiction to determine the right to possession. *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 350-51, ¶ 21, 101 P.3d 641, 644-45 (App. 2004). The action is intended to "afford a summary, speedy and adequate remedy for obtaining possession of the premises withheld by a tenant in violation of the covenants of his tenancy or lease . . . ." *Phoenix-Sunflower Indus., Inc. v. Hughes*, 105 Ariz. 334, 336, 464 P.2d 617, 619 (1970). The only appropriate results are the dismissal of the complaint or the grant of possession to the plaintiff. *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 205, 167 P.2d 394, 400 (1946). Any other dispute between landlord and tenant must be tried in an ordinary civil action. *RREEF Mgmt. Co. v. Camex Prods., Inc.*, 190 Ariz. 75, 77, 945 P.2d 386, 388 (App. 1997).

¶16 We conclude that the superior court did not rely on the findings of the justice court in the FED action. Rather, the superior court relied on Cavalliere's testimony given during the FED case because Cavalliere was deceased at the time of the

superior court trial. The transcript of the first FED hearing was properly admitted into evidence as a prior statement under oath, and the superior court read the transcript to determine whether Cavalliere knew about existing code violations.

¶17 Additionally, the justice court made clear in its ruling that it was only deciding who had the right to possession. The court stated in its ruling, "I am going to find for the landlord, possession only." Accordingly, we find no support for Wagner's argument that the justice court ruled on matters outside of its subject-matter jurisdiction.

**CONCLUSION**

¶18 We affirm.

/s/  
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PATRICK IRVINE, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
ANN A. SCOTT TIMMER, Presiding Judge

/s/  
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DANIEL A. BARKER, Judge