IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

LAW OFFICE OF PHIL HINEMAN, P.C.,
Plaintiff/Counterdefendant/Appellant,

v.

PINE RIDGE PROPERTIES, LLC,
Defendant/Counterclaimant/Appellee.

No. 2 CA-CV 2019-0093
Filed March 5, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Gila County
No. CV201800081
The Honorable Gary V. Scales, Judge Pro Tempore

AFFIRMED

COUNSEL

Law Office of Phil Hineman P.C., Mesa
By Phil Hineman
Counsel for Plaintiff/Counterdefendant/Appellant

Harper Law Offices PC, Payson
By Michael J. Harper
Counsel for Defendant/Counterclaimant/Appellee

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 The Law Office of Phil Hineman, P.C. ("Appellant") seeks review of the trial court's entry of stipulated judgment in favor of Pine Ridge Properties, LLC ("Pine Ridge"). For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 The parties were involved in litigation arising from their landlord-tenant relationship, with each asserting claims against the other.[1] At a judicial settlement conference held on November 21, 2018, the parties reached an agreement. At the invitation of the trial court, counsel for Pine Ridge placed the parties' agreement on the record as follows:

> The agreement as to all the claims and counterclaims in the case will be dismissed with prejudice except for . . . the following:
>
> There will be three payments made . . . from [Appellant] to Pine Ridge . . . with payments of $750 in 30 days, a payment of $750 in 60 days, payment of $500 in 90 days. If all of those payments are made, no further relief will be ordered.
>
> If any of the payments is missed, a stipulated judgment shall enter in favor of Pine Ridge . . . in the amount of $7500. The settlement paperwork will be prepared by my office.

Appellant then agreed this was an accurate statement of the parties' agreement, confirmed agreement to these terms, and stated that payment

[1]The substance of those claims is not at issue in this appeal.

would be made to Pine Ridge but mailed to its counsel's office. At Appellant's request, Pine Ridge confirmed having heard the terms of the agreement and that nobody was pressuring Pine Ridge to make the agreement.

¶3 The court then asked Pine Ridge, "[D]o you want me to dismiss the lawsuit right now or wait until it's paid?" Pine Ridge stated its preference to "wait until it's paid just so that we have a case that we can get a judgment on." After confirming with the clerk that Appellant's last payment was due on February 21, 2019,[2] the court ordered Pine Ridge to submit its proposed judgment for the court's signature in time for the court to review and sign it on March 1, 2019.

¶4 Despite the parties' agreement, Pine Ridge did not receive any payment from Appellant until December 29—thirty-eight days after the agreement had been reached and placed on the record—and that payment was for $500 instead of the $750 agreed for the first payment. On January 29, 2019—sixty-nine days after the date of the agreement—Pine Ridge moved for entry of stipulated judgment, noting that no further payments had been received.

¶5 In response, Appellant explained that Pine Ridge had never "memorialize[d] the agreement in a written settlement agreement for the parties[′] review and signature" as agreed at the settlement conference, such that "a stipulated judgment [wa]s premature as the stipulated agreement ha[d] not even been presented for review" or submitted to the trial court. Three days later, Appellant submitted a photograph of a certified check for the full remaining balance of $1,500, which Appellant promised to provide to Pine Ridge "once the settlement agreement has been executed by all parties."[3] Appellant also claimed to be "fully prepared to meet the March 1, 2019 deadline."

¶6 On April 9, 2019, the trial court summarily granted Pine Ridge's motion and entered judgment in Pine Ridge's favor, ordering

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[2]By our count, ninety days after the date of the settlement conference was February 19, 2019.

[3]Appellant's claims of having "fully performed" by "tender[ing] the total agreed upon amount" and making "payment in full" on February 11, 2019—the date an image of the check was filed with the court—appear to be contradicted by the record.

Appellant to pay $7,500 to Pine Ridge.[4] We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Discussion

¶7 We must decide whether the agreement placed on the record at the conclusion of the settlement conference on November 21, 2018, was binding on the parties, with the time limits for Appellant's payments beginning to run as of that date, even though Pine Ridge never circulated "settlement paperwork" for Appellant's review and signature.[5] We review questions of law de novo, including a trial court's interpretation of a court rule or settlement agreement and its conclusion regarding such agreement's validity and enforceability. *Poulson v. Ofack*, 220 Ariz. 294, ¶ 8 (App. 2009) (court rules); *Burke v. Ariz. State Ret. Sys.*, 206 Ariz. 269, ¶ 6 (App. 2003) (terms of settlement agreement); *Schuck & Sons Constr. v. Indus. Comm'n*, 192 Ariz. 231, ¶ 6 (App. 1998) (validity and enforceability of settlement agreement).

¶8 Rule 80(a)(2), Ariz. R. Civ. P., establishes that a disputed agreement "made orally in open court and entered in the minutes" is binding on the parties. This includes disputed settlement agreements. *See Canyon Contracting Co. v. Tohono O'Odham Hous. Auth.*, 172 Ariz. 389, 391 (App. 1992) (holding substantially similar prior version of rule "does indeed apply to settlement agreements"), *disapproved on other grounds by Robertson v. Alling*, 237 Ariz. 345, ¶ 15 (2015).[6]

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[4] Appellant moved for reconsideration, and the court issued a summary denial after the notice of appeal was filed.

[5] As Pine Ridge correctly notes, Appellant did not raise its contract-related claims in the trial court, and we will not consider them for the first time on appeal. *See Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 503 (1987) (noting "general rule" that "appellate court will not consider issues not raised in the trial court").

[6] In *Robertson*, our supreme court held that this rule of civil procedure "applies only if a party disputes the existence or terms of an agreement," as distinct from other challenges to its enforceability. 237 Ariz. 345, ¶ 22. Here, however, Appellant does dispute the existence of a final agreement, claiming that further written documentation was necessary for the parties to finalize the specific terms of the agreement.

¶9 After their agreement was placed on the record at the November 21 settlement conference, Appellant and Pine Ridge both expressly adopted it. The minute entry from the settlement conference reflects this: "The Court is advised that the parties have reached an agreement and [counsel for Pine Ridge] recites the agreement on the record. Upon the Court's inquiry, [Appellant] agrees with [the] recitation and [Pine Ridge] also agree[s]." Thus, the agreement was binding on the parties per Rule 80(a)(2).

¶10 Nothing in that agreement indicated that its clear terms were contingent on Pine Ridge's preparation of "settlement paperwork," or that the preparation of that paperwork was a condition precedent for the effectiveness of the agreement. To the contrary, the court indicated its understanding that the clock for payment was to begin running that day—with the final deadline set for February 21, 2019, and judgment to be entered by March 1, 2019, regardless of when Pine Ridge finished preparing the "settlement paperwork."

¶11 Appellant did not pay Pine Ridge $750 by December 21, 2018. By January 20, 2019—sixty days after the settlement conference—Appellant had only paid Pine Ridge $500, not $1,500 from the two $750 payments that were due by that date. The parties' binding agreement was clear that "[i]f any of the payments is missed, a stipulated judgment shall enter in favor of Pine Ridge . . . in the amount of $7500." Here, two payments were missed, and the trial court was therefore obligated to enter the judgment challenged in this appeal.[7]

¶12 Pine Ridge requests an award of attorney fees incurred on appeal, pursuant to A.R.S. § 12-341.01(A).[8] Appellant's primary claim had

[7]Assuming but not deciding that Appellant's estoppel claim was preserved for appeal, we reject that claim because we reject the two premises on which it is based. First, it was reasonable for Pine Ridge to forego the expense of preparing and circulating "settlement paperwork" once Appellant had missed the first (let alone second) payment required under the parties' agreement. Second, as noted above, the contention that "Appellant did pay the $2,000.00 within ninety days of November 21, 2018 by paying the remaining $1,500.00 on February 11, 2019" appears to be a misstatement of the facts.

[8]Pine Ridge also grounds its request for fees on the terms of the lease between the parties, which it claims "specifically stated that the prevailing party in any action arising out of the lease shall be entitled to an award of

no chance of prevailing on appeal, given clearly established Arizona law regarding the binding nature of agreements made orally in open court and entered in the trial court's minutes. Appellant's other claims either were not raised before the trial court or are flatly contradicted by the record. We therefore exercise our discretion under § 12-341.01(A) to grant Pine Ridge its reasonable fees on appeal.

Disposition

¶13 Because the trial court correctly entered judgment pursuant to the parties' binding Rule 80(a)(2) agreement, we affirm, granting Pine Ridge its reasonable attorney fees, subject to its compliance with Rule 21(b), Ariz. R. Civ. App. P.

attorneys' fees." However, Pine Ridge has not directed us to a copy of that lease in the record before us, and we need not reach this issue, regardless.