



MEMORANDUM

Date: February 25, 2021

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator *CHH*

Re: **Evictions Proceedings in the Consolidated Justice Court**

We have heard numerous anecdotal accounts of wrongful evictions occurring in the Consolidated Justice Court but have no facts or data to substantiate those claims. I directed my staff to look into these issues further. What follows is a recent sampling of actions taken by the court.

Motions to Compel the Eviction

The Centers for Disease Control (CDC) moratorium currently in effect allows the landlord to file for eviction for non-payment of rent, obtain the judgment as well as the writ of restitution. However, it prevents the writ from being served on the defendant. Consequently, while there is a judgment for eviction, the defendant cannot be evicted as long as the moratorium remains in effect.

Regardless, plaintiffs have filed numerous motions to "compel" the court to enforce evictions. They primarily allege that the defendant did not comply with the CDC requirements, such as establishing a payment plan, adhering to the payment plan, seeking rental assistance, or submitting the required declaration to the landlord.

These motions are routinely set for hearing within a couple of days, with notice being mailed to the defendant. We have heard that defendants miss the hearing because they do not receive the notice timely. Consequently, defendants are routinely not present to defend themselves. The motion to compel is granted, and the defendant is evicted. The following cases are actual examples:

CV21-000659 - The eviction for non-payment of rent was heard on January 19, 2021. The tenant provided the CDC declaration to the landlord as required. The court ruled in favor of the plaintiff. The plaintiff's lawyer filed a motion to compel the eviction. The hearing was scheduled two days later, and notice was mailed to the defendant. The defendant was not present at the hearing. The motion to compel the eviction was granted based on the plaintiff's statement that the defendant had not established a payment plan and had not made any payments.

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CV21-000656 – Same set of facts as above. The hearing on the motion to compel was scheduled three days after it was filed. The plaintiff's lawyer testified that two agencies had made payments on behalf of the defendant, but the defendant failed to establish a payment plan. The court granted the motion to compel the eviction.

CV20-025767 – The court entered judgment for the plaintiff. The plaintiff filed a motion to compel the eviction, and the motion was heard on January 26, 2021. The motion to compel was granted. The defendant filed a motion for reconsideration, advising the court that she did not receive notice of the hearing until January 29, 2021. The court denied her motion indicating that "because no CDC declaration was provided to the plaintiff, there was no basis for reconsideration." If the defendant had provided the declaration, there was no opportunity for her to present it to the court since she had not received timely notice of the hearing. (Attachment 1)

CV20-018597 - After receiving a judgment, the plaintiff filed a motion to compel. The landlord stated in the motion that the tenant established a payment plan but was unable to adhere to it. The motion to compel was granted. The tenant filed a letter with the court stating he had not received notice of the hearing.

One of the recommendations that we will make in our report to rectify this issue is for the court to schedule the hearing far enough into the future for the defendant to receive notice. If it must be set within a few days, have the constable personally serve the defendant with the notice of hearing.

Cases Alleging Non-Compliance with Rental Agreement (Material Breach)

There have been many anecdotal accounts of tenants being evicted for frivolous breaches of the rental/lease agreement. The court granted the eviction in all of the cases cited below. The question remains as to whether the breach rose to the level of jeopardizing the public's health and safety.

CV20-025771 - Minute entry indicated the eviction does not qualify for CDC protection due to "trash, broken items on the property after notice to remove."

CV21-002768 - Complaint alleges non-payment of rent as well as "unauthorized guests and pets residing in the unit; wrongful holdover."

CV21-002770 - Complaint alleges non-payment of rent as well as "unauthorized items on the patio."

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CV21-002639 - Complaint alleges non-payment of rent, as well as the defendant, "failed to maintain the area around the unit; unregistered and/or inoperable vehicle on the property, leaking fluids."

CV21-001109 - Complaint alleges that the tenant "failed to properly maintain the space and area around the unit."

CV21-001120 - Notice to tenant from landlord states the reason for the breach is non-payment of rent and an "unauthorized guest."

CV21-001122 - Notice given to tenant from landlord states reason for breach is non-payment and "marijuana use."

CV21-001532 - Complaint alleges non-payment and breach due to the tenant having "failed to properly maintain space and area around the unit."

CV21-000667- The court ruled that the CDC order does not apply because "...this is a wrongful holdover case..." The Administrative Office of the Courts (AOC) has clarified that a "holdover" is subject to CDC protection as long there has been no material breach, and it appears to be an eviction for non-payment of rent. In this case, no material breach was alleged, but a judgment was issued for the plaintiff for \$1,800. (Note: A holdover tenant is a renter who remains in a property after the lease expires.)

We will recommend in our report that the Presiding Superior Court Judge provide greater direction on how these cases should be handled. Maricopa County and perhaps others have developed "best practices" for processing eviction cases. We will recommend that the Consolidated Justice Court adopt them.

Referencing the Wrong Statute in the Court Ruling

CV20-011719-EA – There are several non-payment of rent cases where one particular judge referenced the wrong statute in the minute entry. The minute entry (Attachment 2) states in part, "Enforcement of the Writ in this matter is in the interest of justice in accordance with section 33-1368A and shall not be delayed." This statute refers to material noncompliance, not non-payment of rent.

ARS 33-1368. Noncompliance with rental agreement by tenant; failure to pay rent; utility discontinuation; liability for guests; definition

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, including material falsification of the information provided on the rental application, the landlord may deliver a

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written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate on a date not less than ten days after receipt of the notice if the breach is not remedied in ten days.

It is estimated that this judge entered approximately 80 similar rulings. Known case numbers are: CV20-011568, CV20-011579, CV20-011639, CV20-011644, CV20-011645, CV20-011647, CV20-011691, CV20-011709, CV20-011710, CV20-011719, CV20-011726, CV20-011729, CV20-011856, CV20-011857, CV20-011993, CV20-011994, CV20-011997, CV20-011998, CV20-012175.

In addition to these examples, I am providing two case studies, CV20-015119-EA and CV21-0009018-EA, that raise concerns about whether the defendant received due process. (Attachment 3 and 4)

As I have indicated to you in a previous memorandum, defendants can appeal the eviction and actions taken by the court; however, to do so, they must continue to pay their rent (bond) to the court to remain in their home during the appeal process. Few have the financial means to do so.

I also want to make you aware that the Chief Justice of the Arizona Supreme Court issued an Administrative Order in June 2020 waiving the time requirements for setting hearings in eviction cases within specific time periods. He also directed the courts to liberally grant continuances and to give the parties an opportunity to reach a consent agreement to resolve the case. As you can see from the issues identified above. The Justice of the Peace in the Consolidated Justice Court should carefully review the Administrative Order.

The comprehensive report on the eviction process is near completion and will be provided to you this week.

c: Jan Leshner, Deputy County Administrator
Dave Byers, Director, Administrative Office of the Courts
The Honorable Kyle Bryson, Presiding Superior Court Judge

ATTACHMENT 1



Pima County Justice Courts, Arizona

Pima County Consolidated Justice Court
240 N. Stone Ave., Tucson, AZ 85701 (520) 724-3171

CASE NUMBER: CV20-025767-EA

Pacifica Apartments LLC
4650 E 29th St #85711
Tucson, AZ 85711
(520) 207-9997

Plaintiff(s) Name / Address / Email / Phone

Kaitlyn F
29th St #1121
Tucson AZ
kaitlynbord@
gmail.com (520) 481 4340

Defendant(s) Name / Address / Email / Phone

☒ MOTION TO: Reconsider Eviction

☐ RESPONSE TO MOTION

☐ REPLY TO RESPONSE

If you have received this motion you have the right to file a response to this motion within ten (10) days from the date this motion was served. Your response must be filed with the court and copies of your response must be served to the other parties as provided by Rule 120 of the Justice Courts Rules of Civil Procedure. The court may treat your failure to respond to a motion as your consent that the motion be granted.

I am the ☐ Plaintiff ☒ Defendant

I would like the court to:

Put a pause to eviction process

Statement of facts:

Did not receive court date hearing for Jan 26 until the
29th of January

Legal support including Statute or Rule that applies:

Defendant should have received notice for court hearing
date

I state under penalty of perjury that the foregoing is true and correct.

Date: 02/1/2021 Kaitlyn Borden

☐ Plaintiff ☒ Defendant

I CERTIFY that a copy of this document has been or will be mailed on 02/03/2021 to:

☐ Plaintiff at the above address ☐ Plaintiff's attorney ☒ Defendant at the above address ☐ Defendant's attorney

Date: 02/01/2021

By Kaitlyn Borden

Signature

ORDER

Case Number: _____

Upon reading the ☒ Motion ☐ Response ☐ Reply and good cause appearing:

It is ordered:

Because no CDC Declaration was provided to Plaintiff, there is no basis for reconsideration. If Defendant would like to delay eviction, she must provide a valid CDC Declaration to the landlord.

2-1-21
Date

Shel Allen
Justice of the Peace

☐ Entered On:☒ Conformed Copies Sent To:☐ Scheduling Notices Sent To:☒ Plaintiff(s) Via ☒ Mail ☐ Runner☒ Defendant(s) Via ☒ Mail ☐ Runner☐ Garnishee Via ☐ Mail

*Landlord Runner
left v/m

Date: FEB 01 2021 Clerk: **BC**

ATTACHMENT 2

PIMA COUNTY CONSOLIDATED JUSTICE COURT
240 N STONE AVENUE TUCSON, AZ 85701-1130 (520)724-3171

PLAINTIFF(S): PUEBLO VILLAS APARTMENTS LLC VS DEFENDANT(S): GARVIN, BRUCE	CIVIL MINUTE ENTRY PLAINTIFF'S ATTORNEY: SCOTT M CLARK DEFENDANT'S ATTORNEY:	CASE NO. CV20-011719-EA Defendant's Address: GARVIN, BRUCE 520 WEST PRINCE ROAD 8221 Tucson ARIZONA 85705
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COURT DATE: 06/15/2020 **TIME:** 10:30 AM **HEARING TYPE:** Eviction Action

PLAINTIFF:	<input type="checkbox"/> Present	<input type="checkbox"/> Not Present	<input checked="" type="checkbox"/> By Counsel
DEFENDANT:	<input type="checkbox"/> Present	<input checked="" type="checkbox"/> Not Present	<input type="checkbox"/> By Counsel

The Court, being fully advised in the premises, finds Plaintiff is entitled to recover by his/her/their/its complaint. A Writ of Restitution (Order of Eviction) may be issued on Sunday, June 21, 2020 and is effective immediately upon being served.

NOTICE TO DEFENDANT

Pursuant to §12-1178(E), as amended, provides that a defendant who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit or remaining on or returns to the mobile home space or the recreational vehicle space without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to section §13-1502.

Rent in the sum of \$ 1814.00, Late fees \$ 145.00, Court costs \$ 108.00, Attorney's fees \$ 125.00, Notice fee \$ 30.00, Total judgment \$ 2222.00.

Plus daily rate of \$ 19.23 per day from Wednesday, July 01, 2020 until premises are vacated.

Interest of 4.25 % per annum from Tuesday, June 16, 2020.

Enforcement of the Writ in this matter is in the interest of justice in accordance with section 33-1368A and shall not be delayed.

5 day Notice for Non-Payment was served in accordance with Arizona Revised Statutes.

The Court finds the Defendant was properly served for today's Hearing Date.

Defendant Failed to Appear. Default Judgement for the Plaintiff is Entered.

Plaintiff's Attorney avows to Judgement Amounts.

DATED: 06/15/2020



JUSTICE OF THE PEACE ☐ HEARING OFFICER ☐ PRO TEM

ALL PARTIES IN ANY CIVIL CASE HAVE THE RIGHT TO APPEAL BY FILING A NOTICE OF APPEAL WITH THE TRIAL COURT WITHIN (14) CALENDAR DAYS AFTER THE ENTRY OF THE ORDER, RULING, OR JUDGMENT APPEALED FROM, EXCEPT IN AN EVICTION CASE THE TIME LIMIT SHALL BE (5) CALENDAR DAYS. THERE ARE NO APPEALS FROM A SMALL CLAIMS JUDGMENT. PURSUANT TO RECORDS RETENTION AND DESTRUCTION SCHEDULE, YOUR EXHIBIT(S) WILL BE DESTROYED UPON DISMISSAL, DISPOSITION, OR FINAL APPELLATE RULING WHICHEVER COMES LATER.

Copy mailed to ☐ Plaintiff ☐ Defendant ☐ Garnishee

DATE: _____ **BY:** _____

* Interest rate shall be at the lesser of ten cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the Board of Governors of the Federal Reserve System.

ATTACHMENT 3



Pima County Justice Courts, Arizona

Pima County Consolidated Justice Court

WAIVER

CASE NUMBER:

CV21-000918-EA

YAK GARANS

3737 E. Bellevue St. Unit 26

Tucson, Arizona 85716

~~YAK GARANS~~

Plaintiff(s) Name / Address / Email / Phone

~~3737 E. Bellevue St. Unit 26~~

3737 E. Bellevue St.

Tucson, AZ 85716

(520) 248-3516

Defendant(s) Name / Address / Email / Phone

21 JAN 26 PM 2:17 POCUT

☒ **MOTION TO: Set Aside Judgment**

☐ **RESPONSE TO MOTION**

☐ **REPLY TO RESPONSE**

If you have received this motion you have the right to file a response to this motion within ten (10) days from the date this motion was served. Your response must be filed with the court and copies of your response must be served to the other parties as provided by Rule 120 of the Justice Courts Rules of Civil Procedure. The court may treat your failure to respond to a motion as your consent that the motion be granted.

I am the ☐ Plaintiff ☒ Defendant

I would like the court to:

Set aside my eviction judgment.

Statement of facts:

I have a medical condition that requires me to have an escort and helper to do various daily tasks. On January 22, 2021, my escort was in quarantine due to exposure to COVID-19, forcing me to attend the hearing on my own. When I arrived at the courthouse, I informed them of my hearing and followed their directions while waiting for assistance to dial into the hearing. I was eventually assisted but not until (cont.)

Legal support including Statute or Rule that applies:

Rule 15(a)(9) of the Arizona Rules of Procedure for Eviction Actions allows a motion to set aside when a judgment is "contrary to the law."

I state under penalty of perjury that the foregoing is true and correct.

Date: 1/26/2021

YAK ☒ Plaintiff ☒ Defendant

I CERTIFY that a copy of this document has been or will be mailed on 1/26/2021 to:

☐ Plaintiff at the above address ☒ Plaintiff's attorney ☐ Defendant at the above address ☐ Defendant's attorney

Date: 1/26/2021

By

Signature

(cont. from first page) my hearing had already ended and a default judgment had been entered against me. Because of the actions of court staff, I was deprived of my due process rights and barred from attending my hearing where I could defend myself. Additionally, although my landlord claims that I did not pay rent for December 2020 or January 2021, I filed a written answer on the day of my hearing showing that I did pay rent for both of those months with copies of the checks as proof. I am attaching my answer to this motion to again show the documents that I filed before my hearing.

ORDER

Case Number: _____

Upon reading the ☐ Motion ☐ Response ☐ Reply and good cause appearing:

It is ordered:

Motion Denied

Date

1/28/21

Justice of the Peace

☐ Entered On:

☒ Conformed Copies Sent To:

☐ Scheduling Notices Sent To:

☒ Plaintiff(s) Via ☒ Mail ☐ Runner

☒ Defendant(s) Via ☒ Mail ☐ Runner

☐ Garnishee Via ☐ Mail

Date: JAN 28 2021 Clerk: *fl*

called def

ATTACHMENT 4

Case Study: CV20-015119-EA

The tenant, a teacher, lost his job when the school district that he worked for closed in March 2020. His spouse, a caregiver, also lost her job. On June 4, the tenant applied for rental assistance through the Arizona Department of Housing (ADOH) portal. He later learned that there were issues with the documents he uploaded, so he tried again on July 9 and received confirmation of his application. On August 13, staff reached out to him about his application, but his eviction hearing had already taken place.

On July 9, the tenant sent his landlord a letter informing him that he couldn't make his \$1150 a month rent due to COVID-19 related reasons. The plaintiff filed the eviction on July 14, and the hearing was held on July 22, 2020. The defendant attended the hearing remotely but experienced difficulty uploading his documents (evidence) through the court portal. The court ruled in favor of the plaintiff and awarded \$5793 for back rent, restitution, and late fees. The landlord did not request a monetary judgment. He just wanted possession of the property to sell it.

The plaintiff filed a motion to compel the eviction, and the hearing was held on August 25. Again, the defendant attended the hearing remotely and submitted 17 documents to the court at this hearing. The judge granted the motion "in the interest of justice." On August 25, the defendant filed a motion to vacate the monetary judgment since the landlord testified that he did not want the back rent. His motion was denied. On August 28, the defendant filed a motion to reconsider. The judge denied his motion stating there were "no legal grounds." To appeal the judgment, the defendant had to post a \$6,000 bond, which he did not have the financial means to do.

The constable served the writ of restitution on August 31. The defendant was given one hour to move his family that included his wife, daughter, two grandchildren, along with several pets. He was unprepared because he believed that he was covered by the Governor's moratorium and the eviction would not be carried out.

The family spent several nights in a shelter but moved to their car when it became unsafe. Shortly after the eviction, the defendant was hospitalized for dehydration, exhaustion, and a stroke.

Since the eviction on September 25, the defendant returned to Justice Court to review his file documents. He was told that there was a reference to the 17 documents, but they were not in the electronic file. When he asked for copies, he was told the judge had the file. He returned four days later and was informed that the 17 documents did not exist. In early October, the defendant filed a judicial complaint with the Commission on Judicial Conduct which is currently under review.

The Arizona Daily Star ran the story on September 26. The reporter noted that "under the rules of procedure outlined by the Arizona Supreme Court, judges presiding over eviction case can 'waive the cost bond if the appellant files a satisfactory affidavit of his or her inability to pay.' The high court also urges judges, in providing guidance about how to handle these cases during the pandemic, to 'liberally grant continuances and make accommodations' for anyone struggling to participate in their proceedings." However, no such provision was made in this case.