SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/06/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-091487

FILED: _____

DEBORAH YEARGIN

DEBORAH YEARGIN
2040 S VOYAGER DR
GILBERT AZ 85296-0000

v.

DENNIS DAMIANO

DENNIS DAMIANO
10843 E CATALINA
MESA AZ 85208-0000

REMAND DESK CV-CCC
REMAND DESK-SE
SOUTH MESA-GILBERT JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

This case arises out of a judgment granted in Appellee's favor, concerning an alleged "contract" between Appellant and Appellee for the repayment of funds extended to Appellant via

Appellee's credit card. Here, Appellant argues that although Appellee transferred a substantial portion of Appellant's debt to her (Appellee's) credit card, there is no enforceable contract between the two parties and, therefore, does not have recompense Appellee.

Appellant argues that the Statute of Frauds renders the purported "contract" void for it fails to meet the requirements of such. It is well settled that an agreement is removed from the Statute of Frauds when there has been complete performance by one of parties.[1] Appellant argues that Appellee assumed the debt of Appellant without his knowledge, and Appellant denies that he promised to repay Appellee; Appellant claims there never was an agreement. The notion of assuming a substantial debt for someone, other than a spouse or close family member, with no thought of remuneration certainly strains credulity.

The issues brought by Appellant concern the sufficiency of the evidence. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[2] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.[3] If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.[4]

An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear

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[1] *In re MacDonald's Estate*, 4 Ariz.App. 94, 417 P.2d 728, 36 A.L.R.3d 682 (Ariz.App. 1966).

[2] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

[3] *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[4] *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

error.[5] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[6] The Arizona Supreme Court has explained in *State v. Tison*[7] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[8]

Nothing in the record suggests that the lower court erred in finding for Appellee. Substantial evidence exists to support the action of the lower court.

IT IS THEREFORE ORDERED affirming the decision of the South Mesa-Gilbert Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the South Mesa-Gilbert Justice Court for all further, if any, and future proceedings.

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[5] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

[6] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

[7] SUPRA.

[8] Id. at 553, 633 P.2d at 362.