

Court of Appeals, Division One

Civil Appeal

1 CA-CV 15-0156

SABATINA v. COOK

Appellate Case Information

Case Filed: 12-Mar-2015
Case Closed: 10-Jan-2017

Dismissal

Dept/Composition

Department C

Hon. Diane M Johnsen
Hon. Jon W Thompson
Hon. Paul J McMurdie

Side 1. NICOLE L. SABATINA, Arizona Fiduciary License #20684, dba With Love, Jeannean, LLC, the Successor Personal Representative of the Estate of Carlton Stephen Rebeske, Plaintiff/Appellant-Cross Appellee

(Litigant Group) NICOLE L. SABATINA

- Nicole Sabatina
 - With Love Jeannean LLC
- (Litigant Group) With Love Jeannean LLC**

Attorneys for: Plaintiff/Appellant-Cross Appellee
Laura Linden Still, Esq. (AZ Bar No. 26115)

Side 2. ROSEMARY COOK, Defendant/Appellee-Cross Appellant

(Litigant Group) ROSEMARY COOK

- Rosemary Cook
- PRO SE

CASE STATUS

Jan 10, 2017....Case Closed

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2009-019923					
MAR CV2012-001764	Unjust Enrichment and Conversion		Dawn M Bergin, Authoring Judge of Order		

2 CASE DECISIONS

27-Dec-2016 MEMORANDUM DECISION

Withdrawn
(withdrawn per order filed 01/10/2017)

Filed: **27-Dec-2016** Mandate:

Decision Disposition
Affirmed

Diane Johnsen.....Author
Jon Thompson.....Concur
Paul McMurdie.....Concur

10-Jan-2017 ORDER

* ORDERED: granting the stipulated motion for reconsideration. FURTHER ORDERED: withdrawing the memorandum decision issued on 12/27/2016. FURTHER ORDERED: dismissing the appeal and the cross appeal in this matter, with prejudice, each side to bear its/her

Filed: **10-Jan-2017** Mandate:

Decision Disposition
Dismissed

Diane Johnsen.....Author

86 PROCEEDING ENTRIES

1. 12-Mar-2015 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 02/12/15
2. 12-Mar-2015 FILED: e-Record on Appeal (CV2012-001764):
Instruments/Minute Entries
Exhibits - not sent at this time
3. 12-Mar-2015 FILED: e-Record on Appeal (CV2009-019923):
Instruments/Minute Entries

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4. 18-Mar-2015 FILED: Notice to Parties re: Appellant's Fee/Case Management Statement/Brief Due
5. 23-Mar-2015 FILED: Letter, 3/21/15, to Court from Counsel for for Appellant re: denial of Defendant/Appellee's Motion for New Trial; submission of Appellant's Filing Fee
6. 26-Mar-2015 RECEIPT No.: 2015-00403 ; \$280.00, Authorization: Ref1#84018015696, Applied to: SANDRA REBESKE - Class A Filing Fee (\$280.00) Paid for: Gregory R Jordan PC - By Intresys Inc
7. 31-Mar-2015 FILED: Case Management Statement; Minute Entry re: Judgment Signed dated 1/16/15 filed 1/21/15 (Page 1); Minute Entry re: Judgment Signed dated 1/16/15 filed 1/21/15 (Page 2); Attachment for Case Management Statement, Page 3, B-3 (Appellant)
8. 6-Apr-2015 FILED: Appellee's Notice re: Appellee's Fee/Appellant's Brief Due
9. 8-Apr-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record [Cooks Notice of Cross Appeal filed 3/26/15]
10. 17-Apr-2015 RECEIPT No.: 2015-00502 ; \$140.00, Check Number: #103, Applied to: ROSEMARY COOK - Class B Filing Fee (\$140.00) Paid for: - By Irene W Stathakis
11. 27-Apr-2015 ORDERED: (Eaton Fruit Order) Staying appeal to/including 6/12/15 and revesting jurisdiction to Maricopa Superior Court re: signed order corresponding to minute entry order dated 3/25/15, filed 3/26/15. FURTHER ORDERED: W/in 10 days after ruling on application, appellant/cross-appellee shall file notice w/ ruling. Appeal will be automatically reinstated w/ signed order. FURTHER ORDERED: If appeal not reinstated, appellant/cross-appellee shall file a request to continue stay. If not filed, appeal and cross-appeal will be dismissed. FURTHER ORDERED: If signed order filed, opening brief shall be due 7/13/15. FURTHER ORDERED: Amending caption in this appeal by adding designations of "cross-appellant" and "cross-appellee." FURTHER ORDERED; Appellee/Cross-Appellant's additional filing fee of \$140, is due on 6/12/15. Melina Brill ProTem Judge - Author
12. 7-May-2015 FILED: Notice of Filing Signed Order; Certificate of Service; Signed Order Denying Defendant's Motion for New Trial filed 5/5/15 (Appellant)
13. 7-May-2015 FILED: Amended Case Management Statement; Attachment for Case Management Statement, Page 3, B-3 (Appellant)
14. 18-May-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record (Includes Minute Entry dated 5/4/15, filed 5/5/15 Re: Signed Order Denying Defendant's Motion for New Trial)
15. 10-Jun-2015 RECEIPT No.: 2015-00801 ; \$140.00, Check Number: #103, Applied to: ROSEMARY COOK - Class A Filing Fee (\$140.00) Paid for: Rosemary Cook - By Irene W Stathakis (Memo: X-Ref 2015-00502)
16. 10-Jun-2015 RECEIPT No.: 2015-00802 ; \$140.00, Check Number: #1007, Applied to: ROSEMARY COOK - Class A Filing Fee (\$140.00) Paid for: Rosemary Cook - By Irene W Stathakis (Memo: - Partial Payment)
17. 10-Jun-2015 VOID RECEIPT No.: 2015-00502 - \$-140.00, Check Number: #103, - Applied to: ROSEMARY COOK - Class B Filing Fee (\$-140.00) Paid for: - By: Irene W Stathakis VOID Reason: X-ref 2015-00801 Cross Appeal - Partial payment (db)
18. 10-Jul-2015 FILED: Appellant's Opening Brief; Certificate of Compliance; Certificate of Service
19. 31-Jul-2015 FILED: Appellee's Motion to Stay Case Pending Appointment of Special Administrator of the Estate of Carlton Rebeske Replacing Sanda Rebeske; Certificate of Service (Appellee)
20. 31-Jul-2015 FILED: Appellee's Motion to Extend Time Limitation on Her Answering Brief/Cross-Claim Opening Brief; Certificate of Service (Appellee)
21. 3-Aug-2015 FILED: Courtesy Copy of Appellee's Motion to Extend Time Limitation on Her Answering Brief/Cross-Claim Opening Brief (Appellee/Cross-Appellant Pro Per)
22. 3-Aug-2015 FILED: Courtesy Copy of Appellee's Motion to Stay Case Pending Appointment of Special Administrator of the Estate of Carlton Rebeske Replacing Sanda Rebeske (Appellee/Cross-Appellant Pro Per)
23. 4-Aug-2015 ORDERED: Appellee's Motion to Extend Time Limitation on Her Answering Brief/Cross-Claim Opening Brief (Appellee) = DENIED. FURTHER ORDERED: Vacating 8/24/15 answering brief/cross-appeal opening brief due date. Order ruling on pending Motion to Stay Case will set a due date for answering brief/cross-appeal opening brief. Barbara Vidal Vaught ProTem Judge - Author
24. 16-Aug-2015 FILED: Appellants Response to Appellee's Motion to Stay Case Pending Appointment of Special Adiminstrator of the Estate of Carlton Rebeske; Certificate of Service; Exhibits 1, 2, 3, 4 (Appellant)
25. 26-Aug-2015 FILED: Appellee's Reply to Response to Applee's (sic) Motion to Stay Case Pending Appointment of Special Administrator of The Estate of Carlton Rebeske; Certificate of Service (Appellee)

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26. 8-Sep-2015 ORDERED: Appellee's Motion to Stay Case Pending Appointment of Special Administrator of the Estate of Carlton Rebeske Replacing Sanda Rebeske (Appellee) = DENIED. Parties are reminded that if a substitution of parties is necessary, a motion for substitution should be filed. ARCAP 27 (b). FURTHER ORDERED: Answering brief/cross-appeal opening brief shall be filed on/before 10/5/15. Melina Brill ProTem Judge - Author
27. 23-Sep-2015 FILED: Appellee's Expedited Motion to Extend Time Limitation on Her Answering/Cross-Claim Opening Brief Because of an Error in Mailing Address of Order Setting Deadline and Failure of Appellant to Transcribe and File Complete Transcript of Trial Testimony of Plaintiff Sandra Rebeske; Certificate of Service (Appellee)
28. 29-Sep-2015 ORDERED: granting motion in part and vacating 10/5/15 due date for answering brief/cross-appeal opening brief. Court will set a due date for brief following expiration of time for response and if applicable, replay to appellee/cross-appellant's motion. Melina Brill ProTem Judge - Author
29. 30-Sep-2015 FILED: Appellant/Cross Appellee's Response to Appellee's Expedited Motion to Extend Time Limitation on Brief; Certificate of Service (Appellant)
30. 15-Oct-2015 ORDERED: granting appellee/cross-appellant's motion and extending time for filing answering brief/cross-appeal opening brief to/including 11/30/15. If transcript is completed and delivered after 10/30/15, appellee/cross-appellant may request another extension. Appellant/cross-appellee is reminded that additional transcript must be filed with clerk of court. Melina Brill ProTem Judge - Author
31. 28-Oct-2015 FILED: Appellate Rebeske's Notice of Filing Additional Transcript; Certificate of Service (Appellant)
32. 30-Nov-2015 FILED: Cross Appellant Rosemary Cook's Opening Brief (Appellee-Cross Appellant Pro Per) (stricken per order filed on 12/7/15 - rsl)
33. 30-Nov-2015 FILED: Cross Appellant Rosemary Cook's Opening Brief's Appendix (Appellee-Cross Appellant Pro Per) (stricken per order filed on 12/7/15 - rsl)
34. 30-Nov-2015 FILED: Appellee's Answering Brief (Appellee-Cross Appellant Pro Per) (stricken per order filed on 12/7/15 - rsl)
35. 30-Nov-2015 FILED: Appendix (Answering Brief) (Appellee-Cross Appellant Pro Per) (stricken per order filed on 12/7/15 - rsl)
36. 7-Dec-2015 ORDERED: striking answering brief, opening brief on cross-appeal and appendices thereto filed on 11/30/15. FURTHER ORDERED: Allowing appellee/cross-appellant to file a combined answering brief/cross-appeal opening brief on/before 12/21/15. FURTHER ORDERED: Reply brief/cross-appeal answering brief shall be due w/in 40 days after service of combined answering brief/cross-appeal opening brief. Melina Brill ProTem Judge - Author
37. 11-Dec-2015 FILED: Appellee's Expedited Motion to Extend Time Limitation on Filing Combined Answering Brief/Cross appeal Due to Vacation; Certificate of Service (Appellee)
38. 14-Dec-2015 FILED: Appellee's Expedited Motion to Withdraw Motion to Extend Time Limitation if Court Accepts Combined Brief filed 12/14/15; Certificate of Service (Appellee)
39. 14-Dec-2015 FILED: Appellee's Combined Answering Brief and Cross Appeal Opening Brief; Certificate of Compliance; Certificate of Service (Appellee Pro Per)
40. 14-Dec-2015 ORDERED: Appellee's Expedited Motion to Extend Time Limitation on Filing Combined Answering Brief/Cross Appeal Due to Vacation (Appellee) = GRANTED. Due date EXTENDED from Monday, 12-21-2015 to Monday, 12-28-2015. Melina Brill ProTem Judge - Author
41. 16-Dec-2015 ORDERED: Denying the motion to withdraw the Extension Motion as moot. FURTHER ORDERED: accepting the Answering/Cross-Opening brief filed 12/14/15. Melina Brill ProTem Judge - Author
42. 22-Dec-2015 FILED: Appellant's Motion for Sanctions; Certificate of Service (Appellant)
43. 22-Dec-2015 FILED: Affidavit of Counsel (Appellant)
44. 28-Dec-2015 FILED: Appellee's Response to Appellant's Motion for Sanctions; Certificate of Service (Appellee)
45. 2-Jan-2016 FILED: Appellant's Reply to Response to Appellant's Motion for Sanctions; Certificate of Service (Appellant)

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46. 12-Jan-2016 ORDERED: Appellant's Motion for Sanctions (Appellant) = GRANTED in part and directing appellee/cross-appellant to file a case management statement on/before 1/27/16. FURTHER ORDERED: directing appellee/cross-appellant to comply with ARCAP 4(f) by serving appellant/cross-appellee w/ all documents she subsequently files in this appeal including an accurate certificate of service on each document file, showing date and manner in which document was served. FURTHER ORDERED: Denying remainder of motion for sanctions. Melina Brill ProTem Judge - Author
47. 13-Jan-2016 FILED: Appellee's Expedited Motion for Reconsideration of Order filed 12/7/15 Striking Paper Appendixes and Motion for Leave to Refile Same Combined Answering Brief/Cross Appeal Opening Brief Along with a Separate Combined Separate Appendix; Certificate of Service (Appellee)
48. 15-Jan-2016 ORDERED: Appellee's Expedited Motion for Reconsideration of Order filed 12/7/15 Striking Paper Appendixes and Motion for Leave to Refile Same Combined Answering Brief/Cross Appeal Opening Brief Along with a Separate Combined Separate Appendix = DENIED. Hon Patricia A Orozco - Author
49. 20-Jan-2016 FILED: Appellee's Expedited Motion for Leave to File Two Separate Appendix Identical to Appendix Filed 11/30/15 Motion for Leave to File Combined Appendix and Same Combined Answering Brief Changing Pages 72-78 to Corroborate With Combined Appendix/Motion for Leave to File Appendix for Cross Opening Brief Identical to One Filed 11/30/15; Certificate of Service (Appellee)
50. 21-Jan-2016 FILED: Case Management Statement (Appellee/Cross-Appellant)
51. 27-Jan-2016 FILED: Response to Appellee's Expedited Motion for Leave to File Separate Appendix/Motion to Leave to File Combined Appendix/Leave to File Appendix for Cross-Appeal Identical to One Filed 11/30/15; Certificate of Service (Appellant)
52. 30-Jan-2016 FILED: Appellee Cook's Expedited Reply to Appellant's Expedited Response to Appellee Cook's Expedited Motion for Leave to File Two Separate Appendix Identical to the Appendix Filed 11/30/15 Motion for Leave to File Combined Appendix and Same Combined Answering Brief Changing Pages 72-78 to Corroborate With Combined Appendix/Motion for Leave to File Appendix for Cross Appeal Opening Brief Identical to One Filed 11/30/15; Certificate of Service Reply (Appellee)
53. 30-Jan-2016 FILED: Cross-Appellant Rosemary Cook's Opening Brief's Appendix (Appellee/Cross-Appellant Pro Per)
54. 30-Jan-2016 FILED: Appellee's Answering Brief Appendix (Appellee/Cross-Appellant Pro Per)
55. 1-Feb-2016 FILED: Appellant's Combined Reply Brief/Cross Appellee Answering Brief; Certificate of Compliance; Certificate of Service
56. 1-Feb-2016 FILED: Appendix - Table of Contents - Exhibits A - E; Appendix - Exhibits F - G (Appellant)
57. 2-Feb-2016 FILED: Motion to Strike Appellee Appendix Filed on or About February 1, 2016; Certificate of Service (Appellant)
58. 8-Feb-2016 ORDERED: Appellee's Expedited Motion for Leave to File Two Separate Appendix Identical to Appendix Filed 11/30/15 Motion for Leave to File Combined Appendix and Same Combined Answering Brief Changing Pages 72-78 to Corroborate With Combined Appendix/Motion for leave to File Appendix for Cross appeal Opening Opening Brief Identical to One Filed 11/30/15 = GRANTED and accepting appendices filed on 1/30/16. Barbara Vidal Vaught ProTem Judge - Author
- FURTHER ORDERED: Motion to Strike Appellee Appendix Filed on or About February 1, 2016 (Appellant) = DENIED. Barbara Vidal Vaught ProTem Judge - Author
59. 10-Feb-2016 FILED: Request for Oral Argument; Certificate of Service (Appellant)
60. 25-Feb-2016 FILED: Cross Appellant Cook's Reply Brief; Certificate of Compliance; Certificate of Service (Appellee/Cross-Appellant, Pro Per)
61. 3-Mar-2016 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
62. 9-Mar-2016 ORDERED: Request for Oral Argument (Appellant) = DENIED. Hon Michael J Brown - Author
63. 11-Mar-2016 FILED: Supplemented Superior Court e-Record with Revised Index of Record
64. 14-Mar-2016 FILED: Additional Record on Appeal:
Exhibits: HD 7/24/14 - List and # 1 3 4 5 6 7 8 10 11 12 14 17 18 20 21 22 23 41 42 43 52 53 55 62 65 66 68 70 71 77 78 79 80 83 84 85 86 87 88 89 90 91 92 94 95 108 109 114 115 116 120 127 129 132 133 134 135 in manila envelope.
65. 13-Sep-2016 FILED: Motion to Substitute Party; Certificate of Service (Appellee-Cross Appellant)
66. 22-Sep-2016 FILED: Plaintiff/Appellant Rebeske Response to Motion to Substitute Parties; Certificate of Service (Appellant-Cross Appellee)

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67. 3-Oct-2016 FILED: Successor Personal Representative's Response and Reply; Certificate of Mailing; Exhibits 1-4 (Nicole L Sabatina, Successor Personal Representative)
68. 3-Oct-2016 FILED: Notice of Appearance; Certificate of Mailing (Nicole L Sabatina, Successor Personal Representative)
69. 4-Oct-2016 FILED: Reply to Plaintiff Reveske's Response to Defendant/Apperee (sic) Cooks Motion to Substitute Parties Based on the Termination of Personal Representative Sandra Rebeske and the Appointment of Nicole L Sabatina; Certificate of Service (Appellee-Cross Appellant)
70. 7-Oct-2016 ORDERED: deferring a ruling on the motion (motion to substitute parties) to the panel that considers this appeal on the merits. Melina Brill ProTem Judge - Author
71. 11-Oct-2016 RECEIPT No.: 2016-01243 ; \$140.00, Authorization: #81016158120, Applied to: NICOLE L. SABATINA - Class B Filing Fee (\$140.00) Paid for: Mushkatel Robbins & Becker PLLC - By Integrated Resource Systems IN
72. 28-Oct-2016 CLNDR: CONFERENCE, Department C, 12-7-16, COURTROOM 1.
73. 2-Nov-2016 FILED: Motion For An Amended Order; Certificate of Service (Appellee/Cross Appellant Pro Per)
74. 10-Nov-2016 FILED: Response to Motion for Amended Order; Certificate of Service (Appellant/Cross Appellee)
75. 10-Nov-2016 FILED: Certificate of Service (Appellant)
76. 22-Nov-2016 FILED: Appellee Cook's Reply to Rebeske's Response to Appellee Cook's Motion for Amended Order Substituting Parties or Clarifying Order; Certificate of Service (Appellee-Cross Appellant Pro Per Cook)
77. 7-Dec-2016 ORDERED: Motion to Substitute Party (Appellee) = GRANTED/substituting Nicole L Sabatina, as Successor Personal Representative in place of Sandra Rebeske. FURTHER ORDERED: Motion For An Amended Order (Appellee/Cross Appellant Pro Per) = DENIED as moot. FURTHER ORDERED: amending caption in this appeal. The above listed caption shall be used in all further filings in this matter. Hon Diane M Johnsen - Author
78. 26-Dec-2016 FILED: Notice of Settlement; Certificate of Service (Appellee)
79. 27-Dec-2016 MEMORANDUM DECISION (Affirmed) Hon Diane M Johnsen - Author; Hon Jon W Thompson - Concur; Hon Paul J McMurdie - Concur
80. 27-Dec-2016 FILED: Memorandum Decision Distribution List
81. 6-Jan-2017 FILED: Notice of Settlement; Certificate of Mailing; Exhibits 1-2 (Appellant)
82. 6-Jan-2017 FILED: Stipulated Motion for Reconsideration, Amendment and/or to Vacate Memorandum Decision; Certificate of Compliance; Certificate of Mailing; Exhibits A-E (Appellant)
83. 9-Jan-2017 FILED: Cooks Supplemental Separate Motion to the Joint Motion for Amended Decision and Cooks Supplemental Separate Request for Reconsideration; Certificate of Compliance; Certificate of Service; Attachments (Cross-Appellant)
84. 10-Jan-2017 ORDERED: granting the stipulated motion for reconsideration. FURTHER ORDERED: withdrawing the memorandum decision issued on 12/27/2016. FURTHER ORDERED: dismissing the appeal and the cross appeal in this matter, with prejudice, each side to bear its/her own attorney fees and costs. FURTHER ORDERED: remanding this matter to the superior court for such further proceedings as it determines appropriate in view of the parties' settlement. Hon Diane M Johnsen - Author
85. 10-Jan-2017 FILED: Letter, 01/10/2017, Certified Copy of Order dismissing appeal. Record to clerk, Maricopa County Superior Court
86. 11-Jan-2017 ORDERED: Cooks Supplemental Separate Motion to the Joint Motion for Amended Decision and Cooks Supplemental Separate Request for Reconsideration (Cross-Appellant) = DENIED as moot. Hon Diane M Johnsen - Author