

Court of Appeals, Division One

Civil Appeal

1 CA-CV 15-0306

O'NEAL v. DEILMAN et al.

Appellate Case Information

Case Filed: 5-May-2015

Case Closed:

Dept/Composition

Department C

Hon. Patricia A Orozco
Hon. Peter B Swann
Hon. Jon W Thompson

Side 1. WENDELL DWAYNE O'NEAL, Plaintiff/Appellant

(Litigant Group) WENDELL DWAYNE O'NEAL

- Wendell Dwayne O'Neal PRO SE

Side 2. CARLA DEILMAN; LYNETTE HAUCK; SEAN DUNN; "FRANCIS"; MARC BOOKER; GLORIA SESMAS; UNKNOWN EMPLOYEE; UNIVERSITY OF PHOENIX, INC.; APOLLO GROUP INC., Defendant/Appellee

(Litigant Group) CARLA DEILMAN et al.

- Carla Deilman
Lynette Hauck
Sean Dunn
Marc Booker
Gloria Sesmas
University of Phoenix Inc
Apollo Group Inc

Attorneys for: Defendants/Appellees

Lynne C Adams, Esq. (AZ Bar No. 11367)

CASE STATUS

Dec 22, 2016....Pending Closure

Table with 6 columns: PREDECESSOR CASE(S), Cause/Charge/Class, Judgment/Sentence, Judge, Role <Comments>, Trial, Dispo. Row 1: MAR, CV2014-091086, Consumer Fraud, David M Talamante, Authoring Judge of Order.

Table with 2 columns: DESCENDENT CASE(S), Cause/Charge/Class. Row 1: ASC, CV-16-0193-PR.

OPEN DUE DATE

Stay Request (re: Writ of Certiorari) due

Due By:

Friday, January 6, 2017

Re: Minute Letter of ASC: Petition for Review DENIED

2 PENDING MATTERS

General Motion

Application for Attorneys' Fees (Appellee)

Filed: 16-Aug-2016

General Motion

Verified Statement of Costs; Certificate of Service (Appellee)

Filed: 16-Aug-2016

CASE DECISION

02-Aug-2016 MEMORANDUM DECISION

Peter Swann.....Author
Jon Thompson.....Concur
Patricia Orozco.....Concur

Filed: 02-Aug-2016

Mandate:

Decision Disposition

Affirmed

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1. 5-May-2015 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 04/06/15
Docketing Statement filed in Superior Court: 4/6/15
2. 5-May-2015 FILED: e-Record on Appeal:
Instruments/Minute Entries
3. 19-May-2015 FILED: Notice to Parties re: Appellant's Fee Deferred/Brief Due; Appellees' Fee Due
4. 19-May-2015 ORDERED: the deferral remains in effect unless there is a change in Appellant's financial circumstances. Ruth Willingham -
Author
5. 21-May-2015 FILED: Letter, 5/21/15, to Court from Counsel for Appellee Re: submission of Appellees' filing fee
6. 26-May-2015 FILED: Motion for A Procedural Order Determining Whether Apollo and University are Proper Parties on Appeal (Appellant Pro
Per)
7. 28-May-2015 RECEIPT No.: 2015-00737 ; \$140.00, Authorization: #47021336052. Applied to: CARLA DEILMAN et al. - Class B Filing Fee
(\$140.00) Paid for: Osborn Maledon PA - By Integrated Resource Systems
8. 3-Jun-2015 FILED: Returned US Mail, Deferral/Appellee Fee/Brief letter dated 5/19/15, addressed to Wendell Dwayne O'Neal, Return to
Sender - Insufficient Address
9. 15-Jun-2015 FILED: Response to Motion for a Procedural Order Determining Whether Apollo and University are Proper Parties on Appeal;
Certificate of Service (Appellee)
10. 16-Jun-2015 FILED: Reply for a Procedural Order Determining Whether Apollo and University are Proper Parties on Appeal; Reply for
Procedural Order Certificate of Service; Exhibit A (Appellant)
11. 17-Jun-2015 FILED: Motion to Strike Appellees Appearances on Appeal for Misrepresentation and Failure to Appear Within Time Provided;
Exhibit A; Exhibit B (Appellant)
12. 18-Jun-2015 FILED: Motion to Consolidate Pleadings for a Procedural Order and to Strike Appellees Appearances on Appeal; Exhibit A;
Exhibit B (Appellant)
13. 19-Jun-2015 FILED: Reply for a Procedural Order Determining Whether Apollo and University are Proper Parties on Appeal; Exhibit A; Exhibit
B (Appellant)
14. 24-Jun-2015 ORDERED: granting appellant's motion to consolidate the rulings on pending motions. FURTHER ORDERED: Motion to Strike
Appellees Appearances on Appeal for Misrepresentation and Failure to Appear Within Time Provided; Exhibit A; Exhibit B
(Appellant) = DENIED. FURTHER ORDERED: denying appellant's motion for a procedural order. Appellees University of
Phoenix, Inc., and Apollo Group, Inc., are proper parties to this appeal. FURTHER ORDERED: Denying appellees' request for
attorneys' fees/costs in connection w/ response to motion for procedural order. FURTHER ORDERED: Directing appellant and
appellee to each file a status report of bankruptcy court proceedings on/before 7/9/15. Status reports shall inform this court
whether this appeal is subject to automatic stay. Hon Randall M Howe - Author
15. 25-Jun-2015 FILED: Status Report and Motion Determining Appellees Apollo and University Misrepresented Acceptance of Process Service,
Including Disqualification of Counsel of Prejudice; Certificate of Service; Exhibit B; Exhibit C (Appellant)
16. 26-Jun-2015 FILED: Motion to Suspend ARCAP 6(a)(2); Certificate of Service (Appellee)
17. 30-Jun-2015 ORDERED: Denying Appellant's 'Status Report and Motion Determining Appellees Apollo and University Misrepresented...'.
FURTHER ORDERED: Granting Appellee's Motion to suspend ARCAP 6(a)(2). Melina Brill ProTem Judge - Author
18. 9-Jul-2015 FILED: Status Report on Bankruptcy Proceedings; Certificate of Service; Exhibit 1 to Status Report on Bankruptcy Proceedings
(Appellee)
19. 15-Jul-2015 FILED: Motion for Extension of Time to Submit Brief (Opening) on Appeal; Exhibit B; Exhibit A (Appellant)
20. 16-Jul-2015 FILED: Notice of Appellant Petition for Attorney on Appeal; Notice of Petition for Attorney Certificate of Service; Appellant's
Request for Minute Entry Appointing Attorney for Appeal to Clerk of the Superior Court dated 7/15/15; Courtesy Copy of Order of
Deferral of Filing Fees (Appellant)

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21. 16-Jul-2015 ORDERED: staying this appeal until further order. FURTHER ORDERED: vacating the 7/20/15 due date for the opening brief. FURTHER ORDERED: denying the relief requested in appellant's status report to summarily decide whether two appellee's misrepresented acceptance of service of process. FURTHER ORDERED: directing appellant to obtain an order from the bankruptcy court authorizing this appeal to proceed and to submit such order to this court on or before 9/14/15. If Appellant fails to obtain such order, appellant shall file a status report on or before 9/14/15, indicating why he unable to obtain such order. Melina Brill ProTem Judge - Author
22. 14-Aug-2015 FILED: U.S. Bankruptcy Court Order dismissing Affirmative Claims Against Appellees Authorizing Appeal to Proceed; Exhibit A; Exhibit B (Appellant)
23. 15-Aug-2015 FILED: Appellant Brief on Appeal; Appellant Certificate of Compliance; Brief on Appeal Certificate of Service; (Appellant Brief on Appeal) Exhibit (replaced per order file don 9/30/15 - rsl)
24. 16-Aug-2015 FILED: (Appellant Brief on Appeal) Exhibit - Plaintiff Response to Strike Defendants' Dismissal Motions filed Contrary to Court Rules dated 1/8/15; (Appellant Brief on Appeal) Exhibit - Apollo Gabb Tabb Email Contact Directing Process Service; Appellant Brief on Appeal) Exhibit - Attorney Adams acknowledgment of Apollo and University of Phoenix Inc. Summons and Complaint Before Offer to Accept Process Service.; (Appellant Brief on Appeal) Exhibit - Apollo and University of Phoenix Inc. misrepresented process service acceptance before Federal Judge G. Murray Snow on 10/09/2014. (Appellant)
25. 16-Aug-2015 FILED: Appellant Opening Brief Appendix Certificate of Service (Appellant)
26. 4-Sep-2015 FILED: Motion for Clarification Regarding Status of Appeal; Certificate of Service (Appellee)
27. 8-Sep-2015 ORDERED: (U.S. Bankruptcy Court Order dismissing Affirmative Claims Against Appellees Authorizing Appeal to Proceed) terminating stay of this appeal entered by this court on 7/16/15. FURTHER ORDERED: (Motion for Clarification Regarding Status of Appeal) answering brief shall be filed on/before 10/9/15. Melina Brill ProTem Judge - Author
28. 9-Sep-2015 FILED: Appellant Response to Appellees Motion for Clarification Regarding Status Stay of Appeal; Exhibit B; Exhibit A (Appellant)
29. 13-Sep-2015 FILED: Appellant Appendix to Amended Opening Brief on Appeal; Apollo and University E-mail Acknowledging Summons & Complaint Service through Phoenix Statutory Agent on 07/09/2014.; Federal Judge G. Murray Snow Order Denying Multiple Motions because Apollo and University Misrepresented Process Service Acceptance.; Apollo Appellees Admission they Misrepresented Acceptance to Moot Sufficiency Issue and Gain Additional Time for Responses. (Appellant)
30. 13-Sep-2015 FILED: Appellant Motion to Amend Opening Brief on Appeal; Certificate of Service for Leave to Amend Opening Brief on Appeal (Appellant)
31. 13-Sep-2015 FILED: Appellant Amended Opening Brief on Appeal; Certificate of Compliance for Amended Brief on Appeal; Certificate of Service for Leave to Amend Opening Brief on Appeal
32. 14-Sep-2015 FILED: Certificate Of Service For Supplemental Appendix To Opening Brief On Appeal (Appellant)
33. 14-Sep-2015 FILED: Appellant Supplemental Appendix to Amended Opening Brief on Appeal; (Appellant Supplemental Appendix to Amended Opening Brief on Appeal) Exhibit
34. 16-Sep-2015 ORDERED: (Court has considered appellant's response to appellees' motion for clarification) = DENIED relief requested in response. FURTHER ORDERED: appellees shall respond to motion to amend (opening brief) on/before 9/30/15. Appellant may file a reply in accordance w/ ARCAP 6(b). Melina Brill ProTem Judge - Author
35. 21-Sep-2015 FILED: Defendants/Appellees' Response to Appellant's Motion to Amend Opening Brief on Appeal; Certificate of Service; Exhibit A to Response (Appellee)
36. 25-Sep-2015 FILED: Reply for Order Granting an Amended Brief on Appeal; Exhibit A. Certificate of Service (Appellant)
37. 25-Sep-2015 FILED: Appendix supporting Electronic Interference Prevented Perfection of Initial Opening Brief on Appeal (Appellant)
38. 30-Sep-2015 ORDERED: Appellant Motion to Amend Opening Brief on Appeal (Appellant) = GRANTED and accepting amended opening brief filed on 9/13/15 in place of opening brief filed on 8/15/15. FURTHER ORDERED: Answering brief shall be due on/before 11/9/15. Melina Brill ProTem Judge - Author
39. 9-Nov-2015 FILED: Answering Brief of the Defendant/Appellees; Certificate of Compliance; Certificate of Service (Appellee)
40. 20-Nov-2015 FILED: Appellant (sic) Reply to Appellees (sic) Answer Brief on Appeal; Certificate of Compliance for Reply Brief on Appeal; Reply Brief Certificate of Service (Appellant Pro Per)

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41. 20-Nov-2015 FILED: Appellant (sic) Appendix Exhibits Supporting Reply Against Apollo Ed. Group Inc.(sic) Answer; District Court Motion and Fourth Amended Consumer Fraud Complaint filed 8/13/14; Maricopa Sheriff Return of Subpoena Service re: Apollo and University of Phoenix Inc. Letter dated 10/9/14; Appellees 12(b)(6) Motion to Dismiss Stafford Loan Adversary Complaint before U.S. Bankruptcy Court dated 12/29/14 (Appellant Pro Per)
42. 21-Nov-2015 FILED: Motion to Amend Reply Appendix Exhibits Table of Contents and Documentation; Certificate of Service (Appellant)
43. 21-Nov-2015 FILED: Motion for Leave to Submit a Fourth Complaint Adding Facts, Parties, Consumer Fraud, Negligent Misrepresentation and Libel Slander Claims Against Defendants (Appellant)
44. 21-Nov-2015 FILED: Response Opposing University Motion to Dismiss (Appellant)
45. 21-Nov-2015 FILED: Appellant (sic) Appendix Exhibits Supporting Reply; U.S. Trustee Final Report filed 11/18/15 (Appellant Pro Per)
46. 21-Nov-2015 FILED: Reply Brief and Appendix Certificate of Service (Appellant)
47. 23-Nov-2015 FILED: Reply Brief Appendix Minute Entry Exhibit; U.S. Bankruptcy Court Minute Entry at 4-5 dated 08/11/2015. [Doc. 62], O'Neal v Stafford Loans et al, 15-AP-00062-EPB.; Certificate of Service for Reply Brief Appendix Minute Entry Exhibit (Appellant)
48. 7-Dec-2015 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
49. 10-Dec-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record
50. 11-Dec-2015 FILED: Motion for Production of Appellees Process Service Records Sought by Superior Court Subpoena; Certificate of Service (Appellant)
51. 14-Dec-2015 FILED: Defendants/Appellees' Response to Appellant's Motion to Amend Reply Appendix Exhibits Table of Contents and Documentation; Certificate of Service (Appellee)
52. 15-Dec-2015 FILED: Objection to Appellees Response Regarding Motion to Amend Appendix Exhibits Table of Contents Document; Certificate of Service (Appellant)
53. 21-Dec-2015 ORDERED: Motion to Amend Reply Appendix Exhibits Table of Contents and Documentation (Appellant) = DENIED. FURTHER ORDERED: Motion for Production of Appellees Process Service Records Sought by Superior Court Subpoena (Appellant) = DENIED. Melina Brill ProTem Judge - Author
54. 26-Dec-2015 FILED: Motion for Leave to Enforce Production of Process Service Records Sought by Superior Court Subpoena; Certificate of Service; Plaintiff Motion to Enforce Defendant Compliance with Subpoena for Production of Process Service Records (Appellant)
55. 27-Dec-2015 FILED: Motion For Stay During Leave to Enforce Production of Process Service Records Sought by Superior Court Subpoena; Certificate of Service (Appellant)
56. 27-Dec-2015 FILED: Plaintiff Motion to Enforce Defendant Compliance with Subpoena for Production of Process Service Records; Certificate of Service (Appellant)
57. 27-Dec-2015 FILED: Plaintiff Motion to Enforce Defendant Compliance with Subpoena for Production of Process Service Records; Certificate of Service (Appellant)
58. 19-Jan-2016 FILED: Defendants/Appellees' Notice Regarding Responses to Pending Motions; Certificate of Service (Appellee)
59. 21-Jan-2016 FILED: Appellant Reply to Appellee Notice of No Response for Subpoena Enforcement Due to Order Suspending Rules on Appeal; Certificate of Service (Appellant)
60. 26-Jan-2016 ORDERED: Motion for Leave to Enforce Production of Process Service Records Sought by Superior Court Subpoena (Appellant) = DENIED. FURTHER ORDERED: Motion For Stay During Leave to Enforce Production of Process Service Records Sought by Superior Court Subpoena (Appellant) = DENIED. Barbara Vidal Vaught ProTem Judge - Author
61. 10-Feb-2016 FILED: Motion Oral Argument on Appeal; Certificate of Service (Appellant)
62. 12-Feb-2016 FILED: Defendants/Appellees' Response to Motion for Oral Argument; Certificate of Service; Exhibit A (Appellee)
63. 23-Feb-2016 FILED: Reply For Oral Argument on Appeal; Certificate of Service; United States District Court for the District of Arizona Order (Appellant)
64. 31-Mar-2016 CLNDR: CONFERENCE, Department C, 5-25-16, COURTROOM 2.

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65. 6-May-2016 ORDERED: Denying the request for Oral Argument. Hon Patricia A Orozco - Author
66. 2-Aug-2016 MEMORANDUM DECISION (Affirmed) Hon Peter B Swann - Author; Hon Jon W Thompson - Concur; Hon Patricia A Orozco - Concur
67. 2-Aug-2016 FILED: Memorandum Decision Distribution List
68. 4-Aug-2016 FILED: Appellant Reconsideration Motion; Exhibit A. Certificate of Compliance; Exhibit B. Certificate of Service to Appellees regarding Reconsideration Motion.; Affidavit (Appellant)
69. 5-Aug-2016 FILED: Courtesy Copy - Motion for Leave to Supplement Enforcement of Subpoena for Production of Process Service Records filed in Maricopa County Superior Court; Certification Service to Appellees; Courtesy Copy - Maricopa Deputy Sheriff Return of Subpoena Service to Appellees; Courtesy Copy - Subpoena Directing Production of Summons Service Records filed 10/28/2014 in Maricopa County Superior Court (Appellant Pro Per)
70. 8-Aug-2016 FILED: Second Motion for Stay for Subpoena Enforcement; Certification of Service to Appellees; Superior Court Subpoena directing Apollo and University to produce receipt of Summons in Phoenix records.; Maricopa Deputy Sheriff Return of Subpoena service to Apollo and University statutory agent in Phoenix. (Appellant Pro Per)
71. 10-Aug-2016 FILED: Notice of proposed Supreme Court Mandamus Petition for Order directing Stay of Reconsideration Motion.; Certificate of Service of proposed Supreme Court Mandamus Petition for Order directing Stay of Appellant Reconsideration Motion.; Certificate of Compliance for Notice of Supreme Court Mandamus Petition for Order imposing a Stay of Reconsideration Motion. (Appellant)
72. 11-Aug-2016 FILED: Notice of Errata; Certification Service to Appellees (Appellant Pro Per)
73. 11-Aug-2016 FILED: Arizona Supreme Court Mandamus Petition for Superior Court Subpoena Enforcement; Certificate of Service for Arizona Supreme Court Mandamus Petition; Appellant Affidavit of Service to Appellees; Maricopa Deputy Sheriff Return of Subpoena (Appellant)
74. 15-Aug-2016 FILED: Email Notice from ASC re: Petition for Review filed 8/12/16; request for partial record
75. 16-Aug-2016 FILED: Application for Attorneys' Fees; Certificate of Service; Declaration of Lynne C. Adams in Support of Application for Attorneys' Fees (Appellee)
76. 16-Aug-2016 FILED: Verified Statement of Costs; Certificate of Service (Appellee)
77. 16-Aug-2016 FILED: Defendant/Appellees' Notice Regarding Responses to Motions Filed After Issuance of Decision; Certificate of Service (Appellee)
78. 16-Aug-2016 FILED: ASC Order filed 08/16/2016 re: denying the "Motion for Order Granting Immediate Stay of Civil Court of Appeals Reconsideration Motion Proceeding."
79. 16-Aug-2016 FILED: Arizona Supreme Court Notice of Erratum Correcting Mandamus Petition Captioning; Certification Service to Appellees; Corrected Caption Supreme Court Special Proceeding Mandamus Petition; Arizona Supreme Court Motion for Immediate Order Imposing Stay against Arizona Civil Court of Appeals Deciding Reconsideration Motion to Permit Superior Court Subpoena Enforcement. (Appellant)
80. 18-Aug-2016 FILED: Supreme Court Motion for Immediate Stay of Civil Court of Appeals Ruling on Reconsideration Motion to provide for Superior Court Subpoena Enforcement.; Service Certificate for Motion to Amend Supreme Court Mandamus Petition for Case Code Change from Judicial Review.; Certificate of Compliance for Supreme Court Motion for Immediate Order Staying Civil Court of Appeals Ruling on Reconsideration Motion.; Affidavit of Service for Supreme Court Motion for Immediate Stay supra. (Appellant)
81. 18-Aug-2016 FILED: Appellant Motion for Filing Fee Waiver and Amended Supreme Court Mandamus Petition Special Proceeding for Order directing Civil Court of Appeals Stay of Ruling on Reconsideration Motion for Superior Court Subpoena Enforcement.; Certificate of Compliance for Mandamus Petition supra filed before Supreme Court supra. (Appellant)
82. 22-Aug-2016 FILED: Notice of Motion for Mandamus Petition Filing Fee Waiver Reapplication; Certificate of Service for Reapplication Motion for Mandamus Petition Filing Fee Waiver.; Reapplication for Mandamus Petition Filing Fee Waiver.; Affidavit supporting necessity for Maricopa Sheriff Subpoena or other Court Order Service to Appellees. (Appellant)
83. 24-Aug-2016 FILED: ASC Order filed 08/24/2016 re: "Application for Deferral or Waiver of Court Fees and/or Costs and Consent to Entry of Judgment" and requested "to direct the Arizona Civil Court of Appeals to Stay Reconsideration Supra Pleading for Superior Court"

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84. 26-Aug-2016 FILED: Motion/ Notice Apollo and University of Phoenix Inc. had no intent to Respond to Superior Court Subpoena Enforcement not of Record.; Certificate of Service for Motion/ Notice Apollo and University of Phoenix Inc. had No Intent to Respond to Superior Court Subpoena Enforcement by Notice not of Record.; Apollo and University of Phoenix Inc. Notice of No Intent to Respond to Superior Court Subpoena Enforcement not of record.; Arizona Supreme Court Judge Bolick order Denying Leave for Immediate Order Directing Civil Court of Appeals to Stay Reconsideration for Superior Court Subpoena Enforcement by Mandamus Petition. (Appellant)
85. 31-Aug-2016 FILED: Ninth Circuit Court of Appeals Motion for Temporary Restraining or Permanent Injunction without hearing against State of Arizona; Certificate of Service for Ninth Circuit TRO or Permanent Injunction against State of Arizona for denying Superior Court subpoena enforcement.; Exhibits I supporting Ninth Circuit Motion for TRO without hearing against State of Arizona for denying Superior Court subpoena enforcement.; Exhibits II. supporting Ninth Circuit Motion for TRO without hearing against State of Arizona for denying Superior Court subpoena enforcement. (Appellant)
86. 2-Sep-2016 FILED: Ninth Circuit Motions for Immediate Consideration of Security Costs Waiver and Permanent Injunction.; Certificate of Service to Appellee Attorney; Arizona Memorandum affirming dismissal of consumer fraud with prejudice dated August 2, 2016.; Appellant Reconsideration Motion. (Appellant)
87. 6-Sep-2016 FILED: Letter forwarding partial record to Arizona Supreme Court
88. 6-Sep-2016 ORDERED: denying all of the foregoing motions filed by the appellant. Hon Peter B Swann - Author
89. 9-Sep-2016 FILED: Notice of Appeal from Final Order Denying Reconsideration and Access to Superior Court for Subpoena Enforcement.; Certificate of Service for Notice of Appeal to Arizona Supreme Court.; Arizona Civil Court of Appeals Memorandum affirming dismissal of consumer fraud with prejudice.; Arizona Civil Court of Appeals Order Denying Many Motions to access Superior Court for Subpoena Enforcement against Appellees. (Appellant)
90. 22-Dec-2016 FILED: Letter from ASC, 12/22/2016, re: Petition for Review DENIED on 12/22/2016