

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-004064

08/21/2007

HON. BARBARA M. JARRETT

CLERK OF THE COURT
T. Soto
Deputy

PHOENIX CITY

MICHAEL R LAW

v.

JOSEPH M BELSON JR., et al.

BLAKE D GUNN

PHOENIX CITY ATTORNEY
NO ADDRESS ON RECORD
PHOENIX CITY MAYOR
NO ADDRESS ON RECORD

MINUTE ENTRY

The Court has reviewed and considered Plaintiff's Motion for Post Judgment Relief, Defendant's Opposition and Request for Order Requiring an Appraisal of the Property and Sale to Joseph Belson, and Plaintiff's reply. The Court now makes the following findings and enters the following orders.

In its prior Judgment in this case, the Court held that Plaintiff was liable to Defendant for his attorneys' fees in the amount of \$12,133.56. Plaintiff has calculated Defendant's past due rent obligation as being \$7,933.00. Plaintiff tendered the difference between those two figures (\$4,200.56) to Defendant and requested that he execute a Satisfaction of Judgment. Defendant has refused to do so, claiming that he does not owe that amount of past due rent to Plaintiff. Plaintiff has requested the Court to order Defendant to accept its tender of a check in the amount of \$4,200.56 and to execute the Satisfaction of Judgment. In his responsive pleading, Defendant has requested the Court to order an appraisal of the property at issue, and to order Plaintiff to sell it to him at the amount for which it would have been appraised in August of 2005.

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IT IS ORDERED denying Plaintiff's Motion for Post Judgment Relief, and ordering Plaintiff to pay the full amount of the Judgment (\$12,133.56), plus applicable interest, to Defendant, and ordering Defendant to sign the Satisfaction of Judgment when the check is tendered to him. The Court declines to allow Plaintiff to deduct the amount it claims Defendant owes in back rent from the amount of the Judgment, as there is a dispute between the parties how much back rent, if any, is owed.

The Court would note that failure to comply with rental obligations was not a basis for the Forcible Detainer action in this matter. However, Plaintiff had sought to terminate Defendant's lease based upon an allegation that he had underreported his income in 2004 and 2005 from Social Security and his USAF pension. The Court previously found that it appeared from the evidence and testimony that Defendant may have received additional monies in 2004 and 2005 that were not reported in writing. Defendant admitted that to be the case, but argued that he had complied with the reporting requirement by telling Ruben Silvas about the increases in income. The Court declined to find a material breach in regard to unreported income, and specifically held that the sanction for not accurately reporting income should be a "retroactive increase in rent," and not termination of the lease. In advising Defendant in the Court's ruling that he was not relieved of any obligation in connection with the back rent he owed, the Court was referring not only to his on-going rental obligation, but also to amounts owed in the event Plaintiff retroactively increased the rent based upon Defendant's actual income. The Court's prior ruling in this case did not preclude Plaintiff from retroactively increasing the rent based upon an increase in income in 2004 and 2005, and in fact recognized that such a sanction might occur if Plaintiff determined the Defendant had indeed underreported his income.

The Court would also advise Defendant that, although it is not allowing Plaintiff to subtract the amount of back rent from the Judgment, it is still Defendant's obligation to pay any back rent that is owed. As noted by Plaintiff's in their motion, Defendant cannot qualify to purchase his home unless and until he pays any and all past due rent. The Court would further advise Defendant that failure to pay any past due rent and/or failure to keep current on rent obligations could result in Plaintiff filing another Forcible Detainer action in this matter.

In regard to Defendant's requests for a court-ordered appraisal of the property, and an order requiring Plaintiff to sell the property to him, the Court finds and determines that it would be inappropriate for the Court to enter any such orders. The Court declined in its prior ruling to order Plaintiff to sell the property to Defendant, and instead ordered Plaintiff to provide Defendant an opportunity to complete the CHR requirement of the Scattered Sites Program, and to provide him an opportunity to purchase the home. Accordingly,

IT IS ORDERED denying Defendant's Request for Order Requiring an Appraisal of the Property and Sale to Joseph Belson.

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IT IS FURTHER ORDERED affirming the Court's prior rulings in this matter.