

Court of Appeals, Division One

Civil Appeal

1 CA-CV 22-0565

SMITH v. OLSEN

Appellate Case Information

Case Filed: 13-Sep-2022

Case Closed:

Dept/Composition

Department B

Hon. Michael J Brown
Hon. Andrew M Jacobs
Hon. Samuel A Thumma

Consolidated with: 1 CA-CV 23-0041

Side 1. MELISSA SMITH, Plaintiff/Appellee

(Litigant Group) MELISSA SMITH

- Melissa Smith

Attorneys for: Plaintiff/Appellee

Michael P Fiflis, Esq. (AZ Bar No. 16486)

Side 2. BLAIR EDWARDS OLSEN, Defendant/Appellant

(Litigant Group) BLAIR EDWARDS OLSEN

- Blair Edwards Olsen

Attorneys for: Defendant/Appellant

Ryan J Lorenz, Esq. (AZ Bar No. 19878)
Barrett N Lindsey, Esq. (AZ Bar No. 28311)

CASE STATUS

Jul 3, 2024.....Pending in ASC

Table with 6 columns: PREDECESSOR CASE(S), Cause/Charge/Class, Judgment/Sentence, Judge, Role <Comments>, Trial, Dispo. Row 1: MAR, CV2017-053483, Breach of Contract, Bradley H Astrowsky, Authoring Judge of Order.

Table with 2 columns: DESCENDENT CASE(S), Cause/Charge/Class. Row 1: ASC, CV-24-0141-PR.

2 CASE DECISIONS

30-May-2024 OPINION

Andrew Jacobs.....Author
Michael Brown.....Concur
Samuel Thumma.....Concur

Filed: 30-May-2024 Mandate:

Table with 1 column: Decision Disposition. Content: Affirmed in Part, Reversed in Part, Remanded.

DECISION APPLIES TO THE FOLLOWING OTHER CASE(S)

1 CA-CV 23-0041 SMITH v. OLSEN

03-Jun-2024 OPINION

Andrew Jacobs.....Author
Michael Brown.....Concur
Samuel Thumma.....Concur

Filed: 03-Jun-2024 Mandate:

Table with 1 column: Decision Disposition. Content: Affirmed in Part, Reversed in Part, Remanded.

DECISION APPLIES TO THE FOLLOWING OTHER CASE(S)

1 CA-CV 23-0041 SMITH v. OLSEN

82 PROCEEDING ENTRIES

- 1. 13-Sep-2022 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 08/15/22
2. 13-Sep-2022 FILED: e-Record on Appeal: Instruments/Minute Entries Exhibits: Hearing Date 11/16/20 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 25, 26, 27, 28

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3. 13-Sep-2022 FILED: Appellate Clerk Notice re: Appellant's Fee/Case Management Statement/Brief Due
4. 13-Sep-2022 FILED: Additional Record on Appeal:
Physical Exhibits: Hearing Date 10/16/2018 - List # 1 2 3 4 5 6 7 8 9 10 11 12 13 15 16 21 24 25 26 27 28 29 30 31 36 43 44 45 47 50 51 in a Manila Envelope; Hearing Date 11/26/2018 – List # 1 2 3 4 5 6 9 10 11 12 13 14 15 16 17 18 20 21 25 29 30 in Manila Envelope; Hearing Date 02/21/2020 - List # 1 2 3 4 5 6 7 8 9 10 11 12 in Manila Envelope; Hearing Date 10/14/2020 - List # 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 in Manila Envelope; Hearing Date 05/31/2022 - List # 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 92 93 94 99 102 103 104 106 109 110 111 114 115 116 117 118 119 120 122 123 124 125 126 127 128 129 134 135 136 137 138 140 144 145 147 150 152 153 154 155 156 157 158 159 162 163 164 165 168 169 170 171 173 174 175 179 180 182 185 191 192 194 195 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 227 228 229 in a Box
5. 15-Sep-2022 FILED: Notice of Appearance; Certification of Service (Appellant)
6. 20-Sep-2022 RECEIPT No.: 2022-00999 ; \$280.00, Authorization: 63005086449, Applied to: BLAIR EDWARDS OLSEN - Class A Filing Fee (\$280.00) Paid for: Clark Hill PLC - By nCourt LLC
7. 29-Sep-2022 FILED: Appellate Clerk Notice re: Appellee's Fee; Appellant's Brief/Case Management Statement Due
8. 3-Oct-2022 FILED: Case Management Statement (Appellant)
9. 14-Oct-2022 FILED: Appellee's Notice of Payment of Filing Fee; Certificate of Service of Appellee's Notice of Payment of Filing Fee (Appellee)
10. 20-Oct-2022 RECEIPT No.: 2022-01093 ; \$140.00, Authorization: #93006595864, Applied to: MELISSA SMITH - Class B Filing Fee (\$140.00) Paid for: Michael P Fiflis Attorney at Law - By nCourt LLC
11. 11-Nov-2022 FILED: Appellant's Motion to Stay Appeal and Briefing; Certification of Service (Appellant)
12. 15-Nov-2022 ORDERED: Vacating the 11/14/2022 due date for the opening brief. The order ruling on the pending motion will address the briefing schedule. Melina Brill ProTem Judge - Author
13. 28-Nov-2022 FILED: Appellee's Response to Appellant's Motion to Stay Appeal and Briefing; Certificate of Service of Appellee's Response to Appellant's Motion to Stay Appeal and Briefing; Minute Entry 11/4/22 (Appellee)
14. 13-Dec-2022 ORDERED: Appellant's Motion to Stay Appeal and Briefing (Appellant) = GRANTED in part and staying this appeal until 02/13/2023. FURTHER ORDERED: Revesting jurisdiction in MAR County Superior Court and authorizing that court to consider all pending motions and any additional motions parties intend to file concerning the underlying judgments. FURTHER ORDERED: Directing appellant to file a notice in this court with a copy of all relevant rulings within 10 days after entry. FURTHER ORDERED: If a party wants this court to review any additional rulings, that party must file a timely notice of appeal or amended notice of appeal. FURTHER ORDERED: If superior court has not resolved all matters pertaining to judgments by 02/13/2023, appellant must file a notice in this court regarding status of superior court proceedings. Melina Brill ProTem Judge - Author
15. 21-Dec-2022 FILED: Appellee's Motion to Dismiss for Failure to Timely Cause Preparation and Filing of Transcripts; Certificate of Service of Appellee's Motion to Dismiss for Failure to Timely Cause Preparation and Filing of Transcripts; Declaration and Minute Entry (Appellee)
16. 23-Dec-2022 FILED: Notice Regarding Status of Superior Court Proceedings; Certification of Service (Appellant)
17. 27-Dec-2022 ORDERED: Continuing the stay of this appeal. FURTHER ORDERED: Within 10 days after notice of appeal from the 12/09/2022 minute entry is docketed and assigned a case number in this court, appellant shall file notice in this appeal of new case number. FURTHER ORDERED: Directing appellant to file notice in this court by 02/08/2023, indicating status of notice of appeal if a notice pursuant to previous paragraph is not filed before that date. Melina Brill ProTem Judge - Author
18. 29-Dec-2022 FILED: Appellee's Amended Motion to Dismiss for Failure to Timely Cause Preparation and Filing of Transcripts; Certificate of Service of Appellee's Amended Motion to Dismiss for Failure to Timely Cause Preparation and Filing of Transcripts; Exhibits (Appellee)
19. 30-Dec-2022 FILED: Reporter's Transcript - 04/01/2022 - Final Trial Management (Donna Terrell) (Appellant)
20. 30-Dec-2022 FILED: Reporter's Transcript - 05/31/2022 - Trial Day 1 (Donna Terrell) (Appellant)
21. 30-Dec-2022 FILED: Reporter's Transcript - 06/01/2022 - Trial Day 2 (Donna Terrell) (Appellant)
22. 30-Dec-2022 FILED: Reporter's Transcript - 06/02/2022 - Trial Day 3 (Donna Terrell) (Appellant)
23. 30-Dec-2022 FILED: Reporter's Transcript - 06/07/2022 - Trial Day 5 (Donna Terrell) (Appellant)
24. 30-Dec-2022 FILED: Reporter's Transcript - 06/22/2022 - Trial Day 8 (Donna Terrell) (Appellant)
25. 30-Dec-2022 FILED: Reporter's Transcript - 06/06/2022 - Trial Day 4 (Donna Terrell) (Appellant)

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26. 30-Dec-2022 FILED: Reporter's Transcript - 06/27/2022 - Trial Day 9 (Donna Terrell) (Appellant)
27. 30-Dec-2022 FILED: Reporter's Transcript - 06/08/2022 - Trial Day 6 (Donna Terrell) (Appellant)
28. 30-Dec-2022 FILED: Reporter's Transcript - 06/09/2022 - Trial Day 7 (Donna Terrell) (Appellant)
29. 30-Dec-2022 FILED: Reporter's Transcript - 06/28/2022 - Trial Day 10 (Donna Terrell) (Appellant)
30. 30-Dec-2022 FILED: Supplemented Superior Court e-Record with Revised Index of Record
31. 3-Jan-2023 FILED: Appellee's Motion to Withdraw Motion to Dismiss for Failure to Timely File and Serve Transcripts; Certificate of Service of Appellee's Motion to Withdraw Motion to Dismiss for Failure to Timely File and Serve Transcripts (Appellee)
32. 5-Jan-2023 ORDERED: Appellee's Motion to Withdraw Motion to Dismiss for Failure to Timely File and Serve Transcripts (Appellee) = GRANTED and deeming the Motion to Dismiss for Failure to Timely Cause Preparation and Filing of Transcripts, as subsequently amended, withdrawn. Melina Brill ProTem Judge - Author
33. 9-Jan-2023 FILED: Reporter's Transcript - 06/21/2022 - Status Conference (Donna Terrell) (Appellant)
34. 11-Jan-2023 FILED: Appellee's Second Amended Motion to Dismiss for Failure to Timely File and Serve Transcripts; Certificate of Service of Appellee's Second Amended Motion to Dismiss for Failure to Timely File and Serve Transcripts; Exhibit (Appellee)
35. 17-Jan-2023 FILED: Appellant's Response to Motion to Dismiss; Appellant's Response to Motion to Dismiss (Duplicate) (Appellant)
36. 19-Jan-2023 ORDERED: Appellant must file the certificate of service by 01/23/2023. If the certificate is not timely filed, the court may impose sanctions, including striking the response. FURTHER ORDERED: Any reply to the motion to dismiss is due by 01/30/2023. Melina Brill ProTem Judge - Author
37. 19-Jan-2023 FILED: Certification of Service (Appellant)
38. 23-Jan-2023 FILED: Appellee's Reply in Support of Second Amended Motion to Dismiss for Failure to Timely File and Serve Transcripts; Certificate of Service of Appellee's Reply in Support of Second Amended Motion to Dismiss for Failure to Timely File and Serve Transcripts (Appellee)
39. 26-Jan-2023 ORDERED: Appellee's Second Amended Motion to Dismiss for Failure to Timely File and Serve Transcripts (Appellee) = DENIED without prejudice to appellee requesting attorney's fees and costs in connection with the issues raised in this motion in the answering brief. FURTHER ORDERED: Appellant shall immediately serve appellee with all transcripts filed in this appeal. If appellant fails to serve appellee with the transcripts, the court will consider imposing sanctions, including dismissing this appeal. FURTHER ORDERED: Lifting the stay of appeal 1 CA-CV 22-0565. FURTHER ORDERED: Consolidating cases 1 CA-CV 22-0565 and 1 CA-CV 23-0041. Case no. 1 CA-CV 22-0565 is designated the primary number. FURTHER ORDERED: In accordance with the Appellate Clerk Notice issued on 01/20/2023, in appeal 1 CA-CV 23-0041, appellant's filing fee of \$280.00 is due on 02/03/2023. FURTHER ORDERED: Appellee's filing fee of \$140.00 for appeal 1 CA-CV 23-0041, is due on 02/13/2023. FURTHER ORDERED: The case management statement for appeal 1 CA-CV 23-0041 is due on 02/09/2023. FURTHER ORDERED: The consolidated opening brief is due on 03/21/2023. Hon Kent E Cattani - Author
40. 31-Jan-2023 FILED: Reporter's Transcript - 11/26/2018 - Evidentiary Hearing (Donna Terrell) (Appellant)
41. 31-Jan-2023 FILED: Reporter's Transcript - 10/16/2018 - Evidentiary Hearing (Donna Terrell) (Appellant)
42. 31-Jan-2023 FILED: Reporter's Transcript - 10/14/2020 - Evidentiary Hearing (Donna Terrell) (Appellant)
43. 31-Jan-2023 FILED: Reporter's Transcript - 03/15/2019 - Final Trial Management Conference (Donna Terrell) (Appellant)
44. 31-Jan-2023 FILED: Reporter's Transcript - 12/16/2020 - Evidentiary Hearings (Donna Terrell) (Appellant)
45. 31-Jan-2023 FILED: Reporter's Transcript - 04/02/2021 - Final Trial Management Conference (Donna Terrell) (Appellant)
46. 31-Jan-2023 FILED: Reporter's Transcript - 09/02/2021 - Trial Setting Conference (Donna Terrell) (Appellant)
47. 31-Jan-2023 FILED: Case Management Statement (Appellant)
48. 31-Jan-2023 FILED: Appellant's Notice of Service of Transcripts; Certification of Service (Appellant)
49. 13-Feb-2023 FILED: Appellee's Notice of Payment of Filing Fee in 1 CA-CV 23-0041; Certificate of Service of Appellee's Notice of Payment of Filing Fee (Appellee)
50. 16-Mar-2023 FILED: Defendant/Appellant's (Unopposed) Motion For Procedural Order Re: Extension Of Time To File Opening Brief; Certification of Service (Appellant)

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51. 21-Mar-2023 ORDERED: Defendant/Appellant's (Unopposed) Motion For Procedural Order Re: Extension Of Time To File Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Tuesday, 03-21-2023 to Monday, 04-03-2023. If the brief is not timely filed, the court will dismiss this appeal. Melina Brill ProTem Judge - Author
52. 3-Apr-2023 FILED: Appellant's Opening Brief; Appellant's Certificate Re Compliance Re Opening Brief; Certification Of Service (Appellant)
53. 3-Apr-2023 FILED: Appellant's Motion To Exceed Page Limit; Certification Of Service (Appellant)
54. 20-Apr-2023 ORDERED: Appellant's Motion To Exceed Page Limit (Appellant) = GRANTED and accepting the opening brief filed on 04/03/2023. Hon Kent E Cattani - Author
55. 4-May-2023 FILED: Appellee's Motion for Procedural Order Extending Time to File Response Brief; Certificate of Service of Appellee's Motion for Procedural Order Extending Time to File Response Brief (Appellee)
56. 5-May-2023 ORDERED: Appellee's Motion for Procedural Order Extending Time to File Response Brief (Appellee) = GRANTED. Due date EXTENDED from Monday, 05-15-2023 to Friday, 06-09-2023. If the brief is not timely filed, the court will submit this appeal for decision on the record and the opening brief. Melina Brill ProTem Judge - Author
57. 9-Jun-2023 FILED: Appellee's Answering Brief; Certificate of Compliance; Certificate of Service of Appellee's Answering Brief (Appellee)
58. 19-Jun-2023 FILED: Appellee's Notice of Errata in Answering Brief; Certificate of Service of Appellee's Notice of Errata in Answering Brief (Appellee)
59. 29-Jun-2023 FILED: Appellant's Reply Brief; Appellant's Certificate of Compliance Re Reply Brief; Certification of Service (Appellant)
60. 30-Jun-2023 FILED: Appellant's Motion to Exceed Page Limit; Certification of Service (Appellant)
61. 6-Jul-2023 FILED: Appellant's Request for Oral Argument; Certification Of Service (Appellant)
62. 14-Jul-2023 FILED: Appellee's Request for Oral Argument; Certificate of Service of Appellee's Request for Oral Argument (Appellee)
63. 17-Jul-2023 ORDERED: Appellant's Request for Oral Argument (Appellant) = GRANTED. Hon David B Gass - Author
64. 18-Jul-2023 ORDERED: Appellant's Motion to Exceed Page Limit (Appellant) = GRANTED and accepting the reply brief filed on 06/29/2023. Hon David B Gass - Author
65. 31-Jul-2023 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
66. 11-Aug-2023 FILED: Supplemented Superior Court e-Record with Revised Index of Record
67. 26-Aug-2023 CLNDR: MONTHLY COURT CASE CALENDAR, Department B, 10-17-23, 09:30 am, CONFERENCE ROOM.
68. 28-Aug-2023 FILED: Notice of Oral Argument
69. 28-Aug-2023 FILED: Return Receipt for Notice of Oral Argument, signed by Michael Fiflis on 08/28/2023 (Appellee)
70. 4-Oct-2023 FILED: Return Receipt for Notice of Oral Argument, signed by Ryan Lorenz on 08/28/2023 (Appellant)
71. 13-Oct-2023 ORDERED: Vacating oral argument set for 10/17/2023 at 9:30 a.m. FURTHER ORDERED: Setting oral argument for 12/5/2023 at 10:00 a.m. in Courtroom 1. Hon Michael J Brown - Author
72. 30-Oct-2023 FILED: Notice of Oral Argument
73. 1-Nov-2023 FILED: Return Receipt for Notice of Oral Argument, signed by Ryan Lorenz on 10/30/2023 (Appellant)
74. 8-Nov-2023 FILED: Return Receipt for Notice of Oral Argument, signed by Michael Fiflis on 10/30/2023 (Appellee)
75. 5-Dec-2023 FILED: Sign-in Sheet/Case is Under Advisement as of 12/05/2023
76. 30-May-2024 OPINION (Affirmed in Part, Reversed in Part, Remanded) Hon Andrew M Jacobs - Author; Hon Michael J Brown - Concur; Hon Samuel A Thumma - Concur
[withdrawn per order filed 06/03/2024]
77. 30-May-2024 FILED: Decision Distribution Notification
78. 3-Jun-2024 ORDERED: Withdrawing the Opinion filed on 05/30/2024 and replacing with the Opinion filed this date. The amended Opinion merely corrects formatting and alters no verbiage in the Opinion. Hon Andrew M Jacobs - Author
79. 3-Jun-2024 OPINION (Affirmed in Part, Reversed in Part, Remanded) Hon Andrew M Jacobs - Author; Hon Michael J Brown - Concur; Hon Samuel A Thumma - Concur

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- 80. 3-Jun-2024 FILED: Decision Distribution Notification
- 81. 3-Jul-2024 FILED: Email Notice from ASC re: Petition for Review filed 07/02/2024; request for partial record
- 82. 3-Jul-2024 FILED: Letter forwarding partial record to Arizona Supreme Court