

Court of Appeals, Division One

Civil Appeal

1 CA-CV 22-0760

ELI, et al. v. PROCACCIANTI

Appellate Case Information

Case Filed: 22-Dec-2022

Case Closed:

Dept/Composition

Department E

Hon. Anni Hill Foster
Hon. Brian Y Furuya
Hon. Randall M Howe

Consolidated with: 1 CA-CV 23-0314

Side 1. ZADOK ELI, et al., Plaintiff/Appellant

(Litigant Group) ZADOK ELI, et al.

- Zadok Eli
Hana Eli
R L Whitmer
Colleen London

Attorneys for: Plaintiffs/Appellants

Dennis I Wilenchik, Esq. (AZ Bar No. 5350)
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Side 2. PROCACCIANTI AZ II, LP, Defendant/Appellee

(Litigant Group) PROCACCIANTI AZ II, LP

- Procaccianti AZ II LP

Co-Counsel for: Defendant/Appellee

William J Maledon, Esq. (AZ Bar No. 3670)
Geoffrey M T Sturr, Esq. (AZ Bar No. 14063)
Andrew M Federhar, Esq. (AZ Bar No. 6567)
Jessica Anne Gale, Esq. (AZ Bar No. 30583)

CASE STATUS

Jul 24, 2024.....Motion for Reconsideration Pending

Jul 15, 2024.....Motion for Reconsideration Pending

Table with 6 columns: PREDECESSOR CASE (S), Cause/Charge/Class, Judgment/Sentence, Judge, Role <Comments>, Trial, Dispo. Row 1: MAR, CV2018-014021, Breach of Contract, Gary L Popham, Authoring Judge of Order.

5 PENDING MATTERS

General Motion Appellees' MOTION FOR PUBLICATION and Appellees' Motion for Clarification (Appellee) Filed: 15-Jul-2024

General Motion Appellees' Motion for Publication and Appellees' MOTION FOR CLARIFICATION (Appellee) Filed: 15-Jul-2024

General Motion Defendants/Appellees' Statement of COSTS (Appellee) Filed: 23-Jul-2024

General Motion \* Defendants/Appellees' Application for Attorneys' FEES and Costs (Appellee) Filed: 23-Jul-2024

General Motion Appellants' Motion for Reconsideration (Appellant) Filed: 24-Jul-2024

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CASE DECISION

09-Jul-2024 MEMORANDUM DECISION

Randall Howe.....Author
Anni Foster.....Concur
Brian Furuya.....Concur

Filed: 09-Jul-2024 Mandate:

Table with 1 row: Decision Disposition Affirmed

DECISION APPLIES TO THE FOLLOWING OTHER CASE(S)
1 CA-CV 23-0314 ELI, et al. v. PROCACCIANTI

89 PROCEEDING ENTRIES

- 1. 22-Dec-2022 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 11/23/22
2. 22-Dec-2022 FILED: e-Record on Appeal: (CV2018-055021) Instruments/Minute Entries Exhibits: None
3. 22-Dec-2022 FILED: e-Record on Appeal:(CV2018-014021) Instruments/Minute Entries Exhibits: None
4. 22-Dec-2022 FILED: Appellate Clerk Notice re: Appellant's Fee/Case Management Statement/Brief Due
5. 10-Jan-2023 RECEIPT No.: 2023-00037 ; \$280.00, Authorization: #10008508665, Applied to: ZADOK ELI, et al. - Class A Filing Fee (\$280.00) Paid for: Michael Calovich - By nCourt LLC
6. 11-Jan-2023 FILED: Case Management Statement; Certificate of Service (Appellant)
7. 17-Jan-2023 FILED: Appellees' Response to Appellants' Case Management Statement; Certificate of Service (Appellee)
8. 20-Jan-2023 FILED: Appellate Clerk Notice re: Appellant's Brief Due
9. 23-Jan-2023 RECEIPT No.: 2023-00078 ; \$140.00, Authorization: #23007934163, Applied to: PROCACCIANTI AZ II, LP - Class B Filing Fee (\$140.00) Paid for: Spencer Fane LLP - By nCourt LLC
10. 2-Feb-2023 FILED: Unopposed Motion for Procedural Order to Extend Time to File Opening Brief; Certificate of Service (Appellant)
11. 3-Feb-2023 ORDERED: Unopposed Motion for Procedural Order to Extend Time to File Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Tuesday, 02-21-2023 to Thursday, 03-23-2023. If the brief is not timely filed, the court will dismiss this appeal. Melina Brill ProTem Judge - Author
12. 6-Mar-2023 FILED: Motion For Procedural Order To Stay Appeal And Remand For Determination; Certificate of Service (Appellant)
13. 8-Mar-2023 FILED: Appellees' Response In Opposition To Appellants' Motion For Procedural Order To Stay Appeal And Remand For Determination; Certificate Of Service Of Appellees' Response In Opposition To Appellants' Motion For Procedural Order To Stay Appeal And Remand For Determination; Exhibits 1 - 2 (Appellee)
14. 8-Mar-2023 ORDERED: Vacating the 03/23/2023 due date for the opening brief. The order ruling on the pending motion to stay will set a due date to file the opening brief. Melina Brill ProTem Judge - Author
15. 15-Mar-2023 FILED: Reply In Support For Motion For Procedural Order To Stay Appeal And Remand For Determination; Certificate of Service (Appellant)
16. 22-Mar-2023 ORDERED: Motion For Procedural Order To Stay Appeal And Remand For Determination (Appellant) = GRANTED and, under Arizona Rule of Civil Appellate Procedure 3(b), staying this appeal until 05/05/2023. FURTHER ORDERED: Revesting jurisdiction in the Maricopa County Superior Court and authorizing that court to consider a Motion to Enforce Settlement. This court does not express an opinion regarding the merits of that motion. FURTHER ORDERED: Lifting the stay automatically on 05/05/2023, unless before that date, appellants file a motion to continue the stay of this appeal. FURTHER ORDERED: Within 10 days after the superior court rules on the Motion to Enforce Settlement, appellants must file a notice in this court with the ruling attached. FURTHER ORDERED: The opening brief is due on 06/05/2023. Hon David B Gass - Author
17. 28-Apr-2023 FILED: Appellees' Notice of Denial of Appellants' Motion to Enforce Settlement; Certificate of Service (Appellee)
18. 2-May-2023 ORDERED: Lifting the stay of this appeal. FURTHER ORDERED: Pursuant to the court's order staying appeal, the opening brief is due on 06/05/2023. If the opening brief is not timely filed, the court will dismiss this appeal. Melina Brill ProTem Judge - Author
19. 5-May-2023 FILED: Notice; Notice - Certificate of Service (Appellant)

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20. 5-May-2023 FILED: Supplemented Superior Court e-Record with Revised Index of Record (CV2018-055021)
21. 9-May-2023 ORDERED: Affirming the court's 05/02/2023 order lifting the stay of this appeal and directing the opening brief to be filed by 06/05/2023. Melina Brill ProTem Judge - Author
22. 15-May-2023 FILED: Appellants' Motion for Procedural Order to Consolidate Appeals; Certificate of Service (Appellant)
23. 16-May-2023 FILED: Appellee's Response to Appellants' Motion for Procedural Order to Consolidate Appeals Motion to Dismiss Appeal; Certificate of Service; Exhibit 1 (Appellee)
24. 24-May-2023 FILED: Appellants' Reply for Procedural Order to Consolidate Appeals; Certificate of Service - Appellants' Reply for Procedural Order to Consolidate Appeals (Appellant)
25. 30-May-2023 ORDERED: Appellants' Motion for Procedural Order to Consolidate Appeals (Appellant) = GRANTED. FURTHER ORDERED: Staying this appeal pending further order of the court and vacating the 06/05/2023 due date for the opening brief. FURTHER ORDERED: Within 10 days after this court assigns a case number to the appeal arising from the 05/05/2023 notice of appeal, and the required filing fee is paid, appellants shall file a notice in this appeal indicating the new case number. Hon Kent E Cattani - Author
26. 5-Jul-2023 FILED: Appellants [sic] Notice of Filing Fee in 1-CA-CV-23-0314 (Motion to Finalize Consolidation); Certificate of Service (Appellant)
27. 10-Jul-2023 ORDERED: Appellants [sic] Notice of Filing Fee in 1-CA-CV-23-0314 (Motion to Finalize Consolidation) (Appellant) = GRANTED and consolidating cases 1 CA-CV 22-0760 and 1 CA-CV 23-0314. Case 1 CA-CV 22-0760 is designated the primary number, and the above caption must be used on all future documents filed in this appeal. FURTHER ORDERED: Opening brief in this consolidated appeal is due by 08/09/2023. Barbara Vidal Vaught ProTem Judge - Author  
[Amended per order filed 07/10/2023]
28. 10-Jul-2023 AMENDED ORDER: Appellants [sic] Notice of Filing Fee in 1-CA-CV-23-0314 (Motion to Finalize Consolidation) (Appellant) = GRANTED and lifting the stay of this appeal and consolidating cases 1 CA-CV 22-0760 and 1 CA-CV 23-0314. Case 1 CA-CV 22-0760 is designated the primary number, and the above caption must be used on all future documents filed in this appeal. FURTHER ORDERED: Opening brief in this consolidated appeal is due by 08/09/2023. Barbara Vidal Vaught ProTem Judge - Author
29. 17-Jul-2023 FILED: Supplemented Superior Court e-Record with Revised Index of Record
30. 7-Aug-2023 FILED: Appellees' Statement to Correct Appellants' Case Management Statement; Certificate of Service of Appellees' Statement to Correct Appellants' Case Management Statement (Appellee)
31. 9-Aug-2023 FILED: Opening Brief; Certificate of Compliance - Opening Brief; Certificate of Service - Opening Brief (Appellant)
32. 9-Aug-2023 FILED: Exhibit 26 (Appendix Volume 5) (Appellant)
33. 9-Aug-2023 FILED: Appendix to Opening Brief; Exhibit C (Appendix Volume 2); Exhibit L (Appendix Volume 3); Exhibit G (Appendix Volume 4) (Appellant)
34. 11-Aug-2023 FILED: Appellants' ARCAP Rule 3(B) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Rule 60(D)(3) Motions to Set Aside Judgments Against Plaintiffs and Stay Proceedings; Certificate of Service - Motion to Suspend Appeal (Appellant)
35. 14-Aug-2023 FILED: Appellees' Response to Appellants' ARCAP Rule 3(B) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Rule 60(d)(3) Motions to Set Aside Judgments Against Plaintiffs and Stay Proceedings; Certificate of Service of Appellees' Response to Appellants [sic] ARCAP Rule 3(B) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Rule 60(D)(3) Motions to Set Aside Judgments Against Plaintiffs and Stay Proceedings. [sic] (Appellee)
36. 21-Aug-2023 FILED: Appellants' Reply in Support of ARCAP Rule 3(B) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Rule 60(D)(3) Motions to Set Aside Judgments Against Plaintiffs and Stay Proceedings; Certificate of Service [sic] - Reply to Motion to Suspend Appeal (Appellant)
37. 30-Aug-2023 ORDERED: Appellants' ARCAP Rule 3(B) Motion to Suspend the Appeal and Revest Jurisdiction in the Superior Court to Consider Their Rule 60(D)(3) Motions to Set Aside Judgments Against Plaintiffs and Stay Proceedings (Appellant) = GRANTED in part and, pursuant to Arizona Rule of Civil Appellate Procedure 3(b), staying this appeal until 10/16/2023. FURTHER ORDERED: Denying that request (request for stay of superior court proceedings). FURTHER ORDERED: The answering brief is due on 11/15/2023. Hon Randall M Howe - Author
38. 13-Oct-2023 FILED: Appellants' Notice of Ruling in the Superior Court and Motion for Procedural Order to Continue Stay of Proceedings; Appellants' Notice of Ruling in the Superior Court and Motion for Procedural Order to Continue Stay of Proceedings - Certificate of Service (Appellant)

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39. 13-Oct-2023 FILED: Appellees' Notice Of Trial Court Ruling; Certificate Of Service Of Appellees' Notice Of Trial Court Ruling (Appellee)
40. 16-Oct-2023 FILED: Appellees' Response to Appellants' Notice of Ruling in the Superior Court and Motion for Procedural Order to Continue Stay of Proceedings; Certificate of Service Appellees' Response to Appellants' Notice of Ruling in the Superior Court and Motion for Procedural Order to Continue Stay of Proceedings; Exhibit 1-3 (Appellees)
41. 17-Oct-2023 FILED: Supplemented Superior Court e-Record with Revised Index of Record (CV2018-055021)
42. 18-Oct-2023 FILED: Motion for Procedural Order to Stay or Modify the Superior Court's August 28, 2023 Order to Post a Cash Bond Based Upon a New Court of Appeals' Opinion Filed on September 14, 2023; Certificate of Service (Appellant)
43. 23-Oct-2023 FILED: Appellees' Response to Appellants' Motion for Procedural Order to Stay or Modify the Superior Court's August 28, 2023 Order to Post a Cash Bond Based Upon a New Court of Appeals' Opinion Filed on September 14, 2023; Certificate of Service of Appellees' Response to Appellants' Motion for Procedural Order to Stay or Modify the Superior Court's August 28, 2023 Order to Post a Cash Bond Based Upon a New Court of Appeals' Opinion Filed on September 14, 2023 (Appellee)
44. 23-Oct-2023 FILED: Plaintiffs' Reply in Support of Motion to Continue to Stay of Appeal; Certificate of Service (Appellant)
45. 26-Oct-2023 ORDERED: Appellants' Notice of Ruling in the Superior Court and Motion for Procedural Order to Continue Stay of Proceedings (Appellant) = GRANTED in part and continuing the stay of this appeal until 11/28/2023. FURTHER ORDERED: Vacating the 11/15/2023 due date for the answering brief. The court will address the briefing schedule when it receives notice of the ruling and any amended notice of appeal. Hon David B Gass - Author
46. 30-Oct-2023 FILED: Plaintiffs' Reply in Support of Plaintiffs' ARCAP Rule 7(C) Motion to Stay or Modify the Superior Court's August 21, 2023 Order to Post a Cash Bond, Based Upon a New Court of Appeals' Opinion Filed on September 14, 2023; Certificate of Service (Appellants)
47. 1-Nov-2023 ORDERED: Motion for Procedural Order to Stay or Modify the Superior Court's August 28, 2023 Order to Post a Cash Bond Based Upon a New Court of Appeals' Opinion Filed on September 14, 2023 (Appellant) = DENIED. Hon David B Gass - Author
48. 16-Nov-2023 FILED: Appellants' Request to Continue the Stay of the Proceedings; Certificate of Service (Appellants)
49. 27-Nov-2023 FILED: Appellees' Response To Appellants' Request To Continue The Stay Of The Proceedings; Certificate Of Service Of Appellees' Response To Appellants' Request To Continue The Stay Of The Proceedings (Appellee)
50. 28-Nov-2023 ORDERED: Appellants' Request to Continue the Stay of the Proceedings (Appellant) = GRANTED and continuing the stay of this appeal until 12/28/2023, for the purposes set forth in this court's 10/26/2023 stay order. 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. If an amended notice of appeal is filed, appellants must notify this court. Melina Brill ProTem Judge - Author
51. 18-Dec-2023 FILED: Appellants' Request to Continue the Stay of the Proceedings; Certificate of Service - Appellants' Request to Continue the Stay of the Proceedings (Appellants)
52. 19-Dec-2023 FILED: Appellees' Response to Appellants' Request to Continue the Stay of the Proceedings; Certificate of Service of Appellees' Response to Appellants' Request to Continue the Stay of the Proceedings (Appellees)
53. 22-Dec-2023 FILED: Appellee's Notice of Superior Court Order and Request to Set a Briefing Schedule; Certificate of Service of Appellee's Notice of Superior Court Order and Request to Set a Briefing Schedule (Appellee)
54. 26-Dec-2023 FILED: Courtesy Copy - Maricopa County Superior Court Minute Entry dated 12/21/2023 (filed 12/22/2023) Re: Order Denying Motion for New Trial and Request for Status Conference
55. 28-Dec-2023 FILED: Supplemented Superior Court e-Record with Revised Index of Record (includes ruling on Motion for New Trial)
56. 3-Jan-2024 ORDERED: Appellants' Request to Continue the Stay of the Proceedings (Appellants) = DENIED. FURTHER ORDERED: Directing appellants to notify the court by 01/16/2024, regarding whether an amended notice of appeal has been or will be filed. The court will address the briefing schedule when it receives such notice. Melina Brill ProTem Judge - Author
57. 17-Jan-2024 FILED: Plaintiffs' Notice to Court of Appeals; Certificate of Service (Appellants)
58. 18-Jan-2024 FILED: Response to Appellants/Plaintiffs' Notice to Court of Appeals; Certificate of Service of Response to Appellants/Plaintiffs' Notice to Court of Appeals (Appellee)
59. 19-Jan-2024 FILED: Request for Clarification; Certificate of Service of Request for Clarification (Appellee)
60. 23-Jan-2024 FILED: Response to Appellees' January 19, 2024 Request for Clarification; Certificate of Service (Appellants)
61. 23-Jan-2024 FILED: Reply to Appellees January 18, 2024 Response to Notice; Certificate of Service - Reply to Appellees January 18, 2024 Response to Notice (Appellant)

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62. 25-Jan-2024 ORDERED: Request for Clarification (Appellee) = GRANTED in part and deeming the 06/15/2023 notice of appeal withdrawn. FURTHER ORDERED: The answering brief is due on 02/26/2024. 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
63. 12-Feb-2024 FILED: Defendants/Appellees' Request for Oral Argument; Certificate of Service of Defendants/Appellees' Request for Oral Argument (Appellee)
64. 12-Feb-2024 FILED: Defendants/Appellees' Answering Brief; Certificate of Compliance of Defendants/Appellees' Answering Brief Answering Brief; Certificate of Service of Defendants/Appellees' Answering Brief Answering Brief (Appellee)
65. 25-Feb-2024 FILED: Unopposed Motion for Procedural Order to Extend Time to File Answering Brief (Reply Brief); Certificate of Service (Appellant)
66. 26-Feb-2024 ORDERED: Unopposed Motion for Procedural Order to Extend Time to File Answering Brief (Reply Brief) (Appellant) = GRANTED. Due date EXTENDED from Monday, 03-04-2024 to Monday, 03-11-2024. If the brief is not timely filed, the court will submit this appeal for decision on the record and the filed briefs. Melina Brill ProTem Judge - Author
67. 11-Mar-2024 FILED: Reply Brief; Reply Brief – Certificate of Compliance; Certificate of Service (Appellant)
68. 13-Mar-2024 FILED: Appellants' Request for Oral Argument; Certificate of Service (Appellants)
69. 4-Apr-2024 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
70. 9-Apr-2024 ORDERED: Appellants' Request for Oral Argument (Appellants) = GRANTED. Hon David B Gass - Author
71. 9-Apr-2024 ORDERED: Defendants/Appellees' Request for Oral Argument (Appellee) = GRANTED. Hon David B Gass - Author
72. 9-Apr-2024 ORDERED: Appellants' Request for Oral Argument (Appellants) = GRANTED. Hon David B Gass - Author
73. 15-Apr-2024 FILED: Supplemented Superior Court e-Record with Revised Index of Record
74. 26-Apr-2024 CLNDR: MONTHLY COURT CASE CALENDAR, Department E, 6-13-24, 11:00 am, COURTROOM 2.
75. 26-Apr-2024 FILED: Notice of Oral Argument
76. 29-Apr-2024 FILED: Return Receipt for Notice of Oral Argument, signed by Andrew Federhar on 04/26/2024 (Appellee)
77. 21-May-2024 FILED: Return Receipt for Notice of Oral Argument, signed by Robert Porter on 05/16/2024 (Appellant)
78. 21-May-2024 FILED: Notice of Appearance; Certificate of Service (Appellant)
79. 13-Jun-2024 FILED: Sign-in Sheet/Case is Under Advisement as of 06/13/2024
80. 9-Jul-2024 MEMORANDUM DECISION (Affirmed) Hon Randall M Howe - Author; Hon Anni Hill Foster - Concur; Hon Brian Y Furuya - Concu
81. 9-Jul-2024 FILED: Decision Distribution Notification
82. 15-Jul-2024 FILED: Appellees' Motion for Publication and Appellees' Motion for Clarification; Certificate of Service of Appellees' Motion for Publication and Appellees' Motion For Clarification; Certificate of Compliance for Appellees' Motion for Publication and Appellees' Motion For Clarification (Appellee)
83. 23-Jul-2024 FILED: Defendants/Appellees' Application for Attorneys' Fees and Costs; Defendant/Appelleeas [sic] Procaccianti AZ II, L.P.'s Certificate of Service (Appellee)
84. 23-Jul-2024 FILED: Defendants/Appellees' Statement of Costs; Defendant/Appelleeas [sic] Procaccianti AZ II, L.P.'s Certificate of Service (Appellee)
85. 24-Jul-2024 FILED: Appellants' Motion for Reconsideration; Certificate Of Compliance – Appellant's Motion For Reconsideration; Certificate Of Service [sic] – Appellant's Motion For Reconsideration (Appellant)
86. 6-Aug-2024 FILED: Appellants' Stipulated Notice (Motion) of Extension (To File Response to Attorney Fees) (Appellant)
87. 7-Aug-2024 FILED: Appellants' Opposition to Appellees' Motion for Attorneys' Fees; Certificate of Service (Appellant)
88. 7-Aug-2024 ORDERED: Appellants' Stipulated Notice (Motion) of Extension (To File Response to Attorney Fees) (Appellant) = GRANTED. Due date EXTENDED from Tuesday, 08-06-2024 to Wednesday, 08-07-2024. Hon Randall M Howe - Author
89. 14-Aug-2024 FILED: Reply In Support of Defendants/Appellees' Application for Attorneys' Fees and Costs; Certificate of Service Appellees' Reply in Support of Defendants/Appellees' Application for Attorneys' Fees and Costs (Appellee)

**Court of Appeals, Division One**

**Civil Appeal**

**1 CA-CV 22-0760**

**ELI, et al. v. PROCACCIANTI**

**89 PROCEEDING ENTRIES**