

**Arizona Supreme Court**

Civil Petition for Review - Appeal

**CV-20-0058-PR**

**CONCETTA RIZZIO v SURPASS SENIOR LIVING LLC et al**

**Appellate Case Information**

Case Filed: 2-Mar-2020  
Case Closed:

**Dept/Composition**

**En Banc**  
Hon. Robert Brutinel  
Hon. Ann A. Scott Timmer  
Hon. Clint Bolick  
Hon. Andrew W. Gould  
Hon. John R. Lopez, IV  
Hon. James P. Beene  
Hon. William G. Montgomery

**Side 1. CONCETTA RIZZIO, Plaintiff/Appellee**

(Litigant Group) CONCETTA RIZZIO

- Concetta Rizzio

**Attorneys for: Plaintiff/Appellee**

H Micheal Wright, Esq. (AZ Bar No. 4277)  
Lincoln M Wright, Esq. (AZ Bar No. 20076)

**Side 2. SURPASS SENIOR LIVING LLC, et al., Defendant/Appellant**

(Litigant Group) SURPASS SENIOR LIVING LLC, et al.

- Surpass Senior Living LLC
- Gilbert AL Partners LP
- Gilbert AL GP LLC
- Brianne Schmitz

**Attorneys for: Defendant/Appellant**

Kevin C Nicholas, Esq. (AZ Bar No. 15940)  
Bruce C Smith, Esq. (AZ Bar No. 11721)  
Sarah Ann Schade, Esq. (AZ Bar No. 31527)

**Side 3. ARIZONA ASSOCIATION FOR JUSTICE/ARIZONA TRIAL LAWYERS ASSOCIATION, Amicus Curiae**

(Litigant Group) ARIZONA ASSOCIATION FOR JUSTICE/ARIZONA TRIAL LAWYERS ASSOCIATION

- Arizona Association for Justice
- Arizona Trial Lawyers Association

**Attorneys for: Amicus Curiae**

David L Abney, Esq. (AZ Bar No. 9001)  
Stanley G Feldman, Esq. (AZ Bar No. 838)

**CASE STATUS**

Nov 2, 2020.....Decision Rendered	Aug 25, 2020....Oral Argument Granted
Jun 25, 2020.....Continued	Mar 2, 2020.....Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA 1 CA-CV 19-0221					
↳ MAR CV2018-090357	Abuse of a Vulnerable Adult		Sherry K Stephens, Authoring Judge of Order Comments: (none)		

**24 PROCEEDING ENTRIES**

- 2-Mar-2020 FILED: Unopposed Motion for Extension of Time to File Petition for Review; Certificate of Service; Email Re: Consent for Extension (Appellee Rizzio)
- 3-Mar-2020 An "Unopposed Motion for Extension of Time to File Petition for Review" (Appellee Rizzio) having been filed on March 02, 2020, IT IS ORDERED granting a first extension of time to file the petition for review on or before March 4, 2020. No further extensions of time shall be granted absent extraordinary circumstances. This matter is subject to dismissal if the petition for review is not filed by March 4, 2020. (Janet Johnson, Clerk)
- 4-Mar-2020 FILED: Petition for Review; Certificate of Service; Certificate of Compliance; Opinion (Appellee Rizzio)
- 4-Mar-2020 FILED: Appendix to Petition for Review; Certificate of Service (Appellee Rizzio)
- 5-Mar-2020 FILED: Record from CofA: Electronic Record
- 12-Mar-2020 RECEIPT No.: 2020-00320 ; \$280.00 Applied to: CONCETTA RIZZIO - Class A Filing Fee (\$280.00) Paid for: CONCETTA RIZZIO - By nCourt LLC Portal (Memo: AUTH # BBA624F0-2A2B-42EE-91A9-FF1E6B870D38)

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7. 8-Apr-2020 FILED: Motion for Procedural Order to Extend Time to File Response to Petition for Review; Certificate of Service (Appellants Surpass Senior Living LLC et al)
8. 8-Apr-2020 A "Motion for Procedural Order to Extend Time to File Response to Petition for Review" (Appellants Surpass Senior Living LLC, et al.) having been filed on April 08, 2020,  
  
IT IS ORDERED granting a first extension of time to file the response to petition for review on or before April 10, 2020. No further extensions of time shall be granted absent extraordinary circumstances. (Janet Johnson, Clerk)
9. 10-Apr-2020 FILED: Defendants'/Appellants' Response to Plaintiffs'/Appellees' Petition for Review; Certificate of Service; Certificate of Compliance (Appellants Surpass Senior Living LLC et al)
10. 15-Apr-2020 RECEIPT No.: 2020-00416 ; \$140.00, Authorization: 363833AD-9776-4DBE-B, Applied to: SURPASS SENIOR LIVING LLC, et al. - Class B Filing Fee (\$140.00) Paid for: SURPASS SENIOR LIVING LLC, et al. - By nCourt LLC Portal (Memo: 7DF-53E8D3DB3917 (nCourt Portal))
11. 25-Jun-2020 ORDERED: Petition for Review = CONTINUED.  
  
FURTHER ORDERED: Request for Attorneys' Fees (Appellee Rizzio) = CONTINUED.  
  
FURTHER ORDERED: Request for Attorneys' Fees (Appellants Surpass Senior Living LLC et al) = CONTINUED.
12. 25-Aug-2020 ORDERED: Petition for Review = GRANTED as to this rephrased issue only:  
  
Whether a plaintiff's retainer agreement under which her attorney will advance all costs of arbitration can be considered as part of the plaintiff's individualized showing of her ability to financially bear the costs of arbitration.  
  
FURTHER ORDERED: Request for Attorneys' Fees (Appellee Rizzio) = CONTINUED.  
  
FURTHER ORDERED: Request for Attorneys' Fees (Appellants Surpass Senior Living LLC et al) = CONTINUED.  
  
FURTHER ORDERED: The case shall be set for oral argument.  
  
FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of the Court's Minute Letter. Any amicus briefs are due on or before September 29, 2020, and any responses to amicus briefs are due on or before October 14, 2020. Any amicus briefs or responses may not exceed 20 pages in length.
13. 31-Aug-2020 NOTICE OF ORAL ARGUMENT: Set for Tuesday, November 17, 2020 at 10:30 A.M. [twenty minutes (20) per side]
14. 31-Aug-2020 FILED: Notice of Filing Acknowledgment of Oral Argument (H. Michael Wright will argue) (Appellee Rizzio)
15. 1-Sep-2020 FILED: Record from CofA1 - MCSC:  
  
MCSC:  
Superior Court Record (Electronic)  
Exhibits: H.D 01/14/2019 LIST # 2 3 4 6 8 9 11 36(SEALED) 37 in a Manila Envelope  
  
CofA 1:  
CofA1 Record(Electronic)
16. 3-Sep-2020 FILED: Notice of Filing Acknowledgment of Oral Argument (Bruce Smith will argue) (Appellants Surpass Senior Living LLC et al)
17. 15-Sep-2020 FILED: Appellee's Supplemental Brief; Certificate of Service; Certificate of Compliance; Exhibits (Appellee Rizzio)
18. 17-Sep-2020 FILED: Defendants'/Appellants' Supplemental Brief; Certificate of Compliance; (Duplicate) Certificate of Compliance; Efiling Status Form Set 4967380 (Appellants Surpass Senior Living LLC et al)
19. 18-Sep-2020 FILED: Certificate of Service; (Duplicate) Certificate of Service (Appellants Surpass Senior Living LLC et al)
20. 29-Sep-2020 FILED: Amicus Curiae Brief of the Arizona Association for Justice/Arizona Trial Lawyers Association; Certificate of Service; Certificate of Compliance (Amici Curiae Arizona Association for Justice/Arizona Trial Lawyers Association)
21. 29-Sep-2020 FILED: Motion of the Arizona Association for Justice/Arizona Trial Lawyers Association for Leave to File Amicus Curiae Brief; Certificate of Service (Amici Curiae Arizona Association for Justice/Arizona Trial Lawyers Association)

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22. 29-Sep-2020 FILED: (Duplicate) Motion of the Arizona Association for Justice/Arizona Trial Lawyers Association for Leave to File Amicus Curiae Brief (Amici Curiae Arizona Association for Justice/Arizona Trial Lawyers Association)
23. 2-Oct-2020 A "Motion of the Arizona Association for Justice/Arizona Trial Lawyers Association for Leave to File Amicus Curiae Brief" (Amici Curiae Arizona Association for Justice/Arizona Trial Lawyers Association) and the brief of amicus curiae were filed on September 29, 2020.
- IT IS ORDERED granting the motion. The brief shall be filed as of September 29, 2020. (Hon. Robert Brutinel)
24. 14-Oct-2020 FILED: Defendants'/Appellants' Brief in Response to Amicus Curiae Brief of Arizona Association for Justice/Arizona Trial Lawyers Association; Certificate of Service; Certificate of Compliance (Appellants Surpass Senior Living LLC, et al.)