IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

LAKEWOOD ESTATES HOMEOWNERS ASSOCIATION,
Plaintiff/Appellee,

v.

MICHAEL A. URBANO, *Defendant/Appellant*.

No. 1 CA-CV 24-0377

FILED 03-06-2025

Appeal from the Superior Court in Maricopa County
No. CV2020-010651
The Honorable Timothy J. Ryan, Judge

AFFIRMED IN PART; REVERSED IN PART

COUNSEL

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MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Michael S. Catlett and Judge Daniel J. Kiley joined.

W E I N Z W E I G, Judge:

¶1 Michael Urbano appeals the superior court's grant of summary judgment and award of attorney fees. For the reasons that follow, we affirm in part and reverse in part.

FACTS AND PROCEDURAL BACKGROUND

Contract Claims

¶2 Urbano bought a house in Lakewood Estates in 2005. At that time, he agreed to all covenants, conditions and restrictions ("CC&Rs") running with the property and promised to pay the Homeowners Association ("HOA") assessments to maintain common spaces. The HOA sued Urbano in justice court in 2014, alleging he failed to pay assessments levied by the HOA.

¶3 The parties settled that lawsuit, and the justice court entered an order ("2014 Order") to dismiss the case with prejudice. The 2014 Order specified "any and all future liens, encumbrances, and/or assessments against [Urbano] . . . shall be deemed void and invalid."

¶4 Six years later, the HOA again sued Urbano in justice court, alleging he failed to pay assessments levied by the HOA. Urbano argued he need not pay any HOA assessments under the 2014 Order and a confidential settlement agreement between him and the HOA. Urbano counterclaimed for breach of contract, breach of duty of good faith and fair dealing, abuse of process and punitive damages, so the lawsuit was transferred to the superior court.

Tort Claims

¶5 Urbano had an altercation with the HOA's property manager over tree trimmings while the lawsuit was pending. The police were called and a report was filed, but nothing more happened.

¶6 Urbano later asserted tort claims against the HOA and two third-party defendants, including the property manager Susan Smith and the property management company AAM (collectively "Third-Party Defendants"), alleging harassment, defamation, negligent infliction of emotional distress and intentional infliction of emotional distress. Urbano added the Third-Party Defendants to the existing abuse of process and punitive damages claims, too, but not the breach of contract and breach of good faith and fair dealing claims.

Summary Judgment and Attorney Fees

¶7 The HOA and Third-Party Defendants successfully moved for summary judgment. The superior court found the 2014 Order void because the justice court lacked subject matter jurisdiction to relieve Urbano from having to pay all future assessments.

¶8 After an evidentiary hearing, the HOA and Third-Party Defendants successfully moved for their attorney fees. The HOA was awarded $31,830, while the Third-Party Defendants were awarded $83,413. Urbano timely appealed. We have jurisdiction. A.R.S. §§ 12-2101(A)(1), -120.21(A)(1).

DISCUSSION

¶9 Urbano argues the 2014 Order was enforceable. He also argues the superior court erroneously granted summary judgment to the HOA and improperly granted attorney fees to the HOA and Third-Party Defendants. We address each argument in turn.

I. The 2014 Order.

¶10 Urbano first argues the superior court erred by finding the 2014 Order void.[1] Justice courts are courts of limited jurisdiction, only having jurisdiction as affirmatively conferred on them by statute. Ariz. Const. art. 6, § 32(B); A.R.S. § 22-201(A). We review the interpretation of statutes and the justice court's subject matter jurisdiction de novo. *State ex rel. Brannan v. Williams*, 217 Ariz. 207, 209–10, ¶ 4 (App. 2007).

¶11 As relevant here, justice courts have jurisdiction to hear civil actions when the amount involved is less than ten thousand dollars and

[1] Urbano failed to develop this argument in his brief, which may constitute waiver, but we address the argument in our discretion. *See* ARCAP 13(a)(7); *Ramos v. Nichols*, 252 Ariz. 519, 522, ¶ 8 (App. 2022).

when the dispute involves the right to possession of real property, but not ownership or title to that property. A.R.S. § 22-201(B), (D). A justice court order is void when the justice court lacks jurisdiction to issue the order. *State v. Cramer*, 192 Ariz. 150, 153, ¶ 16 (App. 1998). A void order is a nullity, and the parties can proceed as though it had not been rendered. *Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 254 Ariz. 485, 491–92, ¶ 21 (2023).

¶12 The superior court found the 2014 Order void for lack of subject matter jurisdiction because it declared all future liens, encumbrances and assessments levied on Urbano to be invalid. We agree because that relief is neither a monetary remedy under ten thousand dollars nor concerns the right to possess real property. *See* A.R.S. § 22-201(B), (D).

¶13 Urbano raises a new theory on appeal, arguing the 2014 Order is enforceable under the theory of promissory estoppel, but that argument was waived because Urbano never raised it below. *See Harris v. Cochise Health Sys.*, 215 Ariz. 344, 349, ¶ 17 (App. 2007).

II. Summary Judgment.

¶14 Next, Urbano claims the superior court erred by granting the HOA's motion for summary judgment. We review the grant of summary judgment de novo, viewing the evidence and reasonable inferences in the light most favorable to the party opposing the motion. *Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12 (2003). Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). A moving party is entitled to summary judgment "if the facts produced in support of the [nonmovant's] claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990).

¶15 To prove a breach of contract claim, plaintiffs must establish the existence of a contract, breach and resulting damages. *Graham v. Asbury*, 112 Ariz. 184, 185 (1975). The HOA met that burden with undisputed evidence that Urbano agreed to the CC&Rs, failed to pay assessments and had an outstanding balance. *See Ahwatukee Custom Ests. Mgmt. Ass'n, Inc. v. Turner*, 196 Ariz. 631, 634, ¶ 5 (App. 2000) ("CC & Rs constitute a contract between the subdivision's property owners as a whole and individual lot owners.").

¶16 Still, Urbano argues the 2014 Order is evidence of an agreement that exempts him from assessments, creating a dispute of material fact. Urbano had the burden of proof to demonstrate this affirmative defense and counterclaim. *Grubb & Ellis Mgmt. Servs., Inc. v. 407417 B.C., L.L.C.*, 213 Ariz. 83, 89, ¶ 21 (App. 2006) ("The proponent of an affirmative defense has the burden of pleading and proving it."). To meet that burden, however, Urbano relies on the void 2014 Order, which is a nullity and ineffective for any purpose. *See State v. Espinoza*, 229 Ariz. 421, 429, ¶ 32 (App. 2012); *supra* ¶¶ 11–13. Beyond that, the CC&Rs required that any amendment to the declaration be signed by the HOA's president or vice president and recorded, which never happened. As a result, the alleged oral agreement could not have raised a material fact that prevented summary judgment. *Orme Sch.*, 166 Ariz. at 310.

¶17 The superior court properly granted the HOA's motion for summary judgment.

III. Attorney Fees.

¶18 Lastly, Urbano challenges whether the superior court had authority to grant the Third-Party Defendants' attorney fees and whether the HOA's attorney fees were reasonable.

A. The Third-Party Defendants.

¶19 Urbano claims the superior court erred by awarding fees to the Third-Party Defendants because he sued them for tort claims, not contract claims.

¶20 Parties in civil cases are generally responsible for their own litigation expenses. *Bennett v. Baxter Grp., Inc.*, 223 Ariz. 414, 419, ¶ 19 (App. 2010). Section 12-341.01(A) represents one exception to that rule, stating "[i]n any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees." A.R.S. § 12-341.01(A). Arizona courts may also award fees for tort claims when interwoven with contract claims, but only when the tort claims could not exist but for the breach of contract. *Ramsey Air Meds, L.L.C. v. Cutter Aviation, Inc.*, 198 Ariz. 10, 13, 15, ¶¶ 17, 27 (App. 2000).

¶21 Here, the Third-Party Defendants requested fees as the successful party in an action arising out of contract under A.R.S. § 12-341.01(A), but Urbano's tort claims arose from his argument with the property manager, which were unrelated to his breach of contract claims

against the HOA. For that reason, we reverse the superior court's award of attorney fees to the Third-Party Defendants.

B. Plaintiff HOA.

¶22 Urbano next challenges the superior court's award of attorney fees to the HOA as plaintiffs, which he contends were for an unreasonable amount. We review for abuse of discretion. A.R.S. § 12-341.01; *Hawk v. PC Village Ass'n, Inc.*, 233 Ariz. 94, 100, ¶ 19 (App. 2013). We will not disturb the court's decision if it has any reasonable basis. *State Farm Auto. Ins. Co. v. Arrington*, 192 Ariz. 255, 261, ¶ 27 (App. 1998).

¶23 Urbano argues the court did not consider the relevant factors in awarding $31,830 in fees to the HOA. Not so. The superior court considered several factors to reach the award, including Urbano's counterclaims and discovery. Nor was the court required to make findings on the record. *See Hawk*, 233 Ariz. at 100, ¶ 21. We discern no error on the HOA's fee award.

CONCLUSION

¶24 We affirm the superior court's orders voiding the 2014 Order, granting Lakewood HOA's motion for summary judgment and granting the HOA's attorney fees on its contract claims. We reverse the order granting attorney fees to the Third-Party Defendants.

¶25 The HOA requested attorney fees under the contract and Arizona law. The CC&Rs grant the HOA reasonable attorney fees expended collecting assessments. Thus, we grant the HOA's appellate attorney fees upon compliance with ARCAP 21.

¶26 The Third-Party Defendants also request their attorney fees, but we decline that request because their case did not arise out of the CC&Rs or contract. *Supra* ¶ 21. They cite no other authority entitling them to fees on appeal. *See* ARCAP 21(a)(2) ("A claim for fees under this Rule must specifically state the statute, rule, decisional law, contract, or other authority for an award of attorneys' fees.").