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Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 10/02/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ROBERT SEYFFERTH COMPANY, INC.,	)	1 CA-CV 11-0406
an Arizona corporation,	)	
	)	DEPARTMENT E
Plaintiff/Appellee,	)	
	)	<b>MEMORANDUM DECISION</b>
v.	)	(Not for Publication -
	)	Rule 28, Arizona Rules of
BLUE HAVEN NATIONAL MANAGEMENT,	)	Civil Appellate Procedure)
INC., a California corporation,	)	
	)	
Respondent/Appellant.	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CV2009-090480

The Honorable John R. Ditsworth, Judge

**AFFIRMED IN PART, VACATED IN PART, AND REMANDED**

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P O R T L E Y, Judge

¶1 Blue Haven National Management, Inc. ("Blue Haven")  
appeals the summary judgment granted to Robert Seyffertth

Company, Inc. ("RSC"). For the following reasons, we affirm in part, vacate in part, and remand.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶2 Robert Seyfferth ("Seyfferth") was a general manager for Diving Lady of Arizona, Inc. ("Diving Lady") pursuant to an employment agreement that remained in effect from 2003 to 2007. Seyfferth and Diving Lady had an employment dispute, and Blue Haven, a separate corporation operated by the same individuals operating Diving Lady, stepped in to resolve the dispute. Blue Haven entered into an agreement with Seyfferth and RSC<sup>1</sup> entitled "Consultancy Agreement," and agreed to pay \$500,000 over the course of six years. In return, Seyfferth released any claims he may have had against Diving Lady and Blue Haven, and he and RSC agreed to provide consulting services to Blue Haven. The agreement further provided that Blue Haven would pay RSC monthly installments until the \$500,000 was paid, and that "[t]he benefits of this Agreement shall inure to Seyfferth's survivors, heirs and devisees."

¶3 Seyfferth died in March 2007, three months after Blue Haven began to make the monthly payments pursuant to the agreement. Blue Haven continued to make payments, but later asserted that it terminated the consultancy agreement when

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<sup>1</sup> The agreement specifically listed RSC as a party: "Robert Seyfferth and the Robert Seyfferth Company (hereinafter collectively 'Seyfferth')."

Seyfferth died, and that the continued payments were the result of an accounting oversight. Blue Haven did not, however, communicate the termination to Seyfferth's widow, Helga Seyfferth, or to RSC.

¶14 After Blue Haven stopped making payments in December 2008, Mrs. Seyfferth filed a lawsuit against Blue Haven and Diving Lady. The complaint sought damages for the breach of contract and sought the balance of the \$500,000 under an account stated theory.<sup>2</sup>

¶15 Mrs. Seyfferth and RSC filed a motion for summary judgment. Blue Haven was granted permission to conduct discovery before filing its response. The court subsequently considered its cross-motion for summary judgment and all related pleadings. After oral argument, the court found that RSC was entitled to partial summary judgment against Blue Haven on the issue of liability for breach of the contract.<sup>3</sup> The court, however, found that the issue of damages could not be summarily resolved.

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<sup>2</sup> "An account stated . . . signifies an agreed balance between the parties to a settlement; that is, that they have agreed after an investigation of their accounts that a certain balance is due from one to the other." *Trimble Cattle Co. v. Henry & Horne*, 122 Ariz. 44, 47, 592 P.2d 1311, 1313 (App. 1979) (citation and internal quotation marks omitted).

<sup>3</sup> The court also granted Blue Haven's cross-motion in part by dismissing the claims against Diving Lady and dismissing Mrs. Seyfferth's individual claims. Those rulings have not been challenged on appeal.

¶16 At a subsequent hearing, RSC limited its claim to the account stated. The court found that there were no remaining issues of fact and granted RSC judgment on the balance of the \$500,000 that had not been paid. Blue Haven filed this appeal after the court entered judgment, which included pre-judgment and post-judgment interest as well as an award of attorneys' fees and costs.

### DISCUSSION

¶17 Blue Haven argues that it was error to grant RSC summary judgment. Specifically, Blue Haven contends that the court erred by: considering inadmissible evidence; disregarding ambiguities about the agreement's intended purpose and the payment obligations it imposed on Blue Haven; and ordering Blue Haven to pay the outstanding balance contrary to the agreement's payment terms when there was no pending motion, new evidence, or ruling on damages.

¶18 Summary judgment is appropriate "if the facts produced in support of the 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, 802 P.2d 1000, 1008 (1990). We review a grant of summary judgment de novo and examine the evidence in the light most favorable to the party opposing summary judgment.

*Federico v. Maric*, 224 Ariz. 34, 36, ¶ 7, 226 P.3d 403, 405 (App. 2010) (citations omitted). We are not bound by the trial court's interpretation of the parties' agreement because contract interpretation generally is a matter of law. *County of La Paz v. Yakima Compost Co.*, 224 Ariz. 590, 599, ¶ 14, 233 P.3d 1169, 1178 (App. 2010) (citation omitted).

### *I. Admissibility of Evidence*

¶9 Blue Haven first argues that the court relied on inadmissible evidence to grant summary judgment. We disagree. Although the court did not make findings in support of its ruling on the breach of contract claim, we can affirm so long as the ruling is correct for any reason. *Rowland v. Great States Ins. Co.*, 199 Ariz. 577, 581-82, ¶ 6, 20 P.3d 1158, 1162-63 (App. 2001) (citation omitted).

¶10 Here, the court did not need to rely on the challenged evidence – the cocktail napkin agreement or Helga Seyfferth's characterization of the parties' intent – to conclude that Blue Haven was contractually required to make payments to RSC even after Seyfferth's death.<sup>4</sup> The agreement identifies both Seyfferth and RSC as parties, and refers to both collectively as "Seyfferth." The agreement further defines the collective

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<sup>4</sup> Consistent with our analysis, at the hearing to consider RSC's motion for summary judgment, the judge noted: "I really do think that we're focusing on the language of the contract and the way it's been pled, there's not going to be that much outside we need to discuss."

"Seyfferth" as "such Party itself, and/or such Party's trustee(s), heirs, executors, administrators, spouses, successors, assigns, offspring, issue, beneficiaries, . . . representatives, agents, principals, partners, officers, directors, . . . and any combination of the above, or anyone acting on their behalf." Because of the broad language, the collective "Seyfferth" includes Seyfferth and RSC, as well as their heirs, such as Mrs. Seyfferth, or any successor to RSC. Our understanding is supported by the "Covenants and General Release" provision of the agreement, which specifically provides that "[t]he benefits of this [a]greement shall inure to Seyfferth's[] survivors, heirs and devisees." Consequently, a plain reading of the agreement supports the trial court's ruling.

¶11 Furthermore, although the agreement repeatedly refers to Blue Haven's "desire[] to settle and compromise all claims of any nature between the Parties and Diving Lady," Blue Haven attempts to portray the agreement as a personal services contract. Despite this contention, the agreement cannot be construed as a personal services agreement between Seyfferth and Blue Haven.

¶12 Generally, a personal services agreement, like Magic Johnson's first contract with the owner of the Los Angeles Lakers, involves one party's promise to perform in exchange for

the other party's promise to tender a fixed payment. *See Miller v. City of Phoenix*, 51 Ariz. 254, 260, 75 P.2d 1033, 1036 (1938). Such agreements do not bind the parties' heirs, successors, and assigns, and are not subject to specific enforcement. *See id.* Thus, based on its terms, the agreement here is not a personal services agreement but a settlement of the dispute between Seyfferth and Diving Lady. The plain language of the agreement provides that it is one of "[c]onsultancy, [c]ompromise and [f]ull and [g]eneral [r]elease." The agreement, moreover, expressly states that Blue Haven was resolving any claim Seyfferth might have against Diving Lady by paying Seyfferth and RSC as consultants, as needed, for six years. Although the agreement has components of a personal services contract, the fact that the agreement was created to resolve Seyfferth's dispute with Diving Lady, and included RSC to provide consulting services, readily supports the construction that RSC, an intended party to the contract, was entitled to continued payments even if Seyfferth passed away. Consequently, we find no error.

## *II. Alleged Factual Disputes*

¶13 Blue Haven next argues that summary judgment was improper because factual disputes existed as to the agreement's primary purpose. According to Blue Haven, the agreement contemplated paying Seyfferth only for his consulting services,

and therefore terminated upon his death. We disagree. The agreement indicates that Blue Haven agreed to retain Seyfferth, and RSC, as consultants "[i]n consideration of resolving any and all existing or potential disputes between [the parties and Diving Lady]." Furthermore, it provides that "in the event of a dispute as to [the agreement's] interpretation, no ambiguity shall be construed for or against any [p]arty. Rather, it is the [parties'] intent that the court shall construe this [a]greement fairly and in a manner that gives full effect to its purpose and intent."

¶14 Although the main objective of contract interpretation is to effectuate the parties' intent, extrinsic evidence is inadmissible if it contradicts the contract language. *Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 152, 154 n.2, 854 P.2d 1134, 1138, 1140 n.2 (1993) (citations omitted). Here, the contractual waiver of Seyfferth's claims against Diving Lady and Blue Haven was an integral part of the parties' bargain and, as a result, any extrinsic evidence offered to undermine the plain language of the contract was properly excluded as incompatible with the terms of the agreement.

¶15 Blue Haven also argues that the settlement of claims was not supported by consideration. Despite provisions in the agreement that "Seyfferth's consideration for this agreement shall be his waiver of claims as provided herein," and that Blue



Haven agrees to retain Seyfferth "[i]n consideration of resolving any and all existing or potential disputes," Blue Haven argues that the claims settlement did not constitute consideration because (1) Seyfferth did not have claims against Blue Haven and (2) Blue Haven was not affiliated with Diving Lady.

¶16 Even if we assume for the purpose of argument that Seyfferth had no claims or potential claims against Blue Haven, his release of claims against Diving Lady constituted a benefit to Blue Haven that was sufficient to satisfy the consideration requirement. See *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 139 Ariz. 209, 212, 677 P.2d 1317, 1320 (App. 1983) (citation omitted) ("Consideration is a benefit to the promisor or a loss or detriment to the promisee, and there is no consideration for a promise where no benefit is conferred on the promisor or a detriment suffered by the promisee."). Here, because the settlement of Seyfferth's claims was a valid and substantial portion of the parties' bargain, and the agreement refers to Seyfferth's "survivors, heirs and devisees," the agreement demonstrates that it was reasonably intended to last for the six-year term even if Seyfferth died during the term of the agreement.

¶17 Blue Haven also argues that the court erred when it failed to recognize the provisions that required Seyfferth to

provide consulting services as a condition precedent to Blue Haven's payment obligation. The language of the agreement does not support the argument. First, the agreement only provides that Blue Haven will retain Seyfferth for consulting services for six years but does not provide that he has to provide any services before the first and successive monthly payments were due. Moreover, the agreement provides that it would inure to Seyfferth's survivors, heirs and devisees.

¶18 And, with respect to RSC, the agreement does not require active consulting but merely states that "the Robert Seyfferth Company will make itself available on an as needed basis during the coveture [sic] of this [a]greement to provide advice and consultation to Blue Haven National Management, Inc." Therefore, even assuming Blue Haven's contention that RSC cannot perform consulting services, RSC is still entitled to compensation for the negotiated waiver of claims. Consequently, the court did not err in granting summary judgment to RSC.

### *III. Damages*

¶19 Finally, Blue Haven challenges the court's summary grant of damages and argues that the court was not authorized to enter the damages award in the absence of a corresponding motion or ruling. We disagree.

¶20 After granting partial summary judgment on liability, the court determined that the damages for the breach of contract

could not be readily calculated. Once RSC withdrew its claims for consequential and punitive damages in open court, however, the court was free to evaluate whether there was a dispute about the basic damage claim. The court found there was no dispute under the contract. As a result, we find no error.

¶21 Blue Haven additionally argues that the court incorrectly ordered it to pay the entire outstanding balance, with interest, because the agreement required monthly installment payments. We agree.

¶22 Whether the claim is for the breach of contract for a specific amount or as an account stated for a specific amount, *Trimble Cattle Co.*, 122 Ariz. at 48, 592 P.2d at 1314, the agreement does not contain an accelerated payment clause. Instead, Seyfferth and RSC agreed to a six-year payout of the settlement sum; in other words, the parties entered into a settlement requiring Blue Haven to pay RSC monthly for six years. A fair construction of the agreement therefore requires that Blue Haven can only be held responsible for each missed payment since December 2008, plus interest, attorneys' fees, and costs. Because the judgment entered by the court accelerated the balance of the \$500,000.00, and ordered interest on the full amount, we vacate the award of \$339,744 plus pre-judgment and

post-judgment interest, and remand for a recalculation of the payments due since December 2008 plus pre-judgment interest.<sup>5</sup>

¶123 Blue Haven and RSC have requested attorneys' fees on appeal pursuant to Ariz. Rev. Stat. ("A.R.S.") § 12-341.01 (West 2012). Both parties have prevailed in part; RSC retained its summary judgment on all but the calculation of the judgment and Blue Haven prevented the complete acceleration of the agreement. Accordingly, in the exercise of our discretion, we decline the attorneys' fees requests. Mindful of A.R.S. § 12-342(A) (West 2012),<sup>6</sup> we will allow the trial court to determine whether any party is entitled to costs expended on this appeal when a judgment is entered.

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<sup>5</sup> We are not vacating the trial court's award of attorneys' fees or costs. We also do not address whether RSC will be entitled to further fees or costs when the judgment is recalculated.

<sup>6</sup> The statute governing appellate costs provides that:

On an appeal by the party against whom judgment was given in the court below, if the judgment of the appellate court is against him, but for a lesser amount, he shall recover costs in the appellate court, but shall be adjudged to pay costs in the court below. If the judgment of the appellate court is against him for the same or a greater amount than in the court below, the adverse party shall recover costs in both courts.

A.R.S. § 12-342(A).

## CONCLUSION

¶24 Based on the foregoing reasons, we affirm the judgment finding that Blue Haven is liable to RSC under the consultancy agreement, vacate the damage award with pre-judgment and post-judgment interest, and remand for a recalculation of the amount owed to RSC pursuant to the directions of this decision.

/s/

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MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

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PHILIP HALL, Judge

/s/

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MICHAEL J. BROWN, Judge