DIVISION ONE
FILED: 06/28/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

RON CAMERON, an individual,	)	1 CA-CV 11-0436
	)	
Petitioner/Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
WILLIAM C. MARTUCCI,	)	Rule 28, Arizona Rules of
	)	Civil Appellate Procedure)
Defendant/Appellant.	)	
	)	

Appeal from the Superior Court in Yavapai County

Cause No. P1300CV20090615

The Honorable Kenton D. Jones, Judge

AFFIRMED

William C. Martucci, Defendant/Appellant — Springfield, NJ
In Propria Persona

Wong Fujii Carter, P.C. — Phoenix
by Rick K. Carter
Ben J. Himmelstein
Matthew A. Klopp
Attorneys for Petitioner/Appellee

S W A N N, Judge

¶1 William C. Martucci appeals from a summary judgment granted against him on a breach of contract claim, and a later default judgment entered against him on other claims as a

sanction for his disregard of a court order to respond to discovery. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 At all relevant times, Martucci was a New Jersey resident and the president of ECASH, Inc., a New Jersey corporation. On or about September 22, 2004, Martucci and ECASH executed and delivered a $150,000 promissory note ("the Note") to Ron Cameron, a resident of Paulden, Arizona. The Note required Martucci and ECASH to make monthly payments to Cameron at his Paulden address or at any other place Cameron designated in writing.

¶3 In exchange for the Note, Cameron wired $150,000 from his Chino Valley Training Center account at a Chino Valley bank to Martucci and ECASH in two installments on September 23 and 30, 2004. Cameron wired another $100,000 from the same account to Martucci and ECASH on December 2, 2004, but did not receive an updated note reflecting an increased debt.

¶4 In December 2004, Martucci and ECASH defaulted. Cameron unsuccessfully demanded payment, and then, in April 2009, filed suit in Arizona against Martucci, ECASH, and others.[1] Cameron's complaint alleged claims for breach of contract, breach of the implied covenant of good faith and fair dealing,

[1] Martucci is the only party to this appeal. Default judgments were entered against ECASH and the other defendants based on their failure to appear.

conversion, securities fraud, fraud, negligent misrepresentation, and violations of A.R.S. §§ 44-1841 and 44-1842.

¶5 On September 14, 2009, Martucci filed a pro per "Answer to Summons and Cross Motion and Motion for Dismissal" that denied every complaint allegation starting with paragraph 9, and affirmatively alleged that Cameron was indebted to Martucci. In addition, Martucci moved for dismissal based on: (1) lack of personal jurisdiction; (2) forum non conveniens; and (3) the expiration of the statutes of limitations for "loans" and fraud.

¶6 Cameron then obtained a summary judgment against Martucci, but only on the breach of contract claim. Thereafter, Martucci refused to respond to Cameron's interrogatories, requests for admission, and requests for production. Martucci also ignored Cameron's efforts to resolve the discovery dispute, and failed to timely respond to a July 2010 motion to compel. Even after the superior court ordered Martucci in August 2010 to comply with the discovery requests within ten days or face "serious sanctions, up to and including, a striking of Defendant's Answer," Martucci did not comply. Instead, Martucci waited until October 1, 2010, to file a response in which he claimed that he did not understand what he was compelled to do

or produce, and had never seen the motion to compel paperwork. At that point, Cameron moved to strike Martucci's answer.

¶7 Following oral argument, the superior court granted Cameron's motion to strike Martucci's answer, and held a hearing on default. The hearing focused on Cameron's damages because Martucci chose not to testify regarding his own damages claim. The superior court signed a final judgment against Martucci in July 2011, awarding Cameron $610,356.16 in compensatory damages, plus interest. Martucci appeals.

DISCUSSION

¶8 As an initial matter, we note that Martucci's appellate brief does not comply with ARCAP 13(a)(4)'s requirement for citations to the record. Nevertheless, we have reviewed the record to determine whether there is merit to the appeal. *See Delmastro & Eells v. Taco Bell Corp.*, 228 Ariz. 134, 138 n.2, ¶ 7, 263 P.3d 683, 687 n.2 (App. 2011).

I. JURISDICTION WAS PROPER IN THE SUPERIOR COURT.

A. The Superior Court Had Personal Jurisdiction Over Martucci.

¶9 Martucci contends that the superior court lacked personal jurisdiction over him.[2] We review this issue de novo,

[2] We reject Cameron's argument that Martucci waived the personal jurisdiction defense. Martucci raised the defense in his September 14, 2009 answer, which was the first document he filed. We deny Cameron's request to supplement the appellate record with a pleading that Martucci allegedly transmitted to

and view the facts in the light most favorable to the plaintiff. *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 566, 569, 892 P.2d 1354, 1355, 1358 (1995).

¶10 Arizona exercises personal jurisdiction over nonresident litigants "to the maximum extent allowed by the federal constitution." *Id.* at 569, 892 P.2d at 1358 (citing Ariz. R. Civ. P. 4.2(a)). Defendants have fair warning that they are subject to jurisdiction if they purposefully direct activities at the forum state and the cause of action arises out of those activities. *Id*. at 570, 892 P.2d at 1359; *see generally Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-80 (1984).

¶11 Here, the purposeful availment requirement is satisfied: Martucci solicited funds from an Arizona resident, executed a promissory note with an Arizona resident, received funds wired by an Arizona resident, and agreed to send payments to an Arizona address. *See Aries v. Palmer Johnson, Inc.*, 153 Ariz. 250, 255-56, 735 P.2d 1373, 1378-79 (App. 1987) (basing personal jurisdiction in part on phone solicitations of an Arizona resident, the negotiations via phone calls to and from Arizona, and misrepresentations made to the Arizona resident via telephone and mail). These contacts were not casual and the

---

Cameron in August 2009 because that pleading is unstamped and unfiled.

cause of action arose out of them. The assertion of personal jurisdiction over Martucci was therefore reasonable and fair, and did not offend due process. *See Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd.*, 226 Ariz. 262, 270-71, ¶¶ 37-39, 246 P.3d 343, 351-52 (2011).

B. Martucci Waived the Forum Non Conveniens Issue.

¶12 Martucci asserts that he is a New Jersey resident and "seeks dismissal of the Complaint due to the principle of Forum Non Conveniens." But he only fleetingly referred to this doctrine in his answer, and his appellate brief is devoid of any arguments concerning the doctrine's requirements. We therefore deem the argument waived and do not address it. *See Stulce v. Salt River Project Agric. Improvement & Power Dist.*, 197 Ariz. 87, 94, ¶ 28, 3 P.3d 1007, 1014 (App. 1999); ARCAP 13(a)(6); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, 491 n.2, ¶ 6, 154 P.3d 391, 393 n.2 (App. 2007).

II. SUMMARY JUDGMENT ON CAMERON'S BREACH OF CONTRACT CLAIM WAS NOT BARRED BY THE STATUTE OF LIMITATIONS.

¶13 Martucci next challenges the summary judgment on Cameron's breach of contract claim (granted before the superior court struck his answer), arguing that a four-year statute of limitations on "loans" bars that claim.[3] We review de novo the

[3] Though Martucci cites no authority for this proposition, we take him to refer to the four-year statute of limitations

superior court's application of the statute of limitations when the determination hinges on a question of law and not on disputed facts. *Montano v. Browning*, 202 Ariz. 544, 546, ¶ 4, 48 P.3d 494, 496 (App. 2002).

¶14 The statute of limitations for breach of a written contract is six years. A.R.S. § 12-548. Cameron filed suit on April 24, 2009, less than six years after the September 22, 2004 Note was executed -- let alone breached. Martucci's defense fails as a matter of law. The statute of limitations did not bar summary judgment on the breach of contract claim.[4]

III. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY STRIKING MARTUCCI'S ANSWER AND GRANTING A DEFAULT JUDGMENT.

¶15 Martucci contends that the superior court abused its discretion by striking his answer and entering a default judgment against him. Ariz. R. Civ. P. 37(b)(2) provides:

---

contained in A.R.S. § 12-544. This statute, however, does not prescribe a limitations period for "debts."

[4] On appeal, Martucci makes a series of arguments relating to the merits of the contract claim, including the alleged lack of damage to Cameron, the enforceability of the Note, Martucci's lack of compensation for his actions, and Martucci's authority to act for Cameron. In the superior court, however, Martucci simply stated these allegations, accompanied by an unsworn "certification," and never submitted any statement of facts or affidavits setting forth the specific factual issues for trial. This response failed to meet the summary judgment standard requiring the party opposing the motion not to rest on allegations and to support the opposition with an affidavit or sworn statements. *See* Ariz. R. Civ. P. 56(e); *Orme Sch. v. Reeves*, 166 Ariz. 301, 310, 802 P.2d 1000, 1009 (1990).

> If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> . . . .
>
> (C) An order striking out pleadings . . . or rendering a judgment by default against the disobedient party[.]

¶16 Although a superior court has discretion to impose these sanctions, its exercise of that discretion is more limited when the ultimate sanction of default is imposed. *Poleo v. Grandview Equities, Ltd.*, 143 Ariz. 130, 133, 692 P.2d 309, 312 (App. 1984). Our task is to review the record and determine whether a reasonable basis exists for the superior court's ruling. *Sears Roebuck & Co. v. Walker*, 127 Ariz. 432, 437, 621 P.2d 938, 943 (App. 1980). We defer to the court's factual findings unless clearly erroneous. *Stoddard v. Donahoe*, 224 Ariz. 152, 154-55, ¶ 9, 228 P.3d 144, 146-47 (App. 2010).

¶17 Because Martucci has failed to supply a transcript of any of the hearings in this matter, including the proceedings conducted on striking the answer and entering the default judgment, we must assume that the evidence supports the superior court's rulings. *Kohler v. Kohler*, 211 Ariz. 106, 108 n.1, ¶ 8, 118 P.3d 621, 623 n.1 (App. 2005).

¶18 Moreover, the record before us contains ample evidence of Martucci's willful failure to comply with discovery requests

and the court's order. Martucci never objected to the scope of the discovery requests, and then months later claimed not to understand what he was required to produce. After a February 24, 2011 hearing, the court found no merit to Martucci's objection, stating: "Martucci has made no effort to assist or comply with [the] Court's Order since August 11, 2010." On this record, we find no abuse of discretion in the superior court's decision to strike the answer and enter a default judgment in favor of Cameron. *See Poleo*, 143 Ariz. at 133-34, 692 P.2d at 312-13 (affirming the judgment as to the striking of the pleading and entering default based upon the party's failure to timely and fully respond to discovery requests); *Gulf Homes, Inc. v. Beron*, 141 Ariz. 624, 688 P.2d 632 (1984) (finding no abuse of discretion when the superior court struck a reply to a counterclaim and entered a default judgment against a party whose president appeared at a deposition and gave unresponsive answers); *see also Roberts v. City of Phoenix*, 225 Ariz. 112, 118-21, ¶¶ 22-32, 235 P.3d 265, 271-74 (App. 2010) (holding that repeated violations of discovery obligations by failing to produce documents responsive to requests or required to be disclosed under Rule 26.1 demonstrated bad faith and justified striking the city's answer and entering default). Striking Martucci's answer was also appropriate because the court warned Martucci of the possibility of sanction beforehand. *See Old*

Pueblo Plastic Surgery, P.C. v. Fields, 146 Ariz. 178, 181, 704 P.2d 819, 822 (App. 1985).[5]

¶19 The striking of Martucci's answer and the entry of the default judgment moots Martucci's argument that Cameron's fraud claim is time-barred.

CONCLUSION

¶20 We affirm the superior court's judgment in all respects. We award Cameron his costs and his reasonable attorney's fees on appeal pursuant to A.R.S. § 12-341.01(A), subject to his compliance with ARCAP 21(c).

/s/
_____
PETER B. SWANN, Presiding Judge

CONCURRING:

/s/
_____
MICHAEL J. BROWN, Judge

/s/
_____
JON W. THOMPSON, Judge

[5] Before imposing the ultimate sanction of dismissal, a court must consider and reject lesser sanctions. *Wayne Cook Enters. v. Fain Props. Ltd. P'ship*, 196 Ariz. 146, 149, ¶ 12, 993 P.2d 1110, 1113 (App. 1999). We find no express finding to this effect in this incomplete record but note that the superior court conducted hearings prior to striking the answer and entering the default judgment. Because Martucci failed to supply transcripts of the hearings, we assume that the court found that lesser sanctions were inappropriate. *See Kohler*, 211 Ariz. at 108 n.1, ¶ 8, 118 P.3d at 623 n.1.