DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CHAMPION REMODELING & BUILDING, INC., an Arizona corporation, Plaintiff/Counterdefendant/Appellant, and LAWRENCE CHARLES VISNER and MARY P. VISNER, Counterdefendants/Appellants, v. SUSAN L. FRANCISCO, an individual; GALAXY INVESTMENT & HOLDING GROUP, INC., an Arizona corporation, Defendants/Counterclaimants/Appellees.	1 CA-CV 08-0785 DEPARTMENT D **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court of Maricopa County

Cause No. CV2005-019784

The Honorable Glenn M. Davis, Judge

AFFIRMED

Parker Law Firm, PLC — Phoenix

By John D. Parker, II
Attorneys for Plaintiffs/Counterdefendants/Appellants

Burton T. Cohen, PC Scottsdale
By Burton T. Cohen
Attorneys for Defendants/Counterclaimants/Appellees

T H O M P S O N, Judge

¶1 Plaintiff/counterdefendant/appellant Champion Remodeling & Building, Inc. (Champion) and counterdefendants/appellants Lawrence Charles Visner and Mary P. Visner appeal after a trial to the court. They argue that the final judgment does not accurately reflect the trial court's rulings and assert that the court erroneously entered a default judgment against the Visners. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On or about June 25, 2005, Champion and defendant/counterclaimant Susan L. Francisco entered into an agreement whereby Champion was to provide labor and materials to remodel property owned by defendant/counterclaimant Galaxy Investment Holding Group, Inc. (Galaxy).[1]

¶3 On December 30, 2005, Champion filed suit against Susan L. Francisco and Galaxy (collectively Francisco) for breach of contract and to foreclose on a mechanic's and

[1] Francisco was the beneficial owner and Galaxy the legal owner of the subject property.

materialmen's lien against the property. The complaint alleged that Champion had performed all acts required by the contract, that Francisco had not paid for the work as agreed, and that Francisco owed Champion the principal sum of $11,207.75.

¶4 Francisco filed an answer and counterclaim, naming Lawrence Visner, the controlling officer and director of Champion, and his wife as defendants on the counterclaim. Francisco alleged that the agreement she entered into was for a fixed price of $64,400, that she had already paid $101,962.01, and that Champion failed and refused to complete the work. Francisco alleged claims for breach of contract, unjust enrichment, false lien, consumer fraud, and director/officer liability. The claim for director/officer liability alleged that the other claims "were the result of the conduct of Visner, who directed the activities of Champion and was guilty of negligence and/or intentionally harmful conduct in the management and supervision of the corporate affairs of Champion." It sought to hold the Visners personally liable for the damages incurred by Francisco. Francisco sought repayment of $24,386.60, compensatory damages, and punitive damages.

¶5 Counsel for the Visners, who was also counsel for Champion, accepted service of the complaint and summons on March 6, 2006. On March 21, 2006, Champion and the Visners filed a motion to dismiss all but the breach of contract claim on the

counterclaim. They argued, among other things, that the Visners could not be held personally liable for the acts of Champion. The court denied the motion to dismiss.

¶6 Champion filed a reply to the counterclaim on May 17, 2006. To the count asserting personal liability of Visner, Champion answered:

> Champion denies that it breached the Agreement, that it has been unjustly enriched, or that there has been any "consumer fraud." Champion admits that its actions were the result of the conduct of Lawrence C. Visner and that Mr. Visner directed the activities of Champion. Champion denies there has been any "negligence and/or intentionally harmful conduct in the management and supervision of the corporate affairs of Champion." Champion affirmatively alleges that neither Lawrence C. Visner or Mary P. Visner are proper parties to this action. Champion further affirmatively alleges that Defendant/Counterclaimants have no standing to challenge the conduct of the management or affairs of Champion. Champion further affirmatively alleges that Count Five of the Counterclaim is an impermissible attempt to circumvent the laws and protections afforded by incorporation.

¶7 On May 25, 2006, Francisco filed an application for entry of default against the Visners. In 2007, Champion and Francisco filed a joint pretrial memorandum and a joint pretrial statement; although the Visners were identified as defendants on the counterclaim, the documents did not indicate they were filed on behalf of the Visners.

¶8 The court conducted a two-day bench trial. The court's minute entry noted that Charles Visner was present and that the Visners were represented by counsel. By minute entry dated November 26, 2007, the court found in favor of Francisco on Champion's complaint and on Francisco's claims for breach of contract and filing a false lien. The court found that the contract was a fixed-rate agreement based on the ambiguity of the provisions, which the court construed against Champion, as the drafter of the contract. The court awarded Francisco $27,181 in damages for breach of contract. The court also ordered that the lien be released, but denied statutory damages on the invalid lien, stating that, although it found the lien to be invalid, it was unable to find that Champion knew or had reason to know it was invalid. The court found in favor of Champion on Francisco's fraud claim.

¶9 Champion filed a motion for reconsideration arguing that Francisco's unjust enrichment claim should be dismissed and that the damages awarded Francisco were essentially an improper recoupment.

¶10 Francisco filed a proposed form of judgment that declared that judgment was entered on Francisco's counterclaims against Champion and the Visners jointly and severally. Champion and the Visners objected, arguing that only the consumer fraud claim could have been against the Visners because

the Visners were not parties to the contract that was the subject of the other claims, and that, because the court ruled in favor of Champion on the fraud claim, the Visners should not be held liable.

¶11 The court denied the motion for reconsideration. The court also denied the objection to the form of judgment stating:

> The Visners were defaulted in this matter. They were served, failed to answer, and an application for default was properly filed.
>
> The claims in the Counterclaims against the Visners included more than a consumer fraud claim and were based on the same conduct and similar claims as the Counterclaim against Champion Remodeling & Building Inc. The damages in this matter were proved in trial.

¶12 Francisco filed a revised form of judgment in accordance with the court's ruling denying attorneys' fees, and the Visners objected again, arguing that the counterclaims were not pleaded sufficiently to hold them personally liable for acts of the corporation. Francisco responded that the Visners were found liable for their own acts performed in the name of the corporation.

The court denied the Visners' second objection and signed the judgment, again stating that the "Visners were defaulted and found liable in this matter and judgment is properly entered against them." The judgment referred to the court's minute entry ruling of November 26, 2007, noted that the Visners had

defaulted, ordered that Champion recover nothing on its claims, and ordered, "[u]pon Defendants' Counterclaims, Judgment be and is hereby entered in favor of Defendants . . . and against Plaintiff, Champion . . . and Defendants on Counterclaim, Lawrence Charles Visner and Mary P. Visner, jointly and severally in the amount of $27,181.00."

¶13 Champion and the Visners filed a motion for a new trial, arguing that the court should construe Champion's reply to the counterclaim as a response by the Visners through their corporation and that the Visners therefore answered and defended and should not be found in default. They argued that the Visners could not be held personally liable for corporate acts without piercing the corporate veil, and that the counterclaim did not allege sufficient facts to support such a finding. They further argued that the ruling was confusing because the court never ruled on the unjust enrichment claim, which they asserted could not be valid when a contract exists, and because the court found that Francisco had not proved fraud, yet the final judgment granted judgment to Francisco "on the counterclaims."

¶14 After oral argument, the court denied the motion. Champion and the Visners timely appealed from the order denying

the motion for new trial. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(f)(1) (2003).[2]

DISCUSSION

¶15 We review a trial court's decision denying a motion for new trial for a manifest abuse of discretion. *Styles v. Ceranski*, 185 Ariz. 448, 450, 916 P.2d 1164, 1166 (App. 1996). We review issues of law de novo. *Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 300, ¶ 9, 955 P.2d 534, 537 (1998).

¶16 Champion and the Visners argue that the judgment does not accurately reflect the trial court's findings because it states that Francisco recovered on all five of her claims when she did not. Champion and the Visners specifically note that the court made no finding on unjust enrichment, found the lien

[2] The Visners are appealing from a default judgment. The primary remedy for relief from a default judgment is a motion to vacate the judgment pursuant to Rule 60(c), Arizona Rules of Civil Procedure. *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 311, 666 P.2d 49, 56 (1983). Generally, no appeal lies from a default judgment, although exceptions exist where there are questions as to jurisdiction or whether the default judgment was authorized by Rule 55, Arizona Rules of Civil Procedure. *Id*. In addition, where the defaulting party filed a motion for new trial without filing a motion to vacate the judgment, we have previously concluded that the trial court was afforded sufficient opportunity to review the claimed error, thereby bestowing jurisdiction on this court to hear the appeal. *See generally Poleo v. Grandview Equities, Ltd.*, 143 Ariz. 130, 692 P.2d 309 (App. 1984). The Visners did not file a motion to vacate the default judgment, but did file a motion for new trial. Pursuant to *Poleo*, we find we have jurisdiction to consider their appeal.

invalid but awarded no statutory damages on that count, and ruled against Francisco on the fraud claim.

¶17 We find no abuse of discretion. By rule, a judgment is intended not to provide details of the proceeding, but simply to articulate the court's order. Ariz. R. Civ. P. 54(a) ("A judgment shall not contain a recital of pleadings"). The judgment here appropriately states the result of the litigation-that the court has awarded damages of a particular amount against Champion and the Visners and in favor of Francisco. It expressly refers to the November 26, 2007, minute entry as containing the trial court's rulings after trial. No further detail is necessary to the judgment. *See, e.g., City of Mesa v. Bradshaw*, 11 Ariz. App. 171, 172, 462 P.2d 864, 865 (1969) (requirement that grounds for granting new trial be stated with specificity satisfied where judgment expressly incorporates minute entry findings and minute entry was attached to judgment). Champion and the Visners also argue that the trial court should have dismissed Francisco's claim for unjust enrichment.

¶18 The doctrine of unjust enrichment does not apply where a specific contract governs the relationship of the parties. *Brooks v. Valley Nat'l Bank*, 113 Ariz. 169, 174, 548 P.2d 1166, 1171 (1976). Once the court found in favor of Francisco on her breach of contract claim, the doctrine of unjust enrichment

became inapplicable and the claim became moot. The trial court did not address the unjust enrichment claim in either its minute entry ruling or the judgment. Although it would have been appropriate to do so, the failure to do so does not warrant action by this court.[3]

¶19 Champion and the Visners argue that this court should reverse the trial court's decision awarding damages to Francisco on her breach of contract claim because the court "cannot pry into the adequacy of the consideration . . . between the parties." They also argue that Francisco's claim was for a "recoupment" and that it was improper for the court to have allowed Francisco to recover a recoupment for money and labor that had been provided.

¶20 Champion and the Visners did not present these arguments in their motion for new trial. The scope of this court's review is limited to those issues and arguments presented in a motion for new trial, where the appeal is taken only from the judgment denying that motion. *See Rourk v. State*, 170 Ariz. 6, 12, 821 P.2d 273, 279 (App. 1991); *Sun Lodge, Inc. v. Ramada Dev. Co.*, 124 Ariz. 540, 543, 606 P.2d 30, 33 (App.

[3] Champion and the Visners assert that the amount of damages awarded should have been reduced because the unjust enrichment claim should have been dismissed. They have offered no explanation as to how the trial court's failure to dismiss or otherwise address the unjust enrichment claim requires a reduction of damages on the breach of contract claim.

1979). Champion and the Visners appealed specifically and only "from the judgment signed by the court on September 10, 2008," which was the judgment denying their motion for new trial. These arguments are therefore beyond this court's scope of review, and we do not address them.

¶21 Champion and the Visners also argue that the trial court should have found that the Visners appeared and defended against the counterclaim and so should not have been defaulted. They argue that the Visners should be deemed to have responded to the counterclaim by Champion's reply, in which Champion asserted that the Visners were not proper parties to the action. They further note that the trial court recognized that the Visners and Champion were represented by the same attorney during trial and assert that their counsel introduced evidence and questioned witnesses on behalf of both Champion and the Visners. Champion and the Visners argue that under these circumstances they actually appeared and defended and should not be found in default.

¶22 A defendant is required to answer a complaint or counterclaim within twenty days after the service of the summons. Ariz. R. Civ. P. 12(a)(1)(A). If the defendant files a motion to dismiss and the court denies the motion, the defendant must answer within ten days after notice of the court's ruling. Ariz. R. Civ. P. 12(a)(3)(A). If a defendant

fails "to plead or otherwise defend" as provided by these rules, a default may be entered against the party upon application by the party seeking relief. Ariz. R. Civ. P. 55(a). A default entered by the clerk becomes effective ten days after the filing of the application unless the party claimed to be in default pleads or otherwise defends in that time. Ariz. R. Civ. P. 55(a)(2),(3). The court may set aside the entry of default "[f]or good cause shown." Ariz. R. Civ. P. 55(c). A defendant against whom a default has been entered, but who has appeared in the action, must be served with at least three days' notice of a hearing on the application for judgment on the default. Ariz. R. Civ. P. 55(b)(2).

¶23 The Visners appear to confuse the requirement that a defendant "plead or otherwise defend" against the complaint or counterclaim for purposes of entry of default, with appearing in the action for purposes of notice prior to entry of a default judgment. A party appears in the proceeding by engaging in any act that recognizes the case is in court. *Tarr v. Superior Court*, 142 Ariz. 349, 351, 690 P.2d 68, 70 (1984). The Visners unquestionably appeared in the case by filing a motion to dismiss, pursuant to Rule 12(b)(6). However, when the trial court denied that motion, the Visners were required to file an answer to Francisco's counterclaim. They did not, and therefore did not "plead or otherwise defend" against the counterclaim as

required under the rules. Champion and the Visners argue that the Visners did respond through Champion's "Reply to Counterclaim." The record does not support this contention.

¶24 Champion and the Visners were represented by the same attorney. The motion to dismiss was clearly captioned as "Plaintiff's/Counterdefendants' Motion to Dismiss" and the initial statement in the text clearly identified both Champion and the Visners as the proponents of the motion. After the trial court denied the motion, Champion filed its "Reply to Counterclaim." The document clearly states that it is made on behalf of Champion and gives no indication that it was filed on behalf of the Visners. Throughout the body of the document, "Champion" admits and denies the allegations of the counterclaim and asserts affirmative allegations, even stating "Champion affirmatively alleges neither Lawrence Charles Visner or Mary P. Visner are proper parties in this action." The Visners offered no admissions, denials, or affirmative allegations. After Francisco filed her application for entry of default, the Visners had another ten days to answer the counterclaim. Ariz. R. Civ. P. 55(a)(3). They neither answered the counterclaim nor filed any document asserting that they had already answered through Champion. That they were represented at trial does not cure their failure to answer the counterclaim as required to avoid default.

¶25 Champion and the Visners also argue that, because they appeared in the action, under Rule 55(b) they were entitled to three-day's notice of a hearing on Francisco's application for entry of judgment before judgment could be entered. They argue they received no such notice and are entitled to the hearing.

¶26 Although Champion and the Visners argued in their motion for new trial that the Visners appeared and defended and so should not have been defaulted, they did not argue that they were denied a hearing under Rule 55(b)(2). We are limited in our review to arguments raised in the motion for new trial. *Rourk,* 170 Ariz. at 12, 821 P.2d at 279. We therefore do not address this argument.

¶27 Champion and the Visners argue that the Visners cannot be held responsible for actions taken by their corporation without clear and convincing evidence justifying piercing the corporate veil. They contend that no such evidence was presented at trial. The Visners, however, have defaulted and so have lost the right to litigate the merits of the case. *Tarr*, 142 Ariz. at 351, 690 P.2d at 70. Moreover, the claim for personal liability was not based on a theory of piercing the corporate veil, but on the allegations that Lawrence Visner directed the actions of the corporation and that he engaged in negligent management of the corporation or intentionally harmful conduct that resulted in injury. The Visners also argue that

the counterclaim was inadequate to support a judgment against them.

¶28 A default judgment is void if the complaint on which it is based does not state facts legally entitling the plaintiff to judgment. *Price v. Sunmaster*, 27 Ariz. App. 771, 774, 558 P.2d 966, 969 (1976). All that is required, however, is that the complaint "contain a plain and concise statement of the cause of action and give defendants fair notice of the allegations as a whole." *Cockerham v. Zikratch*, 127 Ariz. 230, 234, 619 P.2d 739, 743 (1980).

¶29 Francisco sought to hold the Visners personally liable for Lawrence Visner's actions in directing Champion to overcharge Francisco. In Arizona, corporate officers are generally insulated from personal liability for acts done in good faith on behalf of the corporation, but can be found personally liable for intentionally harmful or fraudulent conduct or for negligence in the management of the corporation that results in injury. *Albers v. Edelson Tech. Partners L.P.*, 201 Ariz. 47, 52, ¶ 19, 31 P.3d 821, 826 (App. 2001); *Bischofshausen, Vasbinder, and Luckie v. D.W. Jaquays Mining and Equip. Contractors Co.*, 145 Ariz. 204, 210-211, 700 P.2d 902, 908-909 (App. 1985).

¶30 The counterclaim against the Visners alleged that Lawrence Visner directed the activities of Champion as described

in the counts for breach of contract, unjust enrichment, recording a false lien and consumer fraud "and was guilty of negligence and/or intentionally harmful conduct in the management and supervision of the corporate affairs of Champion" resulting in damages to Francisco. The complaint sufficiently sets out the allegations against Lawrence Visner.

¶31 Champion and the Visners also argue that the pleadings did not support a consumer fraud judgment against them. Given that the trial court did not enter a judgment against them for consumer fraud, we do not address this argument.

CONCLUSION

¶32 The judgment of the trial court is affirmed.

/s/
_____
JON W. THOMPSON, Judge

CONCURRING:

/s/
_____
JOHN C. GEMMILL, Presiding Judge

/s/
_____
PATRICK IRVINE, Judge