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

THE ESTATE OF ELMO R. KEITH, by and through its personal representative; DOROTHY E. KEITH, an individual, Plaintiffs/Appellants, v. E. R. KEITH PROPERTIES, an Arizona limited liability company; ALEC KEITH and KAY KEITH, husband and wife, Defendants/Appellees.	No. 1 CA-CV 09-0236 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2006-050568

The Honorable Michael D. Jones, Judge
The Honorable Eddward Ballinger, Jr., Judge

AFFIRMED

Ayers & Brown, P.C. Phoenix
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J O H N S E N, Judge

¶1 Dorothy E. Keith and the Estate of Elmo R. Keith ("Appellants") appeal from the superior court's orders dismissing their complaint and granting summary judgment in favor of E.R. Keith Properties, Alec Keith and Kay Keith ("Appellees") on the third amended complaint. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Brothers Alec Keith and Elmo Keith were members of Keith Properties, LLC, an entity that purchased land for residential development. A separate entity, Keith Homes, run by Elmo and his son Forrest Keith, developed the land purchased by Keith Properties. On January 1, 1999, Elmo and his wife, Dorothy Keith, entered into a written agreement (the "Redemption Agreement") with Keith Properties, by which Elmo and Dorothy agreed to transfer to Keith Properties their membership interest in Keith Properties and also agreed to convey to Keith Properties a parcel of real property in Maricopa County (the "South Mountain Property"). In exchange, the Redemption Agreement provided that Keith Properties would transfer to Elmo and Dorothy a parcel of real property in Pinal County (the "Eloy Property") and also would release and indemnify Elmo and Dorothy from certain debts. According to the contract, the respective

property transfers were to take place “immediately following the execution” of the Redemption Agreement.

¶3 Elmo had been the manager of Keith Properties prior to the Redemption Agreement and continued in that role after the agreement. Pursuant to the Redemption Agreement, Elmo conveyed the South Mountain Property to Keith Properties on May 19, 1999. Unknown to Dorothy or Alec, however, Elmo, in his role as manager of Keith Properties, did not immediately transfer the Eloy Property to Dorothy and himself. Instead, through Keith Homes, Elmo built homes on various individual lots on the Eloy Property. When a home was completed, Elmo had Keith Properties transfer title to Keith Homes; Keith Homes then sold the completed home and retained the proceeds.

¶4 In a December 2001 telephone conversation, Elmo explained to Alec he had decided on his own not to transfer the entire Eloy Property at once to himself and Dorothy. Elmo said he did not make the transfer because he “did not trust Dorothy” and he did not feel justified taking ownership of the property until Keith Homes developed it. Alec agreed to Elmo’s practice of taking title to individual lots on the property only after building homes on them, telling Elmo, “That’s a deal.”

¶5 Elmo died on November 12, 2004. Only after his death did Dorothy learn that not all of the Eloy Property had been conveyed to her and Elmo pursuant to the Redemption Agreement.

In February 2005, Dorothy also learned that Keith Properties had sold an apartment property in Pinal County (the "Toltec Property"); she asked Alec about the sale and he allegedly told her not to worry, that he would handle matters. In July 2005, Alec sent Dorothy a letter offering $301,560 to conclude any business between Keith Properties and Keith Homes. At around the same time, Dorothy learned that in May 2005, Keith Properties had sold the remainder of the Eloy Property. When Dorothy questioned Alec about Keith Properties' failure to transfer the Eloy Property to her and Elmo, he allegedly told her to "trust him" and that they would settle the matter amicably.

¶6 On February 13, 2006, Appellants filed suit against Appellees, alleging breach of contract and conversion. The superior court dismissed the complaint without prejudice as barred by limitations but granted leave to amend. Appellants filed an amended complaint alleging breach of contract based on a modification to the Redemption Agreement, conversion and unjust enrichment; later, in a third amended complaint, they added a claim alleging fraud. The superior court entered summary judgment in favor of Appellees, stating:

> If this case involved an equitable claim by plaintiff against her deceased husband, the court believes her claim would probably prevail based upon the undisputed facts. And if Judge Jones [the judge previously

> assigned to the case] had not previously ruled that the statute of limitations barred her claims based upon the parties' 1999 redemption agreement, even plaintiff's counsel acknowledges her likely success on the merits. However, Judge Jones' ruling and applicable Arizona law, applied to the undisputed facts, serve as a bar to plaintiff's current claims.

The superior court also awarded Appellees' their attorney's fees and costs in the amount of $373,291.00.

¶7 Appellants timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

DISCUSSION

A. Dismissal of the Original Complaint.

¶8 Appellants first argue the superior court erred in dismissing their original complaint as time-barred.[1]

¶9 We review *de novo* the superior court's dismissal of a complaint based on limitations. *Dube v. Likins*, 216 Ariz. 406, 411, ¶ 5, 167 P.3d 93, 98 (App. 2007). A claim for breach of a

[1] Appellees argue Appellants are precluded from seeking review of this issue because they failed to re-assert the dismissed claims in their amended complaints. A party does not waive review of the dismissal of a claim by failing to re-allege the claim in an amended complaint, however, if, as here, the superior court has conclusively dismissed the claim. *See Davis v. TXO Prod. Corp.*, 929 F.2d 1515, 1518 (10th Cir. 1991) ("We believe that a rule requiring plaintiffs who file amended complaints to replead claims previously dismissed on their merits in order to preserve those claims merely sets a trap for unsuspecting plaintiffs with no concomitant benefit to the opposing party.") (footnotes omitted).

written contract must be commenced within six years, A.R.S. § 12-548 (2003); the limitations period applicable to a claim for conversion is two years, *id.* § 12-542(5) (2003). Generally, "a cause of action accrues, and the statute of limitations commences, when one party is able to sue another." *Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of Am.*, 182 Ariz. 586, 588, 898 P.2d 964, 966 (1995). Under the discovery rule, however, a plaintiff's cause of action accrues when the plaintiff "knows or, in the exercise of reasonable diligence, should know the facts underlying the cause." *Id.* The discovery rule applies when the plaintiff's injury or the conduct causing it is not easily detected by the plaintiff. *Id.* at 590, 898 P.2d at 968.

¶10 Appellants filed their complaint on February 13, 2006, a little more than seven years after execution of the Redemption Agreement on January 1, 1999. They argue Dorothy did not know and could not have known of Keith Properties' failure to transfer the Eloy Property to her and Elmo until at least December 2001. Appellants contend their conversion claim did not accrue until 2005, when Keith Properties sold the Eloy Property and kept the proceeds.

¶11 We first conclude the discovery rule does not toll the running of limitations on the claims at issue in this case. As to Elmo's estate, Elmo was the person at Keith Properties who

executed the transfers. Thus, Elmo was aware of any breach of the agreement at the time of its occurrence.

¶12 As to Dorothy, the failure to convey real property, at least under the circumstances presented, is not the type of conduct that is "difficult for [a] plaintiff to detect." *Id.* (discovery rule applied to breach of "most favored nations" clause in contract where breach occurred in private transaction between defendant and third party); *see also Walk v. Ring*, 202 Ariz. 310, 318-19, ¶ 33, 44 P.3d 990, 998-99 (2002) (dental malpractice claim; fact-finder to decide whether plaintiff had reason to know adverse effects were due to fault of defendant); *Tom Reed Gold Mines Co. v. United E. Mining Co.*, 39 Ariz. 533, 535, 8 P.2d 449, 450 (1932) (when defendant secretly removed ore from mine, limitations commenced when plaintiff learned of trespass and conversion).

¶13 In Arizona, conveyance of real property is a matter of public record. A.R.S. § 33-411.01 (2007) ("Any document evidencing the sale, or other transfer of real estate . . . shall be recorded by the transferor in the county in which the property is located and within sixty days of the transfer."). Thus, the transfer of the Eloy Property to Elmo and Dorothy would have been recorded in the office of the Pinal County Recorder. Because a search of the Pinal County Recorder's

records would have revealed that the parcel had not been transferred, the discovery rule does not apply.

¶14 Dorothy also argues, however, that limitations should be tolled due to Appellees' alleged fraudulent concealment. She contends Alec knew she was unaware of Keith Properties' failure to transfer the Eloy Property and that he and Elmo agreed to conceal that fact from her.

¶15 To toll the statute of limitations, the defendant must have engaged in a "positive act" designed to prevent detection of the cause of action. *Cooney v. Phoenix Newspapers, Inc.*, 160 Ariz. 139, 141, 770 P.2d 1185, 1187 (App. 1989); *Jackson v. Am. Credit Bureau, Inc.*, 23 Ariz. App. 199, 202, 531 P.2d 932, 935 (1975). Appellants base their fraudulent concealment argument on Alec's deposition testimony regarding a December 2001 telephone call between Alec and Elmo, Alec's statement to Dorothy that she could "trust him" and Alec's July 2005 letter offering to settle the business between Keith Properties and Keith Homes. According to Alec's account of the telephone call, Elmo told Alec that he decided not to transfer the Eloy Property pursuant to the Redemption Agreement because Elmo "did not trust Dorothy, should the remote chance occur that he would die before Dorothy." Alec also testified that he never discussed the conversation with Dorothy.

¶16 We conclude that none of the acts that Appellants allege constitute fraudulent concealment reasonably could have prevented Dorothy from discovering that Keith Properties had not conveyed the Eloy Property, nor have Appellants offered evidence that Alec intended to prevent Dorothy's detection of her claims. Alec's testimony does not establish that he and Elmo affirmatively conspired to conceal Elmo's decision to transfer the Eloy Property only in increments. Additionally, given that real estate transfers require a public filing, Alec's assurances to Dorothy and his offer to settle the business between the two companies could not have prevented her from discovering that the transfer had not occurred. Accordingly, the statute of limitations was not tolled.[2]

¶17 Having concluded the discovery rule does not apply and the statute of limitations was not tolled, we next determine when Appellants' causes of action accrued. The Redemption Agreement, dated January 1, 1999, required that the property

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[2] Appellants argue the statute of limitations on the claims of Elmo's estate should be tolled between his death and the appointment of Dorothy as personal representative of his estate. Because they did not raise this argument in the superior court, and raised it on appeal for the first time in their reply brief, we deem it waived. *Maher v. Urman*, 211 Ariz. 543, 548, ¶ 13, 124 P.3d 770, 775 (App. 2005) (arguments not raised in superior court waived on appeal); *Ness v. W. Sec. Life Ins. Co.*, 174 Ariz. 497, 502, 851 P.2d 122, 127 (App. 1992) (arguments raised for first time in reply brief waived). Nonetheless, because Elmo controlled the property transfers at issue, we do not comprehend how a claim could be brought on behalf of his estate for failure to transfer property.

transfer occur "immediately following the execution of this Agreement." Although the agreement did not define "immediately," Elmo transferred the South Mountain Property to Keith Properties in May 1999. Thus, even had the parties intended "immediately" to mean up to four months later, when the South Mountain transfer occurred, Appellants' breach of contract claim fell outside the six-year statute of limitations because it was not filed until February 13, 2006. As a result, the superior court correctly dismissed the claim.

¶18 Appellants argue their conversion claim accrued in 2005, when Keith Properties sold what remained of the Eloy Property and retained the proceeds. "Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." *Miller v. Hehlen*, 209 Ariz. 462, 472, ¶ 34, 104 P.3d 193, 203 (App. 2005) (quoting Restatement (Second) of Torts § 222A(1) (1965)). A cause of action for conversion accrues "at the time of the wrongful taking." *Jackson*, 23 Ariz. App. at 201, 531 P.2d at 934.

¶19 Appellants' right to the Eloy Property was created by the Redemption Agreement's requirement that Keith Properties "immediately" transfer the parcel to them. Therefore, any wrongful taking occurred when Keith Properties continued to

exercise dominion and control over the property instead of transferring it to Appellants pursuant to the agreement. As a result, Appellants' cause of action for conversion accrued at the same time as their cause of action for breach of contract. Because the two-year statute of limitations expired long before they filed their complaint in 2006, the superior court correctly dismissed the action as time-barred.

B. Summary Judgment on the Third Amended Complaint.

¶20 Appellants next argue the superior court erred in granting summary judgment in favor of Appellees on all claims in their third amended complaint. Summary judgment is appropriate when "the pleadings, deposition[s], answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). Viewing the facts in the light most favorable to the non-moving party, we review *de novo* whether an issue of genuine material fact exists and whether the superior court correctly applied the law. *Green v. Garriott*, 221 Ariz. 404, 417, ¶ 51, 212 P.3d 96, 109 (App. 2009). An appellate court may affirm the superior court's entry of summary judgment if it is correct for any reason. *See Mutschler v. City of Phoenix*, 212 Ariz. 160, 162, ¶ 8, 129 P.3d 71, 73 (App. 2006).

1. Breach of contract.

¶21 In their third amended complaint, Appellants alleged Elmo and Alec agreed to modify the Redemption Agreement, either orally or by their course of conduct. According to Appellants, Appellees breached the amended Redemption Agreement by selling the remaining Eloy Property and the Toltec Property and failing to divide the proceeds with Appellants.

a. The Eloy Property.

¶22 We conclude Appellants provided sufficient evidence from which the trier of fact could conclude Alec and Keith agreed to amend the Redemption Agreement. In his deposition, Alec testified that in a telephone conversation between himself and Elmo in December 2001 or January 2002:

> [Elmo] said essentially two things: One was that he did not feel justified in selling the land of Picacho Heights [the Eloy Property] that was undeveloped because I had purchased it. He also said that he did not trust Dorothy, should the remote chance occur that he would die before Dorothy.
>
> He also said that as he built a home he would feel justified in then taking ownership of the home in Eloy or in Picacho Heights and selling it and taking the proceeds. That's –- and I agreed with Elmo, and I think about all I said was, "That's a deal."

Alec also testified that Keith Properties received none of the proceeds of the developed lots sold by Elmo. Additionally, Alec explained why Elmo wanted to have Keith Homes take title to the

Eloy property only lot-by-lot, rather than take the entire parcel at once:

> I think it was Elmo's morality and sense of right that when he had put energy and work and had actually done some [con]struction, then he had earned the home, and that was consistent with our original understanding. And he felt justified in then taking the property, and I was in complete agreement with him. Elmo and I did not have any argument.

¶23 Viewed in the light most favorable to Appellants, Alec's testimony is evidence that he and Elmo amended the Redemption Agreement regarding how and when Keith Properties was to convey the Eloy Property to Appellants. Though the original Redemption Agreement required Keith Properties to transfer the Eloy Property to Appellants "immediately," Alec's testimony shows that he and Elmo agreed instead that Keith Properties would transfer individual lots to Appellants only after Keith Homes had constructed homes on the lots.

¶24 Appellees argue, however, that Appellants failed to provide any evidence of a breach of the amended Redemption Agreement respecting the Eloy Property. They argue that (1) under the modified agreement, Keith Properties was obligated to transfer the Eloy Property to Elmo and Dorothy only on a lot-by-lot basis, as Keith Homes completed construction of homes; and (2) Appellants offered no evidence that Keith Properties breached that agreement. We agree. We have searched the record

and find no evidence that would support the contention that Keith Properties breached its obligation to transfer to Elmo and Dorothy any lot within the Eloy Property on which Keith Homes had built a home for sale.

b. The Toltec Property.

¶25 Appellants also alleged Appellees breached the Redemption Agreement by selling two apartment complexes (together, the "Toltec Property") and retaining the proceeds.

¶26 Appellants, however, concede the written Redemption Agreement did not encompass the Toltec Property. Instead, in her deposition, Dorothy testified simply that she understood from Elmo that Keith Homes was to own the property in Pinal County: "Elmo said the Pinal County and the properties down there were -– belonged to Keith Homes." Asked when Elmo made that statement to her, Dorothy testified Elmo told her that "[f]rom the time that they decided that they were no longer going to -– that Alec got the properties in Maricopa County." Thus, Dorothy's testimony, if taken as true, is that Elmo told her that their original agreement with Appellees was that Keith Properties would transfer the Toltec Property to Elmo and Dorothy. That testimony, however, is insufficient to create a genuine issue of material fact because it is contrary to the express terms of the Redemption Agreement. *See Aztar Corp. v. U.S. Fire Ins. Co.*, 223 Ariz. 463, 478, ¶ 52, 224 P.3d 960, 975

(App. 2010) ("the parol evidence rule bars admission of extrinsic evidence that varies or contradicts the terms of a written contract").

¶27 In short, no evidence in the record suggests the parties considered the Toltec Property to be subject to the Redemption Agreement. Accordingly, we affirm the superior court's entry of summary judgment on Appellants' breach of contract claim as to the Toltec Property.

2. Conversion.

¶28 Appellants' third amended complaint also alleged Appellees committed conversion by retaining the proceeds of the sales of the Eloy Property and Toltec Property that occurred after Elmo's death. Conversion is defined as the intentional exercise of control over property of another that seriously interferes with the other's right to control it. *See Miller*, 209 Ariz. at 472, ¶ 34, 104 P.3d at 203.

¶29 Appellants' alleged right to the proceeds of the sale of the properties arose only from the Redemption Agreement. Because, as we have held, Appellants cannot establish any contractual right to the Eloy or Toltec Properties, their claim for conversion fails.

3. Unjust enrichment.

¶30 Appellants' third amended complaint alleges Appellees were unjustly enriched by their retention of the sale proceeds

from the Eloy and Toltec Properties. According to Appellants, Appellees were required to transfer to Appellants the properties as consideration for Elmo's transfer to Keith Properties of the South Mountain Property; they assert that Appellees' failure to convey the Eloy and Toltec Properties and subsequent retention of the sale proceeds from those properties left Appellants unjustly enriched.

¶31 When "a specific contract . . . governs the relationship of the parties, the doctrine of unjust enrichment has no application." *Trustmark Ins. Co. v. Bank One, Ariz., NA*, 202 Ariz. 535, 542, ¶ 34, 48 P.3d 485, 492 (App. 2002) (quoting *Brooks v. Valley Nat'l Bank*, 113 Ariz. 169, 174, 548 P.2d 1166, 1171 (1976)). The Redemption Agreement and the amended Redemption Agreement are specific contracts that govern the relationship between the parties respecting the Eloy Property. Because Appellants' right to the Eloy Property exists only by virtue of the contract, they may not recover on a claim for unjust enrichment arising from the Eloy Property.

¶32 As we have held, neither the Redemption Agreement nor the amended Redemption Agreement encompasses the Toltec Property. Thus, the rule articulated in *Trustmark* does not bar Appellants from asserting a right to unjust enrichment relating to the Toltec Property.

¶33 A claim for unjust enrichment requires proof of "(1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) absence of justification for the enrichment and the impoverishment and (5) an absence of a remedy provided by law." *City of Sierra Vista v. Cochise Enters., Inc.*, 144 Ariz. 375, 381, 697 P.2d 1125, 1131 (App. 1984).

¶34 Although Appellants argue they incurred "substantial expenditures" in developing the Toltec Property, they provide no citation to the record for that assertion, and our review of the record reveals no evidence that they suffered an impoverishment in connection with the Toltec Property.[3] Accordingly, the superior court properly entered summary judgment on the claim.

4. Fraud.

¶35 Finally, Appellants' third amended complaint alleged fraud, arising from Alec's failure to inform Dorothy of the amendment to the Redemption Agreement, Alec's alleged statement to Dorothy "not to worry" about the Toltec Property's sale and that "he would handle matters," Alec's July 8, 2005 offer to settle any claims between Keith Homes and Appellants for

[3] At oral argument, Appellants' counsel argued that it was not disputed that Alec had no role in developing the Toltec Property and argued that as a result, it must have been Elmo who developed the property. But the record discloses that Elmo developed properties through Keith Homes, and that entity is not a party to this lawsuit.

$301,560.00 and Alec's alleged statement to Dorothy to "trust him" when she attempted to discuss the Eloy Property.

¶36 A claim for fraud requires proof of

> (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it be acted upon by the recipient in a manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the right to rely on it; [and] (9) his consequent and proximate injury.

Enyart v. Transamerica Ins. Co., 195 Ariz. 71, 77, ¶ 18, 985 P.2d 556, 562 (App. 1998) (citation omitted). The misrepresentation element may be satisfied by an omission when the defendant has "a legal or equitable obligation to reveal material information." *Haisch v. Allstate Ins. Co.*, 197 Ariz. 606, 610, ¶ 14, 5 P.3d 940, 944 (App. 2000).

¶37 Appellants argue Alec owed Dorothy a fiduciary duty to reveal the amendment to the Redemption Agreement because both were members of a limited liability company. Without addressing whether members of a limited liability company owe one another fiduciary duties under Arizona law, we conclude that at the relevant time, Alec and Dorothy were not members of the same limited liability company.

¶38 The only evidence in the record suggesting Dorothy was a member of Keith Properties is the Redemption Agreement, which

defines “Keith” as “Elmo R. Keith and Dorothy Keith, a married couple dealing with community property,” and states that “Keith is the owner of a Membership Interest in [Keith Properties].” But even if Dorothy was at one time a member of Keith Properties, the agreement terminated that interest, stating, “[Keith Properties] hereby purchases and redeems from Keith, and Keith hereby sells to the Company, [the membership interest].” Appellants argue that after the Redemption Agreement was amended, “the parties continued to intermingle the businesses.” But Appellants offer no evidence suggesting that the amended agreement reinstated Elmo and Dorothy as members of Keith Properties. As a result, after execution of the Redemption Agreement, Alec owed Dorothy no duty as fellow members of a limited liability company. Without “a legal or equitable obligation to reveal material information,” Alec’s failure to inform Dorothy of the amendment cannot satisfy the misrepresentation element of Appellants’ fraud claim. *See id.*

¶39 Appellants also assert that Alec made affirmative fraudulent representations; they assert he told Dorothy not to worry, told her to trust him, and sent her the settlement letter. They do not argue and it is not apparent from the record, however, that Dorothy relied on the statements or that any reliance was the consequent and proximate cause of her injury. Without addressing the other elements of fraud, we

conclude Appellants failed to produce sufficient evidence to create a genuine issue of fact that she relied on Alec's representations. *See Dawson v. Withycombe*, 216 Ariz. 84, 97, ¶ 33, 163 P.3d 1034, 1047 (App. 2007) ("Reliance is an essential element of a claim for fraud.").

¶40 For example, Dorothy learned in February 2004 that Keith Properties had not transferred the entire Eloy Property to her and Elmo. All of Alec's allegedly fraudulent representations, however, came after that date. Also, Dorothy knew that Alec sold part of the Toltec Property *before* he purportedly told her "not [to] worry about it [and that] he would handle matters." Likewise, Dorothy apparently learned of the Eloy Property's sale at approximately the same time Alec wrote to her offering a payment to settle the business between Appellants and Keith Properties and before she contends Alec told her to "'trust him' and asserted that the parties could resolve the matter amicably."

¶41 On this record, the trier of fact could not conclude that Dorothy relied on Alec's representations. Furthermore, because Alec's statements occurred after Dorothy learned Keith Properties had sold the properties and presumably kept the proceeds, the representations cannot have been the consequent and proximate cause of Dorothy's injury even if she had relied on them. As a result, we affirm the superior court's entry of

summary judgment on Appellants' fraud claim. *See Mutschler*, 212 Ariz. at 162, ¶ 8, 129 P.3d at 73 (appeals court may affirm superior court's order if correct for any reason).

C. Award of Attorney's Fee against Appellants.

¶42 After granting summary judgment in favor of Appellees, the superior court awarded Appellees their attorney's fees and costs, pursuant to A.R.S. § 12-341.01 (2003). Appellees requested an award of $418,050.50; the court awarded them $371,793 in fees and $1,498 in costs. Appellants argue the court abused its discretion in awarding attorney's fees to Appellees and that the amount awarded was excessive and unreasonable.

¶43 The superior court may award the successful party its attorney's fees in an action arising out of contract. A.R.S. § 12-341.01(A). We review the superior court's award of attorney's fees and costs for an abuse of discretion and uphold the award if supported by "any reasonable basis." *Maleki v. Desert Palms Prof'l Props., L.L.C.*, 222 Ariz. 327, 333-34, ¶ 32, 214 P.3d 415, 421-22 (App. 2009) (citation omitted). We look not to "whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason. We cannot substitute our discretion for that of the trial judge." *Associated Indem.*

Corp. v. Warner, 143 Ariz. 567, 571, 694 P.2d 1181, 1185 (1985) (quoting *Davis v. Davis*, 78 Ariz. 174, 179, 277 P.2d 261, 265 (1954) (Windes, J., specially concurring)).

¶44 Although the amount of fees awarded in this case is substantial, we cannot conclude the superior court abused its discretion. Appellees successfully obtained favorable judgments on all of Appellants' contract-based claims; the superior court granted Appellees' motion to dismiss Appellants' original complaint and granted Appellees' motion for summary judgment on all claims in Appellants' third amended complaint. As a result, a reasonable basis existed to support the superior court's conclusion that Appellees were the successful party.

¶45 Furthermore, we cannot conclude the amount of fees awarded was unreasonable or unsupported. Appellees provided with their application for attorney's fees an affidavit of counsel indicating "the type of legal services provided, the date the service was provided, the attorney providing the service . . . , and the time spent in providing the service." *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (App. 1983).

¶46 Rather than presenting specific objections to the fee award, Appellants contend Appellees did not exclude fees for motions on which they did not prevail and that the amount of fees Appellees sought was approximately four times that which

Appellants incurred in the litigation. Once a party has met the minimum requirements in the affidavit, the opposing party bears the burden to demonstrate its unreasonableness, and such "broad challenges" may be insufficient to demonstrate the unreasonableness of a fee award. *See Nolan v. Starlight Pines Homeowners Ass'n*, 216 Ariz. 482, 490-91, ¶ 38, 167 P.3d 1277, 1285-86 (App. 2007). Moreover, the amount of attorney's fees the superior court awarded was approximately $45,000 less than sought by Appellees. As a result, Appellants have failed to demonstrate that the amount of fees awarded was unreasonable.

CONCLUSION

¶47 For the reasons stated above, we affirm the superior court's orders. In our discretion, we grant Appellees' request for reasonable attorney's fees pursuant to A.R.S. § 12-341.01(A), and also grant Appellees' their costs on appeal, both contingent on compliance with Arizona Rule of Civil Appellate Procedure 21.

/s/_____
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/_____
PHILIP HALL, Judge

/s/_____
LAWRENCE F. WINTHROP, Judge