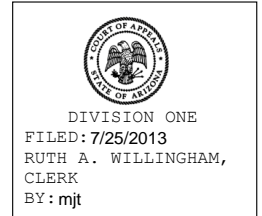


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



INFINET HOLDINGS, INC., an ) No. 1 CA-CV 12-0628  
Arizona corporation; and HDC )  
FINANCIAL SERVICES CORPORATION, ) DEPARTMENT C  
an Arizona corporation, )  
 )  
 ) **MEMORANDUM DECISION**  
Plaintiffs/Appellants, )  
 )  
v. ) (Not for Publication -  
 ) Rule 28, Arizona Rules of  
 ) Civil Appellate Procedure)  
THE SEIBELS BRUCE GROUP, INC., a )  
South Carolina corporation; )  
CONSOLIDATED AMERICAN INSURANCE )  
COMPANY, a South Carolina )  
corporation; and SOUTH CAROLINA )  
INSURANCE COMPANY, a South )  
Carolina corporation, )  
 )  
 )  
Defendants/Appellees. )  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. CV2002-005533

The Honorable George H. Foster, Judge

**AFFIRMED**

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**S W A N N**, Judge

¶1 Infinet Holdings, Inc. ("Infinet") and HDC Financial Services Corporation ("HDCFS") appeal from the summary judgment dismissing their breach of contract and related claims against The Seibels Bruce Group, Inc. ("SBG"), Consolidated American Insurance Company ("CAIC"), and South Carolina Insurance Company ("SCIC"). The judgment was based on the superior court's determination that the facts upon which Infinet and HDCFS's case depended had already been resolved in a bankruptcy proceeding. Because Infinet and HDCFS do not argue that the superior court erred by applying the doctrine of issue preclusion, we affirm.

*FACTS AND PROCEDURAL HISTORY*

¶2 Under a December 2001 Memorandum of Understanding, SBG agreed to front a captive worker's-compensation program for HDC -- a professional employee organization that was, along with HDCFS, a subsidiary of Infinet -- through SBG's subsidiary SCIC and SCIC's subsidiary CAIC.

¶13 In March 2002, Infinet, HDC, HDCFS, and Du Pre Insurance Services, Inc. ("Du Pre") filed a complaint in the superior court against SBG, SCIC, and CAIC, alleging that insurance policies issued to HDC had been improperly cancelled. The plaintiffs sought declaratory relief and monetary damages based on claims for breach of contract, bad faith, punitive damages, tortious interference with contract and business relations, slander, and negligent misrepresentation. In February 2003, the plaintiffs prevailed on their declaratory judgment claim. Thereafter, protracted litigation ensued, including the filing of cross-claims and counterclaims and the entry of summary judgment in favor of SBG on the punitive damages claim.

¶14 In June 2005, HDC filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. In July 2007, the bankruptcy court confirmed a plan of reorganization pursuant to which HDC was reorganized into a new entity, Reorganized HDC ("RHDC"). RHDC then pursued further litigation in the bankruptcy court to recover funds that HDC's principal, Anderton, allegedly stole from HDC. As his defense, Anderton contended that the funds at issue were Infinet's, not HDC's, and he claimed that HDCFS, not HDC, was the subsidiary that generated the vast majority of Infinet's revenue. In July 2011, the bankruptcy court found Anderton liable to RHDC for

over \$4.2 million. The district court affirmed in September 2012. *In re Human Dynamics Corp.*, 2012 WL 3848446, at \*11 (D.Ariz. Sept. 5, 2012) (unpublished decision).

¶15 RHDC also successfully moved to dismiss all of HDC's claims in the superior court action. With Infinet and HDCFS as the sole remaining plaintiffs after Du Pre settled its claims, SBG (joined by SCIC and CAIC) moved for summary judgment on the remaining counts. SBG argued that Infinet and HDCFS could not prove damages because they did not earn revenue from any operations that the defendants' conduct could have harmed: rather, HDC was the operational subsidiary, and it was no longer a plaintiff. SBG attached to its motion consolidated tax returns showing that Infinet's gross receipts consisted solely of revenue earned by HDC and the management fees that Infinet charged HDC. In response, Infinet and HDCSF argued that an issue of fact existed as to whether they were damaged by the defendants' conduct, because "HDCFS produced the greatest portion of Plaintiffs' revenue." In support of this argument, Infinet and HDCSF relied on testimony presented by Infinet executives during the bankruptcy proceedings, and stated that the testimony would be repeated at trial.

¶16 In October 2011, the superior court granted SBG's motion for summary judgment. The court found:

Because the issue of the operations of HDCFS [has] been determined in the Bankruptcy Court where the parties had the full and fair opportunity to litigate, and did litigate the issue of the operations of HDC and HDCFS, the issue is as a matter of law settled, HDCFS had no significant business operations and the revenue from the operations were the assets of HDC.

The court further pointed out that the bankruptcy court had found that "the documentary evidence established that all of the money at issue in that case was solely the assets of HDC, not HDCFS[,]" and that the testimony purporting to show that "HDCFS was a viable operating entity . . . [was] not credible."

¶17 The court entered an appealable judgment in August 2012. Infinet and HDCFS timely appeal. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

#### *DISCUSSION*

¶18 Infinet and HDCFS contend that the superior court erred by granting summary judgment on their claims for damages because factual issues remain as to whether the defendants' conduct harmed them. They contend that the court improperly "ignore[d] the conflicting issues of fact posed by the parties with respect to the nature and structure of [Infinet and HDCFS's] business operations."

¶19 The superior court determined that these issues had been litigated and resolved in the bankruptcy proceedings because the bankruptcy court had concluded that HDC was the

operational and revenue-generating entity. "Under [the doctrine of issue preclusion], a plaintiff and its privies are barred from relitigating issues already settled in one case against a defendant party in another case. The party asserting the bar must show that (1) the issue was litigated to a conclusion in a prior action, (2) the issue of fact or law was necessary to the prior judgment, and (3) the party against whom preclusion is raised was a party or privy to a party to the first case." *Maricopa-Stanfield Irr. & Drainage Dist. v. Robertson*, 211 Ariz. 485, 491-92, ¶ 39, 123 P.3d 1122, 1128-29 (2005).

¶10 Although Infinet and HDCFS's opening brief mentions the superior court's reliance on the bankruptcy proceedings, Infinet and HDCFS do not argue the court erred by determining that the bankruptcy court's findings precluded them from relitigating the issue of whether they suffered damages. This court does not invent or develop arguments for appellants. See *Ace Automotive Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143, 750 P.2d 898, 901 (App. 1987). Further, Infinet and HDCFS do not identify where in the superior court proceeding they argued that issue preclusion did not apply. The argument has therefore been waived. See *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) ("In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a

claim usually constitutes abandonment and waiver of that claim."); *Dugan v. Fujitsu Bus. Commc'ns Sys., Inc.*, 188 Ariz. 516, 521, 937 P.2d 706, 711 (App. 1997) (finding an argument waived because it was not raised before the trial court); ARCAP 13(a)(6) (requiring an appellant to present significant arguments, set forth his or her position on the issues raised, and include citations to relevant authorities, statutes, and portions of the record). Infinet and HDCFS's cursory reference in their reply brief is not sufficient to preserve the issue for appellate review. *Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535, ¶ 18, 169 P.3d 120, 125 (App. 2007) ("Generally, arguments raised for the first time on appeal are untimely and deemed waived."); *Dawson v. Withycombe*, 216 Ariz. 84, 111, ¶ 91, 163 P.3d 1034, 1061 (App. 2007) (refusing to address issue raised for first time in reply brief). Accordingly, we affirm the superior court's order granting SBG's motion for summary judgment.

CONCLUSION

¶11 We affirm the summary judgment. We grant SBG's request for attorney's fees under A.R.S. § 12-341.01(A), subject to SBG's compliance with ARCAP 21.

/s/

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PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

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DIANE M. JOHNSEN, Judge

/s/

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RANDALL M. HOWE, Judge