

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

---

MARY HAYDEN, *Plaintiff/Appellant*,

*v.*

STEVEN PITTENDRIGH, *Defendant/Appellee*.

No. 1 CA-CV 16-0125  
FILED 9-19-2017

---

Appeal from the Superior Court in Maricopa County  
NOS. CV2008-024245,  
CV2010-016836 (Consolidated)  
The Honorable Joshua D. Rogers, Judge  
The Honorable Colleen L. French, Judge *Pro Tempore*

**AFFIRMED IN PART, REVERSED IN PART, REMANDED**

---

COUNSEL

Hagens Berman Sobol Shapiro LLP, Phoenix  
By Robert B. Carey, Leonard W. Aragon, John M. DeStefano,  
Rachel E. Freeman  
*Co-Counsel for Plaintiff/Appellant*

Grant Woods Law, Phoenix  
By J. Grant Woods  
*Co-Counsel for Plaintiff/Appellant*

Dickinson Wright PLLC, Phoenix  
By Robert L. Schwartz, Scott A. Holcomb  
*Counsel for Defendant/Appellee*

HAYDEN v. PITTENDRIGH  
Decision of the Court

---

**MEMORANDUM DECISION**

Judge Michael J. Brown delivered the decision of the Court, in which Acting Presiding Judge Peter B. Swann and Judge Maria Elena Cruz joined.

---

**B R O W N**, Judge:

¶1 Mary Hayden challenges the trial court’s grant of summary judgment in favor of Steven Pittendrigh, asserting she is entitled to a trial on her claims for consequential damages and prejudgment interest resulting from Pittendrigh’s breach of contract. Based on the following, we affirm the grant of summary judgment as to the consequential damages claim but reverse on the prejudgment interest claim, and remand for further proceedings.

**BACKGROUND**

¶2 In their divorce proceeding, Pittendrigh and Hayden entered into a property settlement agreement (“PSA”) in 2005 dividing community and separate assets, including Pittendrigh’s interests in InPulse Response Group, Inc. (“InPulse”), a company he acquired before marriage. Before entering the PSA, the parties apparently disputed whether Hayden was entitled to a community lien against Pittendrigh’s interest in InPulse, and appraisers hired separately by Pittendrigh and Hayden valued InPulse at somewhere between \$2 million and \$8.8 million. Pittendrigh testified at his deposition that he believed the community interest was worth \$400,000 to \$600,000.

¶3 Despite the uncertainty of the value of InPulse, under the PSA Pittendrigh was awarded InPulse as his sole and separate property and in exchange was required to pay Hayden \$800,000 in seven installments over a three-year period beginning in December 2005 and ending in December 2008 (“equalization payments”). Pittendrigh was also required to pay Hayden spousal maintenance payments totaling \$200,000 in six installments from December 2005 through July 2008. Among other provisions, the PSA included the following representations and commitments by the parties:

RECITALS. . . . The parties, having been given the opportunity to be fully advised by independent counsel of

HAYDEN v. PITTENDRIGH  
Decision of the Court

their own choosing, deem it in their best interests to declare their rights and claims of every kind, including rights respecting all property acquired by either or both of them during their marriage, and prior thereto, and to compromise and settle such rights forever.

1. **EQUITABLE DIVISION OF ASSETS AND LIABILITIES.** The parties agree that the division of assets and liabilities provided for herein equitably divides the community and joint property of the parties and any other marital assets and debts.

2. **AFTER DISCOVERED ASSETS.** [The parties] each waive any right they may have to claim assets or set aside transfers of property or funds by the other party whether presently known or unknown. Each party has been advised by counsel of the potential effect of this waiver.

3. **CONFIRMATION OF ADVICE OF COUNSEL.** Each of the parties has had the opportunity to become and is fully informed of the financial and personal status of the other. Each of the parties has had the opportunity to obtain the advice of counsel, and/or has obtained the advice of counsel . . . .

\* \* \*

5. **INTEGRATED AGREEMENT.** . . . This [PSA] is a full and final property settlement agreement between the parties. No promises, warranties or representations of any nature or character . . . have been made to induce either party to enter into this [PSA], and the parties agree and acknowledge that neither of them has been unduly influenced by the other in the making or execution of this [PSA].

\* \* \*

11. **CONDITION AND VALUE.** The parties have each had the opportunity to inspect any and all assets awarded herein and are familiar with the condition and value thereof.

\* \* \*

HAYDEN v. PITTENDRIGH  
Decision of the Court

14. GENERAL RELEASE. . . . [The parties] mutually release and forever discharge one another from any and all actions, causes of actions, claims and demands for . . . any damage, loss or injury, which may have been or which may be sustained by either [party] in consequence of any action, conduct or omission by [either party]. This release extends and applies to . . . all unknown, unforeseen, unanticipated and unsuspected injuries, damages, losses and liabilities, and the consequences thereof as well as those now disclosed and known to exist.

¶4 The family court issued a consent decree for dissolution (“Decree”), explaining that the PSA was incorporated and its terms were “orders of this Court,” but that it was not merged with the Decree. The Decree also stated:

The Court has considered the parties’ [PSA] and finds that the provisions therein are fair and equitable as to division of property and allocation of debt. The Court also finds that the . . . [PSA] was entered into voluntarily and without coercion, duress, or undue influence.

\* \* \*

[The parties] do hereby release and waive any and all rights, claims, or causes of action against the other for any and all acts or events that occurred during the marriage, whether in tort or contract.

¶5 In October 2006, approximately ten months after execution of the PSA, Pittendrigh sold InPulse for \$58 million. Although the PSA provided that all outstanding equalization payments were payable upon the sale of InPulse, Pittendrigh breached the PSA by failing to inform Hayden of the sale or pay her the remaining \$700,000, which was due immediately. Instead, he continued to make scheduled payments as if he had not sold InPulse. In May 2007, Hayden learned of the sale and the same day contacted the attorney who had most recently represented her in the dissolution proceeding. Hayden, however, took no action to set aside the Decree until after she received all payments owed under the PSA, to avoid having the funds “tied up” in litigation. Pittendrigh tendered his last payment of \$600,000 to Hayden in December 2008. The next month, he paid her a 5% penalty as required under the PSA due to the untimely payment.

HAYDEN v. PITTENDRIGH  
Decision of the Court

¶6 In the meantime, in October 2008, Hayden filed the present action alleging that Pittendrigh breached the PSA when he failed to tender the remaining balance of \$700,000 due immediately upon the sale of InPulse.<sup>1</sup> In March 2009, Hayden filed a motion to set aside the Decree in family court under Arizona Rule of Family Law Procedure 85(C) (“Rule 85(C) Motion”).<sup>2</sup> She argued that under the “catch-all” provision, relief from the PSA was justified because division of the community property was unconscionable and she was entitled to an equitable share of the InPulse sale proceeds. *See* Ariz. R. Fam. Law P. (“ARFLP”) 85(C)(1)(f) (providing relief based on “any other reason justifying relief from the operation of the judgment”). Hayden requested and was granted a stay in this case pending the outcome of her Rule 85(C) Motion. In the dissolution case, the parties conducted discovery, including depositions, and in March 2010, the family court denied Hayden’s Rule 85(C) Motion. Without reaching the merits, the court found Hayden’s 22-month delay in challenging the PSA was unreasonable, explaining in part as follows:

By her own admission, [Hayden’s] counsel referred her to law firms that could assist her. Yet, she did not retain [her present counsel] until sometime in September 2008. During this time, she continued to accept all of the equalization payments that were due her pursuant to the [PSA]. She also continued to accept all of the payments due to her as and for spousal maintenance during this period. There is simply no satisfactory reason why she waited seventeen (17) months to file this Motion.

---

<sup>1</sup> Hayden’s complaint, as amended, also alleged (1) fraudulent inducement, (2) fraud/misrepresentation, (3) breach of fiduciary duty for failing to disclose information about InPulse, and (4) conspiracy for failing to disclose material information. She sought a declaration that the PSA was void, compensatory damages, an award of her equitable share of InPulse, interest, and punitive damages. All claims, except breach of contract, were dismissed in the trial court and affirmed on appeal. *See Hayden v. Pittendrigh*, 1 CA-CV 11-0424, 2012 WL 1469042, at \*1, ¶ 1 (Ariz. App. April 26, 2012) (mem. decision).

<sup>2</sup> Although the parties and the trial court referred to the motion as being filed under Rule 60 of the Arizona Rules of Civil Procedure, the proper authority for a motion to set aside a divorce decree is Rule 85 of the Arizona Rules of Family Law Procedure. Regardless, the pertinent subsections, 60(b) and 85(C)(1), are not materially different.

HAYDEN v. PITTENDRIGH  
Decision of the Court

Hayden did not appeal the order.

¶7 Meanwhile, in April 2009, Hayden amended her complaint in the instant action to add several defendants, including her first attorney in the dissolution case and both appraisal firms. Pittendrigh then moved to dismiss all claims against him. Following briefing and oral argument, in January 2011, the trial court dismissed Hayden’s claims against Pittendrigh. The court found that (1) despite Hayden’s contention, she was seeking to achieve the same result in this action as she unsuccessfully attempted in the family court – “she want[ed] more money than she agreed to receive based on the proceeds from the sale of [InPulse] 10 months after the PSA was executed”; (2) the PSA was previously challenged in the family court and could not be attacked in a different proceeding; (3) Hayden could not recover under any alleged fraud claim pursuant to Arizona Rule of Civil Procedure 60(c)(3) because she “acknowledged that she was too late to seek relief”; (4) Hayden was “foreclosed from seeking damages because she ratified the PSA” by continuing to receive scheduled payments for 18 months after discovering the sale of InPulse; and (5) Pittendrigh did not breach the PSA because, although he failed to pay the \$700,000 equalization payment due upon the sale, he paid the required 5% late-payment penalty.

¶8 On appeal, we affirmed the dismissal of all of Hayden’s claims except breach of contract. *Hayden*, 1 CA-CV 11-0424, at \*1, ¶ 1. We directed the trial court, on remand, to calculate the prejudgment interest owed to Hayden on the unpaid equalization payments at the rate of 10% per annum beginning on the sale date of InPulse and accruing until the date each payment was actually made. *Id.* at \*7, ¶ 35. Because Hayden raised a claim for consequential damages for the first time at oral argument in that appeal, we declined to address it. *Id.* at \*4 n.2, ¶ 17.

¶9 On remand, without conducting further proceedings on Hayden’s breach of contract claim, the trial court entered final judgment on mandate in February 2013. The court calculated Pittendrigh’s prejudgment interest obligation as \$145,000, which was offset by the amount of attorneys’ fees (\$10,000) and taxable costs (\$243.50) previously awarded to him for his successful motion to dismiss, plus the post-judgment interest thereon (\$1,707.25). Final judgment was entered for Hayden in the amount of \$133,049.25.

¶10 Hayden challenged the trial court’s ruling by special action, and in August 2013 a different panel of this court determined that Hayden was entitled to litigate her breach of contract claim, including damages, based on our April 2012 memorandum decision. Thus, we vacated the trial

HAYDEN v. PITTENDRIGH  
Decision of the Court

court's final judgment on mandate, as well as the award of attorneys' fees to Pittendrigh. As to Hayden's arguments that the trial court failed to address her consequential damages claim and incorrectly calculated the prejudgment interest, we held that "[t]hese arguments will need to be resolved through further proceedings in the trial court, and we express no opinion on them."

¶11 On remand for the second time, the parties participated in additional discovery.<sup>3</sup> Pittendrigh then moved for summary judgment on Hayden's remaining claims for consequential damages and prejudgment interest, asserting (1) claim preclusion, issue preclusion, and law of the case based on the family court order denying Hayden's Rule 85(C) Motion and our 2012 memorandum decision; (2) ratification of the PSA by Hayden's acceptance of payments after discovering the InPulse sale; and (3) damages were not foreseeable and Hayden failed to mitigate damages upon Pittendrigh's breach. In response, Hayden asserted (1) claim and issue preclusion did not apply because this breach of contract claim was not, and could not have been, litigated or adjudicated in the family court, and (2) a reasonable jury could conclude damages were foreseeable and she met her burden to mitigate.

¶12 In May 2015, the trial court granted summary judgment in Pittendrigh's favor. The court found that:

[Hayden's] claim that [Pittendrigh's] breach of the [PSA] resulted in her not being able to timely file for relief under Rule [85(C)] in the family court is not supported by the record. . . . [Hayden] stated, in her 2015 affidavit submitted to this Court, that "[w]hen [she] searched for an attorney in 2008, [she] was unable to find an attorney [she] could afford on an hourly basis." However, in her deposition conducted in 2009, [Hayden] specifically testified that, in 2007, when she found out about [Pittendrigh's] sale of [InPulse] and his breach of the [PSA], she had sufficient funds available to hire an attorney and pay them by the hour at that point if she so

---

<sup>3</sup> In Hayden's July 2014 initial disclosure statement filed in summary judgment briefing on the second remand, she claimed a "minimum damage figure" of \$49,950,000 due to Pittendrigh's breach for failing to accelerate payments under the PSA. Hayden arrived at that figure as follows: "One half of the marital estate's interest in [InPulse] is \$29,000,000, minus the \$2,000,000 [Hayden] already received under the [PSA], plus interest at 10% per annum from December 19, 2005."

HAYDEN v. PITTENDRIGH  
Decision of the Court

chose. It is undisputed that [Hayden] was represented by counsel at that time in 2007, but did not seek relief under Rule [85(C)] until more than 2 years later.

The court did not address Hayden’s claim for prejudgment interest.

¶13 Hayden unsuccessfully moved for reconsideration. Final judgment was entered in favor of Pittendrigh, and he was awarded his attorneys’ fees and costs in the amount of \$31,096.05. Hayden timely appealed.

**DISCUSSION**

¶14 Entry of summary judgment is proper “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a). We determine de novo whether any genuine issue of material fact exists and whether the trial court erred in application of the law, and we will uphold the court’s ruling if correct for any reason. *Logerquist v. Danforth*, 188 Ariz. 16, 18 (App. 1996). We construe the evidence and reasonable inferences in the light most favorable to the non-moving party. *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 482, ¶ 13 (2002).

**A. Consequential Damages**

¶15 Hayden argues she is entitled to present her claim for consequential damages to a jury because Pittendrigh breached the PSA by failing to pay her the remaining \$700,000 due immediately upon the sale of InPulse. The breach, she contends, prevented her from enforcing her rights—successfully challenging the PSA and securing her equitable interest in InPulse—because she could not afford to hire an attorney to timely pursue the Rule 85(C) Motion in the dissolution action. Hayden asserts that the issue for a jury “is not whether she could bankrupt herself or hire counsel to start *and not finish* the job; it is whether she was financially able to secure competent counsel to pursue the claim.”

¶16 A non-breaching party may recover both “direct” and “consequential” damages from a breach of contract. Rev. Ariz. Jury Instr. (“RAJI”) (Civil) Contract 18 cmt. (5th ed. 2013). “Direct damages . . . result directly from a breach.” *Id.* Consequential or indirect damages do not, but “arise because of special circumstances.” *Id.* at 17 cmt. 1, 18 cmt. To recover consequential damages, a non-breaching party must prove the damages were (1) caused by the breach of contract (proximate result of the breach)



HAYDEN v. PITTENDRIGH  
Decision of the Court

and (2) reasonably contemplated by the parties at the time of contracting (foreseeable). See *Seekings v. Jimmy GMC of Tucson, Inc.*, 130 Ariz. 596, 601 (1981).

**1. Causation**

¶17 Damages are caused by the breach if they are the “fair, legal and natural result” of the breach. *Cole v. Atkins*, 69 Ariz. 81, 85 (1949) (quoting 66 C.J., Vendor and Purchaser § 1700). In other words, damages are the proximate result of the breach if they arise from a “natural and continuous sequence (unbroken by an efficient intervening cause).” *Mahmood v. Ross*, 990 P.2d 933, 938, ¶ 22 (Utah 1999) (internal brackets omitted) (quoting *Harline v. Barker*, 912 P.2d 433, 439 (Utah 1996)). Although causation is generally a fact question to be decided by a jury, the jury is not “free to find a causal connection between a breach and some subsequent injury by relying on unsupported speculation.” *Id.*

¶18 Hayden argues the trial court erred in finding that the record does not support her contention that Pittendrigh’s breach prevented her from timely filing her Rule 85(C) Motion. She argues that her affidavit established she was unable to finance a multimillion dollar lawsuit without the funds Pittendrigh was obligated to pay when he sold InPulse, and her affidavit did not conflict with her 2009 deposition testimony.

¶19 Parties may not avoid summary judgment by creating factual issues through affidavits that contradict their own depositions. *MacLean v. State Dep’t. of Educ.*, 195 Ariz. 235, 241, ¶ 20 (App. 1999). Thus, a court may disregard a party’s affidavit when it contradicts the party’s own deposition testimony. *Id.* Hayden was deposed during discovery proceedings on her Rule 85(C) Motion. She testified that by May 2007, when she discovered Pittendrigh’s breach, she had received \$250,000 in payments under the PSA (\$125,000 in equalization payments and \$125,000 in spousal maintenance) and held at least \$300,000 in retirement savings, in addition to real estate and other assets. In response to questioning, Hayden agreed that in 2007 she had funds available to hire an hourly attorney if she so chose.

¶20 In contrast, Hayden’s 2015 affidavit submitted in opposition to Pittendrigh’s motion for summary judgment stated “[w]hen I searched for an attorney in 2008 [following discovery of the sale of InPulse], I was unable to find an attorney I could afford on an hourly basis,” and that “[a]fter consulting over fourteen attorneys and meeting in-person with several attorneys who worked on an hourly basis, I was able to secure counsel on a contingency basis on October 9, 2008.” By affidavit, a party

HAYDEN v. PITTENDRIGH  
Decision of the Court

may supplement or clarify prior inconsistent deposition testimony if the party was confused at the deposition or lacked access to material facts. *MacLean*, 195 Ariz. at 241, ¶ 20. Nothing indicates Hayden was confused or lacked access to material facts when she testified at her deposition. Thus, the key component of Hayden’s legal theory – that she did not have the funds to hire an attorney – fails because it contradicts what she testified to in her deposition. Without that evidence, Hayden cannot establish that Pittendrigh’s failure to timely pay was a natural and continuous sequence that caused her to lose the opportunity to effectively challenge the PSA.

**2. Foreseeability**

¶21 Hayden argues “Pittendrigh knew from the divorce that Hayden was financially vulnerable and he could out-spend her in court.” Thus, Hayden maintains it was foreseeable to Pittendrigh that by failing to pay the \$700,000 immediately she would be deprived of the funds needed to successfully set aside the Decree.

¶22 Absent proof of foreseeability supporting consequential damages, a plaintiff’s recovery of damages for a breach related solely to the payment of money is limited to the amount due, late fees or penalties, and the legal rate of interest. *See All Am. Sch. Supply Co.*, 125 Ariz. at 233 (citing *Sharp v. W. Union Tel. Co.*, 39 Ariz. 349 (1932)) (“Absent a showing that the defendant knew of special circumstances which would arise to cause plaintiff special damages in the event of a breach of the contract, the plaintiff is limited to the recovery of the amount due and the legal rate of interest.”). To determine foreseeability, “the nature, purpose and particular circumstances of the contract known by the parties should be considered, as well as ‘what liability the defendant fairly may be supposed to have assumed consciously, or to have warranted the plaintiff reasonably to suppose that it assumed, when the contract was made.’” *Kenford Co. v. Cty. of Erie*, 73 N.Y.2d 312, 319 (1989) (citation omitted) (quoting *Globe Ref. Co. v. Landa Cotton Oil Co.*, 190 U.S. 540, 544 (1903)).

¶23 The PSA delineated the rights and obligations of the parties and divided all marital assets, including both parties’ interests in InPulse. Both parties were represented by counsel. They engaged in discovery and hired appraisers to value InPulse. They agreed that Pittendrigh would have ownership of InPulse, “as his sole and separate property, free from any claim by [Hayden].” In exchange, Pittendrigh would make equalization payments to Hayden. In doing so, the parties agreed they “each had the opportunity to inspect any and all assets awarded” in the PSA. They also agreed to compromise and settle all rights and claims relating to

HAYDEN v. PITTENDRIGH  
Decision of the Court

distribution of their assets. The purpose of the equalization payment under the PSA was to give Hayden her portion of the value of a community asset. It was not to fund litigation to unwind the parties' agreement.

¶24 In view of the express terms of the PSA, no reasonable jury could conclude that Pittendrigh assumed liability for Hayden's failure to timely seek to set aside the Decree based on her lack of funds. See Restatement (Second) of Contracts ("Restatement") § 351 (1981) ("Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made.").<sup>4</sup> More specifically, a jury could not reasonably conclude that Pittendrigh would have reason to know his failure to pay Hayden the remaining

---

<sup>4</sup> The cases Hayden cited in her reply brief and at oral argument for the proposition that Pittendrigh could foresee Hayden's inability to hire an hourly attorney are not persuasive. See *Tech. Constr., Inc. v. City of Kingman*, 229 Ariz. 564, 569, ¶ 15 (App. 2012) (finding consequential damages of higher material prices due to construction delay were proximately caused and readily foreseeable by breaching party because delay damages were specifically included in the parties' contract); *Sharp*, 39 Ariz. at 354-56 (finding consequential damages were not recoverable for non-payment because defendant had no cause to expect plaintiff was in financial distress; plaintiff's inability to raise money "was the real cause of his sacrificing his automobile"); *Morris v. W. Union Tel. Co.*, 24 Ariz. 12, 15, 31 (1922) (finding consequential damages recoverable for non-payment where breaching party was fully advised that non-breaching party was in another state, wholly without funds, and because of non-payment, was forced to sleep outside, without proper attire or sufficient food, contracted rheumatism and a severe cold, and suffered great physical pain and partial loss of hearing in one ear).

HAYDEN v. PITTENDRIGH  
Decision of the Court

\$700,000 in a lump sum would deprive her of the ability to hire an hourly attorney to successfully challenge the Decree.<sup>5</sup> *See id.*<sup>6</sup>

**B. Prejudgment Interest**

¶25 Hayden argues the trial court erred by granting summary judgment on her claim for prejudgment interest damages.

¶26 When a contract provides for funds to be paid without interest, interest may still be collected as damages from the time the debt is due. *See Palmcroft Dev. Co. v. City of Phoenix*, 46 Ariz. 400, 401 (1935). After the debt becomes due and payable, it bears interest at the legal rate. *Id.* Unless a different rate is contracted for in writing, the legal rate is 10% per annum. Ariz. Rev. Stat. (“A.R.S.”) § 44-1201(A).

¶27 The PSA did not require Pittendrigh to pay interest on the equalization payments and it was silent as to any rate different than the statutory rate. Pittendrigh’s debt to Hayden matured with the sale of InPulse on October 5, 2006 when he failed to pay Hayden the remaining \$700,000. In doing so, Pittendrigh wrongly denied Hayden use of that money and thus interest began accruing at the statutory rate of 10% per annum from October 5, 2006 until paid. *See In re U.S. Currency in Amount of \$26,980.00*, 199 Ariz. 291, 299, ¶ 27 (App. 2000) (“Prejudgment interest is

---

<sup>5</sup> Hayden also argues (1) the trial court failed to consider her expert’s testimony and report proving she “could not afford the hundreds of thousands of dollars in legal fees it would have taken to fight [Pittendrigh] over nearly eight years and win” and, (2) contrary to the trial court’s finding, she was not represented by counsel in 2007. The expert testimony is not material to the issues of causation and foreseeability. And, the court’s finding that Hayden was represented by counsel was merely alluding to the fact that she was communicating in 2007 with her most recent attorney in the dissolution case and he was counseling her as to her options, including recommending other attorneys she should contact for help with pursuing a challenge to the Decree.

<sup>6</sup> Because we affirm the grant of summary judgment on Hayden’s consequential damages claim based on causation and foreseeability, we need not address Pittendrigh’s additional arguments relating to claim and issue preclusion, law of the case, and ratification. Nor do we consider whether Hayden took reasonable efforts to mitigate her claimed damages.

HAYDEN v. PITTENDRIGH  
Decision of the Court

compensation for the loss of the use of the money and is an element of damages.”).

¶28 The record does not show that Hayden has been paid the interest owed to her as a result of Pittendrigh’s breach of his obligation to timely pay her \$700,000. Our April 2012 memorandum decision remanded this matter to the trial court for calculation of the interest. *See supra* ¶ 8. The court calculated the interest owed to Hayden as \$145,000 and reduced it by Pittendrigh’s award of attorneys’ fees and costs, for a total of \$133,049.25. In February 2013, consistent with the final judgment on mandate, Pittendrigh tendered a cashier’s check to Hayden in the amount of \$133,049.25. At that time, however, Hayden rejected the check because she disputed it was in full satisfaction, even though the face of the check did not indicate as such. In March 2013, Pittendrigh tendered the same check to Hayden but she did not cash it.

¶29 In August 2013, we vacated the trial court’s final judgment on mandate, including Pittendrigh’s prior award of attorneys’ fees. *See supra* ¶ 10. We held that Hayden’s claim that the interest was incorrectly calculated would need to be resolved through further proceedings in the trial court. On remand, Hayden addressed her interest claim during the briefing on Pittendrigh’s summary judgment motion. We therefore reject Pittendrigh’s assertion that Hayden waived her prejudgment interest claim.

¶30 The trial court’s subsequent minute entry granting summary judgment to Pittendrigh is silent as to Hayden’s interest claim. Based on that ruling, Pittendrigh stopped payment on the 2013 check, which was presumably still in Hayden’s possession, because “the check [had] not been [cashed] within the last 2 years.” Hayden unsuccessfully moved for reconsideration, despite advising the court that the prejudgment interest issue had not been addressed and Pittendrigh had stopped payment on the check. Thus, nothing in the record before us indicates that Pittendrigh has tendered to the trial court the appropriately recalculated amount of prejudgment interest he still owes Hayden. Nor is there any indication that Pittendrigh tendered any amount to Hayden other than the check for \$133,049.25, which was not correctly calculated.

¶31 Pittendrigh argues nonetheless that Hayden is not entitled to prejudgment interest because she reached settlements with two other defendants totaling \$625,000. Specifically, he maintains he should be credited for Hayden’s settlement with co-defendants in the same litigation and, because \$625,000 is more than any calculation of interest he could possibly owe under the PSA, Hayden is not entitled to recover any interest.

HAYDEN v. PITTENDRIGH  
Decision of the Court

¶32 Approximately six months into the instant action, Hayden amended her complaint to add several defendants, including Rubin & Samuels, PLC (“Rubin”) and Sierra Consulting Group, LLC (“Sierra”). Rubin was Hayden’s first attorney in the dissolution proceeding and Sierra was the firm Rubin hired to value InPulse in preparation for division of the marital property. Hayden sued Rubin for breach of contract, breach of the covenant of good faith and fair dealing, and malpractice under her legal representation contract and fee agreement with Rubin. She sued Sierra for breach of contract, breach of the covenant of good faith and fair dealing, and malpractice under the contract executed for Sierra’s professional services in valuing InPulse. In 2013, Hayden settled with Rubin and Sierra for \$625,000.

¶33 “[T]he crucial question to be asked . . . is whether the damages stem from the same incident of transaction. In other words, is plaintiff suing several defendants to redress one wrong which he has suffered, or is he suing to redress a *series of wrongs with different defendants responsible for different wrongs?*” *Am. Home Assurance Co. v. Vaughn*, 21 Ariz. App. 190, 192 (1974) (emphasis added). Contrary to Pittendrigh’s assertion, he is not entitled to a credit for the settlement Hayden reached with Rubin and Sierra. Those damages were not based on the same transaction or injury as Hayden’s breach of contract action against Pittendrigh. Hayden sued Pittendrigh alone for breach of the PSA. Hayden’s claim against Rubin, however, arose from inadequate legal advice, for hiring Sierra, and for failing to seek information necessary for a proper valuation. Her claim against Sierra resulted from an appraisal of InPulse, which was a fraction of its true market value. Hayden thus alleged a series of wrongs with other defendants based on liability for different wrongs that resulted in different damages. *Cf. Pasco Indus., Inc. v. Talco Recycling, Inc.*, 195 Ariz. 50, 65, ¶ 74 (App. 1998) (finding settlement payments by co-defendants were properly credited to remaining defendant under breach of contract because damages arose out of a single incident).

¶34 We therefore conclude that the trial court erred by failing to award Hayden the prejudgment interest to which she is entitled based on Pittendrigh’s breach of the PSA. Thus, we remand for further proceedings for recalculation of the prejudgment interest at the rate of 10% per annum, accruing from the sale date of InPulse until such amount has been tendered in full to Hayden.

HAYDEN v. PITTENDRIGH  
Decision of the Court

**CONCLUSION**

¶35 Based on the foregoing, we affirm the grant of summary judgment as to Hayden's claim for consequential damages but we reverse the court's ruling as to prejudgment interest and remand for further proceedings consistent with this decision. In our discretion, we deny both parties' requests for attorneys' fees and costs incurred on appeal pursuant to A.R.S. §§ 12-341 and -341.01.



AMY M. WOOD • Clerk of the Court  
FILED: AA