

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

VENETIAN CONDOMINIUM ASSOCIATION, *Plaintiff/Appellee*,

v.

BRIAN CRAWFORD, *Defendant/Appellant*.

No. 1 CA-CV 19-0828
FILED 12-22-2020

Appeal from the Superior Court in Maricopa County
No. CV2017-051739
The Honorable Lisa Daniel Flores, Judge (Retired)
The Honorable Bruce R. Cohen, Judge

AFFIRMED

COUNSEL

Garrey Woner Hoffmaster & Peshek PC, Scottsdale
By Shawna M. Woner, Ashley E. Wallace
Counsel for Plaintiff/Appellee

Davis Miles McGuire Gardner PLLC, Tempe
By Gregory L. Miles, Marshall R. Hunt
Counsel for Defendant/Appellant

VENETIAN v. CRAWFORD
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Jennifer M. Perkins delivered the decision of the Court, in which Judge Michael J. Brown and Judge Lawrence F. Winthrop joined.

P E R K I N S, Judge:

¶1 Brian Crawford appeals the superior court’s orders granting summary judgment and attorneys’ fees in favor of Venetian Condominium Association (“Venetian”). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Crawford resides at a Scottsdale condominium community managed by Venetian. In July 2016, Venetian filed a justice court complaint against Crawford for non-payment of condominium owners association (“COA”) assessments. Crawford responded with an answer and counterclaim (“Crawford’s Counterclaim”) seeking damages he claimed resulted from a fire in the complex that occurred in May 2016. Crawford claimed that Venetian breached its contractual obligations under the community’s Covenants, Conditions, and Restrictions (“CC&R’s”) and acted negligently in repairing common areas that sustained fire damage. Crawford sought lost wages, punitive damages, property damages, and reimbursement for living expenses he incurred while his unit was under repair. To quantify his damages, Crawford submitted an initial disclosure statement (“Disclosure Statement”) subject to future supplementation of more definite damages as discovery continued. The monetary relief sought in Crawford’s Counterclaim exceeded the justice court’s jurisdictional limit, requiring transferal to superior court.

¶3 In February 2018, the superior court resolved the parties’ original dispute over unpaid COA assessments, leaving only Crawford’s Counterclaim at issue. In April 2018, Venetian moved for partial summary judgment on Crawford’s wage loss, punitive damage, and property damage claims (“First Summary Judgment Motion”). Crawford responded, asserting genuine issues of material fact remained based on his personal knowledge and photographs of damage in his apartment. The superior court granted Venetian’s First Summary Judgment Motion and deferred Venetian’s attorneys’ fees claim to the conclusion of the case.

VENETIAN v. CRAWFORD
Decision of the Court

¶4 During the pendency of Venetian’s First Summary Judgment Motion, Crawford supplemented his Disclosure Statement to include \$4,800 in alleged out-of-pocket alternative living expenses incurred between May and October 2017. Crawford claimed that he incurred approximately six months of rent payments resulting from Venetian’s delay in repairing common areas that precluded him from living in his unit.

¶5 Despite repeated requests, Crawford did not allow retained experts and Venetian’s counsel to inspect his unit until May 2018. The inspection revealed that Crawford had made substantial changes to the unit’s structure, electrical wiring, water piping, and sewer piping. Among those changes, Crawford altered a fire wall and, by encroaching on the common area in the attic, created a second story in his original one-story unit. He also built what appeared to be an “escape hatch” through a sky light in violation of the Scottsdale Building Code. These modifications raised significant health and safety concerns and Venetian sought Crawford’s consent to allow the City of Scottsdale to inspect the unit. Crawford refused. Venetian then requested, and the court issued, an order to permit further inspection.

¶6 In October 2018, Venetian added a new claim against Crawford stemming from its discovery of his substantial changes to the structure of his unit (“Restoration Claim”). Venetian alleged Crawford violated the terms of the CC&R’s by structurally altering electrical, plumbing, and sewer lines, without prior approval. The parties ultimately resolved the Restoration Claim by stipulation.

¶7 In January 2019, Venetian filed a second summary judgment motion on Crawford’s remaining alternative living expenses claim (“Second Summary Judgment Motion”). The superior court granted the motion, finding Crawford failed to demonstrate a genuine issue of material fact as to both the alleged damages and a causal connection with Venetian’s conduct.

¶8 This ruling resolved all claims by Crawford against Venetian. As the prevailing party in its COA assessment claim and Crawford’s Counterclaim, but with its Restoration Claim pending, Venetian requested fees and costs in April 2019. The superior court awarded Venetian \$72,524 in attorneys’ fees, \$1,235.69 in taxable costs, and \$9,100.99 in non-taxable costs.

¶9 Crawford timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(B).

DISCUSSION

I. Summary Judgment

¶10 We review the trial court’s grant of summary judgment *de novo*, viewing the facts “in the light most favorable” to Crawford. *See Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12 (2003). We will affirm summary judgment if no genuine issue of material fact exists and Venetian is entitled to judgment as a matter of law. *See Ariz. R. Civ. P. 56(a)*; *see also Thompson v. Pima Cnty.*, 226 Ariz. 42, 44, ¶ 5 (App. 2010).

¶11 To obtain summary judgment, Venetian bore the initial burden of demonstrating the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. *See Vig v. Nix Project II P’ship*, 221 Ariz. 393, 396, ¶ 11 (App. 2009) (“A party seeking summary judgment has the burden of demonstrating the absence of a genuine issue of material fact as to each element of its claim and each defense.”). Because Crawford bore the burden of proof on his claims at trial, Venetian had to “point out by specific reference to the relevant discovery” that evidence does not exist to support Crawford’s claims. *See Nat’l Bank of Arizona v. Thruston*, 218 Ariz. 112, 117, ¶ 22 (App. 2008) (quoting *Orme Sch. v. Reeves*, 166 Ariz. 301, 310 (1990)). The burden then shifted to Crawford to present sufficient evidence demonstrating the existence of a disputed material fact. *See id.* at 119, ¶ 26.

¶12 The superior court granted summary judgment against Crawford on three of his counterclaims: lost wages, punitive damages, and property damage. In his summary judgment response, Crawford withdrew his lost wages counterclaim, and he does not challenge the punitive damages ruling on appeal.

a. First Summary Judgment Motion

¶13 Crawford argues the superior court erred in granting summary judgment on his counterclaim that Venetian’s breach of contract and negligence resulted in property damage. The superior court found that he may have incurred property damage but he “failed to provide any proof that those damages were caused by Venetian.” To prevail on a breach of contract claim, Crawford must show that he sustained damages as a result of Venetian’s breach. *See Chartone, Inc. v. Bernini*, 207 Ariz. 162, 170, ¶ 30 (App. 2004). Similarly, a negligence claim requires Crawford to prove “actual loss or damage” resulting from Venetian’s negligence. *See Ontiveros v. Borak*, 136 Ariz. 500, 504 (1983).

VENETIAN v. CRAWFORD
Decision of the Court

¶14 Here, Crawford alleged that Venetian unreasonably delayed repairs after the 2016 fire and that delay resulted in damage to his property. In its First Summary Judgment Motion, Venetian provided evidence detailing the timeline of its actions to resolve the fire damage, asserting that the evidence established no contractual breach or negligent delay in performing the necessary repairs. Venetian pointed out that Crawford (1) provided no contrary evidence to establish any actionable delay occurred, and (2) provided no evidence establishing either the value of his alleged property damage or any causal connection between that damage and Venetian’s conduct.

¶15 Even assuming, without deciding, that Crawford’s bare testimony could defeat summary judgment on whether, in fact, Crawford sustained property damage, he failed to provide any admissible evidence of a causal connection sufficient to create a genuine issue as to that critical element. Absent some evidence demonstrating a fact issue as to causation, Crawford’s property damage claim fails, and the court did not err in granting Venetian’s First Summary Judgment Motion.

¶16 Crawford also contends the superior court erred because it granted summary judgment based on an issue first raised in Venetian’s summary judgment reply brief. A substantial portion of Venetian’s First Summary Judgment Motion argued that the collateral source rule barred Crawford’s recovery and this was clearly Venetian’s primary argument. But Venetian explicitly raised twice in its motion that Crawford had not provided any evidence to establish either the cause or the amount of damages he claimed.

b. Second Summary Judgment Motion

¶17 Next, Crawford argues the superior court erred in granting Venetian’s Second Summary Judgment Motion concerning Crawford’s alternative living expenses counterclaim. This claim sought “approximately \$4,800.00 for out of pocket lodging expenses incurred from May – October 2017. These expenses were \$800 per month for 6 months.” He alleged that Venetian’s delays in properly addressing the fire-related damage prevented him from returning to live in his condominium.

¶18 Venetian disputed both the fact and legal cause of any such damages. Venetian pursued discovery regarding the amount of alternative living expenses alleged, specifically requesting Crawford provide evidence of the rental location and payment amounts. Crawford provided no evidence in response – no receipts, no cancelled checks, no bank records,

VENETIAN v. CRAWFORD
Decision of the Court

and no lease agreement. He did not even provide the address at which he resided during the relevant period.

¶19 Crawford bore the burden at trial of proving any asserted damages “with reasonable certainty.” See *Gilmore v. Cohen*, 95 Ariz. 34, 36 (1963). Although complete certainty is not required, Crawford needed to supply some reasonable basis for computing the damage amounts he proffered. See *id.* Because Crawford’s alleged damages were capable of proof approaching mathematical precision, he had to show that his estimated losses did not rest upon “conjecture or speculation.” See *Cnty. of La Paz v. Yakima Compost Co., Inc.*, 224 Ariz. 590, 607, ¶ 53 (App. 2010) (quoting *Gilmore*, 95 Ariz. at 36). The only evidence Crawford offered was his own Disclosure Statement and his declaration, which both merely reference his own unsubstantiated approximation of alleged amounts. On this record, the court did not err in granting summary judgment.

¶20 Even assuming Crawford did in fact move out of his unit for a period of time, there is no admissible evidence connecting that decision with any actionable conduct by Venetian. In support of its summary judgment motion on lack of causation, Venetian provided an affidavit from Steve Gallant, the City of Scottsdale Building Inspection Supervisor. Gallant explained that Crawford could not return to his unit because the modifications, that Crawford himself made, resulted in numerous city code violations, rendering the unit unsafe and uninhabitable. A party may support its summary judgment motion with an affidavit such as Gallant’s, which is “made based on personal knowledge, set[s] out facts that would be admissible in evidence, and show[s] that [Gallant] is competent to testify on the matters stated.” See Ariz. R. Civ. P. 56(c)(5). The superior court properly considered Gallant’s affidavit.

¶21 In response, Crawford relied on his own self-serving declaration—in which he claims he could not return to his unit due to Venetian’s unreasonably delayed repairs—and his expert Fred Nelson’s report. Crawford’s declaration reflects no professional qualifications to offer such an opinion. As such, it was insufficient to create a genuine fact issue on causation. See *Orme Sch.*, 166 Ariz. at 310 (“If the party with the burden of proof on the claim or defense cannot respond to the motion by showing that there is evidence creating a genuine issue of fact on the element in question, then the motion for summary judgment should be granted.”). Nelson’s report identified damage to the unit he believes resulted from the fire and described Venetian’s remediation efforts. But the report does not contain any opinion supporting Crawford’s claim that Venetian unreasonably delayed or improperly completed its remediation

VENETIAN v. CRAWFORD
Decision of the Court

efforts. Nor does the report address the impact of Crawford’s own modifications to the space or what caused Crawford to be unable to return to his unit. Simply stated, Crawford’s response did not identify – let alone serve to create – a genuine issue of material fact on causation.

¶22 Because Crawford failed to demonstrate a genuine issue of material fact on both causation and damages – essential elements of his claim – the superior court properly granted Venetian’s Second Motion for Summary Judgment.

II. Attorneys’ Fees and Costs

¶23 Crawford next argues the superior court erred in granting attorneys’ fees because Venetian applied for attorneys’ fees prematurely, failed to distinguish claimed fees for contract and non-contract claims, and requested unreasonable fees.

¶24 We review a superior court’s award of attorneys’ fees under A.R.S. § 12-341.01 for abuse of discretion. *Assoc. Indem. Corp. v. Warner*, 143 Ariz. 567, 570-71 (1985). We may uphold the attorneys’ fees award if the record reflects “any reasonable basis” for the decision. *Tucson Ests. Prop. Owners Ass’n, Inc. v. McGovern*, 239 Ariz. 52, 56, ¶ 12 (App. 2016).

a. Prematurity

¶25 Crawford argues the superior court prematurely awarded attorneys’ fees because Venetian’s Restoration Claim was still pending at the time the court awarded fees. The superior court entered judgment on Crawford’s Counterclaims and awarded fees in an order containing finality language pursuant to Arizona Rule of Civil Procedure 54(b). Under Rule 54(g)(3)(B), if a decision or judgment adjudicates fewer than all claims and liabilities of a party, a motion for fees must be filed no later than twenty days after any decision is filed that adjudicates all remaining claims in the action.

¶26 Crawford reads this language to set out a specific time frame within which a party may move for fees – between the final decision adjudicating all claims and twenty days later. But the plain language of the rule is not so narrow: it provides only the outer boundary within which a party must seek its fees: “no later than” twenty days after that final order. Ariz. R. Civ. P. 54(g)(3)(B). Nothing in the language of the rule precludes an earlier filing provided a Rule 54(b) judgment has been entered.

VENETIAN v. CRAWFORD
Decision of the Court

¶27 The superior court did not abuse its discretion by awarding Venetian attorneys' fees while the Restoration Claim remained pending.

b. Contract and Non-Contract Claims

¶28 Crawford also argues the superior court erred because it failed to distinguish which attorneys' fees were associated with his breach-of-contract claim as opposed to his negligence claim. We disagree.

¶29 A successful party on a contract claim may recover attorneys' fees expended on both the contract claim and in litigating an interwoven tort claim. *Ramsey Air Meds, L.L.C. v. Cutter Aviation, Inc.*, 198 Ariz. 10, 13, ¶ 17 (App. 2000). "Claims are interwoven when they are based on the same set of facts and involve common allegations, which require the same factual and legal development." *Skydive Arizona, Inc. v. Hogue*, 238 Ariz. 357, 369, ¶ 52 (App. 2015).

¶30 Crawford's claims for breach of contract and negligence were both based on the May 2016 fire and Venetian's alleged mishandling of the situation. Indeed, the claims are so intertwined that Crawford alleged the same set of facts and the exact same damages for both claims. Venetian's defense to the negligence claim therefore required nearly the same work required for the defense of the contract claim alone. *See Bennet v. Baxter Grp., Inc.*, 223 Ariz. 414, 420, ¶ 23 (App. 2010). That Venetian did not distinguish between fees related to the contract claim and those related to the negligence claim does not establish that the superior court abused its discretion in awarding fees.

c. Reasonableness

¶31 Finally, Crawford argues Venetian's fee award was objectively unreasonable. According to Crawford, the award included fees Venetian never charged to its insurance carrier and Venetian's billing records contained redactions that made it impossible for the court to analyze. Crawford also argues Venetian's total billing time, 522.8 hours, was unreasonable.

¶32 If the trial court determines a party is entitled to fees as the successful party under A.R.S. § 12-341.01, it must then determine the reasonableness of the fees requested. *Assyia v. State Farm Mut. Auto. Ins.*, 229 Ariz. 216, 222, ¶ 22 (App. 2012). The fee application need only "contain sufficient detail so as to enable the court to assess the reasonableness of the time incurred." *Orfaly v. Tucson Symphony Soc'y*, 209 Ariz. 260, 266, ¶ 23 (App. 2004). The superior court "has broad discretion to award and

VENETIAN v. CRAWFORD
Decision of the Court

determine the amount of fees under A.R.S. § 12-341.01.” *Vortex Corp. v. Denkewicz*, 235 Ariz. 551, 562, ¶ 39 (App. 2014) (citation omitted).

¶33 The affidavit of counsel and the detailed billing statements submitted in support of Venetian’s fee application, covering hundreds of hours expended over several years, sufficiently described the legal expenses to enable the court to assess their reasonableness. *See id.* Contrary to Crawford’s contention, the superior court’s award reflects the payments made by Venetian’s insurance carrier. And while Venetian partially redacted some time entries to remove privileged information, the invoices still showed the date of each time entry, the relevant timekeeper, the amount of billed time, a general description of how the time was spent, and the associated fees. The superior court did not abuse its discretion in determining a reasonable amount of fees.

d. Expert Fees

¶34 The superior court also awarded Venetian \$9,100.99 in non-taxable costs under Rule 37(e). Rule 37 allows parties to compel disclosure or discovery and identifies a range of sanctions for various forms of discovery and misconduct. Under Rule 37(e), if a party “fails to admit what is requested under Rule 36,” and “the requesting party later proves the matter true,” the requesting party is entitled to an award of “the reasonable expenses incurred in making that proof, including reasonable expenses.” We review a superior court’s award of Rule 37 sanctions for an abuse of discretion. *Roberts v. City of Phoenix*, 225 Ariz. 112, 119, ¶ 24 (App. 2010). Crawford challenges the Rule 37(e) award.

¶35 Crawford denied Venetian’s request for admission that power had not been restored to his unit because of his unauthorized and unpermitted modifications. As a result, Venetian engaged an expert to determine why Crawford’s unit remained without power. Venetian then procured Gallant’s affidavit confirming the truth of the request for admission that Crawford denied. The superior court did not abuse its discretion by awarding Rule 37(e) sanctions based on Crawford’s denial of a request for admission later proven true.

e. Attorneys’ Fees on Appeal

¶36 Both parties request attorneys’ fees under A.R.S. § 12-341.01(A). We award Venetian reasonable attorneys’ fees on appeal subject to its compliance with ARCAP 21.

VENETIAN v. CRAWFORD
Decision of the Court

CONCLUSION

¶37

We affirm.



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