IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

VLADIMIR GAGIC, *Plaintiff/Appellant*,

v.

MARICOPA COUNTY SUPERIOR COURT, *Defendant/Appellee*.

No. 1 CA-CV 20-0673
FILED 8-31-2021

Appeal from the Superior Court in Maricopa County
No. CV2019-056955
The Honorable Theodore Campagnolo, Judge

AFFIRMED

COUNSEL

Vladimir Gagic, Phoenix
Plaintiff/Appellant

Broening Oberg Woods & Wilson PC, Phoenix
By Sarah L. Barnes, Kelley M. Jancaitis
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge Maria Elena Cruz joined.

H O W E, Judge:

¶1 Vladimir Gagic appeals the trial court's grant of summary judgment in favor of Maricopa County for his (1) breach of contract, (2) breach of covenant of good faith and fair dealing, (3) intentional infliction of emotional distress ("IIED"), and (4) defamation claims. He also appeals the trial court's denial of his request for attorney fees under A.R.S. § 12–149 as sanctions for actions taken by the County during settlement discussions. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Gagic, an attorney licensed in Arizona, contracted with Maricopa County to provide legal representation to indigent criminal defendants. The contract made no guarantees about the frequency or volume of work assigned to a contractor and required the contractor to contact an assigned client within 48 hours of an assignment, continue reasonable contact with the client, and cooperate with and assist the county in monitoring his performance under the contract to guarantee timely and effective legal services. Under Section II, Clause 17, the contract required that all contract disputes follow the dispute resolution procedures set forth in the Maricopa County Procurement Code ("Code"). Under Section II, Clause 19, the contract provided that all actions under the contract must be brought before the Maricopa County Superior Court in Phoenix.

¶3 The Office of Contract Counsel ("OCC") and the Office of Public Defender Services ("OPDS") began to receive complaints in September and October of 2018 that Gagic had failed to maintain reasonable contact with his clients. In October 2018, a client struck Gagic's face during jury selection. Gagic subsequently withdrew from representing the client and, a few days later, was asked to return the money he received for the representation. After additional clients and an attorney complained about his lack of communication, the OCC placed Gagic on hold from new case assignments in December 2018 so that he could work through his caseload.

¶4 No one, however, informed him of the hold or its reason until February of 2019 when he inquired why he had not received any new cases. He then emailed the County's Board of Supervisors and the County's Chief Procurement Officer to complain about the hold, claiming the OCC improperly designated dangerous clients to men but not women, and the fact that nobody had asked about his health following the courtroom incident. Procurement Services staff replied that the contract required that any disputes arising under it be processed in accordance with the Code.

¶5 The staff member also included the pertinent Code provision, which stated that disputes not involving a question of law must be "[f]iled with the [c]ontract administrator . . . within ten (10) Days from the date the [c]ontractor knew or should have known the basis of the dispute." MC1–906(A)(1). The contract administrator shall then "respond in writing to the dispute within fourteen (14) Days." MC1–906(A)(2). The contractor then may abide by the decision "or may appeal the decision to the applicable director within seven (7) Days." MC1–906(A)(3). Gagic did not immediately file a dispute with the contract's administrator at the OCC and instead proceeded to file a notice of claim.

¶6 Over the summer of 2019, Gagic reached out to Channel 15, Phoenix's ABC affiliate, to "express his grievances against OPDS." By this time, he had declined to communicate with OCC and OPDS staff about several pending cases, and the County had received more complaints about his lack of communication. When Channel 15 asked about the dispute, Maricopa County issued the following statement:

> A contract might be placed on temporary hold if there are complaints from clients or family members, the attorney provides poor representation, or they are carrying too many cases. Mr. Gagic's contract was placed on temporary hold after multiple complaints about his lack of communication with clients, another attorney, and [O]PDS.

Gagic eventually filed his complaint with the contract administrator at the OCC in October 2019, asserting an improper hold on case assignments under his contract. He did not receive a response to his October 2019 complaint.

¶7 In November 2019, he filed a complaint with the superior court against Maricopa County for (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) intentional infliction of emotional distress; and (4) defamation and requested relief of $500,000 for

the first three claims, and $3,000,000 for the defamation claim. He also moved for a preliminary injunction, requesting that the court immediately reinstate him under the contract. In the motion for preliminary injunction, he claimed that the entire lawsuit would not have occurred had someone from OPDS simply asked him how he was after the courtroom incident.

¶8 The County moved to dismiss the complaint for failure to state a claim, arguing that (1) Gagic did not exhaust his administrative remedies, (2) the County was absolutely immune from Gagic's claims under A.R.S. § 12–820.01, and (3) Gagic has not stated an actionable claim. The County attached both the contract and the Code as exhibits to its motion to dismiss.

¶9 Gagic responded that he complied with the Code, the County was not absolutely immune to the lawsuit, and the only objective that OPDS had in issuing its statement to Channel 15 was to defame him. He attached a plethora of exhibits, including his e-mails with OPDS and OCC staff, internal e-mails between OPDS and OCC staff, client reports, complaint lists, and more, to support his arguments.

¶10 The trial court denied the motion to dismiss. In so doing, the trial court refused to consider Gagic's and the County's exhibits as not essential to determining whether Gagic had sufficiently pled facts under Arizona Rule of Civil Procedure Rule 8. It found, however, that the submitted exhibits converted the County's arguments into a limited motion for summary judgment on whether Gagic had exhausted his administrative remedies and whether the County was absolutely immune to the suit. It then ordered the County to file a motion for summary judgment and asked both parties to submit additional evidence or to rest on their respective motions, replies, and exhibits. Both parties filed motions for reconsideration that were denied.

¶11 Before the County filed its motion for summary judgment, Gagic requested an evidentiary hearing on his preliminary injunction motion that he had filed at the beginning of the action. The County and Gagic then entered settlement discussions, coming to a potential agreement. The proposed settlement provided that the County's attorney would request that Gagic be reinstated and new cases be assigned to him within three weeks of reinstatement. If no new cases were assigned to him, litigation would proceed.

¶12 But the Felony Defense Review Committee, in charge of reinstatement, did not immediately reinstate Gagic and required him to go

through a review hearing. It informed the parties that if it found reinstatement appropriate, it would forward the recommendation to the Maricopa County Presiding Criminal Judge, who could ultimately reinstate Gagic as a contract attorney. Gagic did not believe this is what the County had offered and the settlement talks broke down. The County then moved for summary judgment, further supporting its position with a declaration from Merri Plummer, the OCC contract administrator, that Gagic "did not present his dispute as required by MC1–906, and therefore he did not exhaust his administrative remedies."

¶13 Gagic responded that his claims were not subject to the Code and, alternatively, that he had complied with the Code's required procedures. He supported his position with over 60 pages of documents he had received from a public records request and a declaration avowing under penalty of perjury that "every such statement or assertion or evidence" he introduced into the record was true. He also moved to strike Plummer's declaration, claiming that her statements were not relevant or based on personal knowledge. The County replied that Gagic's most recent filings supported an "additional summary judgment motion against Gagic on the specific elements of each of his claims." As part of this summary judgment litigation, Gagic requested attorneys' fees under A.R.S. § 12–349 for the County's unreasonable delay resulting from the aborted settlement agreement. The court denied Gagic's request for attorneys' fees, finding that the County's actions were not unreasonable.

¶14 At oral argument, the trial court questioned Gagic about the merits of his IIED and defamation claims. Gagic provided no additional evidence and did not request time to reply or respond to the evidence presented. The court denied Gagic's motion to strike Plummer's declaration and denied the County's absolute immunity defense. It granted the County summary judgment, however, because Gagic (1) failed to exhaust his administrative remedies as applicable to counts 1 and 2, and (2) did not provide a prima facia case for IIED or defamation. Gagic timely appeals.

DISCUSSION

¶15 Gagic argues that the trial court erred in (1) dismissing his breach of contract and breach of covenant of good faith and fair dealing claims for failure to exhaust administrative remedies, (2) granting the County summary judgment on his IIED and defamation claims, and (3) denying his request for attorneys' fees as a sanction under A.R.S. § 12–349 for the County's actions in settlement discussions. The court did not err.

I. The trial court properly dismissed Gagic's breach of contract and breach of covenant of good faith and fair dealing claims for failure to exhaust administrative remedies.

¶16 Gagic argues that the court erred in finding that he had not exhausted his administrative remedies. Whether the failure to exhaust administrative remedies bars a civil action is a legal question that we review de novo. *Bailey-Null v. ValueOptions*, 221 Ariz. 63, 67 ¶ 7 (App. 2009).

¶17 The exhaustion of remedies doctrine requires a party to avail itself of all available administrative remedies before seeking judicial relief. *Coconino Cnty. v. Antco, Inc.*, 214 Ariz. 82, 86 ¶ 8 (App. 2006); *Moulton v. Napolitano*, 205 Ariz. 506, 511 ¶ 9 (App. 2003). To determine whether a litigant is required to exhaust his administrative remedies, a court must first decide whether an administrative agency has original jurisdiction over the subject matter of the claims. *Id.* at 511 ¶ 10. An agency has original jurisdiction if it "is specifically empowered to act by the Legislature," *id.*, or some other authority, such as a binding contract, *see Falcone Bros. & Assocs., Inc. v. City of Tucson*, 240 Ariz. 482, 489 ¶ 20 (App. 2016). For a contract to be binding, the contract must refer to a proper adoption or extension of the State Procurement Code, which requires a two-tiered process requiring review of the unit of government that procures the goods or service and by the director of the department of administration. *Id.*; *see also R.L. Augustine Const. Co. v. Peoria Unified Sch. Dist. No. 11*, 188 Ariz. 368, 370 (1997). A procurement code, or contract, must also provide for judicial review when dealing with a political subdivision of the County. *See Id.* at 371.

A. Gagic was required to exhaust his administrative remedies.

¶18 Gagic argues that the trial court erred in finding that the contract required him to first go through the Code's dispute resolution process before he could sue in the superior court. Interpretation of a contract is a question of law reviewed de novo. *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, 593 ¶ 9 (App. 2009). Contracts should be interpreted to enforce the parties' intent. *Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 152 (1993). To determine the parties' intent, the plain meaning of the words must be considered in the context of the contract as a whole. *Grosvenor Holdings, L.C.*, 222 Ariz. at 593 ¶ 9. When contract provisions appear to contradict each other, all parts of the contract should be harmonized by a reasonable interpretation in view of the entire instrument. *Wilshire Ins. Co. v. S.A.*, 224 Ariz. 97, 99 ¶ 10 (App. 2010).

¶19 The contract required Gagic to follow the Code's administrative review procedures before bringing his contract claims before the superior court. In Section II, Clause 17 of the contract, the parties agreed that any dispute arising under the contract shall be processed according to the Code. Under MC1–906, an attorney bringing a dispute must first file a complaint with the contract administrator at the OCC within ten days after he knew or should have known about the dispute. MC1–906(A)(1). The contract administrator then must respond to the dispute in writing within 14 days. MC1–906(A)(2). The contractor may either accept the contract administrator's decision or appeal to the OPDS director. MC1–906(A)(3). The contractor exhausts his administrative remedies after the OPDS director issues its ruling. *See id*.

¶20 While the Code does not provide for judicial review of a contract dispute, *compare* MC1–906(A)(3) *with* MC1–903, Section II, Clause 19 of the contract provides that "any actions or lawsuits involving this contract will be in Maricopa County Superior Court, Phoenix, Arizona." Since judicial review of an administrative decision falls within the general definition of action in Section II, Clause 19, *see Guminski v. Arizona State Veterinary Med. Examining Bd.*, 201 Ariz. 180, 182 (App. 2001) (stating that an action for judicial review of an administrative decision is in the nature of an appeal), the contract anticipates the option of judicial review of the director's determination.

¶21 Gagic argues, however, that following the Code was optional because the initial reviewer, Plummer, was essentially an OPDS administrator and that any appeal to the OPDS director would be within the exact same agency in which he contracted. He further argues that the trial court erred in presuming that an administrative law judge would review the appeal before the OPDS director. He analogizes the review procedures in the Code with those at issue in *R.L. Augustine Const. Co.*, 188 Ariz. 368 and *Falcone Bros. & Assocs., Inc.,* 240 Ariz. 482. Our supreme court and this court each found that the administrative procedures at issue before them, while structured as a two-tiered process in form, substantively provided only a single tier process where the purchasing body constituted both the first and second tier. *See R.L. Augustine Const. Co.*, 188 Ariz. at 370; *Falcone Bros. & Assocs., Inc.,* 240 Ariz. at 489 ¶ 18. The Code's requirements, however, are distinguishable from the requirements in those cases.

¶22 On its face, the Code provides that the Chief Procurement Officer executed the contract with Gagic through Procurement Services and the OCC. The contract administrator at the OCC made the initial review and the OPDS director, a director of a completely different agency,

provided the second level of review. The review the Code promulgates therefore facially complies with the dual function requirement regardless whether an ALJ made the final determination or merely made a recommendation to the OPDS director. *See R.L. Augustine Const. Co.*, 188 Ariz. at 369.

¶23 Moreover, unlike the plaintiffs in those cases, Gagic did not go through the administrative process while maintaining his argument that the process violated the Arizona Procurement Code's requirements. *See Id.*; *Falcone Bros. & Assocs., Inc.*, 240 Ariz. at 486 ¶ 4. Because he did not go through the process and brings his as-applied argument for the first time on appeal without providing the trial court with evidence to support his argument, we consider it waived and will not speculate whether the administrative review process was improper as applied to Gagic. *See Evans Withycombe, Inc. v. W. Innovations, Inc.*, 215 Ariz. 237, 241 ¶ 16 (App. 2006); *see also GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4 (App. 1990) ("An appellate court's review is limited to the record before the trial court.").

¶24 Gagic next argues that he was not required to exhaust his administrative remedies because his complaint presented a question of law. *See* MC1–906A (stating that the Code applies only to a "dispute not involving a question of law"). He does not, however, support his contention with citations to the record, including his complaint, or legal authority. The argument is therefore insufficient for appellate review and is considered waived. *See* Ariz. R. Civ. App. P. Rule 13(7)(A) (stating that argument in an appellate brief must contain "contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record on which the appellant relies"); *see also State v. Carver*, 160 Ariz. 167, 175 (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.").

¶25 Gagic also argues that following the Code's administrative process could not provide him his requested relief. He claims that the Code allowed only liquidated damages to the County and that he could not be awarded any damages. He brings this argument for the first time on appeal and it is therefore waived. *See Evans Withycombe, Inc.*, 215 Ariz. at 241 ¶ 16. Moreover, the argument is meritless. An administrative remedy cannot be deemed futile if it has the power to provide some relief, *see Estate of Bohn v. Waddell*, 174 Ariz. 239, 250 (App. 1992), and a plaintiff's "preference for a

particular remedy does not determine whether the remedy before the agency is adequate," *Moulton*, 205 Ariz. at 513 ¶ 21. Here, the gravamen of Gagic's dispute and complaint is that an improper hold had been placed on case assignments to him. A remedy available to him through an administrative proceeding in February and March of 2019 was the removal of the case hold. *See Estate of Bohn*, 174 Ariz. at 250.

¶26 Gagic further argues that because MC1–906 states that a complainant who receives a response from the contract administrator may abide by the decision or may appeal the decision, any appeal to the OPDS director was merely permissive. This is not true. The "may" in the Code unambiguously creates the avenue for administrative review and thus judicial relief. *See Clayton by & through Sherman v. Kenworthy in & for Cnty. of Yuma*, 250 Ariz. 65, 68 ¶ 12 (App. 2020). The use of "may" means only that the director's review stated in MC1–906(A)(3) is an option available to the complainant. If the contractor does not desire a review of the initial decision under MC1–906(A)(2), he is not required to seek review. Allowing a contractor to accept the first-tier determination does not make the director's review permissive if a party wishes to appeal the determination to the superior court. *See id*.

¶27 The Code thus comports with the Arizona Procurement Code's two-tier requirement. The contract provided that the administrative review process outlined in MC1–906 gave OCC and OPDS original jurisdiction over the type of contract claim at issue here. Gagic was thus required to exhaust his administrative remedies under MC1–906 as a prerequisite to judicial relief. *See Coconino Cnty.*, 214 Ariz. at 86 ¶ 8.

B. Gagic failed to exhaust his administrative remedies.

¶28 Gagic argues that even if he was required to exhaust his administrative remedies, the court erred in finding that he did not do so. The court did not err. Gagic did not timely file his complaint with the contract administrator as the Code required. Gagic learned about the hold in February of 2019 and sent an e-mail to the Chief Procurement Officer. A procurement officer informed him of the proper procedures a few days later. He conceded that he did not file the dispute with the contract administrator, Plummer, within ten days of receiving notice from the Procurement Office. He did e-mail Plummer regarding the dispute in October 2019, some eight months after receiving notice over the cause of the dispute, but such a filing does not comply with the Code's timeliness requirement and he therefore failed to exhaust his administrative remedies.

¶29 Gagic nonetheless argues that his e-mail to the Chief Procurement Officer was consistent with the definition of "filed" in section MC1–101 of the Code, which is defined as "delivery to the [p]rocurement [o]fficer or to the Chief Procurement Officer, whichever is applicable." MC1–101(57). Like the interpretation of statutes generally, interpretation of a county's procurement code is a question of law, which we review de novo. *Grosvenor Holdings, L.C.*, 222 Ariz. at 594 ¶ 11. In construing the Code, we look first to its plain language and if the meaning of the language is clear, we do not employ any further methods of construction. *Id*. Here, the definitions of MC1–101 are only to be used when the context does not otherwise require a different definition. MC1–101. The definition of "filed" in MC1–101, thus, does not apply because MC1–906(A)(1) unambiguously requires a dispute to be filed with the "[c]ontract administrator" when applicable. *See City of Phoenix v. Superior Ct. In & For Maricopa Cnty.*, 139 Ariz. 175, 178 (1984) (special provision controls over a general).

¶30 Gagic next argues that filing the dispute with the Chief Procurement Officer nevertheless complied with MC1–906(A)(1) because the contract administrator received an e-mail alerting her of the initial complaint. The exhaustion of administrative remedies rule requires the aggrieved party to "scrupulously follow the statutory procedures." S*ee Estate of Bohn*, 174 Ariz. at 245–46. Filing a dispute with the Chief Procurement Officer does not "scrupulously follow" the requirements of MC1–906 and we therefore reject the argument that he complied with the Code.

¶31 Gagic further argues that the trial court erred in denying his motion to strike Plummer's affidavit. We decline to address this argument because it is moot; we have already found that he factually conceded that he did not file his dispute with the contract administrator as required by MC1–906 independent of Plummer's affidavit. *See State v. Ott*, 167 Ariz. 420, 428 (App. 1990) (stating that summary judgment will be sustained if independent evidence would permit summary judgment); *In re Henry's Estate*, 6 Ariz. App. 183, 188 (1967) ("We may decline to address an issue if facts show it is . . . moot."). Because he failed to exhaust his administrative remedies, the trial court's dismissal of Gagic's breach of contract and breach of covenant of good faith and fair dealing claims is affirmed.

II. The trial court correctly granted the County summary judgment on Gagic's IIED and defamation claims.

¶32 Gagic argues that the court erred procedurally and substantively in granting the County summary judgment. Whether the trial

court correctly granted summary judgment is reviewed de novo. *Palmer v. Palmer*, 217 Ariz. 67, 69 ¶ 7 (App. 2007).

¶33 As an initial matter, Gagic argues that the court improperly ruled on the factual sufficiency of his IIED and defamation claims because it did not provide him with notice that it was going to determine the merits and give him a chance to provide evidence to support his claims. Gagic, however, did not object to the court's considering the factual sufficiency of the IIED or defamation claims at oral argument. Nor did he raise this issue in a motion for reconsideration. This court generally does not consider arguments that were not properly raised below and we decline to do so here. *See Evans Withycombe, Inc.*, 215 Ariz. at 241 ¶ 16. Furthermore, Gagic has not identified what additional evidence he would have provided the court before it determined the factual sufficiency of the complaint.

¶34 On the merits, summary judgment is appropriate if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c). Summary judgment should be granted when the facts produced to support the claim "have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim." *Orme School v. Reeves*, 166 Ariz. 301, 309 (1990); *see also* Ariz. R. Civ. P. 56(a). This court views all facts and reasonable inferences in the light most favorable to the party opposing the motion and will affirm for any reason the record supports, even if the superior court did not explicitly consider it. *CK Fam. Irrevocable Tr. No. 1 v. My Home Grp. Real Est. LLC*, 249 Ariz. 506, 508 (App. 2020). Gagic failed to provide a genuine issue of material fact on either claim.

A. Intentional Inflection of Emotional Distress

¶35 Gagic argues that the court erred when it found that he did not raise a prima facie case for IIED. To prevail on a IIED claim, a plaintiff must show that (1) the defendant's conduct was "extreme and outrageous"; (2) the defendant either intended to cause or recklessly disregarded the near certainty that emotional distress would result from their conduct; and (3) the defendant's conduct actually caused severe emotional distress. *Nelson v. Phoenix Resort Corp.*, 181 Ariz. 188, 199 (App. 1994). The court must preliminarily determine whether the conduct may be considered so outrageous and extreme to permit recovery. *Id.*; *see also* Restatement (Second) of Torts § 46. This issue may only go to the jury where "reasonable minds may differ." Restatement (Second) of Torts § 46. Even if a defendant's conduct is unjustifiable, it does not necessarily rise to the level of

"atrocious" and "beyond all possible bounds of decency" that would cause an average member of the community to believe it was "outrageous." *Nelson*, 181 Ariz. at 199.

¶36 No reasonable juror could find that the County's actions were beyond all possible bounds of decency. Not checking on Gagic after the courtroom incident falls well short of atrocious or outrageous behavior. Nor did the County's statement to Channel 15 rise to the level of action beyond all possible bounds of decency. The County merely gave Channel 15 the reason OCC had placed a hold on assigning Gagic new cases. The court did not err in granting the County summary judgment on Gagic's IIED claim.

B. Defamation

¶37 Gagic argues that the court erred in finding that he did not raise a prima facie case for defamation. A person suing for defamation must prove a defendant (1) published a false and defamatory statement concerning the person, (2) knew the statement was false and defamed the other, and (3) acted in reckless disregard of these matters or negligently failed to ascertain them. *Peagler v. Phoenix Newspapers, Inc.*, 114 Ariz. 309, 315 (1977). Furthermore, the publication must "reasonably appear to state or imply assertions of material fact that are provably false." *Yetman v. English*, 168 Ariz. 71, 76 (1991).

¶38 The County did not publish a false statement about Gagic. Records of complaints and e-mails show that his hold resulted from his failure to timely communicate with clients, the court, and other attorneys while working cases under the contract. The County's statement to Channel 15 relayed those facts.

¶39 Gagic nonetheless argues that the initial sentence of the statement, "[a] contract might be placed on temporary hold if there are complaints from clients or family members, the attorney provides poor representation, or they are carrying too many cases," could imply that he was placed on a temporary hold because he provided poor representation. This sentence, however, is only the general rule stating when a person may be put on a temporary hold and is not a reasonable assertion of fact why the County placed a hold specifically on him. The only reasonable assertion of fact provided in the statement comes in the following sentence that limited the County's reason for placing him on hold to "his lack of communication with clients, another attorney, and [O]PDS." The court therefore did not err in granting summary judgment in favor of the County.

III. Substantial evidence supports the trial court's decision to deny sanctions.

¶40 Gagic argues the trial court erred in denying him fees under A.R.S. § 12–349. He claims that the County made a settlement offer "[it] knew [it] could not deliver" and therefore unreasonably expanded or delayed the proceeding. We view the evidence most favorably to sustaining the trial court's ruling and affirm the trial court's finding unless clearly erroneous. *Goldman v. Sahl*, 248 Ariz. 512, 531 ¶ 65 (App. 2020).

¶41 The County's actions were not unreasonable. The County proposed a settlement whereby the County would suggest that Gagic be reinstated and the current litigation would be stayed until he received new cases. If he were not reinstated and assigned new cases within three weeks, he would then proceed with the current litigation. Contrary to Gagic's position, the County did not promise something it could not deliver. It proposed actions to attempt his reinstatement and to have cases assigned to him, but the County did not guarantee that Gagic would be assigned cases. While the Felony Defense Review Committee's requirement of a hearing on his reinstatement was not what the County expected when it proposed the settlement, it did not promise anything beyond proposing Gagic's reinstatement before the Committee. We therefore find no error in the court's denial of sanctions under A.R.S. § 12–349.

IV. Attorneys' Fees and Costs on Appeal

¶42 The County requests attorneys' fees and costs under to A.R.S. §§ 12–341, 12–341.01(A), 12–342 and ARCAP 21. "In any contested action arising out of a contract . . . the court may award the successful party reasonable attorney fees." A.R.S § 12–341.01(A). In our discretion, we award the County its attorneys' fees on appeal for fees related to the breach of contract and breach of good faith and fair dealing claims under A.R.S. § 12–341.01 and costs under A.R.S. § 12–342 upon compliance with ARCAP 21.

CONCLUSION

¶43 For the foregoing reasons, we affirm.