DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CWB HOLDINGS, LLC, an Arizona Limited liability company,	)	No. 1 CA-CV 10-0791
	)	DEPARTMENT D
Plaintiff/Appellee	)	
	)	Not for Publication
v.	)	(Rule 28, Arizona Rules
	)	of Civil Appellate Procedure
ANTHONY and PATRICIA ANDERSON, husband and wife,	)	
	)	
Defendants/Appellants.	)	

Appeal from the Superior Court in Maricopa County

Cause No. CV2006-050509, CV2007-017436

The Honorable Michael R. McVey, Judge

AFFIRMED

Fidelity National Law Group — Phoenix
By Patrick J. Davis
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Attorneys for Plaintiff/Appellee

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By Mark J. DePasquale
Attorneys for Defendants/Appellants

G E M M I L L, Judge

¶1 Anthony and Patricia Anderson (collectively the "Andersons") appeal the grant of summary judgment in favor of

CWB Holdings, LLC ("CWB"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 2005, Anthony Anderson ("Anderson") approached Frederick Dettmannn ("Dettmannn") about purchasing real property and a commercial building at 8727 E. Via de Commercio, Scottsdale, Arizona (the "Property"), owned by Dettmannn and his wife, Barbara (collectively the "Dettmanns"). The Dettmanns submitted the following to the Andersons: a Real Estate Disclosure and Election, Commercial Seller's Property Disclosure Statement, and a Commercial Real Estate Purchase Contract (the "Purchase Contract"). The Andersons assert that they reached an oral agreement with the Dettmanns that the earnest money would equal $10,000, as opposed to the $50,000 set forth in the Purchase Contract.

¶3 In January 2006, however, CWB entered into a binding purchase contract with the Dettmanns to purchase the Property for $660,000. The Andersons filed a notice of *lis pendens* against the Property on February 8, 2006 ("2006 *lis pendens*"). The Property was conveyed by Special Warranty Deed to CWB on February 16, 2006.

¶4 The Andersons filed a complaint against the Dettmanns, cause number CV2006-050509, for specific performance, requesting the court compel the Dettmanns to convey the Property to the

Andersons in conformity with the terms and conditions of an oral agreement. The Andersons argue that, although the agreement was oral, it is not barred by the Arizona Statute of Frauds, Arizona Revised Statutes ("A.R.S.") section 44-101 (2003), "because of the past performance of the oral contract by the Andersons." Such acts of past performance included: ordering a land title survey, reviewing and approving existing leases with tenants already occupying the building on the Property, forming 8727 E. Via de Commercio, LLC ("8727 LLC"), and procuring and paying for a $1,960,000 mortgage loan commitment, a portion of which was to be used to pay for the acquisition of the Property. The Andersons assert that they received a letter from Dettmann in January 2006, advising them that the Dettmanns were repudiating the oral agreement and selling to a higher bidder. The Andersons conceded in the complaint that the Dettmanns had not signed the Purchase Contract.

¶5 The Dettmanns moved to dismiss the complaint, disputing the Andersons's contention that their claims were not barred by the Statute of Frauds due to the doctrine of part performance, but the motion was denied.

¶6 The Andersons filed an amended complaint, substituting 8727 LLC as the named plaintiff in the place of the Andersons personally. The complaint explained that the managing member of 8727 LLC was Vaughn-Leavitt Limited Partnership, L.P., the

general partner of which was Knights, III, Inc., and the president of Knights III, Inc., was Anderson. In addition to the Dettmanns, who were named as defendants in the original complaint, CWB was added as a defendant in the amended complaint. The amended complaint also included additional facts, including that Anderson amended the Purchase Contract, in part to eliminate the $50,000 earnest money requirement. 8727 LLC argued that Dettmann sent Anderson a letter, on August 30, 2005 ("August 30, 2005 Letter"), stating that he would be the seller of the Property, Anderson would be the buyer, and the purchase price would be $625,000. In a conversation on September 2, 2005, 8727 LLC alleged that Anderson and Dettmann discussed additional terms and conditions for the transfer of the Property. 8727 LLC further alleged that Anderson executed and delivered the Purchase Contract to the title company, but the title company refused to open escrow. 8727 LLC argued that Dettmann sent a letter, dated October 13, 2005, stating that the title company would not open escrow because the Purchase Contract did not provide for an earnest money deposit. 8727 LLC further asserted that e-mail exchanges occurred between the Andersons and Dettmanns between December 2005 and January 2006 regarding the Property and the Dettmanns informed the Andersons via e-mail that they had received a third-party bid and agreed to sell the Property to the third-party bidder. The amended

complaint asserted count one, breach of contract, against the Dettmanns, and count two, constructive trust, against CWB.

¶7 In January 2007, the trial court dismissed the case without prejudice for lack of prosecution. 8727 LLC moved to reinstate the case, and the case was reinstated in May 2007.

¶8 CWB requested that the Andersons execute a quit claim deed on February 16, 2006, but the Andersons did not comply with their request. CWB again requested the Andersons execute a quit claim deed in May 2007. In September 2007, CWB filed a complaint, cause number CV2007-017436, against the Andersons for wrongful recordation and quiet title ("title dispute action"). CWB argued that they were entitled to damages, including statutory damages or treble the actual damages, under A.R.S. § 33-420 (2007), and reasonable attorneys' fees and costs.

¶9 The Andersons filed a second notice of *lis pendens* in October 2007 ("2007 *lis pendens*"). The notice stated that CWB had filed an action against the Andersons that affected title to the Property.

¶10 The Dettmanns moved for summary judgment in November 2007, arguing that the Andersons and 8727 LLC could not establish the existence of a contract with the Dettmanns. The Dettmanns argued that Anderson had altered the close of escrow date and the earnest money requirement on the Purchase Contract. The Dettmanns asserted that Dettmann informed Anderson, on

October 13, 2005, that he would not accept the counteroffer and requested that Anderson provide the title company with the documents necessary to open escrow. The Dettmanns further alleged that Anderson never provided the documents, but he indicated in an e-mail that he wished to proceed with the sale. The Dettmanns informed the escrow agent on November 11, 2005 that the Purchase Contract was null and void due to Anderson's alterations. The Dettmanns alleged that Dettmann asked Anderson to submit an offer if he was interested in purchasing the Property, but he failed to do so. The Dettmanns further alleged that Dettmann contacted Anderson on January 17, 2006, and informed him that Dettmann had received an offer from another potential buyer. Anderson sent an e-mail saying he was still interested, but the Dettmanns argue that Anderson never submitted a written offer. The Dettmanns sold the Property to CWB on January 17, 2006. CWB filed a joinder in the Dettmanns's motion. The Andersons cross-moved for summary judgment in December 2007.

¶11 Oral argument was held on the Dettmanns's motion for summary judgment in January 2008, and the trial court granted the motion. The court found that the "collective writings" between the parties, which included proposed contracts, letters, and e-mails, did "not reflect that an agreement existed in this case" and "no agreement, or meeting of the minds on all material

terms of the real estate sale ever occurred." The court stated that the August 30, 2005 letter "by itself, is not a real estate purchase contract . . . [because the] letter does not contain all of the terms of the parties' agreement, and specifically expresses an intention to prepare a formal subsequent document." Further, the court found that the Purchase Contract was "ineffective" because it was signed only by Anderson, and it was not accepted by September 15, 2005, which the Purchase Contract required. The court also denied 8727 LLC's cross-motion.

¶12 Following a joint motion to consolidate, the trial court consolidated cases CV2007-017436 and CV2006-050509 under cause number CV2006-050509 in March 2008. 8727 LLC filed a motion to amend the judgment, which the court denied.

¶13 In a formal judgment, filed April 1, 2008, the court granted attorneys' fees in favor of the Dettmanns and CWB, and the court ordered the Andersons to remove all *lis pendens* against the Property within ten days of the judgment. In July 2008, the court set a hearing date for August 2008 for the Andersons and 8727 LLC to show cause as to why the *lis pendens* had not yet been removed. The Andersons and 8727 LLC separately filed releases of *lis pendens* on July 31, 2008. The Andersons and 8727 LLC also filed a notice of appeal ("first appeal") challenging the summary judgment entered in cause number CV2006-050509.

¶14 In December 2008, CWB filed a motion for partial summary judgment on liability for wrongful recordation of the *lis pendens*, as alleged by CWB in cause number CV2007-017436. CWB argued that the trial court's grant of summary judgment, in January 2008, and the court's finding that no agreement existed between the parties, supported its argument that:

> no reasonable person could conclude that a purchase contract existed between the Dettmanns and the Andersons/8727 [LLC] . . . for the Property, [and] the Andersons – like all other reasonable people – must have known (and certainly had reason to know) that the *lis pendenses* were groundless, contained a misstatement or false claim, or were otherwise invalid.

The Andersons cross-moved for partial summary judgment in February 2009. The trial court held oral argument on the motions in March 2009, wherein the Andersons requested the opportunity to submit a reply in support of their cross-motion. Following submission of the Andersons's reply, the trial court granted CWB's motion for partial summary judgment establishing liability for wrongful recordation of the *lis pendens*, and denied the Andersons's cross-motion. The damages, however, remained to be determined.

¶15 In November 2009, this court ruled on the first appeal. *Anderson v. Dettmann*, 1 CA-CV 08-0563, 2009 WL 3878522 (Ariz. App. Nov. 19, 2009) (mem. decision). This court vacated the judgment as to the Andersons, noting that the Andersons had

previously amended the complaint in cause number CV2006-050509 to reflect only 8727 LLC as plaintiff, and this court concluded that the Andersons personally were not subject to the judgment. *Id*. at *2, ¶ 12, *4, ¶ 21.

¶16 The question of CWB's actual damage amount was tried to a jury, and the jury found CWB's actual damages to be $180,000. The court awarded CWB $540,000 as treble the actual damages determined by the jury, pursuant to A.R.S. § 33-420(A) & (C). The Andersons timely appealed, and we have jurisdiction pursuant to A.R.S. § 12-2101(B) (Supp. 2011).[1]

DISCUSSION

A. Summary Judgment

¶17 The Andersons argue that partial summary judgment establishing liability in favor of CWB was improvidently granted.

¶18 We review a grant of summary judgment *de novo*. *Andrews v. Blake,* 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003). Summary judgment may be granted when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Orme Sch. v. Reeves,* 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990); Ariz. R. Civ. P. 56(c)(1). Summary judgment is appropriate only "if the facts produced in

[1] We cite to the current version of the applicable statutes if no revisions material to this decision have since occurred.

support of the [other party's] claim or defense 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 or defense." *Orme Sch.*, 166 Ariz. at 309, 802 P.2d at 1008.

¶19 Pursuant to A.R.S. § 33-420:

> A. A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.
>
> B. The owner or beneficial title holder of the real property may bring an action pursuant to this section in the superior court in the county in which the real property is located for such relief as is required to immediately clear title to the real property as provided for in the rules of procedure for special actions. This special action may be brought based on the ground that the lien is forged, groundless, contains a material misstatement or false claim or is otherwise invalid. The owner or beneficial title holder may bring a separate special action to clear title to the real property or join such action with an action for damages as described in this section. In either case, the owner or beneficial title holder may recover reasonable attorney fees and costs of the action if he prevails.
>
> C. A person who is named in a document which

> purports to create an interest in, or a lien or encumbrance against, real property and who knows that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid shall be liable to the owner or title holder for the sum of not less than one thousand dollars, or for treble actual damages, whichever is greater, and reasonable attorney fees and costs as provided in this section, if he wilfully refuses to release or correct such document of record within twenty days from the date of a written request from the owner or beneficial title holder of the real property.

2006 *Lis Pendens*

¶20 The Andersons argue that CWB failed to meet its burden of persuasion in moving for summary judgment under A.R.S. § 33-420(A) for recording the 2006 *lis pendens*. Specifically, the Andersons assert that CWB's argument that the *lis pendens* was groundless was based solely on the court's January 2008 summary judgment award in favor of the Dettmanns and CWB.

¶21 "[T]he purpose of A.R.S. § 33-420 is to permit the expeditious removal of a lis pendens alleged to be groundless only where the claim that the underlying action is one affecting title to real property has no arguable basis or is not supported by any credible evidence." *Evergreen West, Inc. v. Boyd,* 167 Ariz. 614, 621, 810 P.2d 612, 619 (App. 1991). The "reason to know" requirement under A.R.S. § 33-420(A) has been interpreted to mean that:

> the actor has knowledge of facts from which

> a reasonable man of ordinary intelligence or one of the superior intelligence of the actor would either infer the existence of the fact in question or would regard its existence as so highly probable that his conduct would be predicated upon the assumption that the fact did exist.

Hatch Companies Contracting, Inc. v. Arizona Bank, 170 Ariz. 553, 826 P.2d 1179 (App. 1991) (citing Restatement (Second) of Torts § 12(1) (1965)).

¶22 We agree with the trial court that the "collective writings" between the parties, comprised of a proposed contract, letters, and e-mails, did "not reflect than an agreement existed in this case" and "no agreement, or meeting of the minds on all material terms of the real estate sale ever occurred." The August 30, 2005 letter does not constitute a real estate contract. The letter specifically states that Dettmann "will initiate an AZ Commercial Offer to Purchase along [the lines of the letter] and forward it to [Anderson] along with some of the usual required forms for [Anderson's] consideration and review." Further, the Purchase Contract was only signed by Anderson and not the Dettmanns. While the Andersons asserted that e-mail exchanges, which occurred between the Andersons and Dettmanns between December 2005 and February 2006, occurred regarding the Property, no formal written contract ever existed. The Andersons's claim "has no arguable basis [and] is not supported by any credible evidence," and is, therefore, groundless. *See*

Evergreen West, Inc., 167 Ariz. at 621, 810 P.2d at 619. The Andersons had reason to know, due to the lack of a formal contract, that the *lis pendens* was groundless. Thus, the trial court correctly granted summary judgment to CWB on liability under A.R.S. § 33-420(A).

¶23 The Andersons further argue that CWB failed to establish that a jury would be compelled to find that the Andersons knew or had reasons to know the filing of the 2006 *lis pendens* was groundless. The Andersons also allege that CWB could not prove that CWB was the owner or beneficial title holder at the time the 2006 *lis pendens* was filed, and that the statute of limitations barred CWB from bringing a claim. The Andersons, however, never presented these arguments to the trial court. Specifically, these arguments were not made in the Andersons's cross-motion for partial summary judgment and opposition to CWB's motion for partial summary judgment, subsequent pleadings, or at oral argument. Because these arguments were not presented to the trial court, they are waived. *See Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535, ¶ 18, 169 P.3d 120, 125 (App. 2007) ("[A]rguments raised for first time on appeal are untimely and deemed waived.").

Request to Remove *Lis Pendens*

¶24 The Andersons also contend that CWB was not entitled to summary judgment under A.R.S. § 33-420(C) based on CWB's

February 16, 2006 request to remove the *lis pendens*. CWB sent letters to the Andersons on February 16, 2006 and May 31, 2007, requesting that they release the *lis pendens*. Pursuant to A.R.S. § 33-420(C), "within twenty days from the date of a written request from the owner or beneficial title holder," a "person who is named in a document which purports to create an interest in . . . real property and who knows that the document is forged, groundless, contains a material misstatement or false claim" is liable to the owner or title holder if the person refuses to release the document.

¶25 We have already found the *lis pendens* to be groundless due to a lack of a contract between the Andersons and the Dettmanns. *See supra*, ¶ 22. Even if the Andersons were not liable to CWB immediately after the February 2006 letter, or the May 2007 letter, they were liable to release the *lis pendens* following the trial court's April 2008 order. The Andersons assert on appeal that 8727 LLC filed a notice of appeal following the judgment. While accurate that the case was on appeal, the sole issue addressed on appeal was whether or not "the superior court erred by adding the Andersons as plaintiffs." *Anderson v. Dettmann*, 1 CA-CV 08-0563, 2009 WL 3878522 at *2, ¶ 8. The issue of whether a contract existed was not addressed on appeal. *Id.* Therefore, the Andersons should have released the *lis pendens* within the ten days ordered. In

addition, the Andersons concede on appeal that 8727 LLC should have sought a stay of the proceedings, which they failed to do. **[OB 45]** Summary judgment was appropriate.

8727 LLC's Substitution as Plaintiff

¶26 The Andersons argue that 8727 LLC's substitution as plaintiff in the underlying action did not make the 2006 *lis pendens* wrongful as a matter of law.

¶27 "In an action affecting title to real property, the *plaintiff* at the time of filing the complaint . . . may file in the office of the recorder of the county in which the property is situated a notice of the pendency of the action or defense." A.R.S. § 12-1191(A) (Supp. 2011) (emphasis added). Once the Andersons removed their names on the amended complaint, 8727 LLC became the sole plaintiff in the title dispute action. Therefore, the Andersons personally had no continuing interest in the legal action which might affect the property and should have released the *lis pendens*. The trial court correctly granted summary judgment in favor of CWB.

Dismissal Without Prejudice for Failure to Prosecute

¶28 The Andersons assert that their failure to release the 2006 *lis pendens* after the title dispute action was dismissed without prejudice for failure to prosecute was not a violation as a matter of law.

¶29 Pursuant to A.R.S. § 12-1191(C):

> If a notice of pendency of action has been recorded pursuant to this section and the action is dismissed without prejudice for lack of prosecution, the plaintiff or plaintiffs of the action, within thirty days after such dismissal, shall issue to the defendant of the action a release of the notice of pendency of action. Such release shall be in the form of a recordable document. Failure to grant such release shall subject the person filing the notice of action or defense to liability in the amount of one thousand dollars and also to liability for actual damages.

¶30 The trial court dismissed the title dispute action without prejudice for lack of prosecution on January 31, 2007. 8727 LLC moved to reinstate the case on February 23, and the case was reinstated on May 18, 2007. The Andersons argue that they were not required to release the *lis pendens* because 8727 LLC moved to reinstate the case within thirty days. The Andersons provide no statute or case law to support their argument. Rather, they argue that "CWB cite[d] no cases [before the trial court] requiring release of a *lis pendens* where a motion to reinstate the case is filed within the 30 day period following the dismissal of a case for lack of prosecution." Regardless, the Andersons were required to release the *lis pendens* within ten days following the court's April 2008 order. *Supra* ¶ 25. Therefore, summary judgment was appropriate.

2007 *Lis Pendens*

¶31 The Andersons argue that the 2007 *lis pendens* was not

wrongful as matter of law. They argue that CWB failed to demonstrate that the 2007 *lis pendens* was groundless or that the Andersons knew it was groundless. The 2007 *lis pendens* provided notice that CWB filed a civil action against the Andersons that affected title to the Property. It also provided that the Andersons had asserted affirmative defenses to the complaint and impleaded the Dettmanns, as the prior owners of the Property. **[Id.]** Further, it stated that the Andersons sought dismissal of CWB's complaint and a judgment against the Dettmanns granting the Andersons all rights under the contract.

¶32 As previously mentioned, the record establishes that the 2006 *lis pendens* was groundless. For the same reasons, we conclude that the 2007 *lis pendens* was also groundless. Therefore, summary judgment was appropriate.

Failure to Release *Lis Pendens*

¶33 The Andersons argue that their failure to release the *lis pendens* after the trial court's grant of summary judgment in January 2008 was not wrongful as a matter of law.

¶34 The record is clear that the court ordered, on April 1, 2008, the Andersons remove all *lis pendens* against the Property within ten days of the judgment. The Andersons failed to comply, and the court issued an Order to Show Cause in July 2008. The Andersons finally filed a release of *lis pendens* on July 31, 2008. Summary judgment was appropriate on this issue.

New Trial

¶35 The Andersons assert that while CWB was not entitled to summary judgment on any aspect of the liability claim, a new trial would be required even if the trial court were to find liability on some of the theories. Specifically, the Andersons argue that the premise at trial was that the Andersons were liable throughout the period from the recording of the 2006 *lis pendens* through its release. They assert that, except for the 2006 *lis pendens*, all other alleged wrongful conduct occurred at later times throughout the relevant period.

¶36 The Andersons have identified no case law to support this argument, and we find none. Because we find summary judgment appropriate for the reasons stated, a new trial is not required.

B. Evidentiary Objections

¶37 The Andersons also argue that the trial court abused its discretion in sustaining objections to evidence showing CWB refused to consider the Andersons's proposals to purchase the Property. Specifically, the Andersons argue that the trial court erred in excluding evidence that the Andersons tried to negotiate a purchase from CWB.

¶38 We generally review a trial court's admission or exclusion of evidence for an abuse of discretion. *John C. Lincoln Hosp. and Health Corp. v. Maricopa County*, 208 Ariz.

532, 543, ¶ 33, 96 P.3d 530, 541 (App. 2004).

¶39 At trial, Anderson, appearing *pro per*, asked Caroline Bray ("Bray"), sole owner of CWB, the following question on cross-examination:

> Q. Okay. Well, why don't we just say this. One of the attorneys that represented 8727 [LLC], do you recall that that attorney made an offer to [Bray's attorney at the time, Mr. Gross] to buy the building from you and then lease back space to you for up to two years at a nice profit, was the term that was used?
>
> A. I'm sorry. I don't recall that specifically. I don't recall the nice profit portion.
>
> I do recall some – some conversation to that effect.
>
> Q. Well, but my hand was already tipped. I had already let on that I wanted the building. Right? I mean, there was no secret there. I filed a lawsuit. I filed a lis pendens. I'm screaming, I'm yelling. I'm trying to get attention; correct?

¶40 Counsel for CWB then objected on the grounds that the testimony violated Arizona Rule of Evidence 408.[2] The trial court stated:

> [T]he objection's sustained on a slightly different ground. It's irrelevant. Period.
>
> The issue here is whether, again, Mr. – or CWB was damaged by the wrongful recordation and/or the wrongful failure to

[2] Rule 408 prohibits the offering of evidence of "conduct or statements made in compromise negotiations regarding the claim . . . when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction."

release the recordation. That's the issue. Negotiations back and forth are irrelevant to what the ultimate [issue] for this jury to decide.

¶41 Later during the trial, on direct examination by the court, Anderson was asked the following questions:

> Q. Did you make any – what kind of deal did you offer CWB?
>
> A. I wrote a letter to Jeffrey Gross, CWB's and TCP's counsel,[3] an e-mail letter, where I outlined that I wanted to buy the building from CWB. I proposed that I would release the lis pendens, allowing CWB to perfect its 1031. CWB would then --
>
> Q. Okay. Just what you said to them. Not what they said back.
>
> A. Yes. This is just what I'm saying to them in a letter. And I'm para – in fact, I have it as my exhibit.
>
> Q. What's the timeframe on this?
>
> A. This letter was on February 10th. I'm pretty sure it was February 10th. I have it in my exhibit, if necessary.
>
> But I remember the deal. I proposed that, since CWB had already sued Mr. Dettmann – which I thought was proper, and part of my objective – that CWB and myself would go to Dettmanns, force them to reduce the price to CWB to the price I – he had with me – to me, of $625,000, instead of $660,000. And then I would buy the building back from Ms. Bray at what I described as a nice little profit.
>
> . . .
>
> Q. Did you attempt to make any other offers after CWB turned down your initial offer to buy the property from them?
>
> A. Yes.
>
> Q. Okay. Did you give up hope of any

[3] TCP Holdings is a real estate company, owned by Brady Ipsen ("Ipsen"), a friend of Bray's, which at one point was going to join Bray in the purchase of the Property but later decided to back out.

> chance to buy the property outside of litigation at that point?
> A. I pretty much did.

The court sustained counsel's objection to any testimony regarding CWB's response to the offer.

¶42 CWB asserts that the Andersons's argument is moot because the jury did hear evidence that the Andersons or 8727 LLC tried to negotiate a purchase of the Property from CWB as a result of the aforementioned testimony. The Andersons counter that Anderson's testimony did not provide evidence "regarding CWB's response to the offers," only evidence "that the Andersons made certain offers."

¶43 We need not decide whether the evidence was irrelevant or if it violated Rule 408. Instead, we believe that the jury heard evidence of a proposed sale from CWB, and that CWB rejected the Anderson's initial offer, which appears to be the point the Andersons were trying to present at trial. Specifically, the Andersons argue on appeal that the evidence in issue was "directly relevant to the issue of whether CWB had any interest in selling the Property during the period in question, i.e., during the time the *lis pendens* were in place." We disagree with the Anderson's argument that the jury did not hear CWB's responses to the Andersons's proposals. While the jury did not hear specific facts regarding CWB's responses, the jury could have gleaned such facts from Anderson's testimony

regarding the rejected initial offer and a presumed rejection of subsequent offers. We therefore discern no reversible error here.

C. Jury's Verdict

¶44 The Andersons further argue that the $180,000 jury verdict was not supported by the evidence. We disagree.

¶45 We review "the evidence in a light most favorable to upholding the jury verdict," and we affirm the judgment "if any substantial evidence exists permitting reasonable persons to reach such a result." *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 53, ¶ 13, 961 P.2d 449, 451 (1998).

¶46 At trial, CWB presented evidence that it had made improvements to the Property and that it could have sold the Property if not for the *lis pendens*. Specifically, Bray testified that she bought the Property for $660,000 and spent $27,262.31 on improvements to the Property. Ipsen testified that he backed out of initially purchasing the Property with Bray with the intention of purchasing the Property from her at a later date. Ipsen tried to purchase the Property, in the summer or fall of 2006, for a purchase price of "a little over a million dollars." He testified that he believed the improvements to the Property increased the value "somewhere between 150 and $250,000." The purchase price was "mutually agreed upon," and included the added value from the improvements

and a profit to Bray on the building. Ipsen did not end up buying the Property, however, because he could not get "clear title to the building." Ipsen testified that he would not knowingly buy property with a *lis pendens* on it because it means he could not "sell the property, or [he could not] change the property and realize any profit, or get [his] investment back out of that property." Bray ultimately sold the Property for $585,000 in April 2010. The evidence was sufficient for a reasonable jury to find damages in the amount of $180,000.

CONCLUSION

¶47 For the foregoing reasons, we affirm.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Presiding Judge

_____/s/_____
MAURICE PORTLEY, Judge