IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

BENNETT BLUM, M.D., INC., AN ARIZONA CORPORATION,
Plaintiff/Appellee,

v.

CONNIE COWAN, A SINGLE WOMAN; AND
LAW OFFICE OF RAND HADDOCK, PLC, AN ARIZONA
PROFESSIONAL LIMITED LIABILITY COMPANY,
Defendants/Appellants.

Nos. 2 CA-CV 2012-0166 and 2 CA-CV 2013-0090 (Consolidated)
Filed July 3, 2014

Appeal from the Superior Court in Pima County
No. C20115520
The Honorable Charles V. Harrington, Judge

AFFIRMED

COUNSEL

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By William N. Poorten, III, Andrew M. Jacobs,
and Katherine V. Foss
Counsel for Plaintiff/Appellee

Mesch, Clark & Rothschild, P.C., Tucson
By Gary J. Cohen
Counsel for Defendants/Appellants

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Olson[1] concurred.

V Á S Q U E Z, Judge:

¶1 In this action arising out of a contract, appellants Connie Cowan and the Law Office of Rand Haddock, PLC (Haddock) appeal from the trial court's judgment in favor of appellee Bennett Blum, M.D., Inc. (Blum).[2] Appellants contend the court's findings of fact and conclusions of law are not supported by the record and the court erred in precluding them from presenting the affirmative defense of breach of the implied covenant of good faith and fair dealing. For the reasons set forth below, we affirm the judgment.

Factual and Procedural Background

¶2 "When reviewing issues decided following a bench trial, we view the facts in the light most favorable to upholding the court's ruling." *Bennett v. Baxter Grp., Inc.*, 223 Ariz. 414, ¶ 2, 224 P.3d 230, 233 (App. 2010). Haddock represented Cowan in a will contest involving Cowan's father and the sale of his ranch (will litigation). On February 14, 2011, Haddock and Cowan signed a

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[1]The Hon. Robert Carter Olson, a retired judge of the Arizona Superior Court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

[2]We address other issues on appeal from the trial court's post-judgment award of attorney fees in a separate opinion. *See* Ariz. R. Civ. App. P. 28(g).

contract under which Blum agreed to provide assistance as a medical expert on the issue of undue influence in the will litigation. The contract provided that Haddock would "determine the scope of the work to be performed by [Blum] and the need for any travel or appearances in court." Blum's hourly rate was $600, and he "require[d] a refundable advance payment in the amount of $5,000.00 against which time w[ould] be applied." The contract further provided that Blum "may from time to time require that these funds be replenished before performing additional work" and that "[a]ny significant additional work expected will need to be paid for in advance."

¶3 Blum's first task under the contract was to prepare his "preliminary opinion regarding [Cowan's father's] susceptibility to undue influence." Accordingly, the same day appellants executed the contract, Cowan sent Blum several documents pertinent to the will litigation and gave him access to an online database with additional records. Blum quickly realized that, because of the quantity, he would be unable to review all the records on his own. He requested appellants' "permission to use the assistance of Lori Milus, . . . a psychiatric nurse who assists [him] with initial record review on some cases." Haddock agreed, instructing Blum to "use [Milus] as [he] deem[ed] best." Milus proceeded to review and summarize the records, and Blum then reviewed Milus's summaries and prepared his preliminary opinion. After Haddock confirmed that the preliminary opinion was "exactly what [they] need[ed]," Blum submitted a bill for 32.75 hours of Milus's time—including twenty-five hours of record review—and 7.75 hours of his time, leaving a balance of $10,922.50.

¶4 More than a month later, on March 29, 2011, Haddock asked Blum whether he would be available on May 5, 2011, to attend a settlement conference in the will litigation. Blum told Haddock that he could be available. The parties did not communicate again until April 21, 2011, when Blum emailed Haddock. Blum indicated that there was still a $9,922.50[3] balance due and that he could not

[3]Cowan paid Blum $1,000 in March 2011.

"prepare for the [settlement conference] or be available unless that is paid and prepayment replenished." The next day, Haddock responded that Cowan had mailed him checks totaling $9,000 and that they were "still hoping to get [Blum] to spend a little time with . . . the settlement judge on May 5."

¶5 On May 2, 2011, Haddock contacted Blum to confirm his attendance at the settlement conference. Blum responded to Haddock that he had "received the payment for the outstanding balance due,"[4] but he had not "received the replenishable prepayment," and asked for the address of the settlement conference. In a telephone conversation later that day, Haddock provided Blum with the address and indicated that Blum should be prepared "to discuss [his] preliminary opinions and the bases thereof, and be ready to answer any questions that the judge might have." As to the prepayment, Haddock told Blum that Cowan could not pay him at that time, but Haddock assured Blum that he "would be paid for [his] work."

¶6 Over the next two days, Blum spent 23.5 hours reviewing the records that Milus had previously summarized. On May 5, Blum attended the settlement conference, discussed his preliminary opinion, and resolved a factual issue between the parties. The settlement conference resulted in a settlement of the will litigation.

¶7 Blum subsequently submitted a bill for $18,577.50, which included the 23.5 hours of preparation and other charges. The following day, Haddock told Blum that there was "a major disconnect" because they had not expected Blum to do a "full . . . round of preparation" but only wanted him "to be at the settlement conference to impress upon the judge that [they] had a foundation for the undue influence claims." He asked Blum to "adjust th[e] invoice accordingly." Blum replied, explaining that the "work was necessary to prepare for the settlement conference" and reducing the

[4]Blum mistakenly thought the full $9,922.50 had been paid when in fact $922.50 was still due.

invoice by $500. Cowan subsequently paid Blum $3,667.50, which included only one hour of preparation and other charges.

¶8 In July 2011, Blum filed a complaint against Cowan and Haddock, alleging breach of contract. After a bench trial in September 2012, the court found in favor of Blum. The court entered a final judgment in October 2012, awarding Blum $18,708.74 in damages, plus attorney fees and costs. This appeal followed.[5] We have jurisdiction pursuant to A.R.S. §§ 12-120.21, 12-2101(A)(1).

Sufficiency of the Evidence

¶9 Appellants first contend that "the trial court's judgment, based upon its findings of fact and conclusion[s] of law, was not supported by the evidence and was contrary to [the] law."[6] Because the trial court is in the best position to weigh the evidence, judge the credibility of witnesses, and resolve disputed facts, *Farmers Ins. Co. of Ariz. v. Young*, 195 Ariz. 22, ¶ 19, 985 P.2d 507, 513 (App. 1998), we are bound by its findings of fact unless they are clearly erroneous, *Sabino Town & Country Estates Ass'n v. Carr*, 186 Ariz. 146, 149, 920 P.2d 26, 29 (App. 1996). A finding of fact is not clearly erroneous if substantial evidence supports it. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 58, 181 P.3d 219, 236

[5]While their appeal was pending, appellants filed a motion to set aside the October 2012 judgment pursuant to Rule 60(c), Ariz. R. Civ. P., before the trial court. They asked this court to "revest jurisdiction in the trial court to consider their Rule 60(c) motion." We granted the request, but appellants subsequently withdrew their Rule 60(c) motion before the trial court. We then reinstated the appeal.

[6] Generally, "we cannot consider the sufficiency of the evidence on appeal from a jury trial 'unless a motion for a new trial was made.'" *Marquette Venture Partners II, L.P. v. Leonesio*, 227 Ariz. 179, ¶ 7, 254 P.3d 418, 421 (App. 2011), *quoting* A.R.S. § 12-2102(C). Although appellants never moved for a new trial below, they are challenging the sufficiency of the evidence from a bench trial. We therefore address the argument.

(App. 2008). However, we review de novo a trial court's conclusions of law. *Sholes v. Fernando*, 228 Ariz. 455, ¶ 6, 268 P.3d 1112, 1115 (App. 2011).

¶10 On the record before us, substantial evidence supports the trial court's judgment. *See City of Tucson*, 218 Ariz. 172, ¶ 58, 181 P.3d at 236. It is undisputed that the parties entered into a contract for Blum to provide medical-expert services in the will litigation. Blum testified that Haddock asked him to appear at the settlement conference "to discuss [his] preliminary opinions and the bases thereof" and "to answer any questions that the judge might have."[7] Blum stated that he worked 23.5 hours preparing for the settlement conference because he had not previously reviewed all the records but had relied on Milus's summaries; he also explained that he had completed his preliminary opinion more than two months prior and had not reviewed the case since. Cowan, however, refused to pay for anything more than one hour of preparation. Accordingly, the trial court reasonably found that appellants "breached the contract with [Blum] by failing to pay for the expert witness consulting services rendered by [Blum]" and were "liable to [Blum] for the outstanding balance of $18,708.74."

¶11 Appellants nevertheless raise several specific issues with the trial court's findings of fact and conclusions of law. We address each in turn.

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[7]Although Blum said he had "no independent recollection" of the March 29 conversation in which Haddock first asked him to appear at the settlement conference, the trial court was not required to accept Haddock's testimony that during that conversation he had limited the scope of Blum's appearance to explaining the difference between "mental competency and undue influence." *See Hamilton v. Mun. Court of Mesa*, 163 Ariz. 374, 377, 788 P.2d 107, 110 (App. 1989) ("The trial court is not bound to accept as true the uncontroverted testimony of an interested party.").

A. Burden of Proof

¶12 Appellants contend the findings of fact demonstrate that the trial court improperly shifted the burden of proof. They maintain that the court "placed the burden on [them] to prove precisely what they asked Blum to do in connection with the settlement conference rather than place the burden on Blum to prove that [he] performed in accordance with the contract." In support of their argument, appellants rely on the following findings:

> 42. There is no written communication from Haddock to Blum limiting Blum's preparation for the settlement conference in terms of hours, dollars, or otherwise.
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> 43. At no time did Haddock in any phone conversation or otherwise limit Blum's preparation for the settlement conference in terms of hours, dollars, or otherwise.
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> 44. Haddock did not ask Blum to estimate the number of hours or cost for preparing for the settlement conference.
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> . . . .
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> 47. There are no contemporaneously prepared notes or emails supporting Defendants' contention that Haddock told Blum not to prepare for the May 5 settlement conference or that Blum would be paid only for attending the settlement conference[] or that Cowan refused to pay the additional prepayment because Blum was told only to show up for the settlement conference and not to do any preparation.

¶13 As appellants correctly point out, in a breach of contract action, the plaintiff bears the burden of proving the existence of a contract, a breach, and resulting damages. *See Thomas v. Montelucia Villas, LLC*, 232 Ariz. 92, ¶ 16, 302 P.2d 617, 621 (2013); *Chartone, Inc. v. Bernini*, 207 Ariz. 162, ¶ 30, 83 P.3d 1103, 1111 (App. 2004). In order to establish a breach of the contract, Blum had to show that his preparation for the settlement conference fell within "the scope of the work" under the contract. Contrary to appellants' argument, the trial court explicitly acknowledged Blum's burden of proof, noting that "[t]he parties . . . entered into a binding Contract on February 14" and that "[Blum] bears the burden of proving that [appellants] breached the Contract and the damages caused." And, the court found Blum met his burden by showing Haddock had provided him with a broad scope of work regarding the settlement conference. According to the court, Haddock told Blum to "be able to explain his opinions and findings related to undue influence and the basis for those findings, and also be prepared to answer questions from [the settlement judge]." The findings of fact cited by appellants do not suggest that the court improperly shifted Blum's burden of proof. Rather, they merely serve to show that appellants failed to rebut Blum's evidence. *See Palicka v. Ruth Fisher Sch. Dist. No. 90*, 13 Ariz. App. 5, 9, 473 P.2d 807, 811 (1970) (distinguishing between burden of proof and "burden of going forward").

B. Past Performance

¶14 Relying on *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 140 Ariz. 383, 393, 682 P.2d 388, 398 (1984), appellants assert that "[i]n interpreting and applying the language of a contract, the trial court must take into account the parties' conduct subsequent to execution of the contract." Appellants maintain that Blum's preparation for the settlement conference was contrary to his "past performance under the contract." Specifically, they argue that Blum sought no permission and gave no updates concerning his preparation for the settlement conference, although he had requested permission previously to use Milus and kept appellants informed of his progress in completing his preliminary opinion.

¶15 First, we find appellants' reliance on *Darner* misplaced. *Darner* stands for the proposition that "interpretation of a negotiated agreement is not limited to the words set forth in the document." 140 Ariz. at 393, 682 P.2d at 398. As our supreme court explained:

> Evidence on surrounding circumstances, including negotiation, prior understandings, subsequent conduct and the like, is taken to determine the parties' intent with regard to integration of the agreement; once the court is able to decide what constitutes the "agreement," the evidence may be used to interpret the meaning of the provisions contained in the agreement.

Id.; *see also Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 152-54, 854 P.2d 1134, 1138-41 (1993). But *Darner* does not broadly imply, as appellants seem to suggest, that a party's past performance under a contract must be used as a guidepost for determining the scope of that party's future performance.

¶16 Second, even assuming Blum's past performance under the contract was relevant, we find the situations concerning the preliminary opinion and the settlement conference distinguishable. Although Blum asked appellants if he could use Milus for assistance in the initial document review, involving a third party in a contract, especially when it concerns medical records, is understandably something that one would ask for permission to do. *See generally* A.R.S. § 12-2294 (release of medical records to third parties). By contrast, Blum undertaking such work himself in preparation for the settlement conference does not clearly require permission under the contract. As to the progress reports, the initial document review took place over a ten-day period, giving Blum plenty of time in which to notify appellants of the status of the preliminary opinion. But the preparation for the settlement conference took place the two days immediately prior.

C. Prepayment

¶17 Appellants next point out that the contract required prepayment for "[a]ny significant additional work" and note that Blum was not prepaid for his preparation for the settlement conference. Accordingly, they argue they had no reason to expect Blum was going to spend 23.5 hours preparing for the conference.[8]

¶18 A party may waive strict performance with the terms of the contract. *Am. Cont'l Life Ins. Co. v. Rainer Constr. Co.*, 125 Ariz. 53, 55, 607 P.2d 372, 374 (1980). Here, the trial court found that "Blum waived the requirement for the $5,000 prepayment." Substantial evidence supports this finding. *See City of Tucson*, 218 Ariz. 172, ¶ 58, 181 P.3d at 236. Indeed, the contract expressly provided that Blum "may from time to time require that these funds be replenished before performing additional work." Blum testified that "there are some cases in which [he] will do advance work without requiring an additional prepayment."

¶19 At oral argument, appellants maintained that the contract also contained what they referred to as a "compulsory prepayment provision." They pointed out that the contract included the language: "Any significant additional work expected will need to be paid for in advance." But, as the trial court found, Blum waived the requirement for additional prepayment after Haddock informed him that Cowan could not pay him before the hearing,

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[8] Appellants also argue that "Blum's explanation that his ethical obligations required him to spend 23.5 hours doing a detailed file review to prepare for a settlement conference is ludicrous." However, they provide no legal support for their argument. *See* Ariz. R. Civ. App. P. 13(a)(6) (opening brief shall contain argument with citations to authorities and statutes relied upon); *Sholes*, 228 Ariz. 455, n.1, 268 P.3d at 1114 n.1 (failure to support argument waives issue on appeal). In any event, aside from noting that "Blum used his professional judgment to prepare," the trial court made no findings concerning Blum's ethical obligations. Therefore, we do not consider this argument further.

Blum thought the prior outstanding balance had been paid in full, and Blum received assurances from Haddock that he would be paid. Although Cowan disputed the waiver, we do not reweigh conflicting evidence on appeal. *See In re Estate of Pouser*, 193 Ariz. 574, ¶ 13, 975 P.2d 704, 709 (1999). And, to the extent appellants contend any waiver required mutual consent, the court's findings—Cowan "could not" rather than "would not" pay the prepayment and Haddock's assurance that Blum would be paid—support that conclusion. Moreover, appellants cite no legal authority for the proposition that even a "compulsory" provision in a contract cannot be waived, and we are aware of none.

D. No Writing

¶20 Appellants next maintain that "[n]o writing supported Blum's claim that he was authorized" to do the preparation work and the trial court "ignored this fact." But Blum was not required to produce any additional writing supporting his position. *See In re Estate of Prewitt*, 17 Ariz. App. 396, 397, 498 P.2d 470, 471 (1972) (contract may be proved by circumstantial evidence).

¶21 Without any additional writing, the trial court had to rely solely on the parties' existing contract and their conflicting testimony to determine whether a breach of the contract had occurred.[9] This testimony consisted of (1) Blum's statements that Haddock told him to prepare for the settlement conference so he could discuss his preliminary opinion and answer any questions, and (2) Haddock's statements that he asked Blum to appear at the settlement conference to discuss undue influence, his area of expertise, which should not have required preparation. The court implicitly found Blum to be more credible. "We must give due

[9]Apparently, the only written correspondence from Haddock to Blum was the April 22 email, in which he wrote, "[W]e are still hoping to get you to spend a little time with us and the settlement judge on May 5." Although appellants suggest this limited Blum's work to a couple of hours at the settlement conference, the trial court apparently disagreed.

regard to the trial court's opportunity to judge the credibility of the witnesses," *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16, 219 P.3d 258, 262 (App. 2009), and we cannot say the court's findings are clearly erroneous, *see Sabino Town & Country Estates Ass'n*, 186 Ariz. at 149, 920 P.2d at 29.

E. Meeting of the Minds

¶22 Appellants assert that "[t]here was no meeting of the minds as to the 'scope of work.'" They argue that "they expected [Blum] to attend the settlement conference to discuss the distinctions between undue influence and competency," while Blum "did the work he thought he needed to do to prepare for the settlement conference." Again, the trial court disagreed.

¶23 The trial court found that Haddock asked Blum to appear at the settlement conference "to explain his opinions and findings regarding the undue influence and the basis for them, and also to be prepared to answer questions that [the settlement judge] might have." As the court also pointed out, Haddock never told Blum not to prepare or limited the scope of any such work. Moreover, appellants knew Blum had not reviewed all of the records. And, they also knew the only person to do so, Milus, had spent twenty-five hours doing so. Substantial evidence supports the court's finding. *See City of Tucson*, 218 Ariz. 172, ¶ 58, 181 P.3d at 236.

Affirmative Defense

¶24 Appellants next contend the trial court erred by precluding them from presenting the affirmative defense of breach of the implied covenant of good faith and fair dealing. "Every defense, in law or fact, . . . shall be asserted in the responsive pleading." Ariz. R. Civ. P. 12(b). Generally, a party waives all defenses not presented in the responsive pleading. Ariz. R. Civ. P. 12(h). Requiring the prompt disclosure of an affirmative defense serves to put the other party on notice and to avoid surprise. *See Jimenez v. Wal-Mart Stores, Inc.*, 206 Ariz. 424, ¶¶ 5-9, 79 P.3d 673, 675-76 (App. 2003) (considering surprise by plaintiff in determining

if defendant properly disclosed affirmative defense); *Clark Equip. Co. v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 189 Ariz. 433, 440, 943 P.2d 793, 800 (App. 1997) (purpose of disclosure is to give each party "notice of what arguments will be made and what evidence will be presented").

¶25 In their answers, appellants alleged the following affirmative defenses: "fraud, unclean hands, breach and any additional affirmative defenses revealed during discovery." Before trial but after the disclosure deadline, appellants filed a motion in limine "to allow [them] to assert at trial the affirmative defense of breach of the implied covenant of good faith and fair dealing." They maintained Blum had breached the implied covenant by failing to inform them he was going to spend 23.5 hours preparing for the settlement conference. And, they argued the "breach" alleged in their answers included breach of the implied covenant of good faith and fair dealing. Blum opposed the motion, arguing appellants had failed to comply with the rules for amending their answers and he would be prejudiced if they were allowed to present the defense.

¶26 In its ruling on appellants' motion, the trial court explained that the primary purpose of a motion in limine is to avoid the jury hearing prejudicial matters that might result in a mistrial and reasoned that appellants' motion could not be considered such a motion. Instead, the court treated the motion as a motion to amend pursuant to Rule 15, Ariz. R. Civ. P., and denied it.

¶27 On appeal, appellants again assert they did not need to amend their answers because they had previously disclosed the affirmative defense of "breach," which necessarily encompassed breach of the implied covenant of good faith and fair dealing. They also contend that the trial court "acted arbitrarily" by precluding them from presenting this defense when the court "allowed Blum to argue he was authorized to do work he believed necessary due to his ethical obligations," a "theory" not disclosed prior to trial.

¶28 Generally, a party may amend his or her pleading once as a matter of course within twenty-one days after service of the pleading or after service of a responsive pleading. Ariz. R.

Civ. P. 15(a)(1). "Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party." *Id.* "Leave to amend is discretionary but should be 'freely given when justice requires.'" *Elm Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, ¶ 25, 246 P.3d 938, 943 (App. 2010), *quoting* Ariz. R. Civ. P. 15(a)(1). Denial is a proper exercise of a court's discretion when there is undue delay, bad faith, dilatory motive, or undue prejudice to the opposing party. *Owen v. Superior Court*, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982). We review the trial court's denial of a motion to amend for a clear abuse of discretion. *In re Estate of Tortenson*, 125 Ariz. 373, 376, 609 P.2d 1073, 1076 (App. 1980). But we review legal conclusions de novo. *Sholes*, 228 Ariz. 455, ¶ 6, 268 P.3d at 1115.

¶29 Here, the trial court implicitly determined that the "breach" alleged as an affirmative defense in appellants' answers was insufficient to put Blum on notice that appellants were contemplating a defense of breach of the implied covenant of good faith and fair dealing. We agree. *See Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 7, 13 P.3d 763, 767 (App. 2000) (pretrial disclosure did not put plaintiff on notice defendant would raise particular theory of comparative fault when defendant previously had disclosed defense on different grounds). The law implies in all contracts a covenant of good faith and fair dealing, which provides that "neither party will act to impair the right of the other to receive the benefits which flow from their agreement or contractual relationship." *Rawlings v. Apodaca*, 151 Ariz. 149, 153, 726 P.2d 565, 569 (1986); *see also Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, ¶ 64, 38 P.3d 12, 29 (2002) (discussing breach of covenant). Nevertheless, the covenant of good faith and fair dealing is not implied as a defense when a defendant alleges breach of a contract generally. *Cf. Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, ¶ 9, 180 P.3d 977, 979 (App. 2008) (defendant raised defenses separately); *Taylor v. Fireman's Fund Ins. Co. of Canada*, 161 Ariz. 432, 434, 778 P.2d 1328, 1330 (App. 1989) (plaintiff filed lawsuit for breach of contract and sought to amend complaint to allege breach of implied covenant).

¶30 The trial court also did not abuse its discretion by denying the request to amend. *See Estate of Tortenson*, 125 Ariz. at

376, 609 P.2d at 1076. Appellants requested to present the defense of breach of the implied covenant of good faith and fair dealing more than ten months after filing their answers and less than six weeks before trial. *Cf. Schoolhouse Educ. Aids, Inc. v. Haag*, 145 Ariz. 87, 91, 699 P.2d 1318, 1322 (App. 1985) (no reason for delay in bringing motions to amend months after initial pleadings and shortly before trial). Moreover, appellants noted in their motion that "the[ir] arguments set forth at the Arbitration implied this defense," which in turn suggests appellants were contemplating the defense at that time but nonetheless neglected to raise it sooner. *See Owen*, 133 Ariz. at 79, 649 P.2d at 282. Additionally, Blum argued that he would suffer "real and substantial prejudice" because appellants were "seeking to inject a new legal theory in the case beyond the discovery and disclosure deadlines." *See id.* at 81, 649 P.2d at 284 (denial proper when amendment raises new issues requiring discovery).

¶31 We also disagree with appellants that the trial court was "arbitrary and capricious" in not allowing them to present this defense when it allowed Blum to introduce evidence of his ethical obligations. The situations are distinct. The contract provided: "Blum complies with the American Academy of Psychiatry and the Law (AAPL) Ethics Guidelines for the Practice of Forensic Psychiatry . . . ." The court noted that Blum's compliance with the ethical obligations was, "obviously, a term of the contract," and the contract had been disclosed, unlike appellants' affirmative defense of the implied covenant of good faith and fair dealing. Furthermore, as Blum points out, while appellants sought to use breach of the implied covenant as an affirmative defense, "there is no separate cause of action in a contract action for a doctor's requirement to follow the applicable rules of his profession." Rather, Blum used the ethical obligations to explain, in part, why he prepared extensively for the settlement conference.

Disposition

¶32 For the reasons stated above, we affirm the judgment. Both parties have requested their attorney fees and costs on appeal. As the prevailing party, Blum is entitled to his reasonable attorney

fees and costs associated with this part of the appeal, contingent upon his compliance with Rule 21, Ariz. R. Civ. App. P.