IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

RICHARD C. BRUMGARD AND KAY BRUMGARD, HUSBAND AND WIFE,
Plaintiffs/Appellants,

v.

FREDERICK G. GAMBLE AND JANE DOE GAMBLE, HUSBAND AND WIFE; JOHN YOUNG AND MARGARET YOUNG, HUSBAND AND WIFE; YOUNG BUILDERS, INC.; AND YOUNG BUILDERS, INC., PROFIT SHARING AND RETIREMENT TRUST,
Defendants/Appellees.

RICHARD C. BRUMGARD AND KAY BRUMGARD, HUSBAND AND WIFE,
Plaintiffs/Appellants/Cross-Appellees,

v.

YOUNG BUILDERS, INC., PROFIT SHARING AND RETIREMENT TRUST,
Defendant/Appellee/Cross-Appellant.

No. 2 CA-CV 2015-0081
Filed January 13, 2017

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. CV200802418
The Honorable Edward O. Burke, Judge
The Honorable Michael J. Herrod, Judge

AFFIRMED IN PART; REVERSED IN PART

COUNSEL

Richard C. Brumgard and Kay Brumgard, Casa Grande
In Propria Personae

Law Offices of Frederick G. Gamble, Chandler
By Frederick G. Gamble
Counsel for Defendants/Appellees/Cross-Appellant

MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Judge Espinosa and Judge Miller concurred.

S T A R I N G, Judge:

¶1 This appeal follows many years of disputes and associated lawsuits involving appellants Richard and Kay Brumgard, appellee Young Builders, Inc., Profit Sharing & Retirement Trust (hereinafter "the Trust"), its owners and related business entities. The parties challenge the trial court's July 2010 ruling denying the Brumgards leave to amend their complaint, a June 2014 under-advisement ruling following a bench trial, and the final judgment entered in December 2014. We affirm in part and reverse in part.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the trial court's decisions. *Hammoudeh v. Jada*, 222 Ariz. 570, ¶ 2, 218 P.3d 1027, 1028 (App. 2009). The underlying disputes involve the shared ownership of two adjoining parcels of real property, various debts encumbering the properties, and the management of a storage business, known as Casa Grande Mini, located on one of the parcels. The Brumgards filed their initial

complaint in this matter in August 2008, alleging, inter alia, claims of fraud and racketeering, quiet title, lien prioritization, foreclosure and abuse of process, and in a series of amended complaints, alleged claims against the Trust and other defendants. The Brumgards' claims were all resolved before trial.

¶3 The Trust asserted several counterclaims, three of which were tried to the court in March 2014. In its counterclaims, the Trust sought to foreclose on a lien it held by virtue of its payment of the Brumgards' share of property taxes, to obtain an accounting of the income and expenses of the storage business, which the Brumgards managed, and to enforce several judgment liens it held against the Brumgards as a result of prior litigation. The court issued its under-advisement ruling in June 2014 and entered a final judgment in favor of the Trust in December 2014.

¶4 The Brumgards and the Trust both appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

Statute of Limitations for the Brumgards' Malicious Prosecution Claims

¶5 The Brumgards argue the trial court erred when it denied their motion for leave to file a third amended complaint. The proposed complaint specified that the Brumgards' claim for malicious prosecution was related to a bankruptcy court finding that Young had engaged in bad faith in proceedings related to the Brumgards' bankruptcy. The trial court denied the motion based on its conclusion that the Brumgards' claim was barred by the one-year limitations period of A.R.S. § 12-541.

¶6 We review a trial court's denial of a party's request for leave to file an amended complaint for an abuse of discretion. *See Owen v. Superior Court*, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982). A court may deny leave to amend when the proposed amendment would be "futile." *See Walls v. Ariz. Dep't of Pub. Safety*, 170 Ariz. 591, 597, 826 P.2d 1217, 1223 (App. 1991).

¶7 A claim for malicious prosecution requires "prov[ing] defendant (1) instituted a civil action which was (2) motivated by malice, (3) begun without probable cause, (4) terminated in plaintiff's favor, and (5) damaged plaintiff." *Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 157 Ariz. 411, 416-17, 758 P.2d 1313, 1318-19 (1988). "A malicious prosecution action does not accrue until the prior proceedings have terminated in the defendant's favor." *Moran v. Klatzke*, 140 Ariz. 489, 490, 682 P.2d 1156, 1157 (App. 1984). The Brumgards argue their claim for malicious prosecution accrued in March 2008, when the Bankruptcy Appellate Panel (BAP) upheld the bankruptcy court's order requiring John Young, a beneficiary and co-trustee of the Trust, and his attorney Frederick Gamble to pay attorney fees as a sanction for their conduct in proceedings related to the Brumgards' bankruptcy.[1] The Trust argues the claim accrued in May 2007, when the bankruptcy court's decision concerning the merits of certain disputes related to the Brumgards' bankruptcy was affirmed on appeal.[2]

¶8 In denying the Brumgards leave to file the third amended complaint with respect to the claim of malicious prosecution, the trial court found the amendment "futile as barred by the statute[] of limitations." Although the proposed amended complaint briefly mentioned a May 2005 hearing before the bankruptcy court and subsequent sanctions imposed against Young and Gamble for bad faith, the complaint failed to describe any specific proceeding brought against the Brumgards and terminated in their favor within one year prior to the date they filed their complaint. Moreover, the BAP's 2008 decision established Young and Gamble were not sanctioned for conduct against the Brumgards,

---

[1] *See Young v. Waterfall, Economidis, Caldwell, Hanshaw & Villamana, P.C.* (*In re Brumgard*), No. AZ-07-1358-KPaJu, 2008 WL 8444799 (B.A.P. 9th Cir. Mar. 13, 2008).

[2] *See Young Builders, Inc., Profit Sharing & Ret. Tr. Fund v. Brumgard* (*In re Brumgard*), Nos. AZ-05-1410-SPaD, AZ-06-1038-SPaD, 02-04327, 02-00117, 2007 WL 7532272 (B.A.P. 9th Cir. May 16, 2007).

but for concealing assets in the Youngs' bankruptcy. *Young v. Waterfall, Economidis, Caldwell, Hanshaw & Villamana, P.C.* (*In re Brumgard*), No. AZ–07–1358–KPaJu, 2008 WL 8444799, at *1-2 (B.A.P. 9th Cir. Mar. 13, 2008). The bankruptcy court's order was not, therefore, the resolution of a proceeding filed against the Brumgards, much less one that had terminated in their favor within one year before the August 2008 complaint was filed in this action. The Brumgards have thus failed to sustain their burden of establishing the trial court abused its discretion in denying their motion for leave to file a third amended complaint alleging a claim of malicious prosecution.[3]

Trial Court's Incorporation of Bankruptcy Court Finding

¶9 In September 2005, the bankruptcy court found the Brumgards had inappropriately used business funds to pay for personal expenses, entitling the Trust to a compensating distribution of $12,783.67. In its counterclaim for an accounting of the business income and expenses in this action, the Trust alleged the Brumgards had failed to pay the Trust, and sought judgment for this amount, together with interest from the date of the order, which the trial court granted. Although the Brumgards did not raise the issue below, they contend on appeal the trial court lacked subject matter jurisdiction to effectively enforce the bankruptcy court's order. Subject matter jurisdiction is a question of law, which we review de novo, *Buehler v. Retzer ex rel. Indus. Comm'n*, 227 Ariz. 520, ¶ 4, 260 P.3d 1085, 1086 (App. 2011), and may be raised for the first time on appeal. *See Rojas v. Kimble*, 89 Ariz. 276, 279, 361 P.2d 403, 406 (1961).

¶10 The Brumgards cite *Deitz v. Ford (In re Deitz)*, 760 F.3d 1038 (9th Cir. 2014), in support of their argument that only the

[3]The Trust also correctly notes that any state claim based on alleged misconduct in the Brumgards' bankruptcy proceeding would be "completely preempted by the structure and purpose of the Bankruptcy Code." *MSR Expl., Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 916 (9th Cir. 1996).

bankruptcy court could reduce the underlying claim to a judgment. But *Deitz* concerned the scope of the bankruptcy court's jurisdiction under 28 U.S.C. § 157(b)(2) to hear a "core proceeding," and merely confirmed existing precedent that "a bankruptcy court may liquidate a debt and enter a final judgment in conjunction with finding the debt nondischargeable." 760 F.3d at 1043, 1050. *Deitz* does not support the Brumgards' argument that the bankruptcy court's authority to issue a judgment on non-dischargeable debt preempts a state court from later issuing a judgment when the bankruptcy court has not done so. Nor do the cases the Brumgards cite in their reply brief support that proposition. *See In re Sasson*, 424 F.3d 864, 868-70 (9th Cir. 2005) (discussing bankruptcy court's broad jurisdiction); *MSR Expl., Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 916 (9th Cir. 1996) (concluding creditor's actions in bankruptcy could form the basis of a "federal claim" for malicious prosecution, which debtor could only bring "in the bankruptcy court itself"); *Pierce v. Carson* (*In re Rader*), 488 B.R. 406, 418 (B.A.P. 9th Cir. 2013) (concluding Arizona's requirement to file separate mortgage deficiency action preempted when it conflicted with bankruptcy claims process).

¶11 Further, the bankruptcy code explicitly contemplates judicial enforcement of claims after a bankruptcy case is closed and the stay on collection activity is lifted. 11 U.S.C. § 362(a)(1), (c)(2)(A). "The stay does not operate as a bar to the action, but only as a suspension of proceedings until the question of the bankrupt's discharge shall have been determined in the [bankruptcy court]." *Hill v. Harding*, 107 U.S. 631, 633 (1883). And claims surviving bankruptcy are routinely enforced in non-bankruptcy courts. *See Hinduja v. Arco Prods. Co.*, 102 F.3d 987, 988-89 (9th Cir. 1996) (district court had jurisdiction to enforce bankruptcy court order on stipulated settlement agreement); *cf. In re Walker*, 151 B.R. 1006, 1008 (E.D. Ark. 1993) (wrongful death suit seeking to access insurance policy abandoned by bankruptcy trustee was "properly before" state court); *Zitani v. Reed*, 992 So. 2d 403, 409-10 (Fla. Dist. Ct. App. 2008) (allowing domestication and recording of California judgment containing awards for claims likely discharged in bankruptcy). As these cases demonstrate, "[t]here is no reason to declare that the

mere fact that a bankruptcy decree has issued requires that any and all further proceedings be in the bankruptcy court." *Hinduja*, 102 F.3d at 989.

¶12 Accordingly, we conclude the trial court had subject matter jurisdiction to consider the $12,783.67 the bankruptcy court previously found the Brumgards owed the Trust. The court properly entered judgment on the Trust's claim as a component of its claim for accounting.

Factual Finding re Failure to Submit Independent Evidence of Deferred Management Fees

¶13 As part of its action for an accounting, the Trust claimed the Brumgards had used business funds to pay personal expenses. The Brumgards responded that they were entitled to a monthly fee of $4,000 for managing the storage business, and that the difference between $4,000 and what they actually paid themselves entitled them to payment from the storage business's funds before they distributed any income to the Trust.[4] In support of their claim for deferred management fees, the Brumgards offered and relied on an exhibit (Exhibit 65) which is a compilation of the fees they paid themselves. The trial court admitted the exhibit, but made "findings of fact" that it was "a hearsay exhibit not supported by any independent evidence," and that the Brumgards had failed to prove the amount of their claimed deferred management fees.

[4]In its June 2014 ruling, the trial court referred to the fact that in 2003, a bankruptcy examiner had set the Brumgards' monthly management fee at $4,000, and that in September 2005, the bankruptcy court had set the fee at $3,000 per month. Although the court acknowledged the Brumgards' claim that they were entitled to $4,000 per month since 2003, and found such a fee "is not unreasonable," it did not find they were currently entitled to this amount. We thus reject the Trust's claim that the court improperly readjusted the monthly fee, as it purports to challenge a finding the court did not make.

¶14 On appeal, the Brumgards contend the trial court erred in characterizing the exhibit as hearsay and finding there was no independent evidence supporting it. A trial court's finding of fact following a bench trial "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses." Ariz. R. Civ. P. 52(a). Factual findings will be sustained if there is "substantial evidence" to support them. *In re Estate of Pouser*, 193 Ariz. 574, ¶ 13, 975 P.2d 704, 709 (1999). "Substantial evidence is evidence which would permit a reasonable person to reach the trial court's result." *Id.*

¶15 Although we acknowledge the testimony of the Brumgards and their accountant provided sufficient foundation for the trial court to consider Exhibit 65,[5] the Brumgards conflate weight and admissibility. A judge acting as the finder of fact "is the judge of the witness'[s] credibility and the weight of the evidence and the reasonable inferences to be drawn therefrom." *Blaine v. McSpadden*, 111 Ariz. 147, 149, 526 P.2d 390, 392 (1974). In short, regardless of its factual finding concerning the Brumgards' failure to present "independent evidence," the court was free to reject the overall sufficiency of the Brumgards' evidence. Notably, the Brumgards have attempted to distinguish the court's ultimate conclusion from the portion of the finding they are challenging, and have not argued the court's finding their failure to meet the burden of proof was clearly erroneous. And "we are obliged to affirm the trial court's ruling if the result was legally correct for any reason." *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 193, 836 P.2d 404, 406

[5]Thus, we agree the trial court's finding that no "independent evidence" supported the exhibit was incorrect. *See State v. Whitney*, 159 Ariz. 476, 484, 768 P.2d 638, 646 (1989) (witness reliability "goes to the weight of the [witness's] statements, not their admissibility"). But we find no merit in the Brumgards' contention the Trust's unopposed motion to admit Exhibit 65 operated as a concession that the Brumgards had earned the amounts reflected in it. Exhibit 65 also was relevant to proving the amount of certain funds the Trust claimed were wrongfully taken.

(App. 1992). We therefore affirm the trial court's finding the Brumgards failed to meet their burden of proof with respect to their claim for deferred management fees.

Creation of Judgment Lien

¶16 The Brumgards argue the trial court erred by finding the Trust's recording of a 1993 order by this court, awarding it attorney fees on appeal, created a valid judgment lien. They assert the award was not a final judgment, and therefore could not create a valid lien. Whether a recorded document is a judgment for purposes of creating a judgment lien involves "interpretation of the judgment lien statutes" and is thus reviewed de novo. *Sysco Ariz., Inc. v. Hoskins*, 235 Ariz. 164, ¶ 5, 330 P.3d 354, 355 (App. 2014).

¶17 "[S]trict compliance with the statutory requirements is necessary to perfect a valid judgment lien." *Id.* ¶ 8. A party perfects a judgment lien by filing and recording a "certified copy of the judgment of any [Arizona] court . . . in each county where the judgment creditor desires the judgment to become a lien on the [judgment debtor's] real property." A.R.S. § 33-961(A); *see also Sysco*, 235 Ariz. 164, ¶ 7, 330 P.3d at 355. "In order that a judgment operate as a lien under a general judgment lien statute, it must be final and conclusive, and the amount due must be definite and certain." *McClanahan v. Hawkins*, 90 Ariz. 139, 141, 367 P.2d 196, 197 (1961). "The priority of a judgment lien as against other lienholders is generally determined by the date of its recordation." *Sysco*, 235 Ariz. 164, ¶ 6, 330 P.3d at 355.

¶18 The Brumgards argue the award of fees on appeal was not a final judgment because the case was remanded, and the trial court incorporated the award into its later judgment. The Trust, however, contends the fee award issued by this court was "final and unchangeable" despite remand for further proceedings because "the trial court was not free to ignore [it]." The Trust argues the court of appeals has authority to issue final judgments pursuant to A.R.S. § 12-120.21(A)(3), which confers jurisdiction to issue "writs and orders necessary and proper to the complete exercise of its appellate jurisdiction." The Trust further asserts the term "writ," which

A.R.S. § 1-215(44) defines as "an order or precept in writing issued in the name of the state or by a court or judicial officer," includes judgments. We disagree.

¶19 This court awarded attorney fees on the final page of our order denying several motions for reconsideration. Because we issued that order before we issued the mandate on appeal, the award of fees was not final and unchangeable. *See* Ariz. R. Civ. App. P. 24(a)-(b) (appellate court retains jurisdiction until issuing mandate after disposition of motions for reconsideration). And the order lacks both an explicit entry of judgment and the name of the judgment creditor's attorney of record, both required in order for a recorded judgment to create a lien. *See* § 33-961(A)(2), (5). The fee award thus bears little resemblance to the type of judgment contemplated under § 33-961.

¶20 And, while our rules explicitly contemplate the issuance of mandates containing awards for fees and costs, Ariz. R. Civ. App. P. 21(e), the superior court generally enters judgment on any such mandate, as it ultimately did in this case. *Cf. Raimey v. Ditsworth*, 227 Ariz. 552, ¶ 20, 261 P.3d 436, 443 (App. 2011) (anticipating superior court's entry of judgment on mandate). Accordingly, we conclude the 1993 award was not a final judgment, and did not create a valid judgment lien upon recordation. We therefore reverse the trial court's finding on this issue.

Priority of Liens

¶21 The Brumgards also appeal the trial court's determination that several judgment liens held by the Trust were renewed by action and retained their priority over five later-recorded deeds of trust, despite the Trust's failure to continuously renew both the judgments and liens.[6] This issue involves the

[6]The Brumgards raised this argument below and the trial court acknowledged but rejected it. We thus reject the Trust's contention that the issue has been waived. We likewise reject the Trust's claim the Brumgards lack standing to raise it. The Brumgards suffer distinct and palpable harm by virtue of a

"interpretation of the judgment lien statutes," which we review de novo. *See Sysco*, 235 Ariz. 164, ¶ 5, 330 P.3d at 355.

¶22 Pursuant to § 33-964(A), a recorded judgment lien continues for a period of five years. Section 12-1611, A.R.S., allows the renewal of a "judgment . . . by action thereon at any time within five years after the date of the judgment," but does not provide for the continuation of any associated judgment lien.[7] Section 12-1613(A)-(C), A.R.S., however, provides for the renewal by affidavit of both a judgment and a judgment lien. The statute provides, in relevant part: "No lien on or against the real property of the judgment debtor shall be continued by an affidavit of renewal until a [certified] copy of the affidavit . . . is recorded in the office of the county recorder." § 12-1613(C).

¶23 By the counterclaim it filed in this matter, the Trust sought to renew three judgments and associated liens against the Brumgards' real property. The trial court concluded the judgments had been renewed by action despite the lapse in continuous renewal, concluding the renewal time limit for each judgment had been tolled by a series of bankruptcy stays and state court injunctions prohibiting collection. The court concluded the liens

---

judgment granting greater priority to the Trust than to another possibly more agreeable creditor, in this case the Brumgards' former attorney. *See In re Gubser*, 126 Ariz. 303, 306, 614 P.2d 845, 848 (1980) (appellant has standing to appeal only if personally harmed by judgment); *cf. Brimet II, LLC v. Destiny Homes Mktg., LLC*, 231 Ariz. 457, ¶¶ 7-9, 296 P.3d 993, 995 (App. 2013) (possession of interest in real property confers standing to bring quiet title action against any person claiming adverse interest).

[7]Reading § 12-1611 in connection with § 33-961(A), it is clear that recordation of a certified copy of a judgment renewed by action would renew the underlying judgment lien.

created by two of those judgments[8] were renewed and retained their priority against five deeds of trust first recorded in January 1994.

¶24 The Brumgards argue the trial court erred because the Trust failed to renew and re-record the judgments every five years as required by §§ 12-1613(B)-(D) and 33-964(A). The Trust, on the other hand, insists the tolling of judgment renewal deadlines tolled the lien renewal deadline, and that the counterclaims to renew the judgments by action pursuant to § 12-1611 preserved the priority of the underlying liens. The Brumgards reply that recording a renewal affidavit is a ministerial act not precluded by injunction against enforcement, and thus argue the Trust was not prevented from renewing by affidavit, and the lien renewal deadline in § 12-1613(D) was not tolled.

¶25 Based on the plain language of these statutes, the renewal of a judgment, whether by action or affidavit, is distinct from continuation of the associated judgment lien. *See also Hall v. World Sav. & Loan Ass'n*, 189 Ariz. 495, 503, 943 P.2d 855, 863 (App. 1997) ("Nothing in . . . [§] 12-1611, which allows renewal of a judgment by the filing of an action, suggests that one may renew a judgment lien by this method."). Thus, although the Trust's judgment renewal deadline may have been tolled by the injunctions against collection, continuation of any associated liens was not precluded and the lien renewal deadline was not tolled. *See In re Smith*, 209 Ariz. 343, ¶¶ 9-15, 101 P.3d 637, 639-40 (2004). Accordingly, we conclude the trial court's ruling concerning the priority of the judgment in CIV89-38069 was incorrect as a matter of law, and we reverse.

Cross-Appeal

Homestead Lien Exemption

¶26 While managing the storage business, the Brumgards failed to pay the taxes on the business property for a number of

[8]CIV89-38069 and 2 CA-CV 91-0211, which, as noted above, did not create a valid judgment lien.

years. Ownership of the property is split between the Trust, which owns 45.666 percent, and the Brumgards, who own 54.334 percent and have a homestead exemption for part of the property. While he was still the Brumgards' attorney, Thomas Cole bought tax lien certificates for the property, which the Trust argued he intended to foreclose. The Trust paid the taxes owed in May 2008 to redeem the property and prevent Cole from foreclosing, generating a lien in the Trust's favor pursuant to A.R.S. § 42-18057(B). The Trust sought to foreclose its lien in the accounting action it brought as part of this lawsuit.

¶27 In its cross-appeal, the Trust contends the trial court erred when it concluded that the lien for payment of the Brumgards' share of the taxes does not entitle the Trust to sell the Brumgards' homestead portion of the property. Disposition of this issue requires interpretation of the lien and homestead exemption statutes; accordingly, our review is de novo. *See Rogone v. Correia*, 236 Ariz. 43, ¶ 17, 335 P.3d 1122, 1128 (App. 2014) ("We review de novo the interpretation and application of a statute.").

¶28 Pursuant to § 42-18057(B), a co-owner who pays the property taxes on jointly owned real property "has a lien on the share of the other part owner for that portion of the tax that was paid, with interest" and the lien is enforceable "in the same manner as any other lien." But A.R.S. § 33-1101, Arizona's homestead exemption statute, exempts homestead property from various collection efforts including "attachment, execution and forced sale." The statute contains explicit exceptions for mortgages and other consensual liens, labor and material liens, liens for child support and spousal maintenance arrears, and equity exceeding the amount of the exemption ($150,000). A.R.S. §§ 33-1101(A), 33-1103(A). Two recognized exceptions are civil forfeiture (for criminal activity) pursuant to A.R.S. §§ 13-4301 to 13-4315, *see In re 1632 N. Santa Rita*, 166 Ariz. 197, 202, 801 P.2d 432, 437 (App. 1990), and equitable mortgages, *see In re Farnsworth*, 384 B.R. 842, 848-50 (Bankr. D. Ariz. 2008). It is undisputed that property tax liens under A.R.S. § 42-17153 are not subject to the homestead exemption and can be foreclosed. *See Weller v. City of Phoenix*, 39 Ariz. 148, 152, 4 P.2d 665,

667 (1931) (exemptions from statutory tax "must be granted in terms too plain to be mistaken").

¶29 The Trust argues its lien is analogous to these statutory and non-statutory exceptions because the homesteader's obligation to compensate the co-owner for paying more than his share of the tax "relates to the property itself." The trial court rejected a similar argument and concluded the Trust could not foreclose on the homestead property because there was no explicit exception in the homestead statute for the Trust's lien. We agree.

¶30 Moreover, the Trust's lien is not legally equivalent or even analogous to a traditional tax lien, which secures payment of property taxes owed to the county and other political subdivisions of the state. *See* A.R.S. §§ 42-17151 to 42-17154. Tax liens are sold by the county treasurer, acting as the official tax collector, in order to secure payment of delinquent property taxes. *See* A.R.S. §§ 42-18001 (treasurer is ex officio collector), 42-18101 (treasurer secures payment by selling tax liens). If the property owner fails to redeem the property, the tax lien purchaser may foreclose the right to redeem, and the county treasurer conveys title to the property to the tax lien purchaser. *See* A.R.S. §§ 42-18201, 42-18204, 42-18205. In contrast to the complex statutory procedure for the enforcement of tax liens, there is no such procedure for liens under § 42-18057. Absent unmistakable statutory authority, we cannot conclude a co-owner of property is entitled to the same enforcement procedures the county treasurer is permitted to use for the collection of property taxes.

¶31 We are similarly unconvinced by the Trust's argument that it was forced to pay the Brumgards' share of the taxes to protect its own interest in the property, as it was entitled pursuant to A.R.S. § 42-18151(C) to redeem only its own share of the taxes. Had the Trust elected to redeem only its own share of the taxes in this case, Cole could only have foreclosed on the remaining balance and the Brumgards' share of the property.

¶32 Reversal of the trial court's ruling on this issue would create a new exception to § 33-1101. The Trust has not convinced us

we have the authority to create such an exception. We therefore conclude the Trust's lien does not defeat the Brumgards' homestead exemption and the court did not err.

Amount of Co-Owner's Lien

¶33 The Trust also challenges the trial court's finding as to the amount of its lien for payment of the Brumgards' share of property taxes pursuant to § 42-18057(B). This issue involves "the interpretation and application of a statute," a question of law which we review de novo. *See Rogone*, 236 Ariz. 43, ¶ 17, 335 P.3d at 1128.

¶34 "A person who pays the tax on the whole parcel of which the person is a part owner has a lien on the share of the other part owner for that portion of the tax that was paid, with interest." § 42-18057(B). The trial court found the Trust paid $179,872.63 in taxes, of which the Brumgards' share was $101,346.23, including interest allocated between the owners by a ruling in the Brumgards' bankruptcy.[9] The court concluded, however, the amount of the Trust's lien was only $97,731.99, the amount corresponding to the Brumgards' 54.334 percent share of the property, without considering the variation in responsibility for part of the interest.

¶35 The amount of the lien depends on what is meant by the phrase, "that portion of the tax that was paid, with interest" in § 42-18057(B). The statute neither defines nor explains the phrase, and no published decision has addressed this issue. The plain language of the statute, however, provides that the lien amount is

[9]In the bankruptcy proceeding, Judge Hollowell found the Brumgards solely responsible for the interest in one of the years the Trust paid the taxes. Pursuant to the BAP's ruling, however, the accrued interest split according to the parties' ownership percentage for the years when the business did not generate sufficient income to pay taxes. *See Young Builders, Inc., Profit Sharing & Ret. Tr. Fund v. Brumgard* (*In re Brumgard*), Nos. AZ-05-1410-SPaD, AZ-06-1038-SPaD, 02-04327, 02-00117, 2007 WL 7532272, at *11 (B.A.P. 9th Cir. May 16, 2007).

equal to the "portion of the tax . . . with interest" for which the non-paying owner was responsible. § 42-18057(B). Absent ambiguity or contrary guidance from the statutes, the plain language indicates the amount of the lien should be determined in proportion to the parties' respective ownership interests. *Cf. Owens v. M.E. Schepp Ltd. P'ship*, 218 Ariz. 222, ¶ 20, 182 P.3d 664, 669 (2008) (acknowledging general rule for property owners to share maintenance expenses "in proportion to their interests"); *Brown v. Brown*, 58 Ariz. 333, 336, 119 P.2d 938, 939 (1941) (party who pays obligation for which co-owners are jointly responsible "is entitled to recover from the other the proportion that he was obligated to pay"). We agree with the Trust that the lien is equal to the Brumgards' share of the taxes and interest. The court's finding as to the total lien amount is, therefore erroneous.[10]

Fiduciary Burden of Proof

¶36 In its accounting claim, the Trust disputed a number of expenditures the Brumgards made using company funds. The Trust ultimately challenges the trial court's finding that it failed to sustain its burden of proving certain expenditures were not business related. The Trust's claim that the court used the wrong burden of proof is a question of law, which we review de novo. *See Mobilisa, Inc. v. Doe*, 217 Ariz. 103, ¶ 9, 170 P.3d 712, 716 (App. 2007) ("Whether the superior court applied the correct legal standard in reaching [a] discretionary conclusion is a matter of law that we review de novo.").

¶37 The Trust argues the trial court improperly placed the burden on it to prove the impropriety of disputed expenditures. The Trust claims once it proved the Brumgards had a fiduciary duty entitling the Trust to an accounting, the Brumgards had the burden of proving the propriety of transactions. The Trust also blames the

[10]The Trust's analysis of the amount of the Brumgards' share is correct, but includes a copying error for the 1999 interest, which inflated the total by six dollars. The correct lien amount is $101,340.23.

Brumgards' "incompetent record keeping" for its inability to prove the expenses were improper.

¶38 The Trust asserts it raised its argument concerning the burden of proof below, and also that the trial court found the Brumgards owed the Trust a fiduciary duty. However, neither assertion is supported by citation to the record as required by Rule 13(a)(7)(A), Ariz. R. Civ. App. P. *See Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 119, 412 P.2d 47, 55 (1966) (appellate court not obligated to search voluminous record for support for an appellant's claims). Accordingly, we find the issue waived. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) ("[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal."); *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62, 211 P.3d 1272, 1289 (App. 2009) (failure to cite record may constitute waiver of claim on appeal).

¶39 Moreover, even if not waived, the Trust's argument concerning the allocation of the burden of proof is only partially correct; it oversimplifies what is actually a multi-step analysis. The party challenging transactions must first establish a fiduciary relationship or other right to an accounting exists. *See Assocs. Fin. Corp. v. Walters*, 12 Ariz. App. 369, 374, 470 P.2d 689, 694 (1970). The burden then shifts to the party managing the funds to prove the validity of each charge. *Id.* Once the fiduciary presents a prima facie case, the burden of producing contradictory evidence shifts back to the other party. *Lefkowitz v. Ariz. Tr. Co.*, 10 Ariz. App. 415, 420, 459 P.2d 332, 337 (1969). When the fiduciary fails to keep and produce an accurate account of transactions, "all doubts respecting particular items will ordinarily be resolved against him." *Fernandez v. Garza*, 88 Ariz. 214, 220, 354 P.2d 260, 264 (1960), *quoting Sweatt v. Johnson*, 122 A. 501, 504 (Vt. 1923).

¶40 Although the trial court did not explicitly discuss this burden-shifting procedure, "if the judgment can be sustained on any theory framed by the pleadings and supported by the evidence, we must affirm it." *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 193, 836 P.2d 404, 406 (App. 1992). As we conclude below, the trial

court's findings can be sustained despite the fact it may have misapplied the burden of proof.

Sufficiency of Evidence on Fiduciary Issue

¶41 Related to its argument that the Brumgards had the burden to prove the propriety of all of their expenditures using business funds, the Trust contends the evidence the Brumgards presented, which consisted primarily of compilation reports and credit card statements, was insufficient to show individual transactions were proper. Thus, the Trust effectively challenges the sufficiency of the evidence to support these findings, which we will uphold if the record contains evidence that would "permit a reasonable person to reach the trial court's result." *In re Estate of Pouser*, 193 Ariz. 574, ¶ 13, 975 P.2d 704, 709 (1999).

¶42 Relying on *Larsen v. Claridge*, 23 Ariz. App. 508, 509, 534 P.2d 439, 440 (1975), the Trust argues the Brumgards' production of copies of checks and credit card statements did not satisfy their burden. The Trust asserts the Brumgards were required to produce a "voucher" for each charge, such as a document "'that shows on its face the facts, authority, and purpose of disbursement.'" *Id.*, *quoting Voucher*, Black's Law Dictionary (4th ed. rev. 1968). But *Larsen* does not stand for the proposition that the fiduciary must produce "vouchers" in every accounting action; nor did the court conclude evidence other than vouchers could not be considered in conjunction with a fiduciary's testimony. The court merely concluded the trial court had not erred in finding cancelled checks were not vouchers. *See id.*

¶43 Here, it is evident the trial court considered the evidence presented, including financial compilation reports, credit card statements, and the testimony of Richard Brumgard, and made individual findings with respect to multiple challenged expenditures. The court concluded "various credit card charges and invoices complained of . . . are *de minimis*, and are not out of the ordinary course of operating the storage business." The record here supports this conclusion, as well as the conclusion that the

Brumgards had made a prima facie case establishing the validity of the charges.

¶44 The Trust has not persuaded us the trial court's findings were not supported by the record. We thus have no basis for disturbing the findings relating to the Trust's accounting claim.

Disposition

¶45 For the reasons above, we reverse the trial court's rulings as to (1) the legal character of the 1993 appellate order awarding attorney fees in 2 CA-CV 91-0211, which was not a final judgment and did not create a valid lien; (2) the priority of the Trust's judgment lien in CIV89-38069, which lost priority because it was not continued within the five-year renewal period; and (3) the amount of the Trust's lien for payment of taxes, which should be equal to the Brumgards' share of the taxes, $101,340.23. We affirm the trial court's rulings on all other issues.