IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CHAND BAWA, AN INDIVIDUAL; PAUL BAWA, AN INDIVIDUAL,
Plaintiffs/Appellants,

v.

P&M CASA GRANDE INVESTMENTS, LLC; BHARPUR DHANOA, AN INDIVIDUAL; SWINDERJIT SINGH, AN INDIVIDUAL,
Defendants/Appellees.

No. 2 CA-CV 2021-0017
Filed October 21, 2021

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NOT FOR PUBLICATION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. S1100CV201900400
The Honorable Steven J. Fuller, Judge

AFFIRMED IN PART; VACATED IN PART AND REMANDED

COUNSEL

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MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

S T A R I N G, Vice Chief Judge:

¶1 Chand and Paul Bawa appeal from the entry of judgment against them in litigation arising from the winding up of P&M Casa Grande Investments LLC. We affirm the trial court's denial of the Bawas' motions for judgment as a matter of law but remand for further proceedings based on its improper denial of the Bawas' motion for leave to amend their complaint.

Factual and Procedural Background

¶2 "We view the facts and the reasonable inferences therefrom in the light most favorable to upholding the jury's verdicts." *Crackel v. Allstate Ins. Co.*, 208 Ariz. 252, ¶ 3 (App. 2004). P&M was formed in 2011 and consisted of Bharpur Dhanoa, Swinderjit Singh, Utpal Thaker, and Three Amigo LLC, which included members Paul Bawa, Pranav Patel, and Peter Shimondle. Dhanoa had a 62.5-percent interest, Singh had a 12.5-percent interest, Thaker had a five-percent interest, and Three Amigo had a twenty-percent interest in the LLC. Later that year, P&M purchased a hotel in Eloy "subject to any property taxes due."[1] On October 25, 2012, Dhanoa emailed Paul, Singh, and Thaker to inform them that approximately $160,000 in back taxes on the property was due October 30, and that "[e]veryone ha[d] to pay their own share" in proportion to their individual member interests. To avoid foreclosure, Thaker and Dhanoa together loaned a total of $108,000 to P&M, and Paul paid $52,000.

¶3 In 2014, Three Amigo's interest was effectively transferred to Paul's wife, Chand, and, in 2017, Paul was given power of attorney regarding her financial affairs. P&M subsequently sold the property for approximately $974,000. P&M's members then agreed they would "probably dissolve [the] LLC on or before January 2019." At the same meeting, the members agreed to distribute $1.5 million of P&M's assets.

[1]The hotel was previously owned by Lotus Hospitality LLC, an entity in which Paul had an ownership interest.

And, the meeting minutes stated, "Paul Bawa agree[s] to pay $170006.73 to P&M Casa Grande with 10% interest." Chand ultimately received approximately $130,000 in the distribution, although her share of P&M was twenty percent, which would amount to a distribution of $300,000.

¶4 In March 2019, the Bawas filed this lawsuit against P&M, Dhanoa, and Singh (collectively, defendants), alleging "the distribution due [to] Ms. Bawa from . . . P&M [was] $300,000.00" and asserting claims of breach of contract and fiduciary duty, conversion, "[v]iolation of [the] Arizona Limited Liability Company Act" for failure to provide records for inspection, and fraud. Nearly a year later, the Bawas moved "for permission to file their First Amended Complaint to clarify and add additional claims and remedies." The trial court denied the motion to amend without explaining its reasoning.

¶5 The matter proceeded to a jury trial. After the close of evidence, the Bawas moved for a "directed verdict," arguing that because any agreement that Paul would ultimately be responsible for the property tax costs—approximately $170,000—"lacked legal consideration," "no reasonable jury would have sufficient evidentiary basis to find for defendants." The trial court denied the motion.[2] Ultimately, the jury found against the Bawas on all claims. And, the court awarded defendants approximately $126,000 in attorney fees. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Motion to Amend

¶6 The Bawas first argue the trial court erred "in denying the motion to amend [their] complaint." We review this ruling for an abuse of discretion. *See Timmons v. Ross Dress For Less, Inc.*, 234 Ariz. 569, ¶ 17 (App. 2014). A court abuses its discretion when it makes an error of law or its decision completely lacks supporting evidence. *Tucson Ests. Prop. Owners Ass'n v. Jenkins*, 247 Ariz. 475, ¶ 8 (App. 2019).

¶7 Generally, beyond "21 days after a responsive pleading is served," "a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action." Ariz. R. Civ. P. 15(a). Nonetheless, "[l]eave to amend must be

[2]The Bawas renewed this motion after the jury returned its verdicts, and the trial court again denied it.

freely given when justice requires." Ariz. R. Civ. P. 15(a)(2).[3] Still, denial of a motion to amend is proper when a trial court finds "'undue' delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments or undue prejudice to the opposing party." *Carranza v. Madrigal*, 237 Ariz. 512, ¶ 13 (2015) (quoting *Owen v. Superior Court*, 133 Ariz. 75, 79 (1982)). Similarly, denial is appropriate where the proposed amendment would be futile. *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, ¶ 40 (App. 2007).

¶8 The Bawas' proposed first amended complaint included numerous revisions, alleging Chand had "paid her proportional share of the property taxes ($32,000.00) to be repaid to Ms. Bawa upon the sale of the Property," Paul had similarly loaned a total of $24,000—as opposed to the previously alleged $20,000—to defendants, and defendants had failed to repay these amounts. The proposed additions also stated that before the meeting involving P&M's dissolution and distribution in August 2018, "Dhanoa showed to the members a handwritten document showing what the then members' distribution would be and had the members write down their names and current addresses on the same document." The Bawas further elaborated that Paul had "no authority to incur debts" at that meeting because he was there "in representative capacity for Chand Bawa," and that "Dhanoa had sole control over the . . . [a]genda after the meeting."

¶9 Moreover, the complaint included new causes of action in which the Bawas claimed: the failure "to distribute the full $300,000.00 based on Ms. Bawa's 20% membership interest in Defendant P&M and . . . to repay the $32,000.00 loan for property taxes paid by Ms. Bawa" had violated the LLC's operating agreement and A.R.S. §§ 29-706 and 29-709; the distribution at issue had rendered P&M insolvent; defendants' withholding repayment of the alleged loans and full distribution had resulted in their unjust enrichment; and "[d]efendants breached the implied covenant of good faith and fair dealing arising from, amongst others, the oral agreements and the Operating Agreement by engaging in the [alleged] conduct."

¶10 Defendants argued in response that permitting the Bawas to amend their complaint would have caused "undue delay and prejudice" because the motion to amend was filed "127 days after [the] passage of Defendants' expert disclosure deadline" and the proposed amended

[3] Rule 15(b) permits amendment of pleadings to conform to the evidence during and even after trial.

complaint contained various "new factual allegations." Further, they asserted the amendments were futile and brought in bad faith, specifically claiming the "new allegations constitute nothing more than an attempt to avoid summary judgment" and largely contradicted "Plaintiffs' own deposition testimony and disclosed documents."

¶11 On appeal, the Bawas contend "[t]he trial court abused its discretion because it did not and could not provide sufficient reasons to justify the denial of [their] motion to amend." Specifically, they assert the "facts surrounding the 'newly' asserted claims ha[d] been already introduced to the litigation," and, although they had been "willing to stipulate to an amended Scheduling Order to permit additional discovery," defendants failed to identify additional witnesses that they would need to depose or counterclaims and third-party complaints that would need to be filed.

¶12 In response, defendants claim allowing the amended complaint would have prejudiced them because they might have had to "depose the parties again"; "conduct other discovery"; file additional pleadings and motions; file a new scheduling order; or otherwise spend more time preparing for the new claims and factual allegations brought forward.[4] And, relying on *Walls v. Arizona Department of Public Safety*, 170 Ariz. 591 (App. 1991), defendants reassert their argument that the amendments would have been futile, stating, "The resolution of this lawsuit centered on the fact that all parties signed the Meeting Minutes, memorializing a written contract, that unequivocally stated Appellants agreed to pay the back taxes on the Property. None of these new causes of action, nor the facts that accompanied them, negated the terms of the contract."

¶13 We conclude the court abused its discretion in denying leave to amend. Granting such leave would not have prejudiced defendants as contemplated by Arizona law governing the amendment of pleadings. As

[4]Defendants also claimed that because neither the Bawas' notice of appeal nor amended notice identified the denial of their motion to amend, we lack jurisdiction to address the issue. However, defendants appropriately withdrew this assertion at oral argument in this court; we have jurisdiction to address the propriety of the trial court's denial of leave to amend, which is an intermediate order appropriately challenged in an appeal from a final judgment. *See Rourk v. State*, 170 Ariz. 6, 12-13 (App. 1991).

noted, the Bawas were willing to agree to additional discovery on the new claims. Further, when the court made its ruling on the motion to amend, it had not yet set a trial date. Indeed, the court did not set a trial date until nearly six weeks later, setting the date approximately five additional months in the future. Thus, we cannot say any new issues raised would have caused inconvenience and delay sufficient to overcome the imperative that leave to amend should be freely granted. *See Carranza*, 237 Ariz. 512, ¶ 13; Ariz. R. Civ. P. 15(a)(2). Similarly, the amendments would not have caused undue delay, which occurs when amendments "requir[e] delay in the decision of the case." *Carranza*, 237 Ariz. 512, ¶ 13 (quoting *Owen*, 133 Ariz. at 81).

¶14 At oral argument in this court, defendants argued that the facts of the case at hand are very similar to those present in *Carranza*, in which our supreme court upheld the trial court's denial of leave to substitute another individual as the plaintiff. *Id*. ¶ 14. The action arose from attorney Edward Fitzhugh's purported assignment of a contractual right to recover a twenty-five percent contingency fee after withdrawing from representing the Madrigals in a wrongful-death action. *Id*. ¶¶ 1-2. In upholding the denial of substitution, the supreme court wrote:

> [T]he Madrigals had questioned and objected to the validity of the assignment "for well over a year," and Fitzhugh's absence as a party was a "conscious decision." Fitzhugh admittedly knew that he was the real party in interest. Nevertheless, he inexplicably had Carranza bring the action and forced the Madrigals to incur expenses pursuing defenses unique to Carranza.

Id. ¶ 14. The record before us does not contain similar indications of dilatory gamesmanship.

¶15 Further, the Bawas' proposed amendments would not have been futile. In pertinent part, along with new factual allegations and legal theories supporting the existing claims and altered amounts of money at issue, the amendments alleged Chand was owed $32,000, further alleging statutory and operating agreement violations, unjust enrichment, and breach of the covenant of good faith and fair dealing. In short, the proposed amendments reflected "sufficient facts to establish a real dispute based upon an actual controversy." *Yes on Prop 200*, 215 Ariz. 458, ¶ 43. *But see, e.g.*, *Sherman v. First Am. Title Ins. Co.*, 201 Ariz. 564, ¶ 20 (App. 2002)

(amendment adding negligence claim would have been futile where defendants did not owe duty of care). Moreover, despite defendants' contentions, the evidence concerning Paul's purported contract to repay the cost of the back taxes would not have rendered the proposed causes of action in the amended complaint entirely futile. *But see Walls*, 170 Ariz. at 597 ("amendment adding a gross negligence claim . . . would have been futile" where "proof on gross negligence did not survive . . . summary judgment"). The newly proposed causes of action each implicated new matters, such as the $32,000 loan and a violation of § 29-706.[5]

Motions for Judgment as a Matter of Law

¶16 The Bawas also argue the trial court erred in denying their motions for judgment as a matter of law. We review these rulings de novo. *See Glazer v. State*, 237 Ariz. 160, ¶ 29 (2015).

¶17 Before a case is submitted to a jury, based on a conclusion that "a reasonable jury would not have a legally sufficient evidentiary basis to" decide otherwise, a party is entitled to judgment as a matter of law on a claim the trial court determines to be dependent on an issue it has resolved against the opposing party. Ariz. R. Civ. P. 50(a). If a court declines to grant judgment at that stage and the case is submitted to a jury, "the movant may file a renewed motion for judgment as a matter of law," and the court may thereafter "allow judgment on the verdict, . . . order a new trial[,] or . . . direct the entry of judgment as a matter of law." Ariz. R. Civ. P. 50(b). We will affirm the denial of judgment as a matter of law if the evidence, viewed in the light most favorable to defendants, was substantial enough to allow a reasonable person to reach the court's result. *See Glazer*, 237 Ariz. 160, ¶ 28; *Desert Palm Surgical Grp., P.L.C. v. Petta*, 236 Ariz. 568, ¶ 25 (App. 2015).

¶18 "[A] valid contract requires an offer, acceptance of the offer, consideration, and the intent of both parties to be bound by the agreement." *Murphy v. Woomer*, 250 Ariz. 256, ¶ 16 (App. 2020). "[C]onsideration is 'a benefit to the promisor or a loss or detriment to the promisee.'" *Id.* ¶ 17 (quoting *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 139 Ariz. 209, 212 (App. 1983)). Legal consideration must result from an agreement based

[5]The trial court is in a better position to determine the preclusive effect, if any, of the jury's verdicts. We leave it to the court to determine in the first instance whether the jury's verdicts have rendered any of the proposed amendments futile.

on the parties' understanding and recognition of something of value. *Demasse v. ITT Corp.*, 194 Ariz. 500, ¶ 20 (1999).

¶19 After the close of evidence, the Bawas primarily argued that even had there been a promise "to pay the $170,000 in taxes," it was "a unilateral promise without consideration" because "Paul received no benefit from agreeing to pay . . . taxes that were already paid." In denying the oral motion, the trial court reasoned the existence of a contract was mainly "an issue of credibility . . . [as to] what happened at that meeting" to be decided by the jury. In their renewed motion, the Bawas elaborated that "Paul . . . was never a member of P&M and at no point was . . . personally liable for property taxes." Defendants responded that Paul had promised to pay the back taxes "on behalf of Three Amigo to avoid having the Property go into foreclosure and to avoid a legal entanglement." They further alleged Paul maintained the "benefit[s] of . . . continued investment in the Property" through Chand's share in P&M and their marital community and "escaping a potential lawsuit . . . based on [his] deceit regarding the prior ownership of the Property and the back taxes."

¶20 On appeal, the Bawas again argue "there was no legally sufficient evidentiary basis to find the apparent promises that Paul agreed to pay back property taxes were supported by legal consideration." Further, they reassert that Paul could not have received any benefit from agreeing to pay the back taxes because they had already been paid. The Bawas lastly claim there is no evidence of any agreement that defendants would forgo a lawsuit against Paul if he paid the back taxes. Defendants, however, respond that the trial court correctly concluded the issue centered on factual determinations and was thus properly left to the jury. And, again, they reassert that the Bawas "received a real benefit from their promises to pay back taxes on the Property" based on the avoidance of the hotel's foreclosure and testimony indicating Paul had been informed he would be sued if he did not pay a separate amount in dispute.

¶21 At trial, Paul confirmed that "a motive on [his] part" to pay the property's back taxes was preventing its foreclosure. This is consistent with Chand's testimony that, through power of attorney, Paul was given "authority 'to receive funds, deposit funds in any financial institution, and make withdrawals by checks or otherwise . . . pay for goods, services, and other personal and business expenses for [Chand's] benefit.'" And, as to the Bawas' argument that the taxes were paid before the agreement, Dhanoa nonetheless testified that after he had been "told that the lien on

the property taxes was about to be foreclosed," he asked Paul how he wanted to pay the taxes, to which Paul responded, "I can pay this one."

¶22 Dhanoa further testified Paul had elaborated that after each P&M member paid their share of the back taxes, he would "pay them after six months." And, finally, Dhanoa testified Paul had eventually told him "that since he had not paid back the rest of the 160,000, that P&M could have the rest of the loans back plus interest out of sale proceeds if the property sold." Thus, the jury had a sufficient evidentiary basis to conclude any agreement made by Paul to pay the back taxes was supported by a benefit to him—maintaining his access to the investment in the property. *See* Ariz. R. Civ. P. 50(a); *Glazer*, 237 Ariz. 160, ¶ 28; *Desert Palm Surgical Grp., P.L.C.*, 236 Ariz. 568, ¶ 25. We find no error in the denial of judgment as a matter of law.

Attorney Fees in the Trial Court

¶23 Based on our disposition, we decline to address the Bawas' arguments regarding the statutory basis and reasonableness of the fee award. The determination of which party has prevailed is a matter within the trial court's sound discretion. *Ariz. Biltmore Hotel Villas Condos. Ass'n v. Conlon Grp. Ariz., LLC*, 249 Ariz. 326, ¶ 39 (App. 2020). Accordingly, on remand and upon consideration of the additional matters raised in the Bawas' amended complaint, the court shall reconsider the parties' entitlement to attorney fees. *See Tortolita Veterinary Servs., PC v. Rodden*, No. 2 CA-CV 2020-0070, ¶ 33, 2021 WL 3852298 (Ariz. Ct. App. Aug. 27, 2021).

Attorney Fees on Appeal

¶24 Defendants request attorney fees and costs pursuant to A.R.S. §§ 12-341, 12-341.01, and 29-3410(L). Because we conclude there was no fully successful party on appeal, in our discretion, and without deciding whether these statutes apply, we deny this request. *See State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127, ¶ 30 (2020). And, to the extent they request attorney fees pursuant to P&M's operating agreement, defendants have not cited, and we do not find, any relevant provision in that document. The Bawas also "request their costs in this appeal." Because they obtained partial success on appeal, we award them taxable costs. *See Henry v. Cook*, 189 Ariz. 42, 44 (App. 1996); § 12-341.

Disposition

¶25 We affirm the trial court's denials of the Bawas' motions for judgment as a matter of law, but we vacate its denial of their motion for leave to amend their complaint and remand for proceedings consistent with this decision. Further, the court shall strike from the amended complaint any matters that have already been decided. *See Owen*, 133 Ariz. at 81.