IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

SIXTH STREET ENTERPRISES, INC.,
Plaintiff/Appellant,

v.

PURPLEMED, INC. AND
KM MANAGEMENT SERVICES,
Defendants/Appellees.

No. 2 CA-CV 2021-0038
Filed October 29, 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NOT FOR PUBLICATION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 Pima County
No. C20193516
The Honorable Kellie Johnson, Judge

AFFIRMED

COUNSEL

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and

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Eppich and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 Sixth Street Enterprises, Inc., doing business as Nature's Medicines (NatureMed), appeals the trial court's award of damages on its breach of contract claim against PurpleMed, Inc.,[1] following a bench trial. On appeal, NatureMed argues the court erred by reducing its damages award by $50,000 and denying its motion for a new trial. For the following reasons, we affirm.

Factual and Procedural Background

¶2 On appeal following a bench trial, we view the facts and all reasonable inferences therefrom in the light most favorable to upholding the trial court's judgment. *Bennett v. Baxter Grp., Inc.*, 223 Ariz. 414, ¶ 2 (App. 2010). NatureMed brought this lawsuit against PurpleMed in July 2019, asserting a number of claims, including breach of contract for PurpleMed's failure to pay NatureMed for goods sold. In February 2020, the trial court granted partial summary judgment in favor of NatureMed, finding PurpleMed liable for breach of contract and requiring a "further

[1] Although KM Management Services, LLC is listed as a defendant/appellee in this case, NatureMed only claimed breach of contract against PurpleMed. The only claim against KM Management Services was for fraud under A.R.S. § 12-671. During the trial, NatureMed suggested resolution of the breach of contract claim might obviate the need for resolution of its other claims. After the trial, NatureMed submitted a proposed form of judgment stating, "[T]his Judgment is a final judgment as to all claims alleged by Plaintiff against Defendants Purple[M]ed, Inc. dba Purple Med Healing Center; KM Management Services, LLC." At no point did either defendant object to the proposed form of judgment before the trial court entered the final judgment, which included that same language and resolved all claims as to all parties under Rule 54(c), Ariz. R. Civ. P. *See* Ariz. R. Civ. P. 58(a)(2)(B). Therefore, it appears the parties intended to dispose of the remaining claims with the resolution of the breach of contract claim.

hearing or decision" on the issue of damages. After a September 2020 bench trial on damages, the court awarded NatureMed $116,353.50, with pre-judgment interest. In arriving at that amount, the court reduced NatureMed's claim by $50,000.

¶3 Following an unsuccessful motion to reconsider, NatureMed requested a new trial on the sole issue of the $50,000 and submitted a declaration of Jigar Patel, NatureMed's president, who claimed that he had lent the $50,000 to NatureMed when PurpleMed failed to pay, that NatureMed had repaid him, and that he was never reimbursed by PurpleMed or its officers. NatureMed initially had credited the amount as a payment only to later revise its claim during litigation to include it as damages. The trial court denied NatureMed's motion for a new trial, stating that, while NatureMed's "arguments may have some support in the law, the arguments were not made at trial, nor was the evidence supporting them admitted or introduced at trial." This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1), (5)(a).

Damages Award

¶4 NatureMed argues the trial court erred by reducing its damages award based upon its finding that the $50,000 at issue was a payment made under a guaranty agreement. In reviewing the court's judgment, we review findings of fact for clear error and legal conclusions de novo. *Doherty v. Leon*, 249 Ariz. 515, ¶ 7 (App. 2020).

¶5 On appeal, as it did below, NatureMed claims the $50,000 was erroneously credited as a payment on PurpleMed's account when it was actually an internal loan from Patel. In a declaration and at trial, Mark Steinmetz, who was chairman of NatureMed at the time of the disputed transactions, stated he opposed doing business with PurpleMed because of its payment history and he only agreed to do so if Patel would "guarantee payment." Steinmetz stated that, when PurpleMed had failed to pay, Patel paid the $50,000 as an internal business loan to NatureMed, but the payment had been improperly credited to PurpleMed's account.

¶6 NatureMed's argument that the trial court erred in finding the $50,000 was paid as part of a guaranty agreement mischaracterizes the court's rulings. In its ruling after the bench trial, the court noted Steinmetz's testimony and, nevertheless, found NatureMed had "failed to prove the $50,000.00 should not be deducted as a payment from PurpleMed." And in ruling on NatureMed's motion to reconsider, the court stated that NatureMed had misunderstood its reasoning. The court explained that,

although NatureMed had asserted Patel made a $50,000 payment to NatureMed, NatureMed could not prove damages in that amount because it had failed show it repaid Patel.

¶7 The trial court is correct. In breach of contract actions, "the plaintiff has the burden of proving the existence of the contract, its breach[,] and the resulting damages." *Graham v. Asbury*, 112 Ariz. 184, 185 (1975).[2] In calculating damages, a windfall or double recovery is disfavored because damages are limited to compensating the non-breaching party for the breach itself. *Edwards v. Stewart Title & Trust of Phx., Inc.*, 156 Ariz. 531, 535 (App. 1988). Consequently, assuming Patel's $50,000 payment was a loan as NatureMed claims, it was directly related to PurpleMed's nonpayment. And absent evidence that NatureMed had repaid the loan, it failed to prove that amount as additional damages.[3] Based on the evidence presented at trial, the $50,000 was owed to Patel, not NatureMed, and any claim for repayment had to be made by Patel. *See Albers v. Edelson Tech. Partners L.P.*, 201 Ariz. 47, ¶ 18 (App. 2001) (shareholder may maintain direct action when damages sustained by shareholder and not corporation).

Denial of Motion for New Trial

¶8 NatureMed argues the trial court erred in denying its motion for a new trial because the issue of the guaranty was never raised in the proceedings below and it should be allowed to offer new evidence that it had repaid the loan to Patel. A court may grant a motion for new trial on several "grounds materially affecting that party's rights" including "any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial," an "accident or surprise that could not reasonably have been

[2]NatureMed argues the trial court erred by placing the burden on it to "disprov[e] the affirmative defense of discharge under a guaranty." But nothing in the record indicates that PurpleMed raised such a defense, which NatureMed acknowledges, or that the court decided the issue on that basis. The court simply found NatureMed had failed to meet its burden as the plaintiff to prove damages. Notably, NatureMed opened the door to how the $50,000 should be treated when it introduced evidence that the $50,000 was an internal loan made by Patel relating to PurpleMed's account, without clarifying whether that loan had been repaid.

[3]Although NatureMed argues an unpaid loan from Patel would not reduce its damages, it provides no authority to support its argument. *See In re $26,980 U.S. Currency*, 199 Ariz. 291, ¶ 28 (App. 2000) (we do not consider bald assertions without citation to legal authority).

prevented," "newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence," "excessive or insufficient damages," or if "the verdict, decision, findings of fact, or judgment is not supported by the evidence or is contrary to law." Ariz. R. Civ. P. 59(a)(1). We review the denial of a motion for new trial for an abuse of discretion. *Fleming v. Tanner*, 248 Ariz. 63, ¶ 28 (App. 2019).

¶9 NatureMed argues the trial court denied it a fair trial because neither party raised the issue of discharge under a guaranty and it did not have any notice or opportunity to address this issue. It maintains PurpleMed should have raised the issue as an affirmative defense in its pleadings under Rule 8(d)(1), Ariz. R. Civ. P., and should have disclosed it in the joint pretrial statement, pursuant to Rule 16(f)(2)(B), Ariz. R. Civ. P. Once again, NatureMed mischaracterizes the court's ruling and its burden of proving its damages. *See Graham*, 112 Ariz. at 185. NatureMed first described the $50,000 as a loan from Patel, who is not a party to this lawsuit, in its motion for partial summary judgment. It then called Steinmetz as a witness during trial to confirm the nature and purpose of the $50,000. Even after PurpleMed's president testified that PurpleMed had reimbursed Patel for the $50,000 and expressed surprise that Patel was not called to testify at trial, as the trial court noted, NatureMed did not call Patel as a witness, move to strike the undisclosed testimony, or otherwise address PurpleMed's claim of payment. Instead, NatureMed waited until filing its motion for a new trial to offer Patel's declaration countering PurpleMed's testimony. Because NatureMed failed to meet its burden to prove damages and had sufficient opportunity to present its arguments, it received a fair trial and cannot seek a new one on this ground.

¶10 But NatureMed maintains that it had no reason to present evidence at trial that it had repaid Patel because the issue of discharge was never raised. We disagree. As discussed above, NatureMed was the first to characterize the $50,000 as a loan made by Patel, and it had ample opportunity to introduce evidence at trial that it had repaid him to support its claim for damages. The mere fact that NatureMed did not present such evidence does not justify granting its request for a new trial. Ultimately, NatureMed failed to show how the court abused its discretion in denying its motion for a new trial.

Attorney Fees on Appeal

¶11 Both parties request attorney fees on appeal pursuant to A.R.S. § 12-341.01. Because NatureMed was not the successful party on appeal, we deny its request. As the successful party on appeal, we award

PurpleMed its reasonable attorney fees and costs upon compliance with Rule 21, Ariz. R. Civ. App. P. *See Compass Bank v. Bennett*, 240 Ariz. 58, ¶ 20 (App. 2016).

Disposition

¶12 For the foregoing reasons, we affirm the trial court's judgment and its denial of NatureMed's motion for a new trial.