IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

JAY ANTHONY JANICEK AND MARJORIE LEE JANICEK, HUSBAND AND WIFE,
Plaintiffs/Counterdefendants/Appellees,

v.

SYCAMORE VISTA NO. 8 HOMEOWNER'S ASSOCIATION, INC.,
Defendant/Counterplaintiff/Appellant.

No. 2 CA-CV 2021-0058
Filed February 28, 2022

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NOT FOR PUBLICATION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. C20185972
The Honorable Jeffrey T. Bergin, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Dessaules Law Group, Phoenix
By Jonathan A. Dessaules and Jacob A. Kubert
Counsel for Plaintiffs/Counterdefendants/Appellees

Thompson Krone P.L.C., Tucson
By Evan L. Thompson and Maxwell T. Riddiough
Counsel for Defendant/Counterplaintiff/Appellant

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 Sycamore Vista No. 8 Homeowner's Association (SV8) appeals from the trial court's judgment granting Jay and Marjorie Janicek's motion for summary judgment, in part; denying SV8's cross-motion for partial summary judgment; dismissing SV8's counterclaims with prejudice; and awarding attorney fees to the Janiceks. SV8 asserts the court erred by (1) misinterpreting the community's 2005 amended and restated covenants, conditions, and restrictions (CC&Rs); (2) concluding the Janiceks' claims were not barred by equitable defenses; (3) determining SV8's counterclaims were barred by the statute of limitations; and (4) awarding the Janiceks attorney fees as the successful party. For the following reasons, we affirm in part and vacate in part the court's final judgment.

Factual and Procedural Background

¶2 The following facts are undisputed. Sycamore Vista No. 8 is a residential development comprised of four phases. Phases one and two have fully developed lots with homes, and phases three and four have mostly undeveloped dirt lots. NT Properties LLC owns a majority of the lots in phases three and four, and by virtue of this ownership, has controlled SV8's board. SV8 is governed by its 2005 amended CC&Rs.

¶3 SV8 is one of seven residential associations that belong to the Sycamore Vista Master Homeowner's Association ("Master Association").[1] In 2016, SV8's board president, who was also the president of the Master Association, signed the "Sycamore Vista Master Association Agreement" ("Master Agreement") on behalf of all the signatory parties. The agreement

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[1]In the CC&Rs, the "Master Association" is defined as the "New Tucson Master Homeowners Association" and SV8 ("Association") is defined as "New Tucson Unit No. 8 Homeowners Association, Inc." On appeal, both parties refer to the Master Association as the Sycamore Vista Master Homeowner's Association, and the Association as SV8, and so we similarly use those designations.

"memorialize[d] the parties' agreement regarding the [Master] Association's responsibilities and the HOA's obligations for funding the [Master] Association."

¶4 In 2018, the Janiceks, homeowners in phase two of Sycamore Vista No. 8, sought a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, A.R.S. §§ 12-1831 to 12-1846, and injunctive relief. They asserted the HOA had increased their dues to fund development via the Master Association, allegedly in breach of the CC&Rs. SV8 filed counterclaims for breach of fiduciary duty and abuse of process, and moved for summary judgment on the declaratory judgment claim. The Janiceks filed a cross-motion for summary judgment and requested dismissal of SV8's counterclaims.

¶5 In an under-advisement ruling, the trial court granted the Janiceks' motion for summary judgment in part, determined the Janiceks had not waived their claim through equitable doctrines, and found SV8's counterclaims were barred by the statute of limitations—denying SV8's motion for partial summary judgment and dismissing its counterclaims. The court subsequently incorporated these rulings into a final judgment, also awarding the Janiceks $81,332.90 in attorney fees and $4,026.27 in costs. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 12-1837, and 12-2101(A)(1).[2]

[2]We have an independent duty to assess our appellate jurisdiction, and therefore must determine whether the judgment appealed from was final. *See Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465-66 (App. 1997) (denial of summary judgment is not final and thus not appealable). In its under-advisement ruling, the trial court granted the Janiceks' request for summary judgment "in part," and denied summary judgment as to those "requests not pled within the . . . Complaint." However, the court had previously denied the Janiceks' motion to conform evidence for those "requests not pled," and in its subsequent ruling on attorney fees, clarified that it had "denied all requests not pled within the Complaint." And although the under-advisement ruling did not explicitly address the Janiceks' request for injunctive relief, in its ruling on attorney fees, the court clarified that it "did not issue an injunction." The court's final judgment stated the Janiceks' motion for summary judgment was "granted as follows" and issued four declaratory judgments. In light of the court's certification of its judgment as final pursuant to Rule 54(c), Ariz. R. Civ. P., and its resolution of all outstanding motions and properly pled requests for

Discussion

CC&Rs Interpretation

¶6 SV8 first asserts the trial court erred in its interpretation of the CC&Rs, rendering its grant of summary judgment to the Janiceks improper as a matter of law. Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a). We review a grant of summary judgment de novo, viewing the evidence in the light most favorable to the party opposing the motion.[3] *See Wilson v. Playa de Serrano*, 211 Ariz. 511, ¶¶ 2, 6 (App. 2005). CC&Rs are contracts, which we also interpret de novo. *See Ahwatukee Custom Ests. Mgmt. Ass'n v. Turner*, 196 Ariz. 631, ¶ 5 (App. 2000); *see also Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, ¶ 9 (App. 2009).

¶7 In granting the Janiceks' summary judgment motion, the trial court made four declarations regarding SV8's ability to delegate its responsibilities and fund the Master Association pursuant to the CC&Rs: (1) "Phases 1 and 2 within SV8 owe no obligation to the [Master Association] and are not responsible for any obligation that has been undertaken by the Master Association pursuant to the [Master Agreement]"; (2) "The [Master Agreement] is null and void as it applies to [SV8] because it improperly expanded SV8's CC&Rs defined authority of the Master Association without having been approved by 75% of SV8's owners as required by § 12.2(A) of the CC&Rs"; (3) "The CC&Rs and applicable governing documents for [SV8] do not authorize SV8 to divert assessments paid by Phases 1 and 2 within SV8 to the Master Association"; and (4) "The CC&Rs and applicable governing documents for [SV8] do not allow SV8 to charge Phases 1 and 2 or use any assessments paid by Phases 1 and 2 for the benefit of the undeveloped lots in Phases 3 and 4."

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relief, the court's final judgment ended the litigation below and is appealable.

[3]The Janiceks contend SV8 is not entitled to this favorable review of the facts because they failed to file a transcript of the hearing for oral argument on summary judgment. But that hearing did not involve the presentation of evidence, and the Janiceks have not shown how the lack of a transcript would affect how we view the evidence.

¶8 On appeal, SV8 contends the trial court's judgments were erroneous because (1) Article 11 of the CC&Rs expressly designates the Master Association as SV8's non-exclusive agent; and (2) other provisions of the CC&Rs "define what responsibilities may be delegated to the Master Association." It thus asserts that contrary to the court's ruling, the Master Agreement did not require approval by seventy-five percent of the Lot owners in Sycamore Vista No. 8 to be effective, because it was a permissible delegation of authority, as opposed to an amendment under § 12.2(A) of the CC&Rs.[4]

¶9 CC&Rs are a contract "between the subdivision's property owners as a whole and individual lot owners," *Ahwatukee Custom Ests.*, 196 Ariz. 631, ¶ 5, and we interpret them "to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding [its] creation . . . and to carry out the purpose for which it was created," *Powell v. Washburn*, 211 Ariz. 553, ¶ 13 (2006) (quoting Restatement (Third) of Property (Servitudes) § 4.1(1) (2000)). To determine intent, we look at the CC&Rs as a whole, applying the settled principle that "a covenant should not be read in such a way that defeats the plain and obvious meaning." *Ariz. Biltmore Ests. Ass'n v. Tezak*, 177 Ariz. 447, 449 (App. 1993); *see also Town of Marana v. Pima County*, 230 Ariz. 142, ¶ 21 (App. 2012) (where contract clear and unambiguous we "give effect to the agreement as written").

¶10 Article 6 of the CC&Rs establishes four assessments SV8 may charge to Lot owners: (1) Annual Assessments; (2) Special Assessments; (3) Individual Assessments; and (4) Unimproved Lot Assessments. The purpose of the assessments is to "promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Areas of Association Responsibility, Common Areas (if any) and for all purposes set forth in the Articles, Bylaws and this Declaration." SV8's purpose and responsibilities are laid out in Article 2, which obligates SV8 to provide for, among other things, the "protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Areas of Association Responsibility and any other areas for which the Association is responsible." Section 2.4(M) permits SV8 to enter into agreements and take actions "as are reasonably necessary and convenient for the accomplishment of the obligations set forth . . . and the

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[4]"Lot" means "any numbered parcel of real property within the Properties shown on the Plat . . . together with the Dwelling Unit."

operation and maintenance of the Properties as a first-class, residential development."

¶11 However, Article 11, titled "Unimproved Lot Improvements," limits SV8's responsibilities and obligations within the undeveloped phases of SV8. Article 11's purpose is narrowly tailored to address "Unimproved Lots and adjacent Common Areas and/or Areas of Association Responsibility," and SV8 does not dispute that the "unimproved lots" are located within phases three and four.[5] Article 11 defines who bears the costs of those improvements, including collectable assessments: "The cost of improving Unimproved Lots and Common Areas and/or Areas of Association Responsibility shall be borne by the Owners of the Lots located in within either Phase 3 or Phase 4."[6] The costs are to be paid by "Unimproved Lot Assessments, as particularly described in Section 6.13." Section 6.13 states that the board of directors has the right to impose Unimproved Lot Assessments on Lots in Phases 3 and 4, subject to a writing specifying the purpose.

¶12 Article 11 contains the sole mention of the Master Association's authority in the CC&Rs.[7] Section 11.4 states,

> The Master Association is appointed as the non-exclusive agent of the Association for the purpose of exercising all powers granted the Association *pursuant to this Article 11*. Such appointment shall be conditioned upon the

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[5]"Common Areas" are "all real property, including any undisturbed drainageways or equestrianways shown on the Plat . . . owned and controlled by the Association." "Areas of Association Responsibility" is all other real property "owned and/or controlled by the Association for the common use and enjoyment of the Owners."

[6]Phase 3 owners bear the costs of improving only the lots in Phase 3, and the same for Phase 4.

[7]The only other mention of the Master Association in the CC&Rs is in the definition section—"'Master Association' shall mean the New Tucson Master Homeowners Association, an Arizona non-profit corporation, its successors and assigns." This is as opposed to the "Association" which "shall mean and refer to New Tucson Unit No. 8 Homeowners Association, Inc., an Arizona non-profit corporation, its successors and assigns."

> express, written assumption by the Master Association of all obligations, responsibilities, liabilities imposed by the exercise of the powers granted the Association. (Emphasis added.)

SV8 contends the Janiceks have construed the plain language of Article 11 "much too narrowly," and that Article 11 extends "far more broadly than merely authorizing SV8 to levy special assessments for improvements to undeveloped lots in Phase 3 and 4." But as shown above, the plain language is limiting: The Master Association is appointed as a non-exclusive agent of SV8 for the purpose of exercising Article 11 powers, and allows assessments pursuant to that Article to be collected solely from "the Owners of the Lots located in within either Phase 3 or Phase 4," for the stated purposes as to "Unimproved Lots and adjacent Common Areas and/or Areas of Association Responsibility." That Article 11 permits entry on to each Lot to execute this purpose does not expand that authority. The CC&Rs do not permit the Master Association to be funded by any assessment against phases one and two for the purposes of undeveloped Lots, and therefore, the trial court did not err in declaring that the "CC&Rs and applicable governing documents for [SV8] do not allow SV8 to charge Phases 1 and 2 or use any assessments paid by Phases 1 and 2 for the benefit of the undeveloped lots in Phases 3 and 4." *See Tezak*, 177 Ariz. at 449 ("a covenant should not be read in such a way that defeats the plain and obvious meaning").[8]

¶13 Contrary to the restrictions of Article 11, the Master Agreement permits the Master Association to collect assessments from SV8 to fulfill the Master Association's duties outlined in the Master Agreement. These duties include, but are not limited to: maintenance and repair of Maintenance Areas, meaning, as designated by the Master Association, "any private streets or roadways or areas adjacent . . . within the [real property governed by the homeowners associations]"; reimbursing NT

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[8]Given the plain language of the CC&Rs, we need not reach SV8's contention that the Master Association's performance under the License Agreement and Landscaping Agreement is "plainly indicative of the enumerated duties that SV8 is required to carry out under Article 11 of the 2005 CC&Rs." *Cf. G & S Invs. v. Belman*, 145 Ariz. 258, 268 (App. 1984) (valid contract must be given full force and effect and it is not within the power of our court to "revise, modify, alter, extend or remake a contract to include terms not agreed upon by the parties").

Properties for capital contributions it advanced for "water infrastructure"; and "[c]onducting the development and related activities directly or as agent for any HOA pursuant to CCRs (including by way of example, but not limited to, as described in Article 11 of the CCRs for Unit 8)."

¶14 The Master Agreement does not limit the Master Association from using funds collected from SV8—funds that SV8 does not contest were collected from homeowners in phases one and two—to improve phases three and four. To the contrary, as shown above, various provisions of the Master Agreement mandate such use of the funds: specifically, water infrastructure funded by a $1,000 fee on "any transfer of ownership of any Lot" and maintenance and repair of Maintenance Areas, neither of which exclude phases three and four. Thus, the Master Agreement violated Article 11 of the CC&Rs without proper amendment. Accordingly, the trial court did not err in declaring that the Master Agreement is "null and void" as to SV8, and that phases one and two owe no obligation to the Master Association pursuant to the Master Agreement.[9]

¶15 SV8 contends that apart from Article 11, several other provisions in the CC&Rs "define what responsibilities may be delegated to the Master Association." It asserts this is evidenced by Article 2 of the CC&Rs, which as described above, assigns SV8 its rights and responsibilities, and permits it to enter into agreements and take actions "as are reasonably necessary and convenient for the accomplishment of the obligations set forth . . . and the operation and maintenance of the Properties as a first-class, residential development."

¶16 Given the clarity and specificity of Article 11, we do not agree with SV8's assertion that Article 2 permits SV8 to collect assessments from phases one and two to fund the Master Association pursuant to the Master Agreement. *See ELM Retirement Ctr., LP v. Callaway*, 226 Ariz. 287, ¶ 18 (App. 2010) (specific contract provisions "express the parties' intent more precisely than general provisions" and qualify general provisions).

¶17 However, we do agree with SV8 that the trial court's declaration was unduly broad when it stated that "[t]he CC&Rs and

[9]We interpret the trial court's first declaration, that "Phases 1 and 2 within SV8 owe no obligation to the [Master Association]," to mean specifically homeowners within phases one and two owe no obligation to the Master Association pursuant to the Master Agreement, given that the Master Agreement is "null and void."

applicable governing documents for [SV8] do not authorize SV8 to divert assessments paid by Phases 1 and 2 within SV8 to the Master Association." Nothing in the CC&Rs prohibits SV8 from entering into an agreement with the Master Association to delegate its Article 2 responsibilities pursuant to § 2.4(M), subject to the limitations imposed by the CC&Rs. As explained above, the Master Agreement expanded SV8's authority under the CC&Rs by allowing assessments paid by homeowners in phases one and two to fund Article 11 improvements, rendering it unenforceable as to SV8. But the plain language of the CC&Rs does not support the trial court's broader judgment that the CC&Rs do not authorize SV8 to divert assessments paid by phases 1 and 2 to the Master Association. *See Tezak*, 177 Ariz. at 449. For a proper purpose, and with a proper funding provision, SV8 could enter into an agreement with the Master Association pursuant to Article 2, delegating the performance of its responsibilities, just as with any third-party.

¶18 Accordingly, we vacate the trial court's third declaratory judgment that "[t]he CC&Rs and applicable governing documents for [SV8] do not authorize SV8 to divert assessments paid by Phases 1 and 2 within SV8 to the Master Association." We affirm declaratory judgments numbers one, two, and four regarding SV8's inability to fund the Master Association's Article 11 pursuits with assessments levied against the developed phases, pursuant to the CC&Rs, and voiding the Master Agreement.

Equitable Defenses

¶19 SV8 next contends the trial court abused its discretion by determining the Janiceks did not waive their right to seek declaratory and injunctive relief due to the doctrines of laches and equitable estoppel. We review a trial court's decision on applying laches and equitable estoppel for an abuse of discretion. *See Korte v. Bayless*, 199 Ariz. 173, ¶ 3 (2001) (laches); *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 65 (App. 2008) (equitable estoppel).

Laches

¶20 On appeal, SV8 alleges that the Janiceks' delay in bringing their claim was unreasonable. In their motion for partial summary judgment before the trial court, SV8 asserted the Janiceks knew of their

claim more than three years before they brought it.[10] The court determined that the "Janiceks' delay, if any, in bringing this lawsuit was reasonable and does not bar this action."

¶21 Laches typically bars a claim when delay in filing a suit is unreasonable and results in prejudice. *League of Ariz. Cities and Towns v. Martin*, 219 Ariz. 556, ¶ 6 (2009); *see also Harris v. Purcell*, 193 Ariz. 409, n.2 (1998) (laches is an equitable counterpart to a statute of limitations). Delay alone is not sufficient for a finding of laches. *Martin*, 219 Ariz. 556, ¶ 6. Laches may apply to an otherwise timely claim if the delay would produce an unjust result.[11] *See Harris*, 193 Ariz. 409, n.2. But we cannot agree with SV8 that the trial court abused its discretion in concluding the Janiceks' delay was not unreasonable here. *See McComb v. Superior Court*, 189 Ariz. 518, 525 (App. 1997) (absent erroneous interpretation of the law, clearly erroneous factual findings, or unreasonable judgment in assessing relevant factors, we will not overturn a court's laches determination). Unlike the election cases SV8 cites for support, there was no imminent deadline here. *See McLaughlin v. Bennett*, 225 Ariz. 351, ¶ 6 (2010); *Sotomayor v. Burns*, 199 Ariz. 81, ¶ 7 (2000); *see also Martin*, 219 Ariz. 556, ¶ 8 (laches appropriate when "last-minute challenges to ballot propositions filed shortly before impending printing deadlines"). Moreover, SV8 has not shown the second requirement of laches—that it was prejudiced by the delay. *See Martin*, 219 Ariz. 556, ¶ 9 (party advancing laches must demonstrate "substantial

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[10]On appeal, SV8 asserts that, at the most, the Janiceks waited five and half years to bring their claim and, at the least, waited three years. Although it generally asserted below that the Janiceks purchased their home in 2013 and have been "in a position to scrutinize" SV8's actions since then, SV8 specifically stated the claim was brought "more than three years later" and the court relied on that argument in its ruling. Thus to the extent SV8 now asserts the Janiceks waited five and a half years, we do not consider the argument. *See Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 13 (App. 2000) (issues raised for the first time on appeal are waived).

[11] Although Arizona has no uniform statute of limitations for declaratory actions, we determine "the appropriate limitations period by 'examining the substance of that action to identify the relationship out of which the claim arises and the relief sought.'" *Canyon del Rio Invs., L.L.C. v. City of Flagstaff*, 227 Ariz. 336, ¶ 21 (App. 2011) (quoting *Vales v. Kings Hill Condo. Ass'n*, 211 Ariz. 561, ¶ 17 (App. 2005), *abrogated on other grounds by Powell*, 211 Ariz. 553). SV8 has not asserted, to the trial court or on appeal, that the claim was untimely under a statute of limitations.

harm" caused by the delay). SV8's only argument as to prejudice is that it expended resources and incurred costs and fees because of the litigation, but it has not shown how the litigation costs were related to the timing of the claim. Thus, the court did not abuse its discretion in denying SV8's laches defense.

Equitable Estoppel

¶22 SV8 next contends the Janiceks should have been equitably estopped from bringing their claim because (1) as an SV8 board director, Jay Janicek voted to utilize assessments collected from phases one and two to fund the Master Association, a fact the Janiceks dispute but that SV8 argues is evidenced by a 2015 budget report; (2) it was entitled to rely on the "historical practice" of each of its current or former directors in funding obligations to the Master Association, including Janicek; and (3) it was injured as evidenced by the fees and costs incurred by defending the claim.

¶23 "The three elements of equitable estoppel are traditionally stated as: (1) the party to be estopped commits acts inconsistent with a position it later adopts; (2) reliance by the other party; and (3) injury to the latter resulting from the former's repudiation of its prior conduct." *Valencia Energy Co. v. Ariz. Dep't of Revenue*, 191 Ariz. 565, ¶ 35 (1998). The only evidence SV8 presented that Janicek committed an act inconsistent with his current position was a 2015 budget report showing monthly line items for a "Master Association Fee" of $1,054. SV8 asserts that Janicek was on SV8's board of directors in 2015 and approved funds "out of the regular assessment income" to the Master Association, a practice he later contended violates the CC&Rs. But the budget report does not show who approved it, nor does it show which assessments, from what phases, funded that fee. Moreover, the budget report is dated January 1, 2015, and SV8 alleges Janicek was on the board of directors from only July 2015 until mid-January 2016.

¶24 But even assuming such evidence was sufficient to satisfy the first element of equitable estoppel, the second element, reliance, requires that the defendant actually relied, and that such reliance was reasonable under the circumstances. *Id.* ¶ 37. SV8's reliance on Janicek's approval of a brief budget report as a singular director on a board of directors, with no evidence that he knew of the funding source of the Master Association fee, coupled with the clarity of the CC&Rs' Article 11 limitations was not reasonable. *See id.*; *see also Carondelet Health Servs. v. Ariz. Health Care Cost Containment Sys. Admin.*, 187 Ariz. 467, 470 (App. 1996) (reliance is not

justified where contrary knowledge exists). Thus, the court did not abuse its discretion in denying SV8's equitable estoppel defense.

Statute of Limitations on SV8's Counterclaims

¶25 SV8 contends the trial court erred by dismissing its breach of fiduciary duty and abuse of process counterclaims because there were disputed facts requiring a jury determination as to when the counterclaims accrued. The court determined the two-year statute of limitations barred SV8's counterclaims and required dismissal because SV8 was aware of the facts underlying its counterclaims no later than April 25, 2016, but did not file until January 11, 2019. We review the court's dismissal of a claim based on a statute of limitations de novo. *Andrews ex rel. Woodard v. Eddie's Place, Inc.*, 199 Ariz. 240, ¶ 1 (App. 2000).

¶26 SV8's counterclaims alleged Jay Janicek breached his fiduciary duties and abused process when Janicek, as a SV8 board director, authorized suit against NT Properties for unpaid assessments in 2015. On April 25, 2016, the trial court granted NT Properties' request for an award of attorney fees in that suit, noting that SV8 had never made a demand for the payment or sent notice that payment was past due prior to filing suit. It further observed that rather than dismissing the suit, SV8 "vigorously contested" the motion for summary judgment, despite no evidence that anything was owed beyond what had already been paid. In October 2016, NT Properties sued SV8 for malicious prosecution and in December 2016, SV8 sued its former counsel for negligence in maintaining the suit. Those lawsuits were resolved on July 12, 2017 and February 6, 2017 respectively.

¶27 On appeal, SV8 asserts that although it knew it was damaged on April 25, 2016 by the actions of SV8's board in authorizing the 2015 suit against NT Properties, it did not know, and could not have reasonably discovered until the successive settlements, how much of the damages were attributable to Janicek, as a former board director, as opposed to SV8's former counsel. Thus, it asserts, when its claim accrued was a question for a jury.

¶28 A two-year statute of limitations applies to breach of fiduciary duty and abuse of process claims. *See* A.R.S. § 12-542; *Coulter v. Grant Thornton, LLP*, 241 Ariz. 440, ¶ 9 (App. 2017) (breach of fiduciary duty); *see also Kenyon v. Hammer*, 142 Ariz. 69, 76 n.6 (1984) (§ 12-542 governs general tort actions); *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414-15 (9th Cir. 1985) (applying § 12-542 to abuse of process claim). The "discovery rule" governs accrual of these claims, meaning a cause of action accrues when "a

plaintiff discovers or by the exercise of reasonable diligence should have discovered that he or she has been injured by the defendant's negligent conduct." *Coulter*, 241 Ariz. 440, ¶ 10 (quoting *Anson v. Am. Motors Corp.*, 155 Ariz. 420, 423 (App. 1987)); *Com. Union Ins. Co. v. Lewis & Roca*, 183 Ariz. 250, 254 (App. 1995) (accrual when plaintiff knows or should have known the who and what elements of causation).

¶29 When a cause of action accrues is normally a question of fact reserved for the jury, but accrual can be decided as a matter of law "if the record shows when the plaintiff 'unquestionably [was] aware of the necessary facts underlying [his or her] cause of action.'" *Cruz v. City of Tucson*, 243 Ariz. 69, ¶ 7 (App. 2017) (quoting *Thompson v. Pima County*, 226 Ariz. 42, ¶ 14 (App. 2010)); *see also Coulter*, 241 Ariz. 440, ¶ 7 (claims clearly outside limitations period are conclusively barred). "Commencement of the statute of limitations 'will not be put off until one learns the full extent of his damages.'" *Com. Union Ins. Co.*, 183 Ariz. at 255 (quoting *Wettanen v. Cowper*, 749 P.2d 362, 365 (Alaska 1988)).

¶30 Here, the trial court did not err in concluding SV8's counterclaims against the Janiceks were conclusively barred. *See Coulter*, 241 Ariz. 440, ¶ 7. SV8 does not contest it was aware of the damage caused by its board and its attorney in 2015, but asserts that it did not know how much of the damage was attributable to each, and that this created a question of fact.[12] However, accrual only requires the plaintiff know who and what caused the damage, not the amount of damage attributable. *Com. Union Ins. Co.*, 183 Ariz. at 255, 258. Here, SV8 clearly knew a ruling had been issued against them in 2016 in which the trial court concluded the 2015 litigation was "unnecessary" and unreasonable. It also knew Janicek occupied a board seat at the time of the litigation. That it did not know how much of the damage was attributable to Janicek as opposed to its own former counsel did not prevent the claim from accruing. *See id.* (accrual of claim does not defer until total damages determined); *see also Doe v. Roe*, 191 Ariz. 313, ¶ 32 (1998) (accrual does not require plaintiff know every underlying fact, only "a minimum requisite of knowledge" is required).

[12]To the extent SV8's argument can be interpreted as not knowing who caused their damage, they specifically assert in their opening brief that "it is crucial to emphasize that [the trial court's] April 25, 2016 minute entry ruling specifically identified failures made by *both* SV8's existing Board of Directors and its counsel."

Accordingly, no question of fact existed for a jury to resolve, and the court did not err.

Attorney Fees

¶31 SV8's final claim on appeal is that the trial court erred in awarding the Janiceks attorney fees because they were not the successful party under A.R.S. § 12-341.01(A). We review whether a party is successful under § 12-341.01(A) for an abuse of discretion, viewing the record in the light most favorable to upholding the court's decision and affirming the award if there is any reasonable basis for it. *Berry v. 352 E. Virginia, L.L.C.*, 228 Ariz. 9, ¶ 21 (App. 2011).

¶32 The Janiceks sought attorney fees in an amount of $131,332.90. The trial court found that the Janiceks' claims and defenses to the counterclaims arose from the CC&Rs, a contract. Applying factors from *Uyleman v. D.S. Rentco*, 194 Ariz. 300, ¶ 27 (App. 1999), the court found the Janiceks were entitled to a reasonable attorney fee award under § 12-341.01, and reduced the requested fees, awarding $81,332.90.

¶33 On appeal, SV8 contends this award was an abuse of discretion. It asserts the Janiceks were not the successful party because they sought "far broader relief" than ultimately awarded, and the trial court could have declined to award fees for the unsuccessful claims. The Janiceks counter that they accomplished the overall goal of the litigation and thus were entitled to the fees.

¶34 "In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees." § 12-341.01(A). Partial success does not preclude a party from being "successful" under § 12-341.01(A). *Berry*, 228 Ariz. 9, ¶¶ 22, 24 (in cases with various claims and counterclaims, the net winner is the successful party); *Lee v. ING Inv. Mgmt., LLC*, 240 Ariz. 158, ¶ 10 (App. 2016) (successful party even if recovery significantly reduced).

¶35 Here, the Janiceks were successful on their motion for summary judgment, resulting in a declaratory judgment that the CC&Rs do not authorize SV8 to divert assessments from phases one and two to the Master Association to fund development of undeveloped Lots pursuant to the Master Agreement. The Janiceks also successfully defended against SV8's counterclaims, and SV8's motion for partial summary judgment was denied. Although the Janiceks were not granted an injunction and the trial court denied their requests for relief on claims not pled in the complaint,

we cannot say that the court abused its discretion in determining the Janiceks were successful given the outcome of the totality of the litigation. *See Lee*, 240 Ariz. 158, ¶ 10.

¶36 To the extent SV8 contends the amount of the award was improper because it was "substantially disproportionate to the relief" obtained, SV8 has not shown that there was no reasonable basis for the award. *See id.* ¶ 12. A trial court has broad discretion in the amount of attorney fees awarded. *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570 (1985). The award should "mitigate the burden of the expense of litigation to establish a just claim or a just defense," and "need not equal or relate to the attorney fees actually paid or contracted," so long as it does not exceed that amount. § 12-341.01(B). Here, after "significant deliberation"; review of the relevant filings and supporting exhibits; and applying the *Uyleman* factors, the court awarded the Janiceks attorney fees. *See* 194 Ariz. 300, ¶ 27. It also addressed SV8's raised concerns by reducing the award, finding "significant time was invested by [the Janiceks] in pursuing claims not included in the Complaint" and the "incurred fees should [have been] in closer proportion [to SV8's fees] than they [were]."[13] We find no abuse of discretion.[14]

Attorney Fees on Appeal

¶37 Both SV8 and the Janiceks request attorney fees and costs on appeal pursuant to A.R.S. §§ 12-341 and 12-341.01. *See* Ariz. R. Civ. App. P. 21(a) (parties claiming attorney fees on appeal must do so in opening or answering brief). As the successful party on appeal, in our discretion, we award the Janiceks their reasonable fees, and, as entitled, their costs, upon compliance with Rule 21. *See* § 12-341.01 (court may award successful party reasonable fees in a contested action arising out of contract); § 12-341

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[13] To the extent SV8 contends the fee award should be reduced because of "block-billed time entries," a trial court does not necessarily abuse its discretion by awarding block-billed fees, and we find no abuse of discretion here. *See RS Indus., Inc. v. Candrian*, 240 Ariz. 132, ¶ 21 (App. 2016) ("no Arizona authority holds that a court abuses its discretion by awarding fees that have been block-billed"); *see also In re Guardianship of Sleeth*, 226 Ariz. 171, ¶ 34 (App. 2010) (block billing can be reviewed by trial court for reasonableness if supported by sufficient detail).

[14] Nor does our disposition vacating one of the declaratory rulings as overbroad warrant remand of the attorney fee award.

(successful party to civil action shall recover costs); *see also Modular Mining Sys., Inc. v. Jigsaw Techs., Inc.*, 221 Ariz. 515, ¶ 27 (App. 2009) (where party has prevailed on dispositive claims raised on appeal, we may grant fees pursuant to § 12-341.01). Because they have not prevailed, we deny SV8's requests for attorney fees and costs.

Disposition

¶38 For the foregoing reasons, we affirm in part and vacate in part the trial court's final judgment.

B R E A R C L I F F E, Judge, specially concurring:

¶39 I depart from the decision only as to the interpretation of the CC&Rs and the reasoning on the propriety of the breadth of the trial court's declaratory judgment. The decision correctly concludes the court's fourth declaration is proper and its third declaration is overly broad, yet, in my view, the court's first and second declarations are also overly broad. I fully concur in the judgment, however, because SV8 failed to raise, and thus waived, the arguments that would have allowed this court to address those declarations. *See Maximov v. Maximov*, 220 Ariz. 299, n.4 (App. 2009) (we generally do not make arguments for a party); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2 (App. 2007) (appellant's failure to develop and support argument waives issue on appeal).