

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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LAW OFFICE OF BARRY W. ROREX, PLC; AND BARRY W. ROREX,  
*Plaintiffs/Appellees,*

*v.*

PAUL T. ROREX; JEAN M. ROREX; AND  
ROREX DESIGN & DEVELOPMENT, LLC,  
*Defendants/Appellants.*

Nos. 2 CA-CV 2021-0124 and  
2 CA-CV 2021-0154 (Consolidated)

Filed June 1, 2022

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pima County  
No. C20202540  
The Honorable D. Douglas Metcalf, Judge

**AFFIRMED**

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COUNSEL

The Law Offices of Alexandra Tracy-Ramirez, Tucson  
By Alexandra Tracy-Ramirez

and

Michael Harnden, Tucson  
*Counsel for Plaintiffs/Appellees*

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Giordano & Heckeles PLLC, Tucson  
By Gerald F. Giordano Jr. and Mark W. Heckeles  
*Counsel for Defendants/Appellants*

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**MEMORANDUM DECISION**

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

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ECKERSTROM, Presiding Judge:

¶1 Paul Rorex, Jean Rorex, and Rorex Design & Development LLC (collectively the “Rorex Parties”) appeal from the trial court’s judgment in favor of Barry Rorex and his law office, the Law Office of Barry W. Rorex PLC, (collectively “Barry Rorex”) confirming an arbitration award. The Rorex Parties argue the court erred by confirming the award and entering judgment rather than allowing them to litigate their affirmative defenses after arbitration was complete. For the reasons that follow, we affirm.

**Factual and Procedural Background**

¶2 The material facts are undisputed. From 2009 through 2014, Barry Rorex successfully represented the Rorex Parties in a foreclosure action and bankruptcy proceedings. The parties to this appeal entered into a written legal services agreement by no later than June 2012. In that agreement, the Rorex Parties agreed to pay \$235 per hour for Barry Rorex’s legal services. The fee agreement contained an arbitration clause, which stated:

Should there be any disagreement or dispute relating to the fees or costs of this representation, and in the event such dispute cannot be resolved informally between Attorney and Client, Client agrees to binding arbitration of the dispute pursuant to the procedures of the State Bar of Arizona Fee Arbitration Division.

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Barry Rorex ultimately conducted approximately 210 hours of work on the case, amounting to approximately \$48,000 in legal fees.

¶3 In 2020, Barry Rorex filed a complaint seeking recovery of those fees. The Rorex Parties moved to dismiss or, in the alternative, to stay the action and compel arbitration, pursuant to the arbitration clause in the fee agreement. Barry Rorex joined the motion to stay the case pending arbitration. The trial court granted that motion with respect to arbitration and stayed the case to allow arbitration to proceed.<sup>1</sup>

¶4 Barry Rorex petitioned the State Bar of Arizona for fee arbitration, as provided by the parties' fee agreement. Despite having moved to compel arbitration, the Rorex Parties failed to respond to the arbitration petition within the time allotted, and the State Bar dismissed the case. The Rorex Parties eventually requested the file be re-opened, which the State Bar granted. The Rorex Parties then signed the arbitration agreement, and the case proceeded to arbitration.

¶5 In June 2021, after a hearing, the arbitrator issued an award in Barry Rorex PLC's favor in the amount of \$43,705.25. In so doing, the arbitrator specifically declined to address the Rorex Parties' proposed affirmative defenses of waiver and statute of limitations, expressly reasoning that "[t]he purpose of this fee arbitration is limited to a determination of the reasonableness of the fees charged by Barry Rorex" and that "no agreement was reached by the parties to have the Arbitrator address the timeliness of the billing and lawsuit."

¶6 In July 2021, Barry Rorex moved for the trial court to confirm the arbitration award, stating that the Rorex Parties had failed to comply with the award within thirty days, as required by the arbitration rules. In response, the Rorex Parties argued that confirmation of the award was "not warranted at th[at] time" because the arbitrator had not addressed their affirmative defenses, and they urged the court to lift the stay and allow litigation of the affirmative defenses to continue. They made no other motion for the award to be modified, corrected, or vacated.

¶7 In August 2021, the trial court confirmed the award, echoing the arbitrator's reasoning that the parties' fee agreement provided for

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<sup>1</sup>The sole argument for dismissal was failure to properly name as a plaintiff the Law Office of Barry W. Rorex PLC. Because Barry Rorex filed an amended complaint adding his law office as a plaintiff, the trial court denied the motion to dismiss as moot.

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arbitration of any disagreement or dispute relating to the fees or costs of representation and further noting the agreement stated “nothing about splitting claims between arbitration and litigation in the Superior Court.”<sup>2</sup> It further reasoned that the Rorex Parties had provided “no valid grounds to justify vacating, modifying, or correcting the award,” as provided by Arizona statute. *See* A.R.S. §§ 12-3023, 12-3024. The court also granted Barry Rorex’s request for fees and costs. In October, after resolving the fees and costs requests, the court entered final judgment. This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101.01(A)(6).

**Discussion**

¶8 The sole issue on appeal is whether the trial court erred by confirming the arbitration award and entering judgment without allowing the Rorex Parties to litigate their affirmative defenses of waiver and statute of limitations. The Rorex Parties contend the court should have allowed them to argue these defenses before entering judgment because, as stated in the arbitration award, the purpose of the “fee arbitration [wa]s limited to a determination of the reasonableness of the fees charged by Barry Rorex” and their potential defenses “were not subject to arbitration.” We disagree.

¶9 We review for abuse of discretion the trial court’s confirmation of an arbitration award. *The Spaulding LLC v. Miller*, 250 Ariz. 383, ¶¶ 9, 16 (App. 2020). “The validity and enforceability of a contract and arbitration clause are mixed questions of fact and law, subject to de novo review.” *Estate of Decamacho v. La Solana Care & Rehab, Inc.*, 234 Ariz. 18, ¶ 9 (App. 2014). The law favors arbitration of issues generally. *See, e.g.*, A.R.S. § 12-1501 (“A written agreement to submit any existing controversy to arbitration or . . . to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.”); *Foy v. Thorp*, 186 Ariz. 151, 153 (App. 1996) (“Arizona law favors arbitration, both statutorily and by the courts as a matter of public policy.” (citation omitted)).

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<sup>2</sup>As the Rorex Parties note, the trial court incorrectly stated they had not raised their affirmative defenses during arbitration, such that those defenses were waived. Because we affirm the court’s ruling on a ground other than waiver, this factual inaccuracy constitutes non-reversible error. *See Starr v. Ariz. Bd. of Fingerprinting*, 252 Ariz. 42, ¶ 8 (App. 2021) (appellate court may affirm trial court’s correct result, even if reached by different reasoning).

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¶10 Arizona statute “strictly limits the superior court’s options after the arbitration process is complete.” *Hamblen v. Hatch*, 242 Ariz. 483, ¶ 31 (2017). Section 12-3022, A.R.S., requires the trial court, upon a party’s motion, to confirm the award “unless the award is modified or corrected” or vacated as allowed by A.R.S. §§ 12-3024 (modification or correction of award on motion of party); 12-3020 (change of award by arbitrator); or 12-3023 (vacating award). *See also* A.R.S. § 12-1511 (trial court “shall enter judgment upon the [arbitration] award unless opposition is made in accordance with [A.R.S.] § 12-1512,” which provides grounds for opposing arbitration award). Absent “certain well-defined circumstances set forth in our arbitration statutes, the trial court has no authority to modify an arbitration award when request is made for confirmation of that award, even though the trial court is convinced that the arbitrators have erred in their resolution of factual or legal issues.” *Creative Builders, Inc. v. Ave. Devs., Inc.*, 148 Ariz. 452, 456 (App. 1986).

¶11 In requesting only that the trial court “lift the stay previously imposed” in order to litigate the affirmative defenses, the Rorex Parties asserted no valid statutory grounds by which the court could have legally declined to confirm the arbitration award. We therefore find no error in the court’s confirmation of the award. *See Atreus Cmtys. Grp. of Ariz. v. Stardust Dev., Inc.*, 229 Ariz. 503, ¶ 13 (App. 2012) (“judicial review of an arbitration award is severely limited by statute” to aid public policy goal of “speedy and inexpensive disposition of a dispute”).

¶12 The Rorex Parties complain they were deprived of “the opportunity to litigate their affirmative defenses,” whether by the arbitrator’s refusal to consider those defenses or by the trial court’s refusal to consider them after the conclusion of the arbitration proceedings. Although the arbitrator’s jurisdiction is limited in scope by the arbitration agreement, *see Hamblen*, 242 Ariz. 483, ¶ 23, the arbitration clause in the parties’ contract plainly states that “any disagreement or dispute relating to the fees or costs of this representation” would be subject to binding arbitration as provided by the State Bar of Arizona’s arbitration program. (Emphasis added.) *Cf. Clarke v. ASARCO Inc.*, 123 Ariz. 587, 589 (1979) (when “contract could have required that all disputes arising out of the contract as a whole be subject to arbitration,” but did not so require, parties “only bound to arbitrate those issues which by clear language they have agreed to arbitrate”). The terms and scope of the State Bar arbitration program were available to the Rorex Parties at the time they signed the

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contract containing the arbitration provision.<sup>3</sup> They are therefore bound by the terms of their contract, which in any event they have not challenged. *See Green Cross Med., Inc. v. Gally*, 242 Ariz. 293, ¶ 10 (App. 2017) (parties have “legal right to make whatever contracts they desire, subject to liability for their breach except when ‘the acts to be performed under the contract are themselves illegal or contrary to public policy’”) (quoting *E&S Insulation Co. of Ariz., Inc. v. E. L. Jones Constr. Co.*, 121 Ariz. 468, 470 (App. 1979)); *see also Hamblen*, 242 Ariz. 483, ¶ 28 (failure to challenge validity of arbitration agreement separately from larger contract precluded trial court from considering enforceability of arbitration clause).

¶13 We note that Arizona law allows a party to challenge the arbitrability of an issue, including challenging the scope of an arbitration clause. *See* A.R.S. §§ 12-3007 (setting forth trial court’s options when party refuses or contests agreement to arbitrate); 12-1502 (same); *see also Brake Masters Sys., Inc. v. Gabbay*, 206 Ariz. 360, ¶¶ 5-7, 9 (App. 2003) (“Our arbitration statutes and the weight of authority from other jurisdictions allow either a pre-arbitration or a post-arbitration determination of arbitrability.”). But the Rorex Parties have not done so here. Rather, they themselves filed the motion to compel arbitration, impliedly accepting the arbitration clause’s validity. “A party may not compel submission of an issue to arbitration, and then challenge the authority of the arbitrators to act on that very issue when an unfavorable decision results.” *Wages v. Smith Barney Harris Upham & Co.*, 188 Ariz. 525, 530 (App. 1997). “Having invoked the authority, [the Rorex Parties] must abide by it.” *Id.*

### Attorney Fees and Costs on Appeal

¶14 Because they have not prevailed on appeal, we deny the Rorex Parties’ request for fees. *See* A.R.S. § 12-341.01(A). In our discretion, we award Barry W. Rorex, PLC and Barry Rorex reasonable attorney fees, as the prevailing parties. *Id.* We also award them their costs on appeal, A.R.S. § 12-341, upon compliance with Ariz. R. Civ. App. P. 21(b).

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<sup>3</sup>The Rules of Arbitration of Fee Disputes governing the State Bar of Arizona Fee Arbitration Program likewise provide that “[t]he issue before an Arbitrator, in accordance with E[thical] R[ule] 1.5, Rule 42, Ariz. R. Sup. Ct., is whether the fees charged were reasonable for the work that was performed.”

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**Disposition**

¶15 For the foregoing reasons, we affirm the trial court's ruling.