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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

EOM&D MANAGEMENT, LLC, et al., *Plaintiffs/Appellees*,

and

JOHNNY NAMROUD, *Defendant/Appellee*,

v.

ANDREW LEE, et al., *Defendants/Appellants*,

PAUL LANDESMAN, et al., *Intervenors/Appellees*.

No. 1 CA-CV 23-0155

FILED 12-19-2024

Appeal from the Superior Court in Maricopa County
No. CV2017-055732
The Honorable Randall H. Warner, Judge

AFFIRMED

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MEMORANDUM DECISION

Vice Chief Judge Randall M. Howe delivered the decision of the court, in which Presiding Judge Michael S. Catlett and Judge Jennifer M. Perkins joined.

H O W E, Judge:

¶1 Andrew Lee appeals the trial court's orders sanctioning him and finding him personally liable for the balance of a business's purchase price. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Edward Kirk ("Kirk"), Olivia Kirk, Michael Lewis, and David Echeverria (collectively, the "Kirk group") formed MMJ Apothecary, a not-for-profit partnership, to operate a medical marijuana dispensary in Wickenburg. MMJ holds a dispensary license from the Arizona Department of Health Services (the "Department"). The Kirk group also formed for-profit EOM&D Management, LLC, which received management fees from MMJ.

¶3 In 2015, the Kirk group sold MMJ to Lee, Johny Namroud, Ramina Ishac, and Roula Harris for \$3.7 million (the "Lee group"). The purchase agreement (the "Agreement") required the Kirk group members to relinquish their interest in MMJ. Under the Agreement, the Lee group immediately transferred \$1.2 million to the Kirk group and agreed to pay the remaining \$2.5 million according to the terms of a promissory note (the

“Note”). The Agreement further provided that “[i]n accordance with the terms of the Note,” “PC,” defined as the members of the Lee group, would remit to the Kirk group \$50,000 monthly until it had paid off the balance of the Note.

¶4 To operate MMJ, the Lee group then formed Wicken Cure, LLC as the for-profit management company of MMJ. Concurrent with the payment terms of the Agreement, the Note obligated Wicken Cure to pay EOM&D for the duration of the Note. Wicken Cure secured the Note via a pledge agreement that granted EOM&D a membership interest in Wicken Cure until the Note was paid in full. Lee, Ishac, Harris, and Namroud each signed the Agreement, Note, and pledge agreement.

¶5 After the Agreement, Kirk continued to provide consulting services to MMJ and Wicken Cure. In July 2016, the Department informed Kirk that MMJ’s license renewal application was incomplete because Ishac lacked a valid dispensary agent card. Kirk then emailed the Lee group, suggesting that Ishac resign from MMJ. On August 2, Lee’s daughter-in-law emailed the Lee group from his address with Ishac’s resignation letter, backdated to May 1, 2016. Shortly thereafter, Lee informed Amy Buchholz, MMJ’s office administrator, that MMJ’s corporate records must reflect that Ishac resigned before the expiration of her dispensary agent card.

¶6 On August 16, Lee emailed Buchholz an amendment (the “Amendment”) to MMJ’s bylaws substituting the Kirks for Ishac and Harris as officers of MMJ. The attachment had Lee’s signature but left blank lines for the date and the Kirks’ and Namroud’s signatures. Lee also included a copy of his driver’s license. Later, the Kirks and Namroud signed the Amendment, which was dated May 1, 2016, and notarized with the same date. Lee was not physically present at the notarization.

¶7 Eventually, Lee and the Kirks disputed who owned and controlled MMJ. Lee, on behalf of MMJ and Wicken Cure, sued EOM&D and the Kirks, alleging breach of contract, civil conspiracy, and breach of fiduciary duty, and seeking declaratory relief in part to remove Kirk from MMJ’s board of directors. EOM&D and the Kirks counterclaimed for breach of contract, breach of fiduciary duty, and eviction and trespass, and sought relief declaring them as partners and owners of MMJ.

¶8 The court substituted the real party in interest, Lee, for MMJ and Wicken Cure. The court also appointed a temporary receiver for MMJ and later extended the receivership to cover Wicken Cure. The receivership prevented Wicken Cure from making payments on the Note to EOM&D.

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¶9 EOM&D and the Kirks moved for partial summary judgment, submitting a copy of the Amendment bearing only Lee's signature and a copy bearing the additional signatures, date, and notarization. Lee moved to strike the exhibit, arguing "the signature [was,] in reality, a forgery." Lee also submitted a signed declaration in which he claimed several times that he never signed the document.

¶10 In response, EOM&D and the Kirks moved for sanctions, arguing that Lee's declaration was false. Along with the motion, they submitted a signed declaration of Buchholz. In her declaration, Buchholz explained that, in August 2016, Lee had told her that the amended bylaws needed to reflect May 1, 2016, as the date of the Amendment. Lee directed her to find "a notary who could help expedite and finalize the process." Lee subsequently filed a complaint with the Attorney General's Office against the notary who notarized the Amendment. The Attorney General's investigation found that the notary had "failed to meet the standards of the law" in notarizing the Amendment.

¶11 The court found that Lee's statement in his declaration that "he never signed the Amendment to the Bylaws of MMJ [] and that the signature on the document is not his signature . . . is untrue." It also found that Lee's avowals that his signature "was fraudulently affixed" was "also untrue." Finding that sanctions were warranted under Rule 56 of the Arizona Rules of Civil Procedure, A.R.S. § 12-349(A)(3), and the inherent power of the court to sanction bad faith conduct, the court awarded attorneys' fees and costs to EOM&D and the Kirks in the amount of \$220,867.24.

¶12 The court later held a five-day trial on the merits of the case. The court ruled that (1) Lee "has a contractual obligation under Section 11 of the [Purchase] Agreement to pay \$50,000 per month . . . as part of the purchase price," (2) his obligation is "parallel to but independent of" Wicken Cure's obligation to make monthly payments under the promissory note, and (3) Lee "breached his payment obligation under the Section 11 of the [Purchase] Agreement" by failing to make monthly payments. It therefore found Lee liable for the \$1,649,096.48 balance of the purchase price.

DISCUSSION

¶13 Lee's opening brief does not comply with the civil appellate rules because it fails to include citations to legal authority and the record in this case. *See* Ariz. R. Civ. App. P. 13(a). Nonetheless, we exercise our

discretion to address the substance of the appeal. *See Clemens v. Clark*, 101 Ariz. 413, 414 (1966). Lee challenges the court's orders sanctioning him and finding him personally liable for the balance of the purchase price. We address each challenge below.

I. Sanctions

¶14 Lee argues that the court abused its discretion in sanctioning him for making misleading and false statements about the backdating of Ishac's resignation. Specifically, Lee argues that (1) the court failed to consider Kirk's deposition, (2) Buchholz's testimony was not credible, and (3) the court failed to consider the Attorney General's investigation of the notary. We review a sanctions award for abuse of discretion. *Hmielewski v. Maricopa County*, 192 Ariz. 1, 4 ¶ 13 (App. 1997). "We defer to the court's explicit or implicit factual findings and will affirm as long as such findings are supported by reasonable evidence." *Roberts v. City of Phoenix*, 225 Ariz. 112, 119 ¶ 24 (App. 2010).

A. Kirk's Deposition

¶15 Lee's arguments either ask us to reweigh the evidence or are not properly raised. First, Lee argues both that Kirk's deposition is absent from the court's factual timeline underlying its sanctions award and that the deposition explains Lee's statements at his own deposition claiming he did not sign the Amendment. Lee contends that Kirk falsely claimed Lee physically signed the Amendment in Wickenberg on May 1, 2016, and that he was "so perturbed and infuriated" by Kirk's claim that "he never even considered the possibility" that the blank Amendment he signed in August would subsequently be backdated and notarized. Essentially, Lee argues that Kirk's deposition shows that Lee's own statements claiming that he did not sign the Amendment were not intentionally false or misleading.

¶16 Lee submitted Kirk's deposition as part of his motion to strike. Because Kirk's deposition was part of the record before the trial court, we presume that the court considered it. *See Able Distrib. Co. v. James Lampe, Gen. Contractor*, 160 Ariz. 399, 409 (App. 1989) ("We presume that after admitting this evidence, the trial court considered it.").

¶17 Regardless, Kirk's deposition does not undermine the court's findings that Lee made false or misleading statements. At his deposition, Kirk stated that he was "90 percent certain" that Lee physically signed the Amendment in Wickenberg on May 1 together with the other parties. Even if Kirk's statement justified Lee's claim during his own deposition that he had not signed the Amendment, Lee *also* later moved to strike the

Amendment and submitted a declaration claiming the same. In other words, Lee doubled down on his claim that he did not sign the Amendment, belying his argument that he was simply confused in the heat of the moment by Kirk's statement.

¶18 Further, the court heard other evidence that Lee knew he was signing the Amendment and that it would be backdated to May 1. Among that evidence, the court considered (1) the emails Kirk and Lee sent about Ishac's need to resign to renew MMJ's license, (2) Buchholz's declaration that Lee instructed her to find a notary and that the Amendment needed to reflect the May 1 date, and (3) an email from Lee shortly before his deposition to an attorney stating that "[o]n 8/16/16, our consultant Kirk stated these needed to be signed immediately and sent in or we couldn't have the license renewed." The court considered reasonable evidence, *see Roberts*, 225 Ariz. at 119 ¶ 24, and whatever the merit of Kirk's deposition relative to this other evidence, we will not reweigh the evidence on appeal, *Williams v. King*, 248 Ariz. 311, 317 ¶ 26 (App. 2020).

¶19 Finally, Lee also makes two arguments about his knowledge of the backdating based on the relationship between his attorneys and the Amendment and the relationship between Kirk and the State of Arizona. Lee does not include record citations to support either of these arguments, which are therefore waived. Ariz. R. Civ. App. P. 13(a); *Ramos v. Nichols*, 252 Ariz. 519, 522 ¶ 8 (App. 2022) ("An appellant who fails to make a 'bona fide and reasonably intelligent effort to comply with the rules' will waive issues and arguments 'not supported by adequate explanation, citations to the record, or authority.'" (quoting *In re Aubuchon*, 233 Ariz. 62, 64–65 ¶ 6 (2013))).

B. Buchholz's Declaration

¶20 Next Lee argues (1) that Buchholz's declaration lacks credibility because he had two notaries in his office, and (2) if the court believed Buchholz's testimony, then Kirk perjured himself at his deposition. But this Court defers to the trial court's "determination of witnesses' credibility and the weight to give conflicting evidence." *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347 ¶ 13 (App. 1998). As a result, we will not reweigh the credibility of Buchholz's testimony. Further, whether Kirk perjured himself is not at issue. Even if he did (which we do not decide), as discussed *supra* ¶ 18, the court considered both Buchholz's declaration and other evidence in sanctioning Lee. The court did not err by relying in part on her declaration.

C. The Attorney General's Investigation

¶21 Finally, Lee argues that the court erred in not considering the Attorney General's findings about the notary's violations of law. He argues that the investigation casts doubt on Buchholz's testimony and knowledge of the plan to backdate the Amendment. Lee raised this argument for the first time in a motion for reconsideration and "arguments raised for the first time in [such a motion] are not preserved for appeal." *Levine v. Haralson, Miller, Pitt, Feldman & McAnally, P.L.C.*, 244 Ariz. 234, 239 ¶ 16 (App. 2018). We thus do not consider it.

¶22 But even if we were to consider this argument, Lee asks us to reweigh the evidence and determine witness credibility, which we will not do. *Williams*, 248 Ariz. at 317 ¶ 26; *Gutierrez*, 193 Ariz. at 347 ¶ 13. Further, Lee concedes in his brief that he signed the Amendment. The court found Lee's statements untrue that "he never signed the Amendment and that the signature on the document is not his signature." Whatever the circumstances surrounding the notarization and addition of signatures to the Amendment, Lee effectively concedes that he made a false statement. Reasonable evidence supports the court's findings. *See Roberts*, 225 Ariz. at 119 ¶ 24. We discern no error.

II. Liability Under the Agreement

¶23 Lee argues that the court erred in finding that the Agreement creates a personal payment obligation independent of the Note because (1) Wicken Cure, and not Lee personally, made all payments on the Note before the receiver's appointment, and (2) Section 11 of the Agreement stated only in general terms the Note's more specific conditions. We review the trial court's interpretation of a contract de novo. *See Rand v. Porsche Fin. Servs.*, 216 Ariz. 424, 434 ¶ 37 (App. 2007) (noting that contract interpretation is a question of law). In interpreting a contract, courts "seek to discover and effectuate the parties' expressed intent." *Terrell v. Torres*, 248 Ariz. 47, 49 ¶ 14 (2020). We construe the contract's language according to its plain, ordinary meaning, attempting "to reconcile and give effect to all terms of the contract to avoid any term being rendered superfluous." *Id.* at 50 ¶ 14. We interpret a contract in its entirety, seeking to effectuate the parties' intent as to all terms. *Id.* at 49–50 ¶ 14.

¶24 Lee appears to argue that Wicken Cure's payment history under the Note nullifies any independent payment obligation under the Agreement because "[t]he acts of the parties themselves, before disputes arise, are the best evidence of the meaning of doubtful contractual terms."

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(Quoting *United Cal. Bank v. Prudential Ins. Co. of Am.*, 140 Ariz. 238, 266 (App. 1983)). Lee did not raise this argument in the trial court, which is therefore waived. *Roebuck v. Mayo Clinic*, 256 Ariz. 161, 166 ¶ 16 (App. 2023) (noting that arguments not presented to the trial court are waived on appeal).

¶25 But even if we consider the argument, Section 11 of the Agreement's payment obligation is unambiguous and not "doubtful." Section 11 states that "PC shall remit to the Partners the sum of Fifty Thousand (\$50,000.00) per month . . . until the balance of Two Million Five Hundred Thousand (\$2,500,000.00) is paid in full." The Agreement defined "PC" as "Andrew Lee, Ramina Ishac, and Roula Harris, Johny Namroud." Further, Wicken Cure is not a party to the Agreement but rather only Lee and the other members of the Lee and Kirk groups are parties. Thus, the Agreement obliged the Lee Group members to pay the Partners \$50,000.00 per month. Had Lee wished to shift liability from himself to Wicken Cure, the Agreement could have made Wicken Cure a party and stated that "Wicken Cure shall remit . . ." But the Agreement does not state so. We will thus not introduce ambiguity into the Agreement by considering parol evidence.

¶26 Next, Lee argues the court did not harmonize Section 11 with the terms of the Note. But Lee does not cite any specific terms of the Note that conflict with Section 11's unambiguous payment obligation upon "PC" and by extension Lee. Instead, his claim that the court failed to harmonize the Agreement with the Note is simply a bald conclusory assertion without citations or support. Thus, his failure to meaningfully develop this point constitutes abandonment, *see MacMillan v. Schwartz*, 226 Ariz. 584, 591 ¶ 33 (App. 2011) ("Merely mentioning an argument in an appellate opening brief is insufficient."), and his failure to cite the record constitutes waiver, *see Ariz. R. Civ. App. P. 13(a)(7); Ramos*, 252 Ariz. at 522 ¶ 8.

CONCLUSION

¶27 We affirm. In our discretion, we grant EOM&D and the Kirks' request for their reasonable attorneys' fees and costs under A.R.S. §§ 12-341 and -341.01 upon compliance with Arizona Rule of Civil Appellate Procedure 21 because this action arose out of a contract and they were successful on appeal.

