

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CAMPBELL LAW GROUP CHARTERED, an Arizona corporation,
Plaintiff/Appellant,
v.

MONICA JAGELSKI, a single woman; EMPIRE VISTA LLC, an Arizona
limited liability company; SW JAGELSKI HOLDINGS, LLC, an Arizona
limited liability company; SHELLEY MACDONALD, a single woman;
PATRICK MARCHANT, a single man,
Defendants/Appellees.

No. 1 CA-CV 15-0427
FILED 11-1-2016

Appeal from the Superior Court in Maricopa County
No. CV2014-009920
The Honorable Dawn M. Bergin, Judge

AFFIRMED

COUNSEL

Frederick C. Berry, Jr., PC, Phoenix
By Frederick Curtis Berry, Jr
Counsel for Plaintiff/Appellant

Lawrence B. Slater PLLC, Gilbert
By Lawrence B. Slater
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Patricia K. Norris and Judge Margaret H. Downie joined.

T H U M M A, Judge:

¶1 Appellant Campbell Law Group (CLG) sued its former client, Monica Jagelski, to collect more than \$500,000 in unpaid attorneys' fees. CLG alleged that Jagelski engaged in fraudulent transfers to avoid paying CLG's fees and sought a constructive trust. Before CLG's case could proceed, the transfers were undone and, as a result, the court granted summary judgment against CLG on its fraudulent transfer claim and declined to impose a constructive trust. Because CLG has shown no error, the resulting partial final judgment is affirmed.

FACTS¹ AND PROCEDURAL BACKGROUND

¶2 CLG and its predecessors represented Jagelski in a dispute against Bret Marchant and Kathy Jamieson. Those parties reached a settlement that granted Jagelski 100 percent ownership of Empire Vista LLC, which owned two properties. The parties' settlement agreement also provided that Jagelski and Marchant

will come to an agreement wherein they [would] resolve any remaining dispute between them and pay both Marchant's and Jagelski's attorneys' fees. The parties intend to use primarily proceeds from the properties distributed in this [a]greement.

¶3 Approximately two months later, Jagelski emailed attorney Brian Campbell (now of CLG) seeking advice. Jagelski informed Campbell she wanted to (1) appoint Bret Marchant as Empire Vista's manager, (2) give her two adult children, Patrick Marchant and Shelley MacDonald, ownership interests in Empire Vista and (3) make Empire Vista responsible for Campbell's outstanding fees. Campbell responded within an hour,

¹ All facts are construed in favor of CLG, the nonmoving party. *Melendez v. Hallmark Ins. Co.*, 232 Ariz. 327, 330 ¶ 9 (App. 2013).

CAMPBELL v. JAGELSKI
Decision of the Court

recommending against appointing Bret Marchant as manager. After Jagelski confirmed she would not appoint Marchant as manager, Campbell told Jagelski her plans were “a constructive suggestion.” Campbell further wrote that he was “working to set up a meeting amongst all of us (you, me, Bret[] and Bret[]’s attorneys) to resolve the issue of outstanding attorneys’ fees, which need to be resolved and paid out of the proceeds of the settlement.”

¶4 It is not clear from the record whether such a meeting took place and no document shows that Jagelski and Bret Marchant ever agreed on how to pay Campbell’s fees. Nonetheless, by April 2012, Jagelski had transferred 88 percent of her interest in Empire Vista to MacDonald and Patrick Marchant and the remaining 12 percent to SW Jagelski Holdings, LLC, which she owned.

¶5 In July 2014, CLG sued Jagelski, Patrick Marchant, MacDonald, Empire Vista and SW Jagelski Holdings. CLG asserted a breach of contract claim against Jagelski only. CLG also alleged the transactions described above were fraudulent under the Uniform Fraudulent Transfer Act (UFTA), Arizona Revised Statutes (A.R.S.) §§ 44-1001, et seq. (2016).² CLG asked that the transactions be set aside and sought a constructive trust over Empire Vista’s assets.

¶6 In August 2014, Patrick Marchant, MacDonald and SW Jagelski Holdings resigned their membership interests in Empire Vista. On appeal, CLG acknowledges “[t]his transfer moved the membership (ownership) of Empire Vista . . . back to . . . Jagelski, 100%.” At about the same time, Patrick Marchant, MacDonald and Bret Marchant became managers of Empire Vista. Jagelski then moved for summary judgment on CLG’s UFTA and constructive trust claims.

¶7 The superior court granted Jagelski’s motion, finding CLG had “presented no evidence of any harm or injury” resulting from the transfers to, and back from, Patrick Marchant, MacDonald and SW Jagelski Holdings. Finding CLG held no interest in Empire Vista, the court also declined to impose a constructive trust. The court further ruled CLG was equitably estopped from claiming the transfers were fraudulent because Campbell did not object to them when Jagelski first sought his advice. Over CLG’s objection, the court entered partial final judgment on these claims. *See Ariz. R. Civ. P. 54(b)*. This court has jurisdiction over CLG’s timely

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

CAMPBELL v. JAGELSKI
Decision of the Court

appeal pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 120.21(A)(1) and -2101(A)(1).

DISCUSSION

I. The Court Did Not Err In Entering Partial Final Judgment.

¶8 CLG first contends the judgment should not have been certified under Rule 54(b). The superior court may “direct the entry of final judgment as to one or more but fewer than all of the claims or parties . . . upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Ariz. R. Civ. P. 54(b). As applicable here, this court reviews such a certification for an abuse of discretion. *Kim v. Mansoori*, 214 Ariz. 457, 459 ¶ 6 (App. 2007).

¶9 CLG argues that Rule 54(b) certification was improper because its UFTA and constructive trust allegations stated remedies, not separate claims. That argument is contrary to CLG’s pleading, which lists the UFTA claim and the constructive trust claim as separate counts. Moreover, the applicable rules expressly authorize the pursuit of “a claim to have set aside a transfer fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.” Ariz. R. Civ. P. 18(b) (emphasis added); *Farris v. Advantage Capital Corp.*, 217 Ariz. 1, 2 ¶¶ 8-9 (2007); see also A.R.S. § 44-1009 (setting limitations periods for “[a] claim for relief with respect to a fraudulent transfer”).

¶10 The facts necessary to prove the UFTA claim do not overlap with the facts necessary to prove breach of contract against Jagelski. See *Continental Cas. v. Superior Court*, 130 Ariz. 189, 191 (1981) (“For the purpose of Rule 54(b), multiple claims exist if the factual basis for recovery states a number of different claims that could have been enforced separately.”). UFTA, for example, focuses on whether the transfers rendered Jagelski insolvent and were not made for “reasonably equivalent value.” A.R.S. § 44-1005. Neither of these elements coincides with CLG’s breach of contract claim against Jagelski. See *Chartone, Inc. v. Bernini*, 207 Ariz. 162, 170 ¶ 30 (App. 2004) (“[I]n an action based on breach of contract, the plaintiff has the burden of proving the existence of a contract, breach of the contract, and resulting damages.”). Indeed, CLG does not dispute on appeal the superior court’s observation that the only remaining issue is the amount of “damages on [CLG’s] breach of contract claim.”

CAMPBELL v. JAGELSKI
Decision of the Court

¶11 Finally, CLG’s constructive trust claim was tied to its UFTA claim, not Jagelski’s alleged breach of contract. Thus, had there been a subsequent appeal regarding the contract claim,³ there would have been no need to reopen any issues addressed in this appeal. *See GM Dev. Corp. v. Community American Mortg. Corp.*, 165 Ariz. 1, 9 (App. 1990) (“[F]inal judgment on any particular claim is proper only if the nature of the adjudicated claim is ‘such that no appellate court would have to decide the same issues more than once even if there are subsequent appeals.’”) (quoting *Continental Cas.*, 130 Ariz. at 191). On this record, CLG has not shown the superior court erred in certifying the judgment under Rule 54(b), meaning this court has jurisdiction over this appeal. A.R.S. § 12-2101(A)(1).

II. Summary Judgment Was Proper On CLG’s UFTA And Constructive Trust Claims.

¶12 A grant of summary judgment is reviewed de novo, including whether genuine issues of material fact exist and whether the trial court properly applied the law. *Dreamland Villa Community Club, Inc. v. Raimey*, 224 Ariz. 42, 46 ¶ 16 (App. 2010).

A. UFTA.

¶13 CLG contends Jagelski’s transfers to Patrick Marchant, MacDonald and SW Jagelski Holdings were fraudulent under the UFTA and should be set aside. It is undisputed, however, these transfers were undone shortly after CLG filed suit. As a result, CLG did not dispute that Jagelski again owned all of Empire Vista or that the Empire Vista assets maintained their value. Given these facts, neither the UFTA’s remedies nor the specific remedies CLG sought in its complaint would have afforded CLG any meaningful relief. *See* A.R.S. § 44-1007(A) (allowing for garnishment against a transferee, avoidance of a transfer, attachment of the transferred asset, injunctive relief or appointment of a receiver).

¶14 CLG contends the decision to make Patrick Marchant, MacDonald and Bret Marchant managers of Empire Vista amounted to a fraudulent transfer because they would “never declare a distribution to [Jagelski],” thus hindering CLG’s ability to collect. Designating different managers of Empire Vista did not transfer an ownership interest in Empire Vista. *Compare* A.R.S. § 29-681 (addressing management of a limited liability

³ The court entered final judgment for CLG on the breach of contract claim in February 2016. No appeal was taken from that final judgment and the time for such an appeal has expired. *See* Ariz. R. Civ. App. P. 9(a).

CAMPBELL v. JAGELSKI
Decision of the Court

company) *with* A.R.S. § 29-732 (addressing interest in a limited liability company). Accordingly, CLG has not shown that Jagelski, by changing Empire Vista managers, effectuated a “transfer” of an ownership interest in Empire Vista under UFTA. *See* A.R.S. § 44-1001(9). Finally, even if Jagelski had remained Empire Vista’s sole member, she presumably could have declined to issue distributions to herself just as easily as the current managers could. CLG thus failed to demonstrate any error in the ruling on its UFTA claim.

B. Constructive Trust.

¶15 CLG contends the superior court improperly refused to impose a constructive trust on the Empire Vista assets. A court may impose a constructive trust when title to property is obtained through actual fraud, misrepresentation, concealment, undue influence, duress or similar means. *Cal X-Tra v. W.V.S.V. Holdings, L.L.C.*, 229 Ariz. 377, 409 ¶ 107 (App. 2012); *see also Burch & Cracchiolo, P.A. v. Pugliani*, 144 Ariz. 281, 286 (1985) (“A constructive trust is typically imposed when there is a wrongful holding of property which unjustly enriches the defendant at the expense of the plaintiff.”).

¶16 CLG contends it was entitled to a constructive trust because it held a charging lien on Empire Vista’s assets. A charging lien is an attorney’s lien that attaches after obtaining a judgment in litigation. *Skarecky & Horenstein, P.A. v. 3605 N. 36th St. Co.*, 170 Ariz. 424, 428 (App. 1991). For a charging lien to arise, it must appear that the parties agreed to look to a certain fund to pay the attorney. *Linder v. Lewis, Roca, Scoville & Beauchamp*, 85 Ariz. 118, 123 (1958).

¶17 Jagelski’s and Campbell’s fee agreement was an hourly fee arrangement that pointed to no such fund. CLG thus argued its charging lien arose from Jagelski’s and Bret Marchant’s settlement agreement, which stated their intent “to use primarily proceeds from the properties distributed in this Agreement” to pay CLG’s fees. But that agreement only stated that Jagelski and Bret Marchant “will come to an agreement” regarding how to pay CLG’s outstanding fees; there is no evidence in the record to suggest they ever reached agreement. Moreover, even if Jagelski and Bret Marchant did agree at some point, there is no evidence that Jagelski and CLG ever agreed on how the outstanding fees would be paid. *See Linder*, 85 Ariz. at 123 (stating right to charging lien is “dependent upon the intention of the parties to create a charging lien”). CLG therefore was not entitled to a charging lien.

CAMPBELL v. JAGELSKI
Decision of the Court

¶18 As a result, CLG held no interest in Empire Vista or its assets that would have justified imposing a constructive trust. *See Pugliani*, 144 Ariz. at 286 (“A general claim for money damages will not give rise to a constructive trust.”). Accordingly, the superior court did not err in declining to impose one.⁴

CONCLUSION

¶19 The partial final judgment is affirmed. Appellees may recover taxable costs incurred on appeal contingent upon their compliance with Arizona Rule of Civil Appellate Procedure 21.



AMY M. WOOD • Clerk of the Court
FILED: AA

⁴ Given this conclusion, this court need not address the superior court’s findings regarding equitable estoppel.