IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

GARY MURPHY,
Plaintiff/Appellant,

v.

CHERYL WOOMER AND EDWIN ALLEN GROOVER,
Defendants/Appellees.

No. 2 CA-CV 2020-0035
Filed November 27, 2020

Appeal from the Superior Court in Cochise County
No. CV201800070
The Honorable David Thorn, Judge

AFFIRMED

COUNSEL

Gary Murphy
In Propria Persona

Udall Law Firm LLP, Tucson
By Debra C. Boyer
Counsel for Defendants/Appellees

OPINION

Judge Espinosa authored the opinion of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 Gary Murphy appeals from the trial court's entry of summary judgment in favor of Cheryl Woomer and Edwin Groover, arising from Woomer's refusal to allow Murphy to remove from her property a stand-alone workshop that he paid for and built. Murphy argues the court erred because "[s]everal issues of material fact exist in every count of [his] complaint." For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence and all reasonable inferences therefrom in the light most favorable to Murphy, the party who opposed summary judgment. *See Nelson v. Rice*, 198 Ariz. 563, ¶ 2 (App. 2000). In early 2012, while Murphy and Woomer were in a romantic relationship, they lived together in Woomer's home and she gave Murphy permission to build a workshop on her property for his use. Murphy purchased all materials and subsequently built the workshop, completing it in 2013. The structure, measuring twenty feet wide and forty-eight feet long, was built on and anchored to a concrete foundation, with underground electrical service lines, a roof, and fully insulated walls.

¶3 In April 2014, Murphy and Woomer's relationship ended, and Murphy moved out of Woomer's house and into a motor home parked on her property. Woomer allowed Murphy continued access to the workshop, but after a few months of this arrangement, she told Murphy he needed to remove the motor home and his personal belongings by March of 2015. Murphy did so in August of 2015. The following year, Woomer denied Murphy access to her property, including the workshop.

¶4 In February 2018, Murphy sued Woomer and Woomer's boyfriend, Groover, claiming unjust enrichment, conversion, conspiracy to commit conversion, breach of contract, breach of the implied covenant "of good faith and dealing," and constructive fraud. Murphy alleged Woomer had been unjustly enriched because "he designed the [workshop] and paid

for all the materials to build it and built it himself, but is no longer allowed to use the workshop for the purposes he built it for." His conversion claim was based on Woomer and Groover's alleged "intentional[] interfere[nce] with [his] possession over the workshop," which Murphy asserted was his "personal property." Murphy also claimed Woomer had violated their verbal contract "for construction and exclusive use of the building." Finally, the constructive fraud claim was based on Woomer's alleged misrepresentations and inducement for Murphy to build the workshop and her refusal to allow him to remove it from her property.

¶5 An arbitrator determined the workshop was a fixture and Murphy's claims were "without merit" and dismissed his complaint. Murphy appealed the arbitration ruling to the trial court, and Woomer and Groover filed a motion for summary judgment. Murphy then filed a motion to amend his complaint—in which he had moved to add a claim for tortious interference with a contract and remove the conspiracy to commit conversion claim. The court granted Murphy's motion and denied the summary judgment motion as moot.

¶6 After answering the amended complaint, Woomer and Groover filed a second motion for summary judgment, arguing Murphy could not establish all required elements for each of his claims. Murphy responded that Woomer and Groover's factual "background . . . is basically correct," but claimed it was "void of details that disqualify this case for [s]ummary [j]udgment." Murphy claimed there were three "verbal contractual agreements" between him and Woomer: (1) for Murphy to build the workshop on Woomer's property; (2) for Murphy to live in his motor home on Woomer's property; and (3) for Murphy to move the workshop from Woomer's property. He further argued there were multiple issues of material fact precluding summary judgment, including whether the verbal agreements existed, whether Woomer and Groover had compensated Murphy for his workshop or had simply taken it, whether Woomer and Groover had deliberately kept Murphy from moving his workshop, and whether Groover had interfered with the contracts between Murphy and Woomer.

¶7 Following a hearing, the trial court granted Woomer and Groover's motion for summary judgment,[1] reasoning there was no genuine

[1]Murphy has failed to provide a transcript of the hearing. In its absence, we must presume that whatever transpired at the hearing

dispute as to any material fact in the case. The court recounted the facts as follows:

> Sometime in 2014, Murphy decided to construct a building on Woomer's property. This was done at his behest and his expense and for his own use. No evidence was presented at the hearing for the Motion for Summary Judgment that Woomer asked Murphy to construct a building or otherwise induced him to do so. . . .
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> Eventually the romantic relationship between Murphy and Woomer ended and Murphy moved out of Woomer's home. Thereafter, Murphy and Woomer engaged in negotiations for the removal of the building to another location. At first Woomer was amenable to allowing Murphy to move the building but eventually changed her mind. Murphy then brought an action under several theories to recover the building and have it moved to another location.

¶8 As to unjust enrichment, the trial court found "no evidence" that Woomer or Groover "asked, induced, convinced, or connived Murphy into constructing" the workshop, and though Woomer "may have been enriched by Murphy's construction of his shop building . . . that enrichment is not unjust." No evidence was presented that the parties had entered into a written or oral contract "for anything," and though at some point Woomer may have been willing to allow Murphy to remove the workshop, she "had no legal obligation" to allow that and she had "received nothing in consideration for her discretionary decision." The court concluded that the workshop was a permanent fixture, despite Murphy's intention to eventually move the building, and the conversion claims were therefore without merit. We have jurisdiction over Murphy's appeal pursuant to A.R.S. §§ 12-120.21(A) and 12-2101(A)(1).

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supported the trial court's ruling. *See Johnson v. Elson*, 192 Ariz. 486, ¶ 11 (App. 1998).

Discussion

¶9 We review a trial court's entry of summary judgment de novo. *Nelson*, 198 Ariz. 563, ¶ 6. Summary judgment is appropriate only if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a). But the motion should be granted when "the facts produced in support of the claim . . . have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990); *see also* Ariz. R. Civ. P. 56(a). We address each of Murphy's claims in turn.

Conversion

¶10 In granting summary judgment on Murphy's conversion claim, the trial court concluded the workshop was a fixture to the real property owned by Woomer and therefore not Murphy's personal property subject to conversion. Murphy contends the court erred because it applied the wrong legal standard and because "determining the building is a fixture" requires "many issues of material fact [to] be resolved" including Murphy's intent "when designing, building and placing the building." We disagree.

¶11 Arizona employs a three-part test to determine whether a chattel has become a fixture. *Murray v. Zerbel*, 159 Ariz. 99, 101 (App. 1988). The chattel must be annexed to the realty or something appurtenant thereto, it must "have adaptability or application as affixed to the use for which the real estate is appropriated," and "there must be an intention of the party to make the chattel a permanent accession to the freehold." *Id.* (quoting *Fish v. Valley Nat'l Bank of Phx.*, 64 Ariz. 164, 170 (1946)). The trial court, citing *Arizona Department of Revenue v. Arizona Outdoor Advertisements, Inc.*, 202 Ariz. 93 (App. 2002), employed a "reasonable person" test to determine the building was a fixture.

¶12 In *Arizona Outdoor Advertisements*, this court considered the traditional three-part test and its criticisms and concluded the test is "awkward to apply," and fails to consider "all circumstances that might bear on the fixtures inquiry." *Id.* ¶¶ 17-33. Ultimately, we adopted a "reasonable person" test, which asks, "Would a reasonable person, after considering all the relevant circumstances, assume that the item in question belongs to and is a part of the real estate on which it is located?" *Id.* ¶¶ 35, 38. The adoption of the test, however, was limited solely to "the context of characterizing property as real or personal for tax purposes." *Id.* ¶ 38. The

trial court here noted that limitation but nonetheless found the case "illustrative" and determined "[a] reasonable person, ignorant of Murphy's intent, would conclude that a twenty foot by forty-eight foot building, framed, insulated, wired for electricity, and affixed to a concrete foundation . . . is a permanent structure."

¶13 We need not resolve here whether the three-part test or the reasonable-person test should prevail in this context because we conclude that under either standard, the trial court did not err in finding the workshop a permanent fixture to Woomer's property. The workshop was a relatively large and substantial structure, constructed with "2x6 lumber" secured to a concrete slab and foundation, with insulated walls and underground service lines. These characteristics support the court's conclusion, and Murphy appears to argue only that his intent in building the structure demonstrates its character as personal property. Murphy repeatedly claims there were "several issues of material fact" to resolve to determine the proper classification of the workshop, particularly asserting that his intention had been to move the building at some point. But his rationale misunderstands the intent question, which does not involve "the actual, subjective intent of the annexor," but rather considers the objective intent "to be gleaned from the appearance the item of personalty created when it was placed upon the realty," allowing a court to consider "many other relevant factors" regarding the circumstances that surrounded the annexation. *Id.* ¶ 28; *see also ABCDW LLC v. Banning*, 241 Ariz. 427, ¶¶ 19, 26 (App. 2016) (presumed intent of parties' actions indicated alfalfa plants were fixtures based on plants' life of three to five years and annexor planted them in last year of lease); *Murray*, 159 Ariz. at 101-02 (objective manifestations of intent included removal of wheels and axles; long cement porches in front and back; underground utility lines; attached porch roofs; and added chimney to determine mobile home a fixture).

¶14 In view of this standard, the trial court did not err in determining no dispute of material fact existed and the circumstances support a conclusion that the workshop is a fixture to Woomer's property. And Murphy has not "show[n] that evidence is available that would justify a trial." *W.J. Kroeger Co. v. Travelers Indem. Co.*, 112 Ariz. 285, 286 (1975). The facts regarding the workshop and its construction are undisputed in all material regards, and there was no genuine issue about the nature of the workshop, so that the court could properly rule on the conversion claim as a matter of law. *See* Ariz. R. Civ. P. 56(a); *see also Murray*, 159 Ariz. at 103 (classifying property as fixture as a matter of law). Because the workshop was a fixture, it cannot be the basis of a conversion claim. *See Sears Consumer Fin. Corp. v. Thunderbird Prods.*, 166 Ariz. 333, 335 (App. 1990)

("Conversion is an act of wrongful dominion or control over personal property in denial of or inconsistent with the rights of another."); *see also Miller v. Hehlen*, 209 Ariz. 462, ¶ 35 (App. 2005) (conversion action ordinarily lies "only for personal property" (quoting 18 Am. Jur. 2d, Conversion § 7 (2004))). Thus, summary judgment was properly granted in Woomer's favor on Murphy's conversion claim.

Contract Claims

¶15 Murphy next challenges entry of summary judgment on his claims for breach of contract, breach of the covenant of good faith and fair dealing, and tortious interference with contract. The trial court determined "[n]o facts were presented that any of the parties had entered into either a written or oral contract for anything," a conclusion Murphy disputes on appeal.

¶16 Murphy's pleadings below asserted that he and Woomer had entered into three "verbal contracts": (1) for Murphy to construct and use the workshop on Woomer's property, (2) for Murphy to live in his mobile home on Woomer's property, and (3) for Murphy to move his workshop. Murphy claimed Woomer "violated" all three of the contracts as a result of Groover's interference. Murphy, however, alleged no facts supporting the existence of such contracts, instead urging below and maintaining on appeal only that the "very existence" of the workshop verifies "there was and is a valid contractual agreement" between Murphy and Woomer to build it, due to his "performance on that agreement." But a contract requires more than simply an agreement or the performance of an action—a valid contract requires an offer, acceptance of the offer, consideration, and the intent of both parties to be bound by the agreement. *Goodman v. Physical Res. Eng'g, Inc.*, 229 Ariz. 25, ¶ 7 (App. 2011); *see also K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 139 Ariz. 209, 212 (App. 1983). And Murphy, as the plaintiff, had the burden of proving the contract's existence. *See Thomas v. Montelucia Villas, LLC*, 232 Ariz. 92, ¶ 16 (2013).

¶17 Aside from conclusory allegations in his complaint, Murphy provided no facts demonstrating an offer that Woomer had accepted, *see* Restatement (Second) of Contracts §§ 24, 50 (1981) (defining offer as "a manifestation of willingness to enter into a bargain" and acceptance as "a manifestation of assent to the terms thereof made by the offeree"), or any consideration for such an agreement, *see K-Line Builders, Inc.*, 139 Ariz. at 212 (consideration is "a benefit to the promisor or a loss or detriment to the promisee"). Because there are no facts upon which a jury could conclude a valid contract between the parties existed, the trial court did not err in

granting summary judgment on Murphy's contract claims.[2] *See Goodman*, 229 Ariz. 25, ¶ 7 (to prevail on breach of contract claim, party must prove a contract existed).

Unjust Enrichment

¶18 Murphy further contends the trial court improperly rejected his unjust enrichment claim, arguing the workshop improved Woomer's property and she changed her mind about letting him remove it. This cause of action requires proof of (1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the absence of justification for the enrichment and impoverishment, and (5) the absence of a remedy at law. *See Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314, ¶ 10 (App. 2012). To succeed on this claim, Murphy was required to "demonstrate that the defendant[s] received a benefit, that by receipt of that benefit [they were] unjustly enriched at [Murphy's] expense, and that the circumstances were such that in good conscience [they] should provide compensation." *Freeman v. Sorchych*, 226 Ariz. 242, ¶ 27 (App. 2011).

¶19 Woomer and Groover respond that the trial court correctly ruled because Murphy made no showing that the enrichment was unjust, particularly because he constructed the workshop of his own accord, for his own purpose, he benefited from its use, and was not induced to build it by Woomer. Murphy counters that there is no logical justification for preventing him from either moving the workshop or being paid for it. But Woomer's "mere receipt" of the workshop, which is a fixture to her property, is not sufficient to entitle Murphy to compensation based on unjust enrichment. *See Murdock-Bryant Constr., Inc. v. Pearson*, 146 Ariz. 48,

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[2]Murphy also claims the trial court erred by "not addressing" his breach of the implied covenant of good faith and fair dealing count. But the trial court did address it, correctly concluding there could be no such breach in the absence of a contract. *See Keg Rests. Ariz., Inc. v. Jones*, 240 Ariz. 64, ¶ 45 (App. 2016) ("Arizona law implies a covenant of good faith and fair dealing in every *contract*." (emphasis added)). Murphy further contends the "details" of Groover's interference with the alleged contracts are "issues of material fact." But with no evidence of a valid contract, Groover's actions are clearly immaterial. *See Antwerp Diamond Exch. of Amer., Inc. v. Better Bus. Bureau of Maricopa Cty., Inc.*, 130 Ariz. 523, 529-30 (1981) (existence of valid contractual relationship an element of intentional interference); *Ulan v. Vend-A-Coin, Inc.*, 27 Ariz. App. 713, 717 (1976) (same).

54 (1985). Instead, he must show that the benefit was not meant to be conferred gratuitously. *Id.* Murphy has not made such a showing. He demonstrated only that it was his decision to build the workshop on Woomer's property "exclusively" for his own benefit while he was in a relationship with her, and it "was understood [the workshop] was for Murphy's use and to do with as he pleased." Thus, to the extent the building was an "enrichment" to Woomer, Murphy made no showing it is unjust for her to retain it without compensating him.[3] *See Freeman*, 226 Ariz. 242, ¶ 28 (no unjust enrichment where expenditures on road were for plaintiffs' own purposes and benefit to neighbors was simply by-product of plaintiffs' contributions). Summary judgment in Woomer's favor on this claim was not erroneous.

Fraud

¶20 To the extent we understand it, Murphy's fraud claim alleged Woomer and Groover knew "they had no intention of allowing [him] to continue to use his building, or to move it," and they misused the legal system by "obtaining a fraudulent protective order to keep [him] away from it." "An allegation of fraud must be pled with particularity." *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 53 (App. 2009). Murphy, however, failed to plead any element of fraud—actual or constructive—in his complaint and the trial court rejected it, reasoning "[n]o evidence was presented that Woomer defrauded Murphy in any way." On appeal, Murphy merely asserts that material issues of fact exist and that the court erred in finding no evidence to support his fraud claim when "the evidence is contained in the general history throughout the case." This argument is undeveloped and insufficient to merit review, and we do not address it further. *See* Ariz. R. Civ. App. P. 13(a)(7) (Appellant's argument must contain his "contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities.");

[3]Murphy also argues it is unfair for Woomer to claim "she did not ask for the building and at the same time refuse to let [Murphy] move" it. But as explained above, the workshop is a fixture to Woomer's property, and Murphy was not entitled to remove it simply because he constructed it and wished to relocate it after the demise of his relationship with Woomer. And again, that Woomer retained some benefit from the building does not alone entitle Murphy to relief in unjust enrichment. *See Pyeatte v. Pyeatte*, 135 Ariz. 346, 353 (App. 1982) ("The mere fact that one party confers a benefit on another, however, is not of itself sufficient to require the other to make restitution.").

Polanco v. Indus. Comm'n, 214 Ariz. 489, n.2 (App. 2007) (insufficient argument waives review of claim); *see also W.J. Kroeger Co.*, 112 Ariz. at 286 (party opposing summary judgment must do more than claim an issue of fact exists; he must "show that evidence is available that would justify a trial").

Attorney Fees and Costs on Appeal

¶21 Woomer and Groover request their attorney fees and costs on appeal pursuant to A.R.S. §§ 12-349 and 12-1103. Because they have failed to explain how they are entitled to fees under § 12-1103, which applies to actions to quiet title, we decline their request under that statute. As to § 12-349, Woomer and Groover contend Murphy's claims were "meritless" and pursued "for purposes of harassment" and further request a sanction under Rule 25, Ariz. R. Civ. App. P. In our discretion, we decline to award fees or sanction Murphy. *See Bank of N.Y. Mellon v. Dodev*, 246 Ariz. 1, ¶ 39 (App. 2018) (noting we impose sanctions "only with great reservation" (internal quotation omitted)). As the prevailing parties, however, we award Woomer and Groover their costs upon compliance with Rule 21, Ariz. R. Civ. App. P.[4]

Disposition

¶22 The trial court's entry of summary judgment in favor of Woomer and Groover is affirmed.

[4]Although he represented himself below and on appeal, Murphy has requested his attorney fees. We decline Murphy's request because he is not the prevailing party on appeal, and, in any event, attorney fees are not awardable for a layman's pro se representation. *See Munger Chadwick, P.L.C. v. Farwest Dev. & Constr. of the Sw., LLC*, 235 Ariz. 125, ¶ 5 (App. 2014).