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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

SC-2022-0501

**Ingenuity International, LLC; Robert Przybysz; Global Asset
Management-Holdings, LLC; and David G. Byker**

v.

Nannette Smith

**Appeal from Jefferson Circuit Court
(CV-14-163)**

SC-2022-0502

**Ingenuity International, LLC; Robert Przybysz; Global Asset
Management-Holdings, LLC; and David G. Byker**

v.

Nannette Smith

**Appeal from Jefferson Circuit Court
(CV-14-369)**

PARKER, Chief Justice.

The Jefferson Circuit Court summarily enforced a settlement agreement by ordering the defendants to either (1) pay money directly to the plaintiff or (2) pay money to the clerk of court pending adjudication of the plaintiff's claims alleging breach of the settlement agreement. Because the circuit court essentially entered a summary judgment on the breach-of-settlement-agreement claim and issued an injunction order sua sponte and with no notice to the parties, the court deprived the defendants of their due-process right to an opportunity to respond. Accordingly, we reverse.

I. Facts

Nannette Smith, the 20% owner of B2K Systems, LLC ("B2K"), sued B2K, asserting numerous claims related to the sale of certain intellectual property in software developed by Smith. In the same action, Smith sued B2K's 80% owner, Ingenuity International, LLC

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("Ingenuity"); Robert Przybysz, the owner of Ingenuity; B2K's secured creditor, Global Asset Management-Holdings, LLC ("GAM"); and David G. Byker, GAM's owner (collectively "the defendants"). The action was later consolidated with an action by GAM to domesticate a Michigan judgment against B2K.

The parties eventually settled, and their attorneys read the settlement agreement into the record at a hearing on November 15, 2016. Thereafter, Smith amended her complaint, asserting an additional claim based on an alleged breach of the settlement agreement by the defendants. She also asserted claims of fraud and conspiracy. Smith amended her complaint several times thereafter, and she added claims of malicious prosecution/abuse of process and unjust enrichment.

The defendants moved for leave to deposit \$20,956.28 with the circuit clerk under Rule 67, Ala. R. Civ. P., pending adjudication of Smith's claim that she was entitled to 20% of the revenue from the sale of the software. Thereafter, the court entered the following order in the consolidated actions:

"1. Defendants ... are ORDERED and DIRECTED to pay \$20,956.28 directly to ... counsel of record for ... [Smith],

or to pay the entire \$84,650.00 received as royalties from the ... software to the Clerk of Court to be held pending further orders of the Court.

"....

"4. ... [Smith] is entitled to \$20,956.28 under the terms of the settlement ... on November 15, 2016

"5. If the Defendants wish to contest the Court's understanding of the terms of the settlement agreement as it impacts the \$20,956.28 referenced above, they may do so at the trial of the remaining matters in these consolidated cases."

The court scheduled a jury trial on Smith's remaining claims. The defendants moved to alter, amend, or vacate the order, but it does not appear that the court ruled on that motion. The defendants appeal the court's order, under Rule 4(a)(1)(A), Ala. R. App. P. (injunctions).

II. Analysis

A. Jurisdiction

Rule 4(a)(1)(A), Ala. R. App. P., provides an appeal of right from "any interlocutory order granting ... an injunction." The circuit court's order was interlocutory because it did not resolve all of Smith's claims against the defendants.

Smith and the defendants agree that the order granted an injunction, but they dispute whether the injunction was preliminary or permanent. On the one hand, the defendants contend that the order granted a preliminary injunction because the court entered it before adjudicating Smith's claims. They point out that the order itself provided that the defendants could litigate at trial the merits of Smith's claims under the settlement agreement. Smith, on the other hand, contends that the order granted a permanent injunction because it enforced a settlement agreement. Both Smith and the defendants are correct because the order contains both a preliminary and a permanent injunction.

A permanent injunction is "[a]n injunction granted after a final hearing on the merits," Black's Law Dictionary 938 (11th ed. 2019); see City of Gadsden v. Boman, 143 So. 3d 695, 703 (Ala. 2013) (adopting Black's Law Dictionary's definitions of permanent and preliminary injunctions); Howell, Tilley's Alabama Equity § 3:1(d) (5th ed. 2012) ("The court issues a permanent or perpetual injunction after full hearing and decision of the merits of the matter and enjoins the respondent absolutely

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according to the matter which is specified."). By contrast, a preliminary injunction is "[a] temporary injunction issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case." Black's Law Dictionary 938. Preliminary injunctions are designed "to preserve the status quo in aid of the ultimate equitable relief claimed." Tilley's Alabama Equity § 3:1(b). In addition, injunctions are generally enforceable by contempt. See generally id. § 3:9.

In the order, the circuit court gave the defendants two options. First, the defendants could pay the \$20,956.28 directly to Smith ("option 1"). Because option 1 gave Smith the ultimate relief that she sought on her breach-of-contract claim and appears to have been enforceable by contempt had the defendants chosen not to comply (other than by choosing option 2), option 1 was a permanent injunction. See Boman, 143 So. 3d at 703.

Alternatively, the defendants could contest the court's ruling on the merits at the scheduled trial, but in order to do so, they would have to first deposit the entire \$84,650 in software royalties with the circuit clerk ("option 2"). Because option 2 was designed to maintain the status quo

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pending final determination of the merits of Smith's claims, that aspect of the order was a preliminary injunction. See id.

Accordingly, both options in the court's order are appealable under Rule 4(a)(1)(A).

B. Merits

1. Option 1

In reviewing option 1, we apply the standard of review that applies to a permanent injunction enforcing a settlement agreement, which is de novo. Kappa Sigma Fraternity v. Price-Williams, 40 So. 3d 683, 692 (Ala. 2009). In addition, option 1 was based on the circuit court's partial summary judgment, which we also review de novo. Ex parte Teal, 336 So. 3d 165, 168 (Ala. 2021).

As the defendants note, the relief ordered in option 1 was outside the scope of Rule 67, Ala. R. Civ. P., because that rule provides only for depositing of disputed property with the circuit clerk; it does not provide for delivery of disputed property to another party. Further, under Rule 67, a party "may" deposit disputed property "by leave of court." (Emphasis added.) Rule 67's permissive language makes clear that

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depositing property is voluntary, not compulsory. Thus, the trial court's role is limited to granting or withholding leave; Rule 67 does not give it authority to order such a deposit. Accordingly, in ordering option 1, the circuit court acted beyond the scope of Rule 67.

Instead, it appears that the circuit court acted under its general authority to enforce settlement agreements. See Kappa Sigma, 40 So. 3d at 696 (Murdock, J., concurring in rationale in part and concurring in result) ("[A] trial court exercises inherent power to [enforce a settlement agreement] based on the fact that the agreement has been made before the court."). Normally, when a party to a settlement agreement alleges, before the underlying claim has been dismissed, that the settlement agreement has been violated, that party seeks relief by moving to enforce the settlement agreement instead of asserting a new claim of breach of contract. See Lem Harris Rainwater Family Trust v. Rainwater, [Ms. 1210106, Sept. 30, 2022] ___ So. 3d ___, ___ (Ala. 2022) ("[W]hen a settlement agreement ... is entered into mid-litigation and the underlying action is not dismissed, the mechanism for seeking relief based on a breach of that agreement is a motion to enforce the

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agreement."). That motion essentially functions as an amendment to the complaint, asserting a breach-of-contract claim against the allegedly breaching party. See Billy Barnes Enters., Inc. v. Williams, 982 So. 2d 494, 498 (Ala. 2007) (explaining that a motion to enforce a settlement agreement is an alternative to filing a new action alleging breach of the settlement agreement). In addition, a motion to enforce functions as a summary-judgment motion because the trial court may summarily dispose of it by entering a judgment in favor of the moving party, see Mays v. Julian LeCraw & Co., 807 So. 2d 551, 554 (Ala. Civ. App. 2001) ("A settlement agreement ... will be summarily enforced."); Sagamore Ins. Co. v. Sudduth, 45 So. 3d 1286, 1289 (Ala. Civ. App. 2010) (same).¹

¹That authority of a trial court does not permit it to enforce a settlement agreement in a perfunctory manner when there is a disputed issue of fact. See Hensley v. Alcon Lab'ys, Inc., 277 F.3d 535, 541 (4th Cir. 2002) ("If there is a factual dispute ... the [trial] court may not enforce a settlement agreement summarily"). Instead, the trial court must hold an evidentiary hearing on that factual issue. As this Court recently explained:

"[T]he principles that apply to breach-of-contract claims also ordinarily apply to a motion to enforce a settlement agreement. When a party raises a defense to a breach-of-contract claim and the defense involves an issue of fact,

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Ordinarily, then, when a party moves to enforce a settlement agreement, the party simultaneously amends the complaint and moves for a summary judgment on the new claim.

But Smith did not avail herself of that mechanism. Instead, she simply amended her complaint to add a breach-of-contract claim based on the defendants' alleged breach of the settlement agreement. When the circuit court then ordered the defendants to pay Smith the relief that she sought (\$20,956.28) in the name of enforcing the settlement agreement, the court essentially entered a summary judgment in her favor on that claim. And the court did so sua sponte, without giving the defendants notice and an opportunity to be heard.

normally a trial must be held on the defense. Accordingly, when the same situation arises on a motion to enforce a settlement agreement, an evidentiary hearing must be held. That is, when a party raises a fact-based defense to enforcement of a settlement agreement, that defense must be resolved in the same way other issues of fact are resolved -- by conducting a hearing at which evidence is received and any witnesses are subject to cross-examination."

Lem Harris Rainwater Family Trust v. Rainwater, [Ms. 1210106, Sept. 30, 2022] ___ So. 3d ___, ___ (Ala. 2022) (citations omitted).

As the defendants note, this Court has held that a trial court should not sua sponte enter a summary judgment for a party who has not moved for such a judgment without affording the other party an opportunity to respond, Giles v. Brookwood Health Servs., Inc., 5 So. 3d 533, 555 (Ala. 2008). This Court reasoned that "[o]ne purpose of the procedural rights to notice and hearing under Rule 56(c) ... is to allow the nonmoving party the opportunity to discover and to present evidence opposing the motion for summary judgment." Id. (emphasis and citations omitted). Accordingly, entering a summary judgment without a motion from the benefiting party, and without providing the other party notice and an opportunity to respond, violates the due-process rights of that other party. See Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 927 (Ala. 2002) ("[T]he trial court violates the rights of the nonmoving party if it enters a summary judgment on its own, without any motion having been filed by a party."); Cofield v. City of Huntsville, 527 So. 2d 1259, 1260 (Ala. 1988) (noting that the requirement of notice before entry of summary judgment is based on due-process considerations). Here, by ordering option 1 without providing the

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defendants notice and an opportunity to respond, the circuit court deprived them of due process.

Smith contends that the circuit court had authority to enforce the settlement agreement under § 34-3-21, Ala. Code 1975, which provides that "[a]n attorney has authority to bind his or her client, in any action or proceeding, by any agreement in relation to such case, made in writing, or by an entry to be made on the minutes of the court." Certainly, the court had authority to enforce the settlement agreement; the problem is that it did so without a motion to enforce and without giving the defendants an opportunity to object to such enforcement. Authority to enforce does not mean authority to enforce without due process.

For these reasons, we conclude that the circuit court erred in ordering option 1.

2. Option 2

In option 2, the circuit court ordered the defendants to deposit the entire \$84,650 in software royalties with the clerk of court pending resolution of Smith's breach-of-contract claim. As noted above, because option 2 was designed to preserve the status quo pending litigation, it

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was a preliminary injunction. See City of Gadsden v. Boman, 143 So. 3d 695, 703 (Ala. 2013). When reviewing a preliminary injunction, we review de novo a trial court's legal rulings based on undisputed facts, but we review the ultimate decision to issue the injunction under an excess-of-discretion standard. City of Helena v. Pelham Bd. of Educ., [Ms. SC-2022-0554, Oct. 21, 2022] ___ So. 3d ___, ___ (Ala. 2022).

Here, the circuit court ordered the defendants to deposit approximately four times more than the defendants moved to deposit under Rule 67, Ala. R. Civ. P. Thus, as with option 1, the court acted beyond the scope of Rule 67. Instead, the court acted under its authority to issue preliminary injunctions. But Rule 65(a)(1) provides that "[n]o preliminary injunction shall be issued without notice to the adverse party." Thus, "[n]otice to the adverse party before a preliminary injunction is issued is mandatory." Funliner of Alabama, L.L.C. v. Pickard, 873 So. 2d 198, 219 (Ala. 2003). Failure to provide such notice violates due process. Southern Homes, AL, Inc. v. Bermuda Lakes, LLC, 57 So. 3d 100, 104 (Ala. 2010). As the defendants note, the circuit court did not give them notice that it would order them to deposit more than

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the amount they moved for leave to deposit. Accordingly, option 2 also deprived the defendants of due process of law.

III. Conclusion

Based on the foregoing, we reverse the circuit court's order and remand the cases for further proceedings.

SC-2022-0501 -- REVERSED AND REMANDED.

SC-2022-0502 -- REVERSED AND REMANDED.

Shaw, Wise, Mitchell, and Cook, JJ., concur.

Bryan, Sellers, Mendheim, and Stewart, JJ., concur in the result.