Rel: July 12, 2019

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

1170974

Keith Michael Arnold

v.

Hyundai Motor Manufacturing Alabama, LLC

1171026

Hyundai Motor Manufacturing Alabama, LLC

v.

Keith Michael Arnold

Appeals from Montgomery Circuit Court
(CV-16-900153)

MITCHELL, Justice.

This dispute centers on whether Keith Michael Arnold must reimburse his former employer, Hyundai Motor Manufacturing Alabama, LLC ("HMMA"), for expenses HMMA incurred in moving Arnold from Kentucky to Alabama to begin employment at HMMA's manufacturing facility in Montgomery. When he started his employment, Arnold signed an agreement obligating him to reimburse HMMA for his relocation expenses if he voluntarily left his employment with HMMA within 24 months. Just 16 months after beginning his employment, Arnold resigned his position with HMMA. After Arnold refused to reimburse HMMA for the relocation expenses it had paid on his behalf, HMMA sued him in the Montgomery Circuit Court, asserting a breach-of-contract claim. HMMA obtained a summary judgment against Arnold for $67,534 in damages, but the trial court denied HMMA's request for prejudgment interest, attorney fees, and expenses.

Arnold appeals the summary judgment in favor of HMMA. HMMA cross-appeals and argues that, under the terms of the reimbursement agreement, it was entitled to $11,710 for prejudgment interest and $20,293 for attorney fees and

expenses. We affirm the summary judgment entered by the trial court to the extent it held that Arnold was liable for breach of contract and awarded HMMA $67,534. Because HMMA has established that it had a contractual right to additional sums beyond the $67,534 awarded by the trial court, we reverse that portion of the judgment denying HMMA's request for those additional sums and remand the cause for the trial court to enter a final judgment in favor of HMMA for $99,537, an amount that fully compensates HMMA under the reimbursement agreement.

Facts and Procedural History

In late 2012, a third-party recruiter approached Arnold, who had approximately 15 years of experience working in the automotive industry, to gauge his interest in a possible job with HMMA. At the time, Arnold was working at a manufacturing facility in Kentucky, but Arnold previously had a favorable experience working for Kia Motors Manufacturing Georgia, a sister company of HMMA, and was interested in returning to the automotive industry. Arnold decided to pursue the opportunity with HMMA, and, in January 2013, he was offered a position as a manager in HMMA's production-control department.

As part of the offer made to Arnold, HMMA agreed to pay certain expenses associated with his relocation from Kentucky to Alabama. Those expenses included not only Arnold's actual moving costs, but also a general relocation allowance, the cost of Arnold's temporary housing in Montgomery, expenses for travel and house hunting, and other incidental costs. Arnold accepted HMMA's offer of employment, and HMMA ultimately expended a total of $67,534 in connection with Arnold's relocation.[1] Arnold began work for HMMA on March 11, 2013.

On March 13, 2013, Arnold executed HMMA's standard relocation-reimbursement agreement, which provides, in pertinent part:

> "[Arnold] understands and agrees that if [he] voluntarily terminates his ... employment with HMMA ... within the first twenty-four (24) months of [his] start date, then [he] shall reimburse HMMA for all relocation costs paid by HMMA on behalf of [him] pursuant to the relocation policy, plus a gross up amount for taxes as determined by HMMA. [Arnold] hereby gives HMMA a lien on [his] wages and authorizes HMMA to deduct said relocation expenses from [his] wages. If [Arnold's] wages are insufficient to cover all costs he ... owes to HMMA, [he] shall make payment to HMMA for all relocation expenses within thirty (30) days after the termination of [his] employment with HMMA."

[1]This amount includes the taxes HMMA paid on certain benefits provided to Arnold.

The agreement also obligated Arnold to pay "all collection costs, charges and expenses incurred by HMMA, including but not limited to all collection agency fees, interest and attorneys' fees" that resulted from Arnold's failure to timely reimburse HMMA any amounts that became due under the agreement.

Arnold states that, upon beginning his new employment, he had a positive relationship with his coworkers, including his immediate supervisor, Angela James, and her supervisor, Wongyun Park. But the relationship between James and Park began deteriorating, and Arnold was allegedly drawn into the conflict and also began having problems with Park. Arnold states that Park began bypassing James and communicating directly with Arnold and that, during their interactions, Park was often angry and aggressive, frequently berating and humiliating him in front of other employees. According to Arnold, Park continually criticized him for matters that were outside Arnold's control, and Park repeatedly tried to force him to take actions that were contrary to HMMA policy. Arnold specifically alleges that Park asked him: (1) to falsify the repair orders for forklifts so that the forklifts might

qualify for warranty service; (2) to hire fewer women into the production-control department; and (3) to install cameras in certain areas of the HMMA facility without obtaining approval from HMMA's legal department. Arnold states that his refusal to take these actions further angered Park.

On February 20, 2014, Arnold filed a complaint with HMMA's human-resources department about the way Park treated him and the hostile work environment Arnold alleged existed in the production-control department because of Park's behavior. Arnold explained in the complaint that the conflict with Park was impacting his health and that he could not "continue to be expected to take verbal abuse and unrealistic requests on an ongoing basis." Arnold states that HMMA's legal department subsequently conducted an investigation but that he was unsure of the ultimate findings of the investigation.

Arnold states that, after he filed his complaint with human resources, Park's treatment of him became even worse. Arnold claims that Park continually required him to spend much of his shift observing in "the weld shop," after which he would have to return to his desk and complete his regularly assigned work duties. Arnold states that he had to work 24-

hour days on multiple occasions as a result of the extra assignments Park gave him and that Park told him that Korean managers often worked 24 hours a day. Arnold further asserts that the other managers had a running joke that his assignment to the weld shop was punishment from Park and that he was humiliated by the assignment and the jokes. Eventually, Arnold concluded that he could not continue working at HMMA, and, on June 30, 2014, he submitted a resignation letter to James, stating, in relevant part:

> "This letter is to inform you that I will be resigning my position as materials manager with HMMA effective July 11, 2014. ... My decision to leave is based on a work environment that continues to be retaliatory in nature and has negatively affected my health as well as the significant imbalance between work and life. This was not an easy decision, yet one that is necessary. It is apparent that the organization is displeased with my performance and I as well have been displeased with the treatment and often demeaning behavior directed towards me. My expectations are that HMMA can mutually agree to a separation without further repercussions both professionally and legally by either party."

Before leaving HMMA, Arnold had an exit interview with Scott Gordy, a manager in HMMA's human-resources department. The meeting lasted approximately 30-40 minutes, and, during the meeting, Arnold told Gordy that he felt like HMMA was forcing him out and retaliating against him for making the

complaint about Park's behavior. Arnold states that he also reiterated to Gordy what he wrote in his resignation letter -- that he expected there to be a mutual separation without any further professional or legal repercussions. Arnold asserts that, in response, Gordy "nodded his head and told me, 'Sorry things ended up the way they did,' and wished me the best of luck, shook my hand, and I walked out the door." It is undisputed that HMMA thereafter paid Arnold all the funds to which he was entitled, including his salary and employer retirement contributions for the days he worked, a payout for his accrued vacation days, and reimbursement for certain job-related expenses he had incurred.

Arnold left HMMA in July 2014 and apparently had no further contact with his former employer until March 2015, when he received a letter from HMMA stating that he owed HMMA $67,534 under the terms of the reimbursement agreement. Arnold responded with a letter denying that he owed HMMA any reimbursement and requesting that HMMA withdraw its demand. It is not clear from the record if there were any other communications between the parties, but, in any event, Arnold refused to make any reimbursement to HMMA. On February 4,

2016, HMMA sued Arnold alleging breach of contract. Arnold filed an answer denying that he owed HMMA any money and asserting a breach-of-contract counterclaim.[2] On December 5, 2017, HMMA moved for a summary judgment on the claims asserted by both parties and an award of $67,534 on its breach-of-contract claim, with an additional amount to be determined for interest, attorney fees, and expenses. HMMA supported its summary-judgment motion with, among other things, a copy of the reimbursement agreement executed by Arnold, a copy of Arnold's resignation letter, excerpts from Arnold's deposition, and an affidavit from Gordy detailing the $67,534 that HMMA claimed Arnold owed.

In his response to HMMA's summary-judgment motion, Arnold claimed that he had not breached the terms of the reimbursement agreement because, he said, he had not voluntarily terminated his employment but had instead been forced to resign. In addition, Arnold alleged that he and Gordy had agreed at his exit interview that neither he nor

[2]Arnold also asserted a second counterclaim against HMMA based on the harassment and retaliation he alleged he had endured while working for HMMA. It is not clear, however, exactly what cause of action he intended to state in this counterclaim.

HMMA would take any legal action against the other. The trial court conducted a hearing on HMMA's summary-judgment motion and, on February 21, 2018, entered a summary judgment in favor of HMMA and against Arnold, awarding HMMA $67,534. The trial court also dismissed Arnold's counterclaims.

On February 27, 2018, HMMA filed a postjudgment motion asking the trial court to amend the summary-judgment order and to award it an additional $11,710 for prejudgment interest, as well as $20,293 for attorney fees and expenses, all of which it asserted the reimbursement agreement obligated Arnold to pay. HMMA noted that it had requested such an award in its summary-judgment motion but that it had been unable to state at that time the exact sum being claimed because the case was ongoing and interest and attorney fees continued to accrue. HMMA supported its request with an affidavit from its attorney detailing the claimed attorney fees and expenses.

On March 9, 2018, Arnold filed his own postjudgment motion asking the trial court to vacate the summary judgment entered in favor of HMMA and to deny HMMA's postjudgment motion. On June 14, 2018, the trial court purported to enter an amended summary-judgment order awarding HMMA a total of

$99,537 -- $67,534 on its breach-of-contract claim, $11,710 for prejudgment interest, and $20,293 for attorney fees and expenses. But under Rule 59.1, Ala. R. Civ. P., both HMMA's and Arnold's postjudgment motions had already been denied by operation of law because the trial court had not ruled on them within 90 days of their filing. The trial court's amended order was therefore void. See, e.g., Ex parte Jackson Hosp. & Clinic, Inc., 49 So. 3d 1210, 1212 (Ala. 2010) ("The trial court's order was void because it lost jurisdiction after the running of the 90-day period prescribed by Rule 59.1."). On July 18, 2018, Arnold filed a notice of appeal challenging the summary judgment awarding HMMA $67,534, and HMMA subsequently filed its own notice of appeal arguing that it should have been awarded prejudgment interest, attorney fees, and expenses.

Arnold's Appeal (no. 1170974)

Arnold argues that the trial court erred by entering a summary judgment against him and in favor of HMMA. In Nationwide Property & Casualty Insurance Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000), this Court stated that, when a party "appeals from a summary judgment,

our review is de novo." The Nationwide Court further explained how that standard of review is applied:

> "We apply the same standard of review the trial court used in determining whether the evidence presented to the trial court created a genuine issue of material fact. Jefferson County Comm'n v. ECO Preservation Services, L.L.C., 788 So. 2d 121 (Ala. 2000) (quoting Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)). Once a party moving for a summary judgment establishes that no genuine issue of material fact exists, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). 'Substantial evidence' is 'evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). In reviewing a summary judgment, we view the evidence in the light most favorable to the nonmovant and entertain such reasonable inferences as the jury would have been free to draw. Jefferson County Comm'n v. ECO Preservation Servs., L.L.C., supra (citing Renfro v. Georgia Power Co., 604 So. 2d 408 (Ala. 1992))."

Arnold first asserts that the summary judgment was entered in error because, he claims, there is a genuine issue of material fact about whether he voluntarily terminated his employment with HMMA. Arnold argues that there was substantial evidence before the trial court that he did not, in fact, voluntarily terminate his employment but that he was

instead forced to resign. Therefore, he argues, the reimbursement agreement has no application because it obligated him to reimburse HMMA only if he voluntarily terminated his employment. In essence, Arnold contends that HMMA cannot establish the elements of a breach-of-contract claim because, he alleges, there has been no breach. See, e.g., Capmark Bank v. RGR, LLC, 81 So. 3d 1258, 1267 (Ala. 2011) (explaining that a party seeking to recover for a breach of contract must establish "the defendant's nonperformance" under the contract).

In support of this contention, Arnold cites Black's Law Dictionary 1806 (10th ed. 2014), which defines "voluntary" as being "[u]nconstrained by interference; not impelled by outside influence." Arnold argues that, considering this definition and the hostile work conditions he says he was experiencing at HMMA, it cannot be said that he voluntarily terminated his employment. He further argues, on the basis of several cases, that whether an employee has voluntarily terminated his or her employment is a question of fact and that a fact-finder must make that determination based on what a reasonable employee would have done under the circumstances.

See Andala Co. v. Ganus, 269 Ala. 571, 572, 115 So. 2d 123, 125 (1959) (stating that, in determining whether an employee acted reasonably in terminating her employment, "a test of good cause is whether it is reasonable when measured by what the average or normal worker would have done under similar circumstances"); Department of Indus. Relations v. Ford, 700 So. 2d 1388, 1390 (Ala. Civ. App. 1997) ("Whether an employee leaves his employment voluntarily without good cause is a question of fact."); Department of Indus. Relations v. Jones, 669 So. 2d 170, 172 (Ala. Civ. App. 1995) ("The pertinent consideration is whether the employees acted reasonably as normal, average employees in voluntarily separating from their employment.").

In response, HMMA argues that the evidence is undisputed that Arnold voluntarily terminated his employment, beginning with his own resignation letter, which stated: "I will be resigning my position." For all that appears, HMMA argues, Arnold could have chosen to continue working for HMMA through July 2014 and beyond because there is no evidence in the record indicating that HMMA had communicated to Arnold that he could no longer work there. HMMA further argues that, even if

Arnold was subjected to harsh treatment at work and his work environment was demanding and unpleasant, he was, as HMMA bluntly states on appeal, "not promised everyone would be nice to him," HMMA's brief, p. 7, and his dissatisfaction with his work environment does not excuse his breach of the reimbursement agreement.

HMMA also argues that the cases cited by Arnold in support of his argument are inapplicable. All three cases, HMMA notes, involve the unemployment-benefits statutes, which are "remedial in character" and "should be liberally construed" to give effect to their "beneficent purpose." Holmes v. Cook, 45 Ala. App. 688, 691, 236 So. 2d 352, 355 (Ala. Civ. App. 1970). Upon review, we agree that the cases cited by Arnold are of limited relevance to this appeal, and, to the extent they are relevant, they actually support HMMA's position rather than Arnold's.

Arnold relies primarily upon Ford, in which the Court of Civil Appeals considered § 25-4-78(2), Ala. Code 1975, which provides that an individual is disqualified from receiving unemployment benefits "[i]f he has left his most recent bona fide work voluntarily without good cause connected with such

work." The claimant in Ford sought unemployment benefits after closing a failing business he owned and at which he worked, but the Department of Industrial Relations ("DIR") denied his application for benefits. 700 So. 2d at 1389. The claimant appealed to the circuit court, which rejected DIR's argument that the claimant had voluntarily quit working, finding instead that he had been forced to close the business for reasons beyond his control. The circuit court accordingly ruled in favor of the claimant and granted him unemployment benefits. DIR appealed that judgment, arguing to the Court of Civil Appeals that the claimant had voluntarily terminated his employment and was thus not entitled to unemployment benefits. 700 So. 2d at 1390.

In considering the case, the Court of Civil Appeals first recognized that the ore tenus rule applied to the circuit court's finding that the claimant had not voluntarily terminated his employment. But, citing Black's Law Dictionary and the plain meaning of the term "voluntary," the court concluded that the claimant's decision to close his business and to stop working was voluntary because it was undisputed

that the claimant alone had made that decision.[3] In explaining its reasoning, the Court of Civil Appeals noted that "other jurisdictions have determined that where a business owner closes the business because the business has failed, the owner quits voluntarily, because the success or failure of the business was in the control of the owner." 700 So. 2d at 1390 (citing Fish v. White Equip. Sales & Serv., Inc., 64 Wis. 2d 737, 221 N.W.2d 864 (1974), and Mednick v. Unemployment Comp. Bd. of Review, 196 Pa. Super. 73, 173 A.2d 665 (1961)). Ford does not support Arnold's argument that his decision to terminate his employment was effectively involuntary because he felt his work circumstances required that decision.

The two other cases cited by Arnold -- Andala and Jones -- did not present an issue of whether the claimants seeking unemployment benefits had voluntarily terminated their employment. In Andala, the claimant admitted that she had

[3]The Ford court nevertheless affirmed the circuit court's judgment awarding the claimant unemployment benefits because, even though the claimant had voluntarily terminated his employment, he had done so with "good cause," and § 25-4-78(2) provides that an employee is disqualified from receiving unemployment benefits only if the employee left his position "voluntarily without good cause." 700 So. 2d at 1392.

voluntarily terminated her employment because she was earning less under a new pay structure. See Andala Co. v. Ganus, 40 Ala. App. 455, 457, 115 So. 2d 119, 120 (1958). And in Jones, the Court of Civil Appeals noted that it was "undisputed" that the claimants had voluntarily terminated their employment by agreeing to buyouts in the face of an imminent workforce restructuring. 669 So. 2d at 170-71. The analysis in Andala and Jones was thus centered on the issue of whether employees who had voluntarily terminated their employment had done so for good cause. That analysis is irrelevant here because, unlike the unemployment-compensation statutes discussed in those cases, the reimbursement agreement Arnold executed had no "good-cause provision" excusing him from his obligation to reimburse HMMA if his decision to leave HMMA was made for good cause. Accordingly, Andala and Jones are of no assistance to Arnold.

The case most similar to this appeal is Ellis v. Owen, 507 So. 2d 436 (Ala. 1987), in which this Court affirmed a summary judgment entered in favor of a supervisor who had been sued by a former employee seeking reinstatement to his job at a state community college after submitting a letter of

resignation. The employee had been informed that his contract of employment would not be renewed after it expired, and he thereafter submitted a letter of resignation stating that he would resign two weeks before the term of his employment ended. 507 So. 2d at 437. The employee later changed his mind and sued his supervisor seeking to be reinstated, arguing "that his resignation was not voluntary, but was made under duress brought about by the necessity of finding other employment prior to the beginning of a new school term." Id. After the trial court entered a summary judgment in favor of the supervisor, the employee appealed to this Court, arguing that a summary judgment was improper because "his affidavit in opposition to summary judgment was sufficient to supply a scintilla of evidence on the question of the voluntariness of the resignation."[4] Id. This Court disagreed, holding that the employee's affidavit explaining the duress he was experiencing at the time he gave notice of his resignation was insufficient to establish a genuine issue of material fact

[4]"Effective June 11, 1987, the scintilla rule was abolished in favor of the substantial-evidence rule. See § 12-21-12, Ala. Code 1975." Furrow v. Helton, 13 So. 3d 350, 359 n. 6 (Ala. 2008). Nevertheless, the principles articulated in Ellis apply here.

because "[i]t does not refute the assertion that he resigned his position," nor did it "set forth specific facts to provide a scintilla of evidence that his resignation was not voluntary." 507 So. 2d at 438. The Ellis Court thus affirmed the trial court's judgment, holding that "[b]ecause [the employee] has failed to show the existence of a scintilla of evidence that his resignation was not made voluntarily, summary judgment was appropriate." Id.

As in Ellis, Arnold has submitted evidence explaining why he terminated his employment, but that evidence is ultimately irrelevant to our inquiry because it "does not refute the assertion that he resigned his position." 507 So. 2d at 438. The material evidence is undisputed, and it establishes that Arnold made the decision to voluntarily terminate his employment with HMMA because he no longer wanted to work at HMMA's facility. Unlike the unemployment-benefits cases cited by Arnold, there is no need for a fact-finder to consider whether Arnold's reasons for terminating his employment were reasonable or constituted good cause. Because there is no genuine issue of material fact about whether Arnold

voluntarily terminated his employment, resolution of that issue on summary judgment was appropriate.

In the alternative, Arnold argues that, even if he did voluntarily terminate his employment with HMMA, he and Gordy reached an agreement at his exit interview that neither he nor HMMA would take any legal action against the other. The basis of Arnold's argument that he and Gordy had an agreement is Gordy's alleged nod and handshake after Arnold made a general statement to the effect that Arnold expected there to be a mutual separation without any professional or legal repercussions. There is no evidence indicating that the alleged agreement was reduced to writing, and HMMA argues that Gordy's vague actions cannot be construed as formal acceptance of Arnold's vague offer.

Even if we assume that Gordy's actions did constitute an acceptance of Arnold's offer that he would forgo any legal action if HMMA agreed to do the same, enforcement of such an oral agreement is barred by the Statute of Frauds, which provides that, with the exception of consumer loans with a principal amount under $25,000, "[e]very agreement or commitment to lend money, delay or forebear repayment thereof"

is void "unless such agreement or some note or memorandum thereof expressing the consideration is in writing." § 8-9-2(7), Ala. Code 1975. Thus, under § 8-9-2(7), any agreement by HMMA to forgive or otherwise waive its right to collect the debt Arnold owed would have no legal effect unless that agreement was in writing. See, e.g., DeVenney v. Hill, 918 So. 2d 106, 115 (Ala. 2015) (holding that an oral agreement to refrain from collecting on a $150,000 debt was void under § 8-9-2(7)); Coleman v. BAC Servicing, 104 So. 3d 195, 207 (Ala. Civ. App. 2012) (holding that an oral agreement providing that a mortgage loan would not be foreclosed upon while the borrower was in a loss-mitigation program was void under § 8-9-2(7)).

We further note that, in his briefs to this Court, Arnold has not disputed HMMA's defense that § 8-9-2(7) bars any recovery under an alleged oral agreement. Arnold argues in his reply brief that § 8-9-2(1) does not apply because that subsection of the Statute of Frauds requires written evidence of an agreement only when the agreement cannot "be performed within one year from the making thereof." But HMMA has not made an argument under subsection (1) of the Statute of

Frauds. Rather, HMMA's Statute of Frauds argument is premised entirely on § 8-9-2(7), which applies to "[e]very agreement or commitment to lend money, delay or forebear repayment thereof" and contains no exception based on the time in which the alleged oral agreement might be performed. (Emphasis added.) Accordingly, Arnold's allegation of the existence of an oral agreement is foreclosed by the Statute of Frauds.

Arnold's final argument is that HMMA has unclean hands. See generally Foy v. Foy, 447 So. 2d 158, 162 (Ala. 1984) ("[W]here a party with unclean hands seeks relief, none is granted."). Arnold states that HMMA misled him into believing that it would not enforce the reimbursement agreement through Grady's indications that HMMA would not do so and then by paying Arnold all the money he was due upon his separation of employment without withholding any funds for the reimbursement of relocation expenses. These acts were done, Arnold alleges, to induce him not to file a complaint with the Equal Employment Opportunity Commission ("EEOC") within the 180-day limitations period following the end of his employment.[5] Arnold alleges that HMMA purposely waited until he could no

[5]The exact nature of any complaint Arnold might have filed with the EEOC is unclear.

longer file an EEOC complaint before seeking to enforce the reimbursement agreement and that the equitable doctrine of unclean hands should prevent HMMA from recovery.

Before the trial court, Arnold initially framed his unclean-hands argument as a promissory-estoppel argument. See, e.g., Dixieland Food Stores, Inc. v. Geddert, 505 So. 2d 371, 374 (Ala. 1987) (explaining that the doctrine of promissory estoppel provides that "'[a] promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise'" (quoting Restatement (First) of Contracts § 90 (1932))). Arnold argued to the trial court that HMMA reasonably expected him to rely on Gordy's oral promise that HMMA would not pursue any legal action against him, that he relied on that promise, and that not requiring HMMA to abide by its promise now would be an injustice.

In Branch Banking & Trust Co. v. Nichols, 184 So. 3d 337 (Ala. 2015), this Court considered an attempt to circumvent the Statute of Frauds by asserting claims in tort, as opposed

to contract, and by invoking the doctrine of promissory estoppel. We concluded that a party may not do so, reasoning in part that, if a party "'"was allowed to recover the benefit of a bargain already barred by the statute of frauds, the statute of frauds would become meaningless."'" Nichols, 184 So. 3d at 346 (quoting Holman v Childersburg Bancorporation, Inc., 852 So. 2d 691, 699 (Ala. 2002), quoting in turn Sonnichsen v. Baylor Univ., 47 S.W.3d 122, 127 (Tex. Ct. App. 2001)). The Nichols Court further explained that promissory estoppel may not be used to bypass the Statute of Frauds because "'"[i]t is well-settled in Alabama that 'an executory agreement which is void under the statute of frauds cannot be made effectual by estoppel merely because it has been acted on by the promisee, and has not been performed by the promisor.'"'" 184 So. 3d at 348 (quoting Durham v. Harbin, 530 So. 2d 208, 213 (Ala. 1988), quoting in turn Hurst v. Thomas, 265 Ala. 398, 402, 91 So. 2d 692, 695 (1956), quoting in turn Clanton v. Scruggs, 95 Ala. 279, 283, 10 So. 757, 759 (1892)). Whether Arnold's equity argument is framed in terms of unclean hands or promissory estoppel, he ultimately runs into the Statute of Frauds and his argument fails. The trial

court did not err by rejecting Arnold's argument that HMMA's motion for a summary judgment should be denied on equitable grounds. Thus, all of Arnold's arguments challenging the summary judgment entered in favor of HMMA are without merit, and that judgment is due to be affirmed.

HMMA's Cross-Appeal (no. 1171026)

In its cross-appeal, HMMA argues that the trial court erred by failing to award it prejudgment interest, attorney fees, and expenses, all of which the reimbursement agreement obligated Arnold to pay if he failed to timely reimburse HMMA any amounts that became due under that agreement. In Classroomdirect.com, LLC v. Draphix, LLC, 992 So. 2d 692, 709-13 (Ala. 2008), this Court recognized that the decision to award attorney fees and costs is generally within the discretion of the trial court. The Court recognized, however, that there is an exception when a claim for attorney fees is made under a contract. In such cases, "we apply a de novo review." 922 So. 2d at 710. HMMA's claim for prejudgment interest and expenses is based on a contractual right; thus, we apply a de novo standard of review.[6] See Winkleblack v.

[6]We note that § 8-8-8, Ala. Code 1975, provides that "[a]ll contracts, express or implied, for the payment of money

Murphy, 811 So. 2d 521, 525-26 (Ala. 2001) (explaining that, when a contractual provision is clear, any question about the legal effect of that provision is a question of law that is reviewed de novo).

HMMA requested an award of prejudgment interest, attorney fees, and expenses when it first moved the trial court for a summary judgment, noting that the reimbursement agreement expressly obligated Arnold to pay "all collection costs, charges and expenses incurred by HMMA, including but not limited to all collection agency fees, interest and attorneys' fees" that resulted from Arnold's failure to timely reimburse HMMA any amount that became due under the agreement. HMMA

... bear interest from the day such money ... should have been paid." Section 8-8-1, Ala. Code 1975, further provides that the legal rate of prejudgment interest is 6%. HMMA's calculation that Arnold owes $11,710 for prejudgment interest is based on that 6% rate applied to the 1,055 days between April 3, 2015 -- 30 days after HMMA sent Arnold a demand letter -- and the entry of the summary judgment on February 21, 2018.

By its terms, the reimbursement agreement obligated Arnold to "make payment to HMMA for all relocation expenses within thirty (30) days after the termination of [his] employment with HMMA." Therefore, HMMA might have been able to claim that Arnold owed interest on the unpaid sum from August 10, 2014 -- 30 days after his last day of employment. By claiming that interest only began to accrue on April 3, 2015, HMMA has forgone any claim to a greater award of interest based on the earlier August 2014 date.

further explained that the exact amount Arnold owed under this provision must be determined "based on the date of judgment." Just six days after the trial court granted HMMA's motion and entered a summary judgment that failed to account for prejudgment interest, attorney fees, and expenses, HMMA moved the trial court to alter or amend its judgment to include those additional sums. HMMA supported that postjudgment motion with an affidavit from its attorney describing his customary hourly rate for collection work, the number of hours he had worked on this case, the tasks he had performed during that time,[7] and the expenses his firm had paid to date, along with his statement that all the claimed fees and expenses were reasonable.

Remarkably, in his response to HMMA's postjudgment motion, Arnold failed to dispute the reasonableness of the prejudgment interest, attorney fees, or expenses claimed by HMMA, and he submitted no evidence to indicate that those

[7]HMMA's attorney stated in the affidavit that he had spent 102.9 hours working on this case and that those hours had been spent "drafting pleadings and motions, responding to pleadings and motions, communicating with [Arnold's] counsel, communicating with [HMMA], meeting with witness, attending and preparing for hearings, and attending and preparing for mediation, among other items."

calculations were excessive. Instead, Arnold primarily reargued that he had not breached the reimbursement agreement and that, even if he had, the trial court should nevertheless rule against HMMA as a matter of equity. He also made a conclusory statement that HMMA sought "a remedy not supported by the evidence." This response by Arnold was plainly insufficient and left the record without any evidence to counter the substantiated calculations brought forward by HMMA.

In support of its claim for attorney fees, HMMA cites Fikes v. Keller, 466 So. 2d 965 (Ala. Civ. App. 1985), which we find instructive. In Fikes, the plaintiffs had contracted to buy stock in a corporation from the defendants, and their purchase contract provided that the defendants "would be responsible for, hold harmless, and indemnify the [plaintiffs] from all claims and indebtedness incurred prior to the closing date, including reasonable attorney's fees incurred by [the plaintiffs] as [a] result of [the defendants'] default." 466 So. 2d at 965. After such a claim arose, the plaintiffs sued the defendants, alleging breach of contract, and obtained a judgment for $4,902, but the trial court failed to award the

plaintiffs attorney fees. On appeal, the Court of Civil Appeals reversed the judgment of the trial court, explaining:

> "In this case the [defendants] contracted to pay all judgments, costs, and expenses, including a reasonable attorney's fee incurred by the [plaintiffs] as a result of [defendants'] breach. The trial court found the [defendants] to have breached the contract. '[D]amages for the breach of a contract should restore the injured party to the condition he would have occupied if the contract had been fully performed.' Kennedy v. Hudson, 224 Ala. 17, 138 So. 282 (1932). Failure to award [plaintiffs] a reasonable attorney's fee, in this case, was error."

466 So. 2d at 966. The Fikes court then determined from the record what the attorney fee should be and remanded the cause for the trial court to enter a judgment in favor of the plaintiffs that included that amount.

Like Fikes, the underlying case involves a party, Arnold, who executed an agreement in which he obligated himself to pay certain amounts if he breached the terms of that agreement. As we have concluded, the evidence is undisputed that Arnold did, in fact, breach that agreement, and, like the plaintiffs in Fikes, HMMA is entitled to be restored to the condition it would have occupied had Arnold performed his obligations under the agreement. The trial court erred by failing to rule in favor of HMMA on this issue. The record contains sufficient

evidence from which this Court can determine the prejudgment interest, attorney fees, and expenses HMMA is entitled to recover under the reimbursement agreement. Accordingly, the cause is due to be remanded for the trial court to enter a judgment in favor of HMMA that includes $11,710 for prejudgment interest and $20,293 for attorney fees and expenses.

Conclusion

HMMA sued its former employee Arnold, alleging that he had breached the terms of a reimbursement agreement by voluntarily terminating his employment within 24 months of his start date and thereafter refusing to reimburse HMMA for the relocation expenses it had paid on his behalf. Although Arnold denies that he breached the agreement, the evidence in the record establishes that Arnold voluntarily terminated his employment with HMMA after approximately 16 months. When he did so, he triggered the obligation to reimburse HMMA $67,534 for the relocation expenses it had paid. Arnold has not shown that the trial court erred in entering a summary judgment in favor of HMMA for that amount.

The reimbursement agreement also obligated Arnold to pay HMMA interest if he failed to timely reimburse HMMA for any sums that came due under that agreement and to pay the attorney fees and expenses HMMA incurred attempting to collect under the agreement. HMMA submitted evidence to the trial court indicating that it was entitled to $11,710 for prejudgment interest and $20,293 for attorney fees and expenses, and the trial court erred by failing to include those amounts in its judgment. Accordingly, the judgment of the trial court, to the extent it failed to include those amounts, is reversed and the cause is remanded for the court to enter a final judgment in favor of HMMA for $99,537, an amount that fully compensates HMMA for all that it is entitled to recover under the terms of the reimbursement agreement.

1170974 -- AFFIRMED.

Parker, C.J., and Bolin, Wise, Sellers, Mendheim, and Stewart, JJ., concur.

Bryan, J., concurs in the result.

1171026 -- REVERSED AND REMANDED.

Parker, C.J., and Bolin, Sellers, Mendheim, and Stewart, JJ., concur.

Bryan, J., concurs in the result.

Wise, J., dissents.