SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D23-0112
Lower Tribunal No. 18-CA-001575

ANDREW CLARKE,

Appellant,

v.

GLOBAL GUARANTEED GOODS AND SERVICES, INC. D/B/A GLOBAL CONSTRUCTION, and HAYTHAM MAHMOUD,

Appellees.

Appeal from the Circuit Court for Lee County.
James R. Shenko, Judge.

June 9, 2023

WOZNIAK, J.

Andrew Clarke ("Clarke") appeals the trial court's final order denying his Motion to Enforce Settlement Agreement against Global Guaranteed Goods and Services, Inc. d/b/a Global Construction and its principal, Haytham Mahmoud (collectively "Global") and giving Global an additional thirty days beyond the settlement agreement's express deadline to satisfy the original settlement amount of

$60,000.[1] Clarke argues that the trial court erred by denying his enforcement motion and unilaterally changing the terms of the settlement agreement. We agree and reverse for entry of an order enforcing the clear terms of the settlement agreement and for the trial court to consider Clarke's request to pursue proceedings supplementary to enforce his liens on Global's construction-related vehicles pursuant to the settlement agreement.

Background

Following mediation, Clarke and Global entered into a settlement agreement to settle Clarke's suit against Global stemming from their contract concerning Global's construction of two homes. Global agreed to pay Clarke a total of $60,000, structured as a one-time payment of $5,000 followed by timely monthly installments of $2,391.30 until the debt was satisfied. The debt was secured by liens on four of Global's vehicles. Within ten days of his receipt of the final installment payment, Clarke was to file a stipulation for dismissal with prejudice and "subsequently seek an Order from the Court approving said Stipulation for Dismissal with Prejudice . . . ." Clarke, however, filed the Stipulated Dismissal with Prejudice approximately eleven months before the anticipated payoff date and did not seek or obtain a court

[1] This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

order approving the stipulation or reserving jurisdiction to enforce the settlement agreement.[2]

Global continued to make payments after the suit was dismissed, but as of the anticipated payoff date, Global had paid only $47,649 of the $60,000 due. Consequently, Clarke filed a Motion to Enforce Settlement Agreement and a supporting affidavit in the same trial court action[3] and sought entry of a final judgment in the amount of $52,351—the $12,351 remaining on the original $60,000 amount plus the additional $40,000 that was owed pursuant to the default provision of the settlement agreement.[4] He also sought permission to initiate proceedings supplementary to enforce his liens on Global's vehicles.

After a non-evidentiary hearing, the trial court denied the Motion to Enforce Settlement Agreement and gave Global an additional thirty days "to pay the full Settlement amounts of $60,000." The trial court further ordered that should Global

---

[2] Although the stipulation states that "[t]he Court reserves jurisdiction to enforce the settlement agreement between the parties to this stipulation," the stipulated dismissal was never brought to the trial court's attention and no attempt was made to obtain an order approving the stipulated dismissal.

[3] The action was still pending as to other parties.

[4] In the event Global defaulted, the Settlement Agreement provided that Clarke "shall be entitled to entry of a final judgment against GLOBAL for the sum of $100,000.00, less the amount, if any, that GLOBAL has theretofore actually paid to CLARKE pursuant hereto, and to have such final judgment provide for interest at the statutory rate and for the recovery of the reasonable attorneysF fees and costs associated with collecting and executing upon such final judgment."

fail to make the requisite payment, the default provision increasing the total settlement amount to $100,000 would be awarded. Clarke admitted in his Initial Brief that, post-order, Global paid the $12,351, but argues that the default provision of the settlement agreement was triggered, and pursuant thereto, he is entitled to an additional $40,000 and to proceedings supplementary to obtain possession of the liened vehicles.

Analysis

As an initial matter, Global argues for the first time on appeal that the trial court lacked jurisdiction to entertain Clarke's motion to enforce the settlement agreement because Clarke filed the stipulated dismissal without obtaining an order of dismissal that either incorporated the settlement agreement or retained jurisdiction to enforce the settlement agreement. *See Albert v. Albert*, 36 So. 3d 143, 147 (Fla. 3d DCA 2010) (noting a voluntary dismissal "divests the trial court of continuing jurisdiction over the case"). This argument concerns case jurisdiction, as opposed to subject matter jurisdiction. Subject matter jurisdiction refers to a court's authority to hear a class of cases, whereas case jurisdiction refers to a court's power over a particular case within its subject matter jurisdiction. *See 14302 Marina San Pablo Place SPE, LLC v. VCP-San Pablo, Ltd.*, 92 So. 3d 320, 321 (Fla. 1st DCA 2012) (Ray, J., concurring) (explaining distinction between case jurisdiction and subject matter jurisdiction). As Judge Ray noted in her concurrence, "While lack of subject

matter jurisdiction renders a judgment or order of a court *void ab initio,* lack of case jurisdiction should merely render the court's act *voidable,* and under appropriate circumstances, subject to consent, waiver, or estoppel." *Id.*; *see also MCR Funding v. CMG Funding Corp.*, 771 So. 2d 32, 35 (Fla. 4th DCA 2000) (holding that filing of voluntary dismissal as contemplated in settlement agreement, without obtaining court order of dismissal, terminated trial court's case jurisdiction but issue of case jurisdiction was waived by party's failure to raise jurisdictional issue in subsequent enforcement proceeding). We are persuaded by *MCR Funding* and Judge Ray's concurrence in *14302 Marina* and hold that lack of case jurisdiction may be waived if not first raised in the trial court, and it was indeed waived here for that reason.

Moving now to the merits of the appeal, we begin by observing that the proper standard of review of a trial court's interpretation of the mediated settlement agreement is de novo.[5] Our de novo review is governed by the well-settled law holding that because a mediated settlement agreement is a contract, it must be interpreted as one and enforced even if enforcement appears harsh. *See Beach Resort Hotel Corp. v. Wieder*, 79 So. 2d 659, 663 (Fla. 1955) ("It is well settled that courts may not rewrite a contract or interfere with the freedom of contract or substitute their judgment for that of the parties thereto in order to relieve one of the

[5] *Silver v. Silver*, 992 So. 2d 886, 888 (Fla. 2d DCA 2008) ("The trial court's interpretation of a mediated settlement agreement is subject to de novo review." (citing *Kirsch v. Kirsch*, 933 So. 2d 623, 626 (Fla. 4th DCA 2006))).

parties from the apparent hardship of an improvident bargain." (citations omitted)); *Learn v. Fin. Well, Inc.*, 987 So. 2d 1230, 1230 (Fla. 2d DCA 2008) (holding party against whom default provision of settlement agreement was enforced could not invoke doctrine of substantial performance "to escape the remedy that the parties chose as the consequence" should she fail to perform, even though strict adherence to terms of default provision seemed harsh); *see also McCutcheon v. Tracy*, 928 So. 2d 364, 364 (Fla. 3d DCA 2006) ("[A] court may not deviate from the terms of a voluntary contract either to achieve what it might think is a more appropriate result or 'to relieve one of the parties from the apparent hardship of an improvident bargain . . . .'" (quoting *Beach Resort*, 79 So. 2d at 663)). It was the trial court's apparent attempt to ameliorate the harshness of the result in this case that led it astray. Clarke was entitled to have the settlement agreement enforced, regardless of whether there had been substantial performance or that enforcement would be harsh on Global.

It was unrebutted that Global failed to timely pay the agreed settlement amount of $60,000, and thus the default provision of the settlement agreement was triggered. There was no allowance in the settlement agreement for any equitable "tweaking" of its terms; it does not contain a force majeure or Act of God provision. In the absence of such a provision, the trial court erred in denying enforcement of the settlement agreement's terms and giving Global additional time to perform. *See Pinero v. Zapata*, 306 So. 3d 1117, 1118 (Fla. 3d DCA 2020) (holding it error to

extend deadlines due to "the dire circumstances present because of the pandemic" where settlement agreement contained neither an extension provision nor provisions addressing force majeure or Act of God).

Because the trial court erred in denying the enforcement motion and unilaterally amending the agreed-upon terms of the settlement agreement, we reverse and remand with instructions that the trial court enter judgment in favor of Clarke for the amounts remaining due under the Settlement Agreement and then consider Clarke's request to pursue proceedings supplementary to enforce his liens against Global's construction related vehicles.

REVERSED and REMANDED with instructions.

COHEN and MIZE, JJ., concur.

Scott J. Hertz, of Aloia Rowland Lubell & Morgan PLLC, Fort Myers, for Appellant.

Jeremy C. Daniels and Christal R. Tomac, of Daniels, Rodriguez, Berkeley, Daniels & Cruz, P.A., Coral Gables, for Appellees.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED