Reversed and Remanded and Memorandum Opinion filed December 19, 2023.

In The

Fourteenth Court of Appeals

NO. 14-22-00721-CV

MAI N. LAM, PROHIBITION THEATRE LLC, PROHIBITION SUPPERCLUB & BAR LLC, RAILWAY HEIGHTS LP, RAILWAY HEIGHTS GP LLC, AND BRAVERY CHEF HALL, L.P., Appellants

V.

EADO ENTERPRISES GROUP LLC, Appellee

On Appeal from the 151st District Court
Harris County, Texas
Trial Court Cause No. 2020-31203

M E M O R A N D U M O P I N I O N

In this appeal from a summary judgment against them for breach of a settlement agreement, the appellants maintain that the agreement is unenforceable because one of the appellee's attorneys violated Texas Disciplinary Rule of Professional Conduct 4.02(a) by communicating directly with a represented appellant without the consent of the appellants' attorney. They argue that the trial court should instead have held a hearing on their motion for sanctions, in which they

asserted this argument and asked the trial court to sanction the appellee by declaring the agreement void or by disqualifying the appellee's attorneys. Although we agree that the trial court reversibly erred in granting a final judgment despite the pending motion for sanctions, we disagree that the appellants could defeat summary judgment merely by proving that opposing counsel violated Rule 4.02(a). We reverse the judgment, but because there is no genuine issue of material fact about the settlement agreement's enforceability, we remand the case solely for a new trial on the appellants' request for sanctions. The trial court can then render a final judgment incorporating the rulings on both the sanctions motion and the summary-judgment motion.

I. FACTS

EADO Enterprises Group LLC owns a business called Chapman & Kirby. According to the allegations below, Company of Nomads, Anh Mai a/k/a Mai N. Lam a/k/a Nguyen Lam Mai (Mai), and two other individuals[1] allegedly own Prohibition Theatre LLC, Prohibition Supperclub & Bar LLC, Railway Heights GP LLC, Railway Heights LP, and an entity alternatively referred to as Bravery Chef Hall L.P. or Chef Hall LLC. We refer to Mai and the organizational defendants collectively as the Mai Parties.

In late 2019, Mai spoke with attorney Bien Tran about purchasing Chapman & Kirby, and the Mai Parties eventually contracted to buy the business from EADO Enterprises Group LLC.[2] The deal fell through, and EADO sued the Mai Parties and

[1] The individual defendants Lian Nguyen a/k/a Lian Nguyen Pham and Sheppard Ross a/k/a Sheppard Ross Small have not appealed the judgment.

[2] Tran attested that he was a co-owner of Chapman & Kirby when Mai first contacted him about the purchase, but according to EADO's pleadings and a later settlement agreement, EADO was the seller by the time a purchase agreement was reached.

the other purchasers for breach of contract, fraud, intentional misrepresentation, theft, and conversion.

In the litigation, the Mai Parties were represented by Mai's brother Pete Mai, and EADO was represented by attorneys George Murr and William Bush. Bush is employed by the same law firm that employs Tran.

In the summer of 2021, Mai contacted Tran directly about settling the case. while Mai's attorney was having the same discussions with EADO's attorney, Murr. The parties reached an agreement on August 18, 2021, and Mai's attorney wrote Murr that he would "forward my clients' execution when it is received." A week later, Mai's attorney wrote Murr, "I have been advised that there has been a delay in the execution of the settlement agreement because my client still needs some time to raise the settlement payment and that your client has been kept informed of the situation." The following evening, Mai texted Tran, "I just got it signed by everyone. Give me a minute to send u." Mai emailed the executed settlement agreement to Tran, who forwarded it to Murr.

Several months later, EADO moved for summary judgment for breach of the settlement agreement. EADO's summary-judgment evidence included an attorney-fee affidavit from Tran, who identified himself as "an attorney whose law firm has represented [EADO] in the past and in this action."

The Mai Parties filed a combined summary-judgment response and motion for sanctions based on Tran's unauthorized communication with a represented party. In the motion, the Mai Parties asked the trial court to hold a hearing on their sanctions motion and to sanction EADO by striking the settlement agreement, disqualifying EADO's counsel, or imposing other appropriate sanctions. The Mai Parties attached a proposed order for the court to set a hearing on the sanctions.

EADO filed a summary-judgment reply that included Tran's supplemental affidavit attesting that he represents EADO in this suit. This was the first filing identifying Tran as EADO's attorney. Tran attested that Mai had authorized Tran to speak directly to him; however, EADO did not contend that Tran or EADO's other attorneys obtained opposing counsel's consent to these communications.

The trial court granted EADO interlocutory summary judgment as to the Mai Parties' liability for breach of the settlement agreement, leaving the issue of EADO's request for attorney's fees pending. The trial court also stated in the order, "[T]he Court hereby DENIES Defendants' request for an oral hearing and notes that no motion is before the Court as to any sanctions or other relief for alleged improper communications between Plaintiff's counsel and any non-attorney Defendant."

Six months later, EADO nonsuited its claim for attorney's fees and the trial court rendered final summary judgment in EADO's favor. The Mai Parties filed a motion for a new trial in which they reurged their argument that, as a result of Tran's unauthorized communications with Mai, the settlement agreement was illegally obtained and contrary to public policy. The motion was overruled by operation of law, and the Mai Parties appealed.

II. THE TRIAL COURT'S FAILURE TO RULE ON THE SANCTIONS MOTION

In the Mai Parties' first issue, they argue that the trial court erred in enforcing the settlement agreement because it was obtained by improper communications with a represented party. They argue in their second issue that the trial court erred in granting summary judgment and denying their request for a hearing to decide appropriate sanctions.

Both of these issues are based on Tran's direct communications with Mai in apparent contravention of Texas Disciplinary Rule of Professional Conduct 4.02(a):

> In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

TEX. DISCIPLINARY R. PROF'L CONDUCT 4.02(a), *reprinted in* TEX. GOV'T CODE, tit. 2, subtit. G, app. A (TEX. STATE BAR R. art. X, § 9). Although the Mai Parties moved for sanctions for Tran's conduct, the trial court never ruled on their pending claim for affirmative relief. *See CTL/Thompson Tex., LLC v. Starwood Homeowner's Ass'n, Inc*., 390 S.W.3d 299, 300 (Tex. 2013) (per curiam) ("A motion for sanctions is a claim for affirmative relief . . . ."). In denying the Mai Parties' request for an oral hearing, the trial court merely left the pending motion unheard. Then, after EADO nonsuited its request for attorney's fees, the trial court ruled that "there are no other issues requiring trial or adjudication in this proceeding" and rendered final judgment.

But the Texas Rules of Civil Procedure establish that a nonsuit "shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief." TEX. R. CIV. P. 162. More specifically, a nonsuit "shall have no effect on any motion for sanctions." *Id.* Thus, the trial court erred in rendering final judgment without addressing the Mai Parties' pending sanctions motion. *See Epps v. Fowler*, 351 S.W.3d 862, 868 (Tex. 2011) ("[A] nonsuit does not affect any pending claim for affirmative relief or motion for attorney's fees or sanctions."); *cf. Hyundai Motor Co. v. Alvarado*, 892 S.W.2d 853, 855 (Tex. 1995) (per curiam) (partial summary judgment becomes final upon the disposition of the other issues of the case); *Goode v. McGuire*, No. 01-22-00243-CV, 2023 WL 5208055 (Tex. App.—Houston [1st Dist.] Aug. 15, 2023, no pet.) (mem. op.) (summary judgment omitting finality language was not a final judgment because sanctions claims remained pending).

Because the final judgment improperly foreclosed any ruling on the Mai Parties' pending claim for affirmative relief, the error is reversible. *See* TEX. R. APP. P. 44.1(a).

This conclusion, however, leaves unanswered the question that goes to the heart of the Mai Parties' appellate issues. The question is not whether Tran in fact violated Rule 4.02(a), or if so, whether his conduct was sanctionable; those questions might be reached if the trial court had ruled on the merits of the motion, but here, there is no sanctions ruling for us to review. Given the complete absence of a ruling on the sanctions motion, the question is, what is the appropriate scope of remand? Does the trial court's failure to address the motion for sanctions require reversal of the summary judgment in EADO's favor for breach of the settlement agreement?

On these facts, we can confidently say that it does not. Even if the trial court were to decide that the motion is meritorious; that Tran violated Rule 4.02(a); and that the violation warranted sanctions, the Mai Parties still would not have raised a question of material fact as to whether the settlement agreement remains enforceable.

The Mai Parties have attempted to link the alleged violation of Rule 4.02(a) to the claimed unenforceability of the settlement agreement by arguing that a violation of the rule renders the settlement agreement illegal and void as against public policy. But, the Supreme Court of Texas has cautioned that "courts must exercise judicial restraint in deciding whether to hold arm's-length contracts void on public policy grounds." *Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*, 467 S.W.3d 494, 504 (Tex. 2015). And, as we explained in *Wright v. Sydow*, "[a] violation of the Disciplinary Rules does not . . . void an otherwise valid contract executed outside of the attorney-client relationship." 173 S.W.3d 534, 549 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). Relying on the Disciplinary Rules

of Professional Conduct as a source of public policy sufficient to void an otherwise-valid contract is particularly fraught, for as the preamble to the rules points out, "the purpose of these rules can be abused when they are invoked by opposing parties as procedural weapons." TEX. DISCIPLINARY R. PROF'L CONDUCT Preamble ¶ 15. We accordingly apply the precedent we established in *M.A. Mills, P.C. v. Kotts*: unless the contract is declared by law to be void or unenforceable, a court should not refuse to enforce the contract solely because it was formed in contravention of a disciplinary rule. 640 S.W.3d 323, 331 (Tex. App.—Houston [14th Dist.] 2022, pet. denied) (citing *Am. Nat'l Ins. Co. v. Tabor*, 111 Tex. 155, 160, 230 S.W. 397, 399 (1921)).

The Mai Parties have not cited, and we have not found, any statute or rule declaring a contract void solely because it was formed in violation of Rule 4.02(a)—and here, that is the settlement agreement's only alleged flaw. The Mai Parties do not assert that Tran has ever had an attorney-client relationship with any of them or that the settlement agreement is anything other than an arm's-length transaction. They do not contend that the terms of the agreement are themselves violative of the law or of public policy. They neither argued nor offered any evidence that they executed the agreement under duress. They do not even dispute that it was Mai himself who not only initiated settlement discussions directly with Tran,[3] but who also continued texting Tran about the settlement even after EADO moved for

[3] A week before EADO filed suit, Mai texted Tran, "Before we go down this route (my brother works for free so I'm prepared to fight this), I['d] rather see if we can come to some sort of agreement. I firmly believe it's always better to make amends then fight each other."

summary judgment.[4] And finally, the Mai Parties admit that they *and their attorney* approved the settlement agreement.

In sum, and regardless of the merits of the Mai Parties' motion, the Mai Parties have failed to raise a genuine issue of material fact regarding the settlement agreement's enforceability. We accordingly overrule both of the Mai Parties' issues to the extent that they challenge the trial court's interlocutory summary judgment against them for breach of the settlement agreement, but we sustain the Mai Parties' second issue to the extent that it can be understood as a challenge to the trial court's rendition of a final judgment that left their sanctions motion unaddressed.

III. CONCLUSION

If the trial court's "error affects part of, but not all, the matter in controversy and that part is separable without unfairness to the parties, the judgment must be reversed and a new trial ordered only as to the part affected by the error." TEX. R. APP. P. 44.1 (b). Although the trial court erred in rendering final judgment despite the Mai Parties' pending sanctions motion, the pending motion does not affect EADO's right to summary judgment for breach of the settlement agreement. We therefore reverse the judgment and remand the case for a new trial only of the Mai Parties' motion for sanctions, leaving the now-interlocutory summary-judgment ruling intact. The trial court's final judgment will then incorporate the rulings on both motions.

[4] After EADO moved for summary judgment for breach of the settlement agreement, Mai texted Tran, "I should be getting funding before end of the year. Then we can finish up the settlement."

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Hassan.