

Rel: November 3, 2023

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

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SC-2023-0109

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**Hyundai Construction Equipment Americas, Inc., and Hyundai  
Heavy Industries Co., Ltd.**

v.

**Southern Lift Trucks, LLC**

**Appeal from Washington Circuit Court  
(CV-22-900029)**

COOK, Justice.

This is an appeal of a contempt order. The underlying action arose

out of a complex commercial dispute. Southern Lift Trucks, LLC ("Southern"), is a Mobile-based, heavy-equipment dealer for Hyundai Construction Equipment Americas, Inc. ("Hyundai Construction"). In May 2022, it filed suit against Hyundai Construction and its alleged parent company, Hyundai Heavy Industries Co., Ltd. (collectively referred to as "Hyundai"), in the Washington Circuit Court asserting various claims. It also sought a preliminary injunction to prevent Hyundai from, among other things, unlawfully allowing Hyundai's dealers to sell certain equipment in Southern's designated territories or advertising that other dealers are authorized to sell that equipment in Southern's territories. Following a hearing, the circuit court entered an order granting Southern's request for a preliminary injunction.

After the circuit court issued its injunction order, Southern learned that another Hyundai dealer had allegedly sold some equipment in one of Southern's territories. As a result, Southern filed a petition seeking a finding of contempt and sanctions against Hyundai. Following a hearing, the circuit court entered an order granting Southern's contempt petition.

Hyundai now appeals from that contempt order on the basis that it was denied due process. Because Hyundai was not given adequate notice

of all the contempt allegations asserted against it before the hearing on those allegations (as required by Rule 70A, Ala. R. Civ. P.), we reverse the contempt order and remand the case for further proceedings.

### Facts and Procedural History

This is the second time these parties have been before us. In Hyundai Construction Equipment Americas, Inc. v. Southern Lift Trucks, LLC, [Ms. SC-2022-0675, May 12, 2023] \_\_\_ So. 3d \_\_\_ (Ala. 2023), this Court reviewed the circuit court's decision to grant the preliminary injunction sought by Southern and its decision refusing to compel arbitration. Because the action underlying the present appeal involves allegations that Hyundai engaged in conduct in violation of that injunction, we deem it necessary to briefly relate some of the facts from the actions underlying the previous appeal that are relevant to the present appeal.

In 2019, Southern entered into a dealer agreement with Hyundai Construction in which it agreed to serve as a lift-truck dealer for the company ("the forklift agreement"). A year later, in 2020, it entered into a second dealer agreement with Hyundai Construction in which it agreed to serve as a construction-equipment dealer for the company ("the

construction-equipment agreement").

Among other things, the forklift agreement covered the sales, service, and distribution of forklifts and other "lift trucks." The construction-equipment agreement covered the sales, service, and rental of, the provision of parts for, and warranties regarding earth-moving equipment used in the construction industry, such as excavators, wheel loaders, rollers, and breakers.

The territories covered by the two dealer agreements overlapped but were not identical. Specifically, the territory covered under the forklift agreement ("Southern's forklift territory") included Washington, Clarke, Choctaw, Sumter, Marengo, Wilcox, Baldwin, Conecuh, Escambia, Mobile, and Monroe Counties in Alabama, as well as certain counties in Mississippi and Florida. The territory covered under the construction-equipment agreement included only Washington, Choctaw, Clarke, Baldwin, Conecuh, Escambia, Mobile, and Monroe Counties in Alabama.

When the parties entered into the dealer agreements, Southern was the only dealer of lift trucks and construction equipment for Hyundai Construction within the above-listed territories. However, neither

agreement was exclusive by its terms.

Immediately after Southern entered into the construction-equipment agreement in 2020, Southern sold four pieces of construction equipment but made no sales of construction equipment in 2021 or in 2022. On March 2, 2022, Hyundai Construction notified Southern of its intent to terminate the construction-equipment agreement because Southern had been unable to meet its expectations for market growth.

Hyundai Construction's actions were not limited to the construction agreement. About a month later, Hyundai Construction sent a second correspondence to Southern notifying Southern that it intended to assign an additional dealer -- Thompson Tractor Company -- to serve as a lift-truck dealer in the Alabama territory covered by Southern under the forklift agreement (but it did not terminate that agreement). Unlike its construction-equipment sales, Southern's lift-truck sales had been significant during the previous two years. Nevertheless, Hyundai Construction alleged that Southern was not fulfilling its duties as a lift-truck dealer because Southern did not have the infrastructure to service the equipment sold. Southern vigorously disputed those assertions.

Shortly after receiving the notice regarding the addition of

Thompson Tractor Company to Hyundai's dealership network, Southern became aware that some of its customers had already been contacted by Thompson Tractor Company and provided quotes and/or had been informed that Thompson Tractor Company was the new lift-truck dealer for Hyundai Construction in the Alabama portions of Southern's forklift territory.

As a result, on May 26, 2022, Southern filed suit against Hyundai, alleging claims under multiple provisions of the Alabama Heavy Equipment Dealer Act ("the AHEDA"), § 8-21B-1 et seq., Ala. Code 1975, a breach-of-contract claim, multiple tort claims, and a claim of conspiracy. Among other things, Southern also moved to preliminarily enjoin Hyundai from (1) terminating either of the dealer agreements with Southern and (2) permitting other dealers to market or sell construction equipment or lift trucks in Southern's territories.

That same day, the circuit court entered a temporary restraining order ("TRO") against Hyundai. That TRO specifically prohibited Hyundai from (1) terminating the dealer agreements with Southern; (2) "entering into agreements or otherwise permitting other dealers to sell Hyundai Construction's Construction Equipment or Forklift Equipment"

in Southern's territories; and (3) "advertising or marketing (via website or otherwise) that other dealers are authorized to sell" the equipment at issue in Southern's territories. It also ordered Hyundai to

"make an account to the Court and [Southern] ... in the form of a sworn affidavit setting forth: (a) the nature and extent of any other dealer agreements that [Hyundai has] entered into with any other dealers for the Product Lines in [Southern's] Territories, including the effective dates and terms/conditions of same ...; and (b) the nature, extent, and pricing of any units of the Product Lines sold to or by other dealers in [Southern's] Territories in the past year."

Several days after entering the TRO, the circuit court held a hearing on Southern's motion for a preliminary injunction. Following that hearing, on June 10, 2022, the circuit court granted Southern's motion and issued an order that stated, in relevant part:

"1. That [Hyundai], and others in active concert and participation with [it] who receive actual notice of this Order, are hereby ENJOINED and RESTRAINED from terminating the Dealer Agreements between [Southern] and [Hyundai];

"2. That [Hyundai], and others in active concert and participation with [it] who receive actual notice of this Order, are hereby ENJOINED and RESTRAINED from entering into agreements or otherwise permitting other dealers to sell Hyundai's Construction Equipment or Forklift Equipment ('the Product Lines') in [Southern's] 'Territories' (including, for the Forklift Equipment: Washington, Clarke, Choctaw, Sumter, Marengo, Wilcox, Baldwin, Conecuh, Escambia, Mobile, and Monroe counties in Alabama);

"3. That [Hyundai], and others in active concert and participation with [it] who receive actual notice of this Order, are hereby ENJOINED and RESTRAINED from advertising or marketing (via website or otherwise) that other dealers were authorized to sell the Product Lines in [Southern's] Territories;

"4. This Order shall be deemed effective immediately and remain in effect until such time as a trial on the merits can be conducted on this matter..."

Hyundai appealed that decision to this Court. See Hyundai Constr. Equip. Americas, supra.

While that appeal was pending in this Court, Southern became aware that Hyundai lift trucks were still being offloaded and distributed at a dealership operated by Thompson Lift Truck, a division of Thompson Tractor Company, in Baldwin County. As a result, on November 15, 2022, Southern filed a petition seeking a finding of contempt and sanctions against Hyundai.

In its contempt petition, Southern alleged that Hyundai had violated the circuit court's TRO and preliminary injunction by failing to provide a timely accounting of (1) the nature and extent of any other dealer agreements that Hyundai had entered into with any other dealers for the "Product Lines in [Southern's] Territories" and (2) "the nature, extent, and pricing of any units of the Product Lines sold to or by other



dealers in [Southern's] Territories in the past year."

Southern further alleged that Hyundai had violated the circuit court's TRO and preliminary injunction by repeatedly permitting other dealers to market and sell Hyundai lift trucks in Southern's designated forklift territory. According to Southern, Hyundai lift trucks were being offloaded and distributed at the Thompson Lift Truck dealership in Baldwin County and that activity was "ongoing."

In support of its contempt petition, Southern attached, among other things, a screenshot taken from Thompson Lift Truck's website, which appeared to show that Thompson Lift Truck was a dealer for Hyundai lift trucks in Alabama, Mississippi, Georgia, and Florida. Southern also attached photographs that, it said, showed five Hyundai lift trucks and a yard truck being offloaded at the Thompson Lift Truck dealership in Baldwin County. Southern also submitted an affidavit of a customer who observed new Hyundai equipment at the Thompson Lift Truck dealership in Baldwin County and an affidavit from Southern's president regarding the identification of that equipment.

In its response to Southern's contempt petition, Hyundai first disputed Southern's contention that it had failed to provide a timely

accounting of the items listed above. According to Hyundai, the TRO had previously been dissolved and was ultimately superseded by the preliminary injunction, which, Hyundai noted, did not require it to provide the accounting submissions listed in the TRO. Nevertheless, Hyundai alleged that it had provided an accounting "in a gesture of good faith" and that that accounting "included the original addendum to [Thompson Tractor Company's] lift truck Dealer Agreement with [Hyundai] [indicating that] [Thompson Tractor Company's] territory included an overlay with Southern in Southern's territories." According to Hyundai, "Southern did not respond to ... [the] accounting submission, did not ask for clarification or additional documentation, and raised no issues regarding [Hyundai's] accounting submission with the Court." Hyundai attached an email to its response that purported to show that it had provided an accounting to Southern in July 2022.

Next, Hyundai disputed that Thompson Lift Truck's advertising or marketing materials indicated that Thompson Lift Truck -- or any other Hyundai dealer -- was authorized to sell Hyundai's lift trucks in Southern's forklift territory. According to Hyundai, at most, the screenshot taken from Thompson Lift Truck's website that Southern

submitted in support of its contempt petition showed that it "carries various product lines, including [Hyundai] lift trucks, and has locations in Alabama and other states" and did not specifically indicate that Thompson Lift Truck sells Hyundai's lift trucks in Southern's forklift territory. Because the circuit court's injunction order did not "enjoin [Thompson Lift Truck] from (1) advertising its Alabama locations, or (2) advertising that [Thompson Lift Truck] is authorized to sell [Hyundai] lift trucks in the state," Hyundai contended that it could not be held in contempt on this basis. (Emphasis added.) In support of its contentions, Hyundai attached to its response various screenshots taken from Thompson Lift Truck's website, which showed that Thompson Lift Truck is a dealer for Hyundai lift trucks in Alabama, Mississippi, Georgia, and Florida.

Finally, with regard to Southern's contention that Hyundai had violated the circuit court's injunction order by allowing other dealers to sell its lift trucks in Southern's forklift territory, Hyundai argued that photographs merely showing the presence of Hyundai's lift trucks at Thompson Lift Truck's dealership in Baldwin County was not proof that Hyundai was permitting its dealers to sell lift trucks -- or any of its

equipment -- in Southern's territories. According to Hyundai, "the equipment seen on the lot at the [Thompson Lift Truck] dealership ... could well be equipment designated for use in [Thompson Lift Truck's] rental fleet or could be [Thompson Lift Truck's] yard truck, or could have simply been seen while traveling through the area, destined for a different location outside of Southern's territory." In other words, Hyundai argued, the mere presence of its lift trucks at Thompson Lift Truck's dealership in Baldwin County was not evidence indicating that it had entered into an agreement with or had otherwise permitted Thompson Lift Truck to sell lift trucks in Southern's forklift territory in violation of the circuit court's injunction order.

In support of its contentions, Hyundai attached to its response the affidavit of Lewis Byers, the executive vice president and chief operating officer of Hyundai Handling Forklift, a division of Hyundai Construction, in which he stated that he had reviewed the photographs submitted by Southern and disputed that the equipment shown was the type of equipment that Hyundai was prohibited from allowing other dealers to sell in Southern's territories. He also indicated his belief that the equipment shown in the photographs was rental equipment and was not

for sale. Hyundai also submitted the affidavit of Matt Serotsky, the vice president of Power Systems and Lift Truck, a division of Thompson Tractor Company, in which he stated that the Hyundai equipment photographed at Thompson Lift Truck's Baldwin County dealership was something that was "not offered for customer purchase or rental but [was] used by [Thompson Lift Truck] for internal needs."

After Hyundai filed its response to Southern's contempt petition, the circuit court issued an order scheduling a hearing on Southern's contempt petition for January 4, 2023, at 1:00 p.m.

On December 19, 2022, Hyundai's counsel reached out to Southern's counsel to notify Southern that Hyundai had recently become aware that a few lift trucks had been sold by one of its dealers -- Thompson Lift Trucks -- to various businesses in Escambia and Mobile Counties, both of which were located in Southern's forklift territory. Although Hyundai was unable to confirm the exact equipment that was sold to those businesses, it told Southern that a representative from Thompson Lift Truck would be providing that information to Southern at a later date.

According to Southern, a representative from Thompson Lift Truck

did in fact contact it to confirm that four lift trucks had been sold to four separate businesses in Escambia and Mobile Counties. That representative also provided Southern documentation confirming that those sales had taken place in Southern's forklift territory.

Approximately 27 minutes before the contempt hearing began on January 4, 2023, Southern filed what it styled as its "reply" to Hyundai's response. According to Hyundai, the notice of that filing from Alacourt, the judicial electronic-filing system, did not actually arrive until eight minutes before the hearing. Southern does not dispute this assertion. Additionally, one of the exhibits to the "reply" was filed under seal.

Southern's "reply" alleged, among other things, that it had been contacted by Hyundai's counsel and by a representative from Thompson Lift Truck regarding the sale of four lift trucks in Escambia and Mobile Counties -- both of which were part of Southern's forklift territory. Southern alleged that those sales constituted additional violations of the circuit court's preliminary injunction and were thus an additional basis upon which to hold Hyundai in contempt and to issue sanctions against it. Southern's "reply" stated: "This was in addition to previous[] sales ...." In support of its "reply," Southern attached a series of email

correspondences between its counsel, Hyundai's counsel, and the representative from Thompson Lift Truck that, it said, proved that these sales had taken place in violation of the circuit court's preliminary injunction. It also attached (under seal) an affidavit from Barkley Lindsey, the sole shareholder of Large Lift Rentals, Inc., a managing member of Southern, in which he stated that the equipment models referenced in the email correspondences are "typically sold by Southern on the retail market for approximately \$32,000, and Southern's profit margin is customarily at least \$8,000 on each such machine." He also stated that two of the businesses listed in the emails that allegedly purchased the equipment at issue from Thompson Lift Truck in violation of the circuit court's preliminary injunction were either former or prospective customers of Southern.

During the hearing on Southern's contempt petition, Southern explained to the circuit court that it had initially filed its contempt petition in November 2022 because it "had started seeing Hyundai forklifts appearing at a competitor dealership in Baldwin County." It then began describing the circumstances that led to the additional contempt allegations that it had made in its "reply," at which point,

Hyundai objected.

In support of its objection, Hyundai explained:

"[Hyundai's counsel:] Rule 70 is unequivocal about what is required in a motion or petition for contempt in a hearing on contempt. And what is required is that they lay out the essential facts. That's Rule 70A(c)(1). And the last language says the petition shall provide ... notice of the essential facts constituting the alleged contemptuous conduct. And that's what we're prepared to go on here, which is what they filed in their petition a month and a half ago.

"They have filed something maybe 30 minutes ago based on information that I provided in good will. It really doesn't prove a violation. But he is attempting now, even in opening arguments, to go beyond and talk about other issues other than what they allege in their petition was contemptuous. Anything that goes beyond the essential facts in the petition is not something that is properly before you today in this hearing and should not be something that they should be able to present evidence on.

"The Alabama Supreme Court has recognized that any contempt proceeding requires due process. And just an example, in State versus Thomas, 550 So. 2d 1072 through 73 -- and that's Alabama Supreme Court 1989 -- the Court said, where an individual is charged with indirect or constructive contempt due process requires he be given notice of the charges and a reasonable opportunity to meet them, the right to call witnesses and confront his accuser and the right to give testimony relevant either to complete the exculpation or extenuation of the offense in evidence and mitigation of the penalty to be imposed."

(Emphasis added).

In response to Hyundai's objection, Southern asserted that one of



the allegations on which its contempt petition had initially been based was that Hyundai had been violating the circuit court's preliminary injunction by allowing lift trucks to be sold by other dealers in Southern's forklift territory. According to Southern, those allegations "haven't really changed" and all it did in its "reply" was provide additional information to supplement those allegations.

Despite Hyundai's objection and the fact that it had admittedly not yet seen Southern's "reply," the circuit court allowed the hearing to proceed. At the hearing, Southern presented arguments concerning not only the allegations that it had made in its contempt petition regarding the sale of Hyundai lift trucks in Baldwin County but also the new factual allegations it had made in its "reply" regarding the lift trucks that had been sold in Escambia and Mobile Counties.

Following the contempt hearing, Hyundai moved to strike Southern's "reply." In its motion, Hyundai argued that Southern's allegations that Thompson Lift Truck had sold four lift trucks to various businesses in Southern's forklift territory were new allegations that had not been made in its contempt petition. Because Southern raised those additional allegations for the first time less than 30 minutes before the

hearing on Southern's contempt petition was scheduled to be held, Hyundai argued, its due-process rights had been violated and it should have been given an opportunity to review and respond to those new allegations and to prepare possible witnesses and exhibits before being forced to defend against Southern's new allegations in court.

Hyundai further argued that, even if it had been given proper notice of those allegations, those allegations were in no way a basis to hold it in contempt because the four lift trucks at issue were nothing more than "ship ins," and, according to Hyundai, "ship ins" were never covered by the circuit court's preliminary injunction.<sup>1</sup> In support of its contention, Hyundai cited a portion of the circuit court's injunction order that acknowledged that "ship-ins" are "not an unusual occurrence" and recognized Southern's practice of selling "ship ins" outside its forklift

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<sup>1</sup>According to Hyundai, "ship in" is "an industry term used to refer to new units that are sold and delivered by one dealer into another dealer's designated territory or area of responsibility." In its affidavits, Hyundai explains that "it is the delivering dealer's obligation to contact the affected dealer and arrange to pay a ship in fee." They also assert that "Southern has shipped approximately 30% of its total sales outside" of its forklift territory.

territory.<sup>2</sup>

On January 11, 2023, the circuit court, without ruling on Hyundai's motion to strike, issued an order in which it granted Southern's contempt petition in part, finding in relevant part:

"This Court previously entered a Preliminary Injunction Order that provided, among other things, that [Hyundai was] enjoined and restrained from permitting other dealers to sell Hyundai forklift or construction equipment in [Southern's] Territories. ...

"[Southern] presented evidence to the Court that, despite the Court's order, multiple sales of Hyundai forklifts have occurred in [Southern's] territories after the entry of the Order. It is clear to the Court that [Hyundai has] willfully failed to take appropriate steps to keep other dealers from selling Hyundai forklifts in [Southern's] Territories, and the Court hereby finds [Hyundai] liable for civil contempt.

"The Court, having considered the evidence presented and arguments of counsel, finds it appropriate to enter a compensatory sanction and judgment in the amount of \$150,000 against [Hyundai] and in favor of [Southern], for which execution may issue. The Court further finds it appropriate to award the attorney's fees and expenses incurred by [Southern] in bringing the petition. [Southern] is ORDERED, within two days of entry of this Order, to submit

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<sup>2</sup>Southern vigorously disputes this and argues that "ship-ins" were barred by the plain language of the circuit court's preliminary injunction. Southern also argues that the four lift trucks at issue could not be "ship-ins" (even if "ship ins" were allowed under the preliminary injunction) because Thompson Lift Truck has a physical location within Southern's forklift territory. Given our resolution of the present appeal, however, we need not address this issue at this time.

to the Court an affidavit of its attorney's fees, for which a separate order will be entered.

"[Hyundai is] further ORDERED to take such other further steps as necessary to ensure that there are no other improper sales by other dealers in [Southern's] Territories while the Preliminary Injunction remains in place, and [Hyundai] must ensure that all Hyundai dealers with physical locations in Alabama are provided notice (and a copy) of the Court's Preliminary Injunction Order. [Hyundai is] ORDERED, within two days of this Order, to file an affidavit confirming that such notice has been provided."

(Capitalization in original; emphasis added). The circuit court denied Southern's petition insofar as it alleged that Hyundai had willfully violated portions of the TRO on the basis that "the TRO was ultimately superseded by the Preliminary Injunction." Hyundai appeals.

#### Standard of Review

"The issue whether to hold a party in contempt is solely within the discretion of the trial court, and a trial court's contempt determination will not be reversed on appeal absent a showing that the trial court acted outside its discretion or that its judgment is not supported by the evidence."

"J.S.S. v. D.P.S., 281 So. 3d [434] at 437-38 [(Ala. Civ. App. 2019)] (quoting Poh v. Poh, 64 So. 3d 49, 61 (Ala. Civ. App. 2010))."

Ex parte SE Prop. Holdings, LLC, 353 So. 3d 533, 537 (Ala. 2021).

#### Discussion

Hyundai contends that the circuit court's contempt order should be reversed because it was not afforded due process below. Specifically, Hyundai argues, just as it did during the contempt hearing and in its motion to strike below, that Southern's allegations in its "reply" that Thompson Lift Truck had sold four lift trucks to various businesses in Southern's forklift territory were new, additional, material allegations that had not been made in its contempt petition. Because Southern raised those additional factual allegations for the first time less than 30 minutes before the hearing on Southern's contempt petition was scheduled to be held, Hyundai argues, it was not given sufficient prior notice of those allegations and was not given an opportunity to respond to and collect evidence refuting those allegations before having to defend against those allegations during the contempt hearing.

Southern disputes that its allegations concerning the sale of the four lift trucks by Thompson Lift Truck in Escambia and Mobile Counties were "new allegations." According to Southern, Hyundai's counsel was the reason Southern found out about those allegedly improper sales in the first place and, thus, should have known that Southern would raise that additional allegedly contemptuous conduct both in its "reply" and

during the contempt hearing. Even if Hyundai could somehow claim that it was unaware that those sales would be made part of Southern's contempt allegations against it, Southern argues, Hyundai should have foreseen that it would make such additional allegations because Southern had previously alleged in its contempt petition that Hyundai's violations of the circuit court's preliminary injunction were "ongoing." Therefore, Southern contends, Hyundai was afforded due process below and the circuit court's contempt order should not be reversed.

Rule 70A, Ala. R. Civ. P., defines the various types of contempt and provides the scope of and the dispositions and punishments available in contempt actions in civil cases in Alabama. The rule defines and distinguishes the different kinds of contempt and separates them into two categories: "direct contempt" and "constructive contempt." This Court has previously described the difference between "direct contempt" and "constructive contempt" as follows:

"Direct contempts are those committed in the 'presence' of the judge, where all of the essential elements of the misconduct are under the eye of the court, and are actually observed by the court. If some of the essential elements are not personally observed by the judge it is [a constructive or] an indirect contempt."

Charles Mfg. Co. v. United Furniture Workers, 361 So. 2d 1033, 1036

(Ala. 1978).

"Constructive contempt" is divided into two categories: "criminal contempt" and "civil contempt." Rule 70A defines "criminal contempt" as either:

"(i) Misconduct of any person that obstructs the administration of justice and that is committed either in the court's presence or so near thereto as to interrupt, disturb, or hinder its proceedings, or

"(ii) Willful disobedience or resistance of any person to a court's lawful writ, subpoena, process, order, rule, or command, where the dominant purpose of the finding of contempt is to punish the contemnor."

Rule 70A(a)(2)(C).

Under Rule 70A(a)(2)(D) "civil contempt" is defined as "[a] willful, continuing failure or refusal of any person to comply with a court's lawful writ, subpoena, process, order, rule, or command that by its nature is still capable of being complied with." None of the parties dispute that the circuit court found Hyundai to be liable for civil constructive contempt.

Rule 70A(c)(1) provides, in pertinent part:

"A proceeding based on constructive contempt, whether criminal or civil, shall be subject to the rules of civil procedure. The proceeding shall be initiated by the filing of a petition seeking a finding of contempt .... The petition shall provide the alleged contemnor with notice of the essential facts constituting the alleged contemptuous conduct."

(Emphasis added.) Such notice of the "essential facts constituting the alleged contemptuous conduct," this Court has said, is critical for due-process considerations in a constructive-contempt proceeding:

"Where an individual is charged with indirect or constructive contempt, due process requires that he be given notice of the charges and a reasonable opportunity to meet them, the right to call witnesses and confront his accuser, and the right to give testimony relevant either to complete exculpation or to extenuation of the offense and evidence in mitigation of the penalty to be imposed. In re Oliver, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948); International Brotherhood of Electrical Workers, Local 136 v. Davis Constructors & Engineers, Inc., 334 So. 2d 892 (Ala. 1976)."

State v. Thomas, 550 So. 2d 1067, 1073 (Ala. 1989) (emphasis added). It is for this reason that a contempt petition should be treated in an analogous way to a pleading.<sup>3</sup>

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<sup>3</sup>To illustrate this point, we note that in Shackelford v. Shackelford, [Ms. 2210201, Aug. 5, 2022] \_\_\_\_ So. 3d \_\_\_\_ (Ala. Civ. App. 2022), the father in a child-custody proceeding petitioned to have the mother held in contempt for interfering with his relationship with the child. A trial was held during which the father attempted to introduce evidence indicating that the mother had interfered with his relationship with the child after he had filed his contempt petition in August 2021. The trial court did not allow that evidence. Following the trial, the trial court found that the father had failed to meet his burden of proof.

On appeal, the father argued that the trial court had erred by excluding evidence of allegedly contemptuous conduct that had occurred after the filing of his August 2021 petition. The Court of Civil Appeals



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affirmed, explaining:

"Rule 8(a)[, Ala. R. Civ. P.,] provides, in part: 'A pleading which sets forth a claim for relief ... shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.' Rule 70A(c)(1), Ala. R. Civ. P., provides, in pertinent part:

"A proceeding based on constructive contempt, whether criminal or civil, shall be subject to the rules of civil procedure. The proceeding shall be initiated by the filing of a petition seeking a finding of contempt .... The petition shall provide the alleged contemnor with notice of the essential facts constituting the alleged contemptuous conduct.'

"Rule 15(d), Ala. R. Civ. P., however, provides, in pertinent part:

"Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented."

\_\_\_\_ So. 3d at \_\_\_\_\_. That court then held:

"In the present case, even assuming that the father's initial pleading, i.e., his August 2021 petition, complied with Rule 8 and Rule 70A, the father sought to hold the mother in contempt for 'occurrences or events which ... happened since the date of the [filing of the petition],' and, therefore, he was required to file a supplemental pleading pursuant to Rule 15(d). In Gardner v. Hokenson, No. 2019-410, Feb. 5, 2021 (Vt.

In Charles Manufacturing, supra, a labor dispute arose between Charles Manufacturing Company and the United Furniture Workers of America, AFL-CIO, Local Union No. 361, and others ("the defendants"). The trial court issued an order preliminarily enjoining the defendants from engaging in violence, mass picketing, threats, coercion, obstruction of the public roads, and interfering with the ingress and egress from Charles Manufacturing's plant or facilities in Dothan. In total, the defendants were enjoined from engaging in 11 separate acts.

A couple of months later, Charles Manufacturing petitioned to hold the defendants in contempt on the basis that they had violated the injunction. That petition averred only that the defendants had "willfully

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2021) (not reported in Atlantic Reporter), a three-justice panel of the Supreme Court of Vermont stated that, even considering Vermont's 'liberal pleading standard requiring only short and concise averments giving fair notice of the grounds upon which the complaint is based,' the trial court in that case had acted within its discretion in excluding evidence of the defendants' actions that had occurred after the filing of the amended complaint. Similarly, in the present case, given the father's failure to comply with Rule 15(d), we conclude that the trial court acted within its discretion when it declined to admit evidence allegedly indicating that instances of contempt had occurred after the filing of the father's August 2021 petition."

\_\_\_\_ So. 3d at \_\_\_\_ (emphasis added).

failed and refused to obey said preliminary injunction as ordered by this Honorable Court." 361 So. 2d at 1035. It provided no other details of the defendants' alleged contemptuous conduct.

The trial court ordered the defendants to appear before it and to show cause, if any, as to why they should not be punished for contempt of court. A copy of Charles Manufacturing's contempt petition, a copy of the preliminary injunction, and the show-cause order were mailed to the defendants' attorney of record.

In response, the defendants filed a motion to dismiss the contempt petition on the basis that both it and the trial court's show-cause order failed to specify how they had violated the preliminary injunction. Two days later, the trial court denied the defendants' motion to dismiss.

After the defendants filed their answer to Charles Manufacturing's contempt petition, the trial court held a hearing on that petition. Following that hearing, the trial court entered an order in which it found that the defendants had engaged in 23 separate acts of contemptuous behavior. The defendants appealed.

On appeal, the defendants argued that adequate notice of the contempt charges had not been given to them and that, as a result, their

due-process rights had been violated. This Court agreed and held:

"The complaint for contempt in this case simply stated that:

"Plaintiff avers that the Defendants have willfully failed and refused to obey said preliminary injunction as ordered by this Honorable Court.'

"The preliminary injunction listed eleven acts prohibited to be engaged in by [the defendants]. Neither the complaint for contempt nor the order to show cause issued by the circuit court, and served upon [the defendants], contained an 'accusation' or 'charge' setting forth any facts which notified the defendants of what they were to defend. We hold this complaint and order did not satisfy due process requirements because adequate notice of the nature and character of the charges against them was not given [the defendants].

"We also hold [the defendants] were denied adequate opportunity to prepare their defense. The specific charges for which [the defendants] were convicted were not known to them until trial began. The plaintiff rested its case at the end of the first day of trial. [The defendants] had been charged with about twenty acts of contempt, as disclosed by plaintiffs' evidence. Counsel for [the defendants] then requested a continuance in order to prepare a defense. On the next day of trial, counsel for [the defendants] again requested a continuance to prepare a defense. It was denied. This was error."

361 So. 2d at 1037. Based on the foregoing, this Court reversed the trial court's contempt order.

In the present case, it is undisputed by the parties that the circuit

court's preliminary injunction expressly prohibited Hyundai from, among other things, (1) "entering into agreements or otherwise permitting other dealers to sell Hyundai Construction's Construction Equipment or Forklift Equipment" in Southern's territories and (2) "advertising or marketing (via website or otherwise) that other dealers are authorized to sell" such equipment in Southern's territories. Here, Southern filed the contempt petition on November 15, 2022, after it had become aware that Hyundai lift trucks were being offloaded and distributed at a Thompson Lift Truck dealership in Baldwin County.

It is undisputed that, after Southern filed the contempt petition and after Hyundai filed its response, Hyundai's counsel reached out to Southern's counsel in December 2022 to notify Southern that it had become aware that a few lift trucks had been sold by one of its dealers -- Thompson Lift Truck -- to various businesses in Escambia and Mobile Counties, both of which were located in Southern's forklift territory. This information was later confirmed to Southern by a representative from Thompson Lift Truck.

Despite receiving this information nearly two weeks before the previously scheduled contempt hearing, Southern waited until less than

30 minutes before that hearing to assert those additional violations as a separate basis on which to hold Hyundai in contempt and to issue sanctions against it.

Southern contends that the timing of its allegations and submission of evidence in support of those allegations is not problematic given that Hyundai's counsel was the very source from which it initially learned about these additional sales and that it had alleged in its contempt petition that Hyundai's violations of the injunction in this regard were "ongoing." However, a review of Southern's allegations in its "reply," along with the attachments to that "reply," show that those allegations were new, material factual allegations involving sales of (1) different equipment models than those identified in the contempt petition (2) to different businesses than those identified in the contempt petition (3) in different counties in Southern's forklift territory than those identified in the contempt petition and (4) that took place after the contempt petition had been filed. Moreover, nowhere in its contempt order did the circuit court suggest that it was limiting its contempt findings to only the allegations that Southern had made in its contempt petition. Thus, like the defendants in Charles Manufacturing, supra, Hyundai arguably was

unaware of the specific charges against it until the contempt hearing was held.

Allowing the contempt hearing to move forward based, at least in part, on the new, material allegations less than 30 minutes after they had been asserted prevented Hyundai from being able to gather additional witnesses and documentary evidence to refute those allegations. Further, Southern relied exclusively on affidavits and documentary evidence and did not bring any witnesses to the contempt hearing. Because the new allegations were supported exclusively by affidavit testimony and documentary evidence during the contempt hearing, Hyundai lost both the opportunity to depose Southern's witnesses and the opportunity to cross-examine them at the contempt hearing. Hyundai also lost the opportunity to subpoena witnesses to attend the contempt hearing.

In addition, Southern's new allegations required the presentation of new defenses by Hyundai. For example, the record before us indicates that Hyundai's defense to the allegations in Southern's contempt petition was that the equipment found in Baldwin County was not sold by Thompson Lift Truck to businesses in Southern's forklift territory but,

instead, was either rental equipment or equipment used by Thompson Lift Truck for its own purposes. In contrast, Hyundai's response to the new allegations was that the equipment was "ship in" equipment that was not covered by the circuit court's injunction order. This was a new issue requiring new evidence and testimony. Thus, like the defendants in Charles Manufacturing, Hyundai was denied the ability to prepare a proper defense to the new allegations asserted at the last minute.

Allegations of contemptuous behavior are serious. Following our procedural rules is especially important when addressing contempt claims. Accordingly, it is important that the procedures in Rule 70A and our caselaw addressing the due-process requirements for contempt proceedings be followed. Southern argues that Hyundai was allowed to submit evidence two days after the contempt hearing, thus solving any problems arising from the lack of notice regarding the new allegations, the new theory, and the new evidence. Our caselaw makes clear, however, that due process required that Hyundai be given "notice of the charges and a reasonable opportunity to meet them, the right to call witnesses and confront [its] accuser, and the right to give testimony relevant either to the issue of complete exculpation or extenuation of the



offense and in mitigation of the penalty imposed." Charles Mfg., 361 So. 2d at 1037 (emphasis added). Thus, Hyundai was entitled to sufficient notice allowing it to assemble and present its evidence before the contempt hearing, including being able to take depositions of witnesses and to serve subpoenas to potential live witnesses.

Because the circumstances before us indicate that Hyundai should have been, but was not, given sufficient notice of Southern's new allegations and was ultimately denied an opportunity to "call witnesses and ... give testimony" before the circuit court held it in contempt and issued sanctions against it, id., we hold that Hyundai was not afforded due process, and the circuit court's contempt order is, therefore, due to be reversed.<sup>4</sup>

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<sup>4</sup>We note that Hyundai argues that Southern's "reply" violated the provisions of Rule 6(d), Ala. R. Civ. P. That rule provides, in relevant part:

"A written motion ... and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. ... When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c),[Ala. R. Civ. P.,] opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time."

Conclusion

Based on the foregoing, we reverse the circuit court's contempt order and remand the cause for the circuit court to hold a contempt hearing consistent with the due-process requirements discussed in this opinion. We pretermite discussion of the remaining issues raised on appeal.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Parker, C.J., and Shaw, Wise, Sellers, Stewart, and Mitchell, JJ., concur.

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

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(Emphasis added.) According to Hyundai, neither Southern's "motion" -- i.e., its "reply" -- nor the affidavit that it submitted in support of that "motion" -- i.e., the affidavit of Barkley Lindsey -- were served within the periods provided in the above-quoted rule. In response, Southern does not dispute those requirements. It does argue, however, that the rule allows the trial court to "permit" at least the accompanying affidavit to be "served at some other time."

Southern does not argue that it requested leave to serve its "reply" containing the new allegations (or the affidavit/evidence in support thereof) less than 30 minutes before the contempt hearing, and it does not argue that the circuit court granted such leave "by order of the court." Therefore, we do not need to reach the questions whether granting such a request would be an abuse of discretion or would support an additional due-process argument by Hyundai.