

Third District Court of Appeal

State of Florida

Opinion filed February 12, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1297
Lower Tribunal No. 17-24767

David C. Metalonis,
Appellant,

vs.

Eastgroup Properties, Inc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, William L. Thomas, Judge.

Kula & Associates, P.A., and Elliot B. Kula, W. Aaron Daniel and William D. Mueller, for appellant.

Akerman LLP, and Gerald B. Cope, Jr., Joseph L. Rebak and Lorayne Perez, for appellees.

Before LOGUE, HENDON and GORDO, JJ.

GORDO, J.

David Metalonis appeals the trial court's order granting Eastgroup Properties, Inc.'s emergency motion to compel compliance with the settlement agreement the

parties entered into to resolve a suit over a parcel of land. Under the terms of the agreement, Eastgroup would pay Metalonis \$2.45 million in exchange for his voluntary dismissal of the action with prejudice. The parties also agreed to exchange releases after the money was paid.

After Eastgroup paid the sum as required by the agreement, Metalonis failed to dismiss the case and claimed he wanted to further negotiate the terms of the settlement. Eastgroup filed an emergency motion to compel compliance with the settlement agreement, which was set for a hearing three days later.

At the hearing, Metalonis's counsel conceded the parties had reached a settlement agreement but claimed that there were still details to be negotiated. Metalonis's counsel, thus, asked the court to reserve jurisdiction on any remaining enforcement issues. He never requested an evidentiary hearing. After hearing argument from both parties, the trial court approved the terms of the agreement, granted the motion to compel and retained jurisdiction to enforce the terms of the settlement agreement.

The court ordered the parties to execute releases—modified as necessary to conform to the parties' intent—and ordered Metalonis to file a notice of voluntary dismissal with prejudice in compliance with the terms of the agreement. The order specified that if Metalonis failed to file the voluntary dismissal, the court would dismiss the case with prejudice.

Following the court's order, the parties negotiated the terms of the general releases and Metalonis filed his notice of voluntary dismissal on June 3, 2019. On June 14, 2019, as part of a ministerial action to close the case, the trial court entered an order of dismissal.

Metalonis appealed the order granting the emergency motion to compel. Eastgroup filed a motion to dismiss the appeal for lack of jurisdiction. In response, Metalonis argued the voluntary dismissal was "involuntary." This argument is directly contradicted by the record, which reflects that 1) the parties negotiated their releases following the court's order and 2) Metalonis, represented by counsel, decided to file a voluntary dismissal rather than preserve his appellate rights and allow the court to dismiss the case with prejudice.

It is well settled that once an appellant takes a voluntary dismissal, he cannot challenge the trial court's earlier rulings. Clarke-Morales v. Coca-Cola Refreshments USA, Inc., 271 So. 3d 1128, 1129 (Fla. 3d DCA 2019). "The voluntary dismissal terminated the lawsuit, thereby divesting the trial court of jurisdiction and depriving this Court of appellate jurisdiction to review pre-dismissal orders of the trial court." Id. Accordingly, the courts were divested of jurisdiction once Metalonis voluntarily dismissed his case.

Dismissed.