

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

VINCE AUSTIN

Appellant

v.

THYSSENKRUPP ELEVATOR  
CORPORATION

Appellant

IN THE SUPERIOR COURT  
OF PENNSYLVANIA

No. 2080 EDA 2018

Appeal from the Order Entered June 1, 2018  
In the Court of Common Pleas of Philadelphia County  
Civil Division at No: 180500821, July Term 2016; 160700347

BEFORE: OTT, STABILE, AND MCLAUGHLIN, JJ.

MEMORANDUM BY STABILE, J.:

**FILED MAY 1, 2019**

Appellant, Vince Austin ("Austin"), appeals from the order entered in the Court of Common Pleas of Philadelphia County on June 1, 2018, granting the motion to enforce settlement filed by Appellee, Thyssenkrupp Elevator Corporation ("tkE"). Upon review, we affirm.

There is no dispute regarding the factual basis for the suit brought by Austin against tkE. Briefly, Austin alleges injuries sustained while he was riding in an elevator owned and maintained by tkE that suddenly and violently dropped.

Austin initiated suit in July 2016. By letter dated December 19, 2017, Austin's then-counsel advised the trial court, in advance of a settlement conference scheduled for that day, that the parties had reached a

settlement. The trial court proceeded to mark the case settled on the docket.

On May 4, 2018, tkE filed a motion to enforce settlement, representing that the parties reached a settlement following a dispute resolution proceeding on November 30, 2017. Attached as exhibits were a letter from the dispute resolution service confirming amicable resolution of the case and various emails exchanged between counsel for the parties regarding the proposed release and suggested modifications thereto. Among the emails was a March 22, 2018 email from Austin's counsel indicating that Austin "is now balking at the settlement, so he hasn't signed the release. Rest assured that I have no intention of trying to renege on our settlement agreement. The only question for me is if I can convince [Austin] to sign what he previously agreed to." Motion to Enforce Settlement, 5/4/18, at ¶ 10 (quoting Exhibit H). In Paragraph 13, tkE alleged that the "communications and releases exchanged by counsel for the parties confirm that the parties agreed to the material terms of settlement and fully intended to be bound by those terms." *Id.* at ¶ 13. In Paragraph 14, tkE indicated that, "[i]n light of the above, tkE seeks judicial intervention to enforce the settlement[.]" *Id.* at P 14. In its proposed order, tkE asked the court to direct Austin to deliver an executed release within twenty days of the order, to direct tkE to deliver a settlement draft within twenty days of receiving the executed release, and

to dismiss the matter with prejudice in the event Austin failed to deliver the executed release as ordered. Proposed Order at 1.

Austin filed a response to the motion, admitting all allegations of Paragraphs 1 through 13 of the motion. Appellant's Response to Motion to Enforce Settlement, 5/30/18, at ¶¶ 1-13. In response to Paragraph 14, Austin denied the allegations and asserted that "[tkE] seeks relief that is unwarranted, specifically the request for dismissal." *Id.* at ¶ 14.

By order entered June 1, 2018, the trial court granted the requested relief relating to the execution of the release and delivery of the check. Order, 6/1/18, at 1. The court did not grant the requested relief for dismissal of the matter in the event Austin failed to deliver the executed release. As the trial court recognized, the request for dismissal "was [Austin's] only opposition to the Motion." Trial Court Rule 1925(a) Opinion, 8/17/18, at 2.

On July 2, 2018, Austin filed a timely notice of appeal.<sup>1</sup> On the same day, Austin also filed a motion for reconsideration of the June 1 order. By order entered July 6, 2018, the trial court denied the motion for reconsideration. On July 10, the trial court ordered Austin to file a Rule 1925(b) statement of errors complained of on appeal. Austin complied,

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<sup>1</sup> The thirtieth day following entry of the June 1 order was Sunday, July 1. Therefore, the deadline for filing the appeal was Monday, July 2, 2018. 1 Pa.C.S.A. § 1908.

raising four alleged errors. In his brief filed with this Court, Austin abandons the third and fourth claimed errors while modifying the first and second claimed errors as follows:

1. Did the trial court err in finding that it was not informed in the record that a factual dispute existed concerning then-counsel's authority to enter into the settlement agreement, where (a) the motion to enforce settlement agreement revealed that [Austin] was "balking at the settlement" and refusing to sign a release; (b) [Austin] himself notified the trial court by letter, in a timely fashion, that he did not consent to the settlement and took exception to his then-counsel's statement to the contrary; and (c) [Austin's] denial of his consent to the settlement was presented in a timely motion for reconsideration?
2. Whether [the trial] court erred in enforcing the alleged settlement agreement between the parties, where there existed a dispute between [Austin] and his counsel as to whether [Austin] authorized his counsel to enter into the settlement agreement, and no evidentiary hearing was held on the validity of the purported settlement?

Appellant's Brief at 4 (some capitalization omitted).

As this Court reiterated in ***Salsman v. Brown***, 51 A.3d 892 (Pa. Super. 2012):

When reviewing a trial court's decision to enforce a settlement agreement, our scope of review is plenary as to questions of law, and we are free to draw our own inferences and reach our own conclusions from the facts as found by the court. However, we are only bound by the trial court's findings of fact which are supported by competent evidence. The prevailing party is entitled to have the evidence viewed in the light most favorable to its position. Thus, we will only overturn the trial court's decision when the factual findings of the court are against the weight of the evidence or its legal conclusions are erroneous.

**Id.** at 893-94 (quoting **Bennett v. Juzelenos**, 791 A.2d 403, 406 (Pa. Super. 2002)).

We first note that this appeal is from the June 1, 2018 order enforcing the settlement agreement orally reached between the parties. Nevertheless, in part (b) of his first issue, Austin asks us to consider a June 7, 2018 letter he purportedly sent to the trial court, challenging his counsel's statements regarding his agreement to the settlement. **See** Appellant's Brief at 4, Issue 1(b). This letter post-dates the order from which Austin appeals and, further, is not part of the certified record on appeal. Therefore, we shall not consider it.<sup>2</sup>

In part (c) of his first issue, Austin asks us to consider matters relating to his motion for reconsideration of the June 1, 2018 order. **See** Appellant's Brief at 4, Issue 1(c). In his motion for reconsideration, Austin claimed his answer to the motion to enforce settlement "did not include [Austin's] contention that the acceptance of the settlement offer was unauthorized." Motion for Reconsideration, 6/2/18, at ¶ 5. We agree. At no time prior to the trial court's entry of the June 1, 2018 order was there any suggestion that counsel was unauthorized to enter into the settlement. Rather, as reflected in the motion to enforce, the parties agreed that Austin was merely "balking at settlement and had not signed the Release," an allegation

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<sup>2</sup> By order entered on January 25, 2019, we denied Austin's motion to supplement the record with the June 7, 2018 letter.

Austin's counsel admitted. Motion to Enforce and Answer to Motion at ¶ 10. Moreover, Austin's counsel indicated he did not intend to renege on the agreement and was attempting to convince Austin to sign "what he previously agreed to." ***Id.***

As tkE correctly observes, the claims raised in Austin's motion for reconsideration were made after the trial court issued its order and are "immaterial to whether the trial court properly enforced the settlement based on the evidence it had before it at the time the motion was pending and should not be considered by this Court." Appellee's Brief at 15 (some capitalization omitted).

As for the motion for reconsideration itself, tkE asserts this Court does not have jurisdiction over the denial of a motion for reconsideration. Appellee's Brief at 14 (citing ***Prince George Ctr., Inc. v. U.S. Gypsum***, 704 A.2d 141, 145 (Pa. Super. 1997)). We agree. Because issues raised for the first time in Austin's petition for reconsideration are beyond the scope of our jurisdiction, we decline to consider them. ***See*** Pa.R.A.P. 302; ***see also Stange v. Janssen Pharmaceuticals, Inc.***, 179 A.3d 45, 63 (Pa. Super. 2018) ("issues raised in motions for reconsideration are beyond the jurisdiction of this Court and thus may not be considered by this Court on appeal") (citations omitted).

We now turn to the issues properly before us, *i.e.*, Issues 1 (a) and 2. In Issue 1(a), Austin challenges the trial court's finding that it was not

informed of a factual dispute concerning his counsel's settlement authority when the motion to enforce the settlement agreement "revealed that [Austin] was 'balking at [] settlement' and refusing to sign a release." Appellant's Brief at 4, Issue 1(a) (quoting Motion to Enforce Settlement, 5/4/18, at ¶ 10). As reflected above, we are bound only by the trial court's factual findings that are supported by competent evidence and tkE, as the prevailing party, is entitled to have the evidence viewed in the light most favorable to its position. **Salsman**, 51 A.3d at 894.

A review of the motion and Austin's answer reveals the inaccuracy of Austin's contentions. As the trial court explained:

The only issue presented to the court was that [Austin] had not yet signed the release. In [Austin's] answer to the motion to enforce settlement, [Austin] admitted all of [tkE's] factual averments and merely contested [tkE's] proposed relief of dismissing [Austin's] claim should [Austin] not comply with the court's order enforcing settlement. [T]he court was not informed in the record that a factual dispute existed concerning [Austin's] then-counsel's authority to enter into the settlement agreement and both parties admitted in pleadings that a settlement agreement had been entered into[.]

Trial Court Rule 1925(b) Opinion, 8/17/18, at 4 (some capitalization omitted).

Austin's first issue lacks support in the record and, therefore, fails for lack of merit.

In his second issue, Austin argues the trial court erred in enforcing the settlement in light of the lack of an evidentiary hearing on the validity of the settlement agreement, leaving unresolved the alleged dispute between

Austin and his then-counsel regarding counsel's authority to enter into a settlement agreement. We find no error in the trial court's ruling.

As the trial court recognized, when the pleadings raise an issue of fact relating to a settlement agreement, the trial court is required to hold an evidentiary hearing to resolve the contested issues. Trial Court Rule 1925(a) Opinion, 8/17/18, at 3 (citing ***Christian v. Allstate Inc. Co.***, 502 A.2d 192, 194 (Pa. Super. 1985)). However, where no factual dispute regarding the existence of an agreement is raised in the pleadings, the trial court does not err in enforcing an agreement. ***Id.*** (citing ***City of Carbondale v. Pennsylvania Ins. Guar. Ass'n***, 636 A.2d 669, 670-71 (Pa. Super. 1994)).

Here, "there was no allegation raised in either the motion to enforce settlement or [Austin's] answer that [Austin's] then-counsel had not been authorized by [Austin] to enter into the settlement agreement." ***Id.*** (citing ***City of Carbondale***, 636 A.2d at 670-71) (capitalization omitted). "In [tkE's] motion to enforce settlement and [Austin's] answer there were no allegations raised as to a dispute relating to [Austin's] counsel's lack of authority to settle the matter. In both pleadings, counsel[] agreed that a settlement had been reached at the November 30, 2017 mediation." ***Id.*** (capitalization omitted).

Because, as the trial court indicated, the only issue presented to the court "was that [Austin] had not yet signed the release," ***id.***, there was no

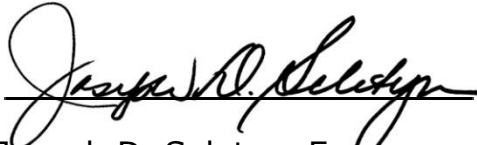


dispute as to authority to enter into a settlement and, therefore, no issue of fact necessitating an evidentiary hearing. Austin's second issue lacks merit.

The trial court's factual findings are supported by competent evidence and its legal conclusions are without error. Therefore, we shall not disturb the court's order enforcing settlement.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 5/1/19