Opinion issued June 9, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00735-CV

NO. 01-20-00803-CV

FASTRACKED EXECUTIVE, LLC D/B/A THE EXECUTIVE; FASTRACKED EXECUTIVE SERVICES, LLC D/B/A FASTRACKED EXECUTIVE; AND RINA Y. HARTLINE, Appellants

V.

PREVOST CAR (US), INC. AND CARL STEVENS, Appellees

On Appeal from the 55th District Court
Harris County, Texas
Trial Court Case Nos. 2017-33764A & 2017-33764B

MEMORANDUM OPINION

Appellants Fastracked Executive, LLC; Fastracked Executive Services, LLC; and Rina Y. Hartline (collectively, Fastracked) appeal the trial court's granting of

two summary judgments in favor of appellees Prevost Car (US), Inc. and Carl Stevens. Fastracked also appeals the trial court's discovery rulings. We affirm.

BACKGROUND

In 2013, Prevost's sales representative Carl Stevens sold a used motor coach to Fastracked. Larry Smith, a friend of Stevens's, was the previous owner of the motor coach and asked Stevens to sell the motor coach through Prevost's website. Fastracked requested from Prevost a detailed mechanical inspection of the motor coach and an estimate to repair all of the problems identified in the inspection. After buying the motor coach, Fastracked found a number of problems with it and, in 2017, sued both Prevost and Stevens, along with Smith and others who are not parties to this appeal. Fastracked sued for DTPA violations, breach of contract, breach of warranty, fraud, negligence, and other similar claims.

The mediation agreement

Counsel for Fastracked and counsel for Prevost and Stevens attended mediation in December 2017. After the mediation, the mediator sent a proposed mediation agreement to counsel for both sides. The mediator explained that, if both sides agreed to the terms, he would contact them to let them know settlement had been achieved. The proposed mediation agreement stated that the defendants would pay $300,000 "[f]or and in consideration of the settlement, mutual release and dismissal, with prejudice, of any and all claims, either pending or which could be

asserted in the future, arising out of the events and actions made subject of the captioned action." Counsel for both sides signed the mediation agreement, and the mediator reported to both that each party had accepted the proposal and that the case had been settled according to the terms of the mediation agreement.

The settlement agreement

Several days later, counsel for Prevost and Stevens sent a draft settlement agreement to Fastracked's counsel. There was some back and forth between them, during which they negotiated specific terms for destroying material obtained in discovery, they discussed excluding defendant Larry Smith—who was not present at the mediation—from the settlement, and counsel for Prevost and Stevens admitted that he could not find Stevens to obtain his signature for the settlement agreement because Stevens was no longer a Prevost employee. Counsel for Fastracked then insisted on including Stevens's name in the paragraph excluding Smith from the settlement agreement. Thus, the final settlement agreement included both of the following seemingly inconsistent paragraphs:

> As consideration for payment of the Settlement Amount and mutual release, Plaintiffs, and all of their agents, employees, servants, officers, directors, owners, successors, heirs, administrators, executors, parents, subsidiaries, sisters and all other related entities and assigns do hereby **fully release, remise, acquit and forever discharge Defendants, and all of their agents, employees,** servants, officers, directors, owners, successors, heirs, administrators, executors, parents, subsidiaries, sisters and all other related entities and assigns **from any and all liability, damages, and claims in any way related to the**

> **Coach and the Litigation**, whether such claims are based upon statute of any kind, tort, contract, warranties, vicarious liability, or any other legal or equitable theory of recovery, irrespective of whether such claims were actually asserted in the Litigation or not.
>
> Defendants Carl Stevens and Larry Smith are not parties to this Agreement and have not contributed any good or valuable consideration. Plaintiffs' existing or potential claims against Carl Stevens and Larry Smith, including as detailed further in Plaintiffs' Second Amended Petition in the Litigation, are not affected by this Agreement. **Rights to pursue claims against Defendants Stevens and Smith are neither released nor discharged, and are explicitly preserved.**

(emphasis added). Rina Hartline, the owner of the Fastracked companies, signed the agreement, and Prevost sent a check for the agreed settlement amount of $300,000.

The dispute continues

After the settlement agreement was signed, Fastracked dismissed Prevost from the suit but sought extensive discovery from Stevens relating to Fastracked's purported remaining claims against him. Fastracked's only claims against Stevens related to his sale of the motor coach as a Prevost employee, and Fastracked asserted that Prevost was vicariously liable. Prevost then moved for a protective order and to enforce the settlement agreement. Prevost argued that, in the mediation agreement, Fastracked agreed to release all claims against Prevost and Stevens, and the later settlement agreement was only a memorialization of the terms agreed to in the mediation agreement. Prevost further argued that the language specifically excluding Stevens from the settlement agreement was not included because of any agreement

to continue litigation against Stevens but because Prevost's counsel admitted he could not find Stevens to sign the settlement agreement. Prevost insisted that Fastracked's pursuit of claims against Stevens was contrary to the settlement agreement and asked the trial court to enforce the settlement agreement. Prevost included a copy of the confidential settlement agreement with its motion.

Fastracked responded by filing an amended petition, contending that Prevost had declared it "never intended to be bound by the language in the purported settlement agreement" and had induced the settlement agreement by fraud. Further, Fastracked alleged that Prevost breached the confidentiality of the settlement agreement by including a copy of it in court records and that Prevost filed a groundless motion to enforce for the purpose of harassment. The amended petition included the same claims against Stevens but reasserted all of the original claims against Prevost relating to the sale of the motor coach as well. Fastracked reasoned that, because Prevost had breached the settlement agreement and induced it by fraud, Fastracked was no longer bound by its terms either. The amended petition also included claims for fraud and fraudulent inducement relating to Prevost's signing of the settlement agreement.

Fastracked continued to serve requests for production and deposition notices on Prevost and Stevens and to move to compel discovery; Prevost and Stevens continued to move for protective orders, to quash the depositions, and to enforce the

settlement agreement. Prevost and Stevens both moved for summary judgment based on the mediation agreement and settlement agreement. Several months later, the trial court granted both Prevost's and Stevens's motions for summary judgment and denied Fastracked's motions to compel discovery. The trial court severed the claims against Prevost and the claims against Stevens into two separate actions, rendering a final judgment in each of those actions. Fastracked now appeals the Prevost and Stevens judgments as well as the trial court's discovery orders.

DISCUSSION

Fastracked argues on appeal that the trial court erred in granting summary judgment for both Stevens and Prevost because the settlement agreement allowed Fastracked to pursue claims against Stevens and because Prevost breached the settlement agreement, reinstating the claims released in the agreement and giving rise to new claims for which Fastracked did not have the opportunity to conduct discovery before the trial court granted summary judgment.

Standard of review

We review a trial court's summary judgment de novo. *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018). To prevail on a traditional summary-judgment motion, the movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Lujan*, 555 S.W.3d at 84. We must credit evidence favoring the nonmovant, indulging every

reasonable inference and resolving all doubts in his or her favor. *Lujan*, 555 S.W.3d at 84. If the trial court does not state the grounds upon which it grants summary judgment, an appellate court will affirm the judgment if any of the grounds set forth by the movant are meritorious. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (per curiam).

A. Stevens's Summary-Judgment Motion

Stevens moved for summary judgment on the grounds that Fastracked's claims against him were barred by the mediation agreement in which Fastracked agreed to release its claims against him. Fastracked argues on appeal that the settlement agreement, which Fastracked contends specifically excluded Stevens, superseded the mediation agreement, and so the mediation agreement is not enforceable. Fastracked also argues that Stevens failed to plead or prove a breach of the mediation agreement that would support the trial court's granting of summary judgment. Finally, Fastracked contends that Stevens did not address in his summary-judgment motion Fastracked's post-settlement claims relating to disclosure of confidential information.

1. Enforceability of mediation agreement

Fastracked argues the mediation agreement was not enforceable because it merged with and was superseded by the settlement agreement.

a. Applicable law

A written settlement agreement is enforceable in the same manner as any other written contract. TEX. CIV. PRAC. & REM. CODE § 154.071(a). A settlement agreement is enforceable if it is "complete within itself in every material detail, and . . . contains all of the essential elements of the agreement." *Padilla v. LaFrance*, 907 S.W.2d 454, 460 (Tex. 1995). The essential terms for a settlement agreement are the amount of compensation and the liability to be released. *See id.* at 461. A settlement agreement may still be enforced even though one party withdraws consent before judgment is rendered on the agreement. *Mantas v. Fifth Court of Appeals*, 925 S.W.2d 656, 658 (Tex. 1996) (orig. proceeding) (per curiam). When consent has been withdrawn, the party seeking enforcement of the settlement agreement may pursue a separate claim for breach of contract or file a motion to enforce. *See Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 663 (Tex. 2009); *Mantas*, 925 S.W.2d at 658.

Generally, we presume that, even in the absence of an express merger clause, all prior oral and written agreements merge into a subsequent written contract. *Yasuda Fire & Marine Ins. Co. of Am. v. Criaco*, 225 S.W.3d 894, 899 (Tex. App.—Houston [14th Dist.] 2007, no pet.). For merger to occur, however, the same parties to an earlier agreement must later enter into a written integrated agreement covering

the same subject matter. *Fish v. Tandy Corp.*, 948 S.W.2d 886, 898 (Tex. App.—Fort Worth 1997, writ denied).

b. Analysis

The mediation agreement states that the defendants agree to pay $300,000 in exchange for the "settlement, mutual release and dismissal, with prejudice, of any and all claims" arising out of the events and actions that are the subject of the lawsuit, and the agreement is signed by counsel for Fastracked and counsel for Prevost and Stevens. The mediation agreement contains the essential terms of an enforceable agreement. *See Padilla*, 907 S.W.2d at 461.

Fastracked does not argue that the mediation agreement is invalid; it only argues that the mediation agreement merged with and was superseded by the later settlement agreement, and so only the settlement agreement is enforceable. *See Criaco*, 225 S.W.3d at 899. Fastracked admits, however, that Stevens was not a party to the later settlement agreement. Therefore, the two agreements were not between the same parties, and there was no merger. *See Fish*, 948 S.W.2d at 898. Both agreements are enforceable.

2. Sufficient pleading

Fastracked argues that Stevens did not sufficiently plead a breach-of-contract claim, and so the trial court erred in granting summary judgment to enforce the

mediation agreement when Stevens did not properly plead that Fastracked had breached the agreement.

a. Applicable law

Like any other breach-of-contract claim, a claim for breach of settlement agreement is subject to the "normal rules of pleading and proof." *Mantas*, 925 S.W.2d at 658. Courts have held that a motion to enforce a settlement agreement is a sufficient pleading to allow a trial court to render judgment enforcing the settlement because the motion gives the alleged breaching party an opportunity to defend itself. *E.g.*, *Neasbitt v. Warren*, 105 S.W.3d 113, 117–18 (Tex. App.—Fort Worth 2003, no pet.); *Bayway Servs., Inc. v. Ameri–Build Constr., L.C.*, 106 S.W.3d 156, 160 (Tex. App.—Houston [1st Dist.] 2003, no pet.); *see also Castillo*, 279 S.W.3d at 663 (parties did not dispute motion to enforce settlement agreement was sufficient as pleading to support judgment for breach of contract). If the motion satisfies the general purpose of pleadings, which is to give the other party fair notice of the claim and the relief sought, it is sufficient to allow the trial court to render judgment enforcing the settlement. *See Neasbitt*, 105 S.W.3d at 117–18; *Bayway Servs.*, 106 S.W.3d at 160.

b. Analysis

Although Stevens did not specifically plead a breach-of-contract claim, he filed a motion to enforce the mediation agreement, which is sufficient to give fair

notice of the breach-of-contract claim. *See Neasbitt*, 105 S.W.3d at 117–18; *Bayway Servs.*, 106 S.W.3d at 160. In Stevens's supplemental motion for summary judgment, which incorporated his previous motion to compel enforcement of the mediation agreement, Stevens alleged that the parties entered into a mediation agreement that called for a release of all the defendants and that consideration for the release had already been paid and received. Therefore, the motion was sufficient to give Fastracked fair notice of the breach-of-contract claim, and it satisfied the pleading requirements. *See Neasbitt*, 105 S.W.3d at 117–18; *Bayway Servs.*, 106 S.W.3d at 160.

3. Breach-of-contract claim and specific performance

Fastracked argues that Stevens did not prove a breach-of-contract claim, and so the trial court erred in granting summary judgment to enforce the mediation agreement when Stevens did not sufficiently prove that Fastracked had breached the agreement.

a. Applicable law

To prevail on a breach-of-contract claim, the claimant must establish the existence of a valid contract, performance or tendered performance, breach, and damages. *Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019). A breach of contract occurs when a party to the contract fails or refuses to do something he has promised to do. *B & W Supply, Inc. v. Beckman*, 305

S.W.3d 10, 16 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). Specific performance is an equitable remedy that may be awarded as a substitute for money damages when money damages would not be adequate. *Stafford v. S. Vanity Magazine, Inc.*, 231 S.W.3d 530, 535 (Tex. App.—Dallas 2007, pet. denied). To be entitled to specific performance, a party must show that it was ready, willing, and able to perform its obligations under the contract. *DiGiuseppe v. Lawler*, 269 S.W.3d 588, 593 (Tex. 2008).

b. Analysis

Stevens has shown the parties had a valid, enforceable mediation agreement. Under the terms of the mediation agreement, the defendants agreed to pay Fastracked $300,000 "[f]or and in consideration of the settlement, mutual release and dismissal, with prejudice, of any and all claims, either pending or which could be asserted in the future, arising out of the events and actions made subject of the captioned action." Fastracked breached the agreement by not releasing all of its pending claims against Stevens. Stevens has performed his part of the contract: the mutual release of all claims arising out of subject matter of the suit, and Prevost paid $300,000 to Fastracked. Stevens was entitled to judgment as a matter of law on his breach-of-contract claim because there was no genuine issue of material fact as to the validity of the agreement, his performance under it, or Fastracked's breach. *See* TEX. R. CIV. P. 166a(c); *Pathfinder Oil & Gas*, 574 S.W.3d at 890; *Lujan*, 555

S.W.3d at 84. Thus, the trial court did not err in granting Steven's motion for summary judgment and granting specific performance of the mediation agreement.

4. Disclosure of confidential information

Finally, Fastracked argues that because Stevens did not address Fastracked's claim for breach of contract relating to his disclosure of confidential information in violation of the mediation agreement, the trial court erred in granting summary judgment as to those claims. On the facts of this particular case, we disagree. The trial court granted summary judgment for Stevens based on the mediation agreement, and we have affirmed. Because Stevens could only have prevailed on the basis of the mediation agreement by disclosing its existence to the trial court, Stevens cannot be liable for breaching the mediation agreement by trying to enforce it. Our law strongly encourages voluntary settlement and orderly dispute resolution. *In re Caballero*, 441 S.W.3d 562, 575 (Tex. App.—El Paso 2014, no pet.); *see also* TEX. CIV. PRAC. & REM. CODE § 154.002 ("It is the policy of this state to encourage the peaceable resolution of disputes . . . and the early settlement of pending litigation through voluntary settlement procedures."). Here, Fastracked had breached the mediation agreement by continuing to pursue claims against Stevens after signing the mediation agreement. We reject Fastracked's claim that merely seeking enforcement of the mediation agreement, which necessarily involved disclosing its existence to the trial court, can serve as the basis for a claim of breach of its

confidentiality provision. To hold otherwise would be tantamount to rendering these types of agreements unenforceable, which is contrary to the law. *See Mantas*, 925 S.W.2d at 658 (claim for breach of settlement agreement subject to "normal rules of pleading and proof" like any other breach-of-contract claim); *see also Alford v. Bryant*, 137 S.W.3d 916, 921–22 (Tex. App.—Dallas 2004, pet. denied) (party waives mediation confidentiality when she uses it "as a sword rather than a shield" by invoking jurisdiction of court in search of affirmative relief but denying opposing party benefit of evidence that would materially weaken claim). In this instance, Fastracked's breach-of-confidentiality claim is subsumed and disposed by the parties' respective arguments about the applicability and effect of the mediation agreement.

The trial court properly granted Stevens's motion for summary judgment. Fastracked's fourth point of error is overruled, and we need not reach Fastracked's fifth point of error, that the trial court erred in granting Stevens's no-evidence motion for summary judgment. *See* TEX. R. APP. P. 47.1.

B. Prevost's Summary-Judgment Motion

In its Fourth and Fifth Amended Petitions, Fastracked asserted two categories of claims against Prevost: (1) pre-settlement claims relating to the sale of the motor coach that Fastracked had previously released under the settlement agreement; and

(2) post-settlement claims for fraud and fraudulent inducement relating to the settlement agreement.

Prevost moved for summary judgment on both sets of claims. As to the pre-settlement sale claims, Prevost argued those claims had already been released by the settlement agreement. As to the post-settlement fraud claims, Prevost argued that it had not concealed or misrepresented any material facts to induce the settlement agreement and that Fastracked could not demonstrate any damages when Fastracked had already received the full settlement amount. The trial court granted summary judgment in favor of Prevost on all claims.

On appeal, Fastracked contends that the trial court erred in granting Prevost's summary-judgment motion on all claims.

1. Post-settlement Fraud Claims

Fastracked argues that Prevost did not establish its entitlement to summary judgment on the post-settlement fraud claims because Prevost did not conclusively negate any elements of Fastracked's claims.

a. Applicable law

To prevail on a claim for fraud, a plaintiff must show: "(1) the defendant 'made a material representation that was false'; (2) the defendant knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth; (3) the defendant intended to induce the plaintiff to act upon

the representation; and (4) the plaintiff actually and justifiably relied upon the representation and suffered injury as a result." *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018) (quoting *Ernst & Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 577 (Tex. 2001)). Fraudulent inducement is a type of fraud that shares the same elements but arises only in the context of a contract. *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018). The material misrepresentation involved must be a "false promise of future performance made with a present intent not to perform." *Id.*

b. Analysis

Fastracked argues that Prevost committed fraud by entering into the settlement agreement with no intent to perform or be bound by its terms. However, we disagree that Prevost's actions show an intent not to be bound by the settlement agreement, particularly in light of the undisputed fact that Prevost fully performed its obligation under the settlement agreement.

Fastracked argues that Prevost showed it had no intent to be bound by the settlement agreement when it attempted to prevent Fastracked from pursuing claims against Stevens, contrary to the language of the settlement agreement that explicitly preserves Fastracked's claims against Stevens. Prevost's attempt to prevent Fastracked from pursuing these claims, however, is consistent with both the mediation agreement and settlement agreement and does not show an intent not to

be bound by the settlement agreement. As discussed above, the mediation agreement and the settlement agreement did not merge, and there were two separate, enforceable contracts between Fastracked and Prevost. The mediation agreement calls for the release of all claims against all defendants, but the settlement agreement explicitly preserves the claims against Stevens, which appears to contradict the mediation agreement. Within the settlement agreement itself, there are two seemingly contradictory paragraphs: one paragraph states that Fastracked agrees to fully release Prevost and all of its employees from any liability related to the motor coach, but another paragraph explicitly preserves claims against Stevens, who was a Prevost employee when the motor coach was sold.

When interpreting a contract, we try to "harmonize and give effect" to every provision of the contract, "so that none will be rendered meaningless." *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011) (quoting *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003)). The settlement agreement releases claims against Prevost and its employees but preserves claims against Stevens, who was a Prevost employee; the only way to give each part meaning is to interpret the settlement agreement as preserving claims against Stevens in his individual capacity only, not in his capacity as a Prevost employee. This interpretation harmonizes not only the seemingly contradictory paragraphs within the settlement agreement, but also the settlement agreement and

the mediation agreement. Under this interpretation, the mediation agreement and the settlement agreement do not irreconcilably conflict, and both agreements can be given effect. Under this interpretation, Prevost did not violate the settlement agreement by attempting to prevent Fastracked from pursuing its claims against Stevens in his capacity as a Prevost employee—the only claims Fastracked had asserted against Stevens. Prevost's actions did not show an intent not to be bound by the settlement agreement.

Further, Prevost showed its intent to be bound by the settlement agreement by performing its obligation under the agreement. The essential terms of the mediation agreement and the settlement agreement, as between Fastracked and Prevost, were that Prevost would pay Fastracked $300,000 and Fastracked would release all claims against Prevost and its employees. *See Padilla*, 907 S.W.2d at 461 (essential terms for settlement agreement are amount of compensation and liability to be released). On receiving Fastracked's signed copy of the settlement agreement, Prevost immediately tendered payment of the full settlement amount, $300,000. Fastracked does not dispute that it received payment under the terms of the settlement agreement. Thus, Prevost fully performed its obligation under the settlement agreement, and Fastracked's claim that Prevost somehow intended not to perform or not to be bound by the settlement agreement is contradicted by the undisputed facts. Therefore, Prevost made no material misrepresentation relating to the settlement

agreement, and Fastracked cannot establish a claim for fraud or fraudulent inducement as a matter of law. *See Anderson*, 550 S.W.3d at 614; *Orca Assets*, 546 S.W.3d at 653. The trial court did not err in granting summary judgment for Prevost on these claims.

Fastracked also argues that Prevost fraudulently concealed Stevens's employment status in inducing Fastracked to sign the settlement agreement. The undisputed evidence shows that counsel for Prevost emailed counsel for Fastracked to explain that Stevens could not be located for his signature because he left employment with Prevost *before* Hartline signed the settlement agreement on behalf of Fastracked. Again, Prevost made no material misrepresentation about Stevens's employment status, and therefore the trial court did not err in granting summary judgment for Prevost on these claims. *See Anderson*, 550 S.W.3d at 614; *Orca Assets*, 546 S.W.3d at 653.

2. Pre-settlement Sale Claims

Fastracked argues that Prevost either (1) induced the settlement agreement by fraud, making it invalid and unenforceable; or (2) repudiated or breached the valid settlement agreement, thereby excusing Fastracked's performance and reviving Fastracked's claims that had been released under the settlement agreement. Either way, Fastracked contends, Prevost is still liable for all of Fastracked's pre-settlement

sale claims that had been released under the settlement agreement, and therefore the trial court erred in granting summary judgment for Prevost on these claims.

a. Applicable law

Generally, a party is not bound by a contract that is procured through fraud. *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors, Inc.*, 960 S.W.2d 41, 46 (Tex. 1998). Nor is a party required to perform under a contract when the other party has repudiated or breached the contract. *Mustang Pipeline Co., Inc. v. Driver Pipeline Co., Inc.*, 134 S.W.3d 195, 196 (Tex. 2004) (per curiam); *Sci. Mach. & Welding, Inc. v. FlashParking, Inc.*, 641 S.W.3d 454, 463 (Tex. App.—Austin 2021, pet. denied). Repudiation of a contract is a "positive and unconditional refusal to perform the contract in the future," evidenced by "conduct that shows a fixed intention to abandon, renounce, and refuse to perform the contract." *CMA-CGM (Am.), Inc. v. Empire Truck Lines, Inc.*, 416 S.W.3d 495, 519 (Tex. App.—Houston [1st Dist.] 2013, pet. denied).

b. Analysis

As discussed above, Fastracked cannot establish as a matter of law that the settlement agreement was procured by fraud. Therefore, Fastracked is incorrect in arguing that the agreement is invalid because it was procured by fraud.

Nor can Fastracked establish as a matter of law that Prevost repudiated the contract when Prevost has already fully performed. *See id.* (repudiation is refusal to

perform contract). The undisputed facts show that Prevost fully performed its obligations under the contract by paying $300,000. Therefore, Fastracked is incorrect in arguing that it is excused from performance because Prevost repudiated the contract.

Fastracked also argues that, if the settlement agreement is valid, then Prevost breached the settlement agreement by attempting to prevent Fastracked from pursuing its claims against Stevens, excusing Fastracked's obligation to perform under the settlement agreement. But, as discussed above, Prevost's attempt to prevent Fastracked from pursuing its claims against Stevens was consistent with the settlement agreement when the settlement agreement is interpreted as preserving claims against Stevens in his individual capacity only—the interpretation that harmonizes both the different terms within the settlement agreement and the settlement agreement with the mediation agreement. Thus, Prevost's actions did not breach the settlement agreement and Fastracked is not excused from performance.

Fastracked has not shown that the settlement agreement is unenforceable due to Prevost's alleged fraud or that it is excused from performance because of Prevost's

alleged repudiation or breach. We next turn to Prevost's summary-judgment motion and motion to enforce the settlement agreement.

3. Prevost's breach-of-contract claim and specific performance

Prevost moved for summary judgment to enforce the settlement agreement and release all of Fastracked's pre-settlement sale claims against Prevost. Fastracked contends that the trial court erred in granting summary judgment because the settlement agreement was not valid due to Prevost's alleged fraud or because Fastracked was excused from performance due to Prevost's alleged repudiation or breach. Fastracked also contends that the trial court erred in granting Prevost's motion to enforce the settlement agreement because Prevost did not plead or prove a claim for breach of contract.

a. Applicable law

A written settlement agreement is enforceable in the same manner as any other contract. TEX. CIV. PRAC. & REM. CODE § 154.071(a). An agreement is enforceable if it is "complete within itself in every material detail, and . . . contains all of the essential elements of the agreement." *Padilla*, 907 S.W.2d at 460. The essential terms for a settlement agreement are the amount of compensation and the liability to be released. *See id.* at 461. A settlement agreement may still be enforced even though one party withdraws consent before judgment is rendered on the agreement. *Mantas*, 925 S.W.2d at 658. When consent has been withdrawn, the party seeking

enforcement of the settlement agreement may pursue a separate claim for breach of contract or file a motion to enforce. *See Castillo*, 279 S.W.3d at 663; *Mantas*, 925 S.W.2d at 658.

Like any other breach-of-contract claim, a claim for breach of settlement agreement is subject to the "normal rules of pleading and proof." *Mantas*, 925 S.W.2d at 658. Courts have held that a motion seeking enforcement of the settlement agreement is a sufficient pleading to allow a trial court to render judgment enforcing the settlement because the motion gives the alleged breaching party an opportunity to defend itself. *Neasbitt*, 105 S.W.3d at 117–18; *Bayway Servs.*, 106 S.W.3d at 160; *see also Castillo*, 279 S.W.3d at 663. If the motion satisfies the general purpose of pleadings, which is to give the other party fair notice of the claim and the relief sought, it is sufficient to allow the trial court to render judgment enforcing the settlement. *See Neasbitt*, 105 S.W.3d at 117–18; *Bayway Servs.*, 106 S.W.3d at 160.

To prevail on a breach-of-contract claim, the claimant must establish the existence of a valid contract, performance or tendered performance, breach, and damages. *Pathfinder Oil & Gas*, 574 S.W.3d at 890. A breach of contract occurs when a party to the contract fails or refuses to do something that he has promised to do. *B & W Supply*, 305 S.W.3d at 16. Specific performance is an equitable remedy that may be awarded as a substitute for money damages when money damages would not be adequate. *Stafford*, 231 S.W.3d at 535. To be entitled to specific performance,

a party must show that it was ready, willing, and able to perform its obligations under the contract. *DiGiuseppe*, 269 S.W.3d at 593.

b. Analysis

Prevost filed a motion to enforce the settlement agreement, which is sufficient to give fair notice of a breach-of-contract claim and allow the trial court to render judgment enforcing the settlement. *Neasbitt*, 105 S.W.3d at 117–18; *Bayway Servs.*, 106 S.W.3d at 160. Prevost also filed a traditional motion for summary judgment asking the trial court to enforce the settlement agreement, giving Fastracked fair notice of the claim and the relief sought. Therefore, Prevost's pleadings were sufficient to allow the trial court to render judgment enforcing the settlement agreement.

Prevost has demonstrated the parties had a valid, enforceable settlement agreement. For the reasons discussed above, the settlement agreement was not rendered invalid by fraud nor was Fastracked excused from performance because of Prevost's alleged repudiation or breach. The settlement agreement contained the essential terms for an enforceable agreement: Prevost agreed to pay Fastracked $300,000 in exchange for the release of all claims arising out of the sale of the motor coach. *See Padilla*, 907 S.W.2d at 460. Prevost undisputedly performed its obligations under the contract. Fastracked breached the agreement by reasserting its claims against Prevost that had been released under the agreement. Thus, the trial

court did not err in granting Prevost's motion for summary judgment to release the pre-settlement sale claims, in granting specific performance of the settlement agreement, and in granting Prevost's motion to enforce the settlement agreement.

4. Disclosure of confidential information

As with Stevens, Fastracked argues that Prevost breached the settlement agreement's confidentiality provision by disclosing the terms of the settlement agreement. Prevost did not address this claim in its motion for summary judgment, but on appeal Prevost argues that filing the settlement agreement with the motion to enforce was necessary to obtain judicial enforcement of the settlement agreement and that Fastracked necessitated this result through the offensive-use doctrine. Fastracked claims the trial court erred in granting summary judgment on this claim because it was not addressed in the trial court.

As discussed above, on the facts of this particular case, we disagree. The trial court granted summary judgment for Prevost based on the settlement agreement, and we have affirmed. Because Prevost could only have prevailed on the basis of the settlement agreement by disclosing its existence to the trial court, Prevost cannot be liable for breaching the settlement agreement by trying to enforce it. Our law strongly encourages voluntary settlement and orderly dispute resolution. *In re Caballero*, 441 S.W.3d at 575; *see also* TEX. CIV. PRAC. & REM. CODE § 154.002 ("It is the policy of this state to encourage the peaceable resolution of disputes . . .

and the early settlement of pending litigation through voluntary settlement procedures."). Here, Fastracked had breached the mediation agreement and settlement agreement by continuing to pursue claims against Stevens and Prevost after signing. We reject Fastracked's claim that merely seeking enforcement of the settlement agreement, which necessarily involved disclosing its existence to the trial court, can serve as the basis for a claim of breach of its confidentiality provision. To hold otherwise would be tantamount to rendering these types of agreements unenforceable, which is contrary to the law. *See Mantas*, 925 S.W.2d at 658 (claim for breach of settlement agreement subject to "normal rules of pleading and proof" like any other breach-of-contract claim); *see also Alford*, 137 S.W.3d at 921–22 (party waives mediation confidentiality when she uses it "as a sword rather than a shield"). In this instance, Fastracked's breach-of-confidentiality claim is subsumed and disposed by the parties' respective arguments about the applicability and effect of the settlement agreement.

The trial court properly granted summary judgment for Prevost. Fastracked's second and third points of error are overruled.

C. Discovery

Fastracked next argues that the trial court erred by not allowing it to conduct discovery before ruling on Prevost's and Stevens's summary-judgment motions.

After signing the settlement agreement, Fastracked continued to pursue discovery from both Stevens and Prevost. Fastracked noticed a deposition of Prevost's corporate representative on 54 topics relating to the settlement agreement, but also relating to a range of other business policies and practices, like Prevost's document retention policies dating back to 2010, its human resources policies dating back to 2010, its pre-owned vehicle standards, historic vehicle service records, and its service center policies and processes. Fastracked also served 82 requests for production on Prevost relating to Stevens's employment history and performance but also relating generally to its sales practices, like information about repairs and services, recall reports, customer complaints, and website policies—information relating to the claims released by the settlement agreement.

Prevost moved for a protective order and to enforce the settlement agreement. Fastracked, in turn, moved to compel Prevost to produce its corporate representative for deposition and to respond to its discovery requests. The trial court granted Prevost's motion for protective order, motion to enforce the settlement agreement, and motion for summary judgment on the same day. Fastracked contends that the trial court erred in ruling on the summary-judgment and enforcement motions before allowing it to conduct more discovery.

1. Standard of review and applicable law

We review a trial court's discovery rulings for an abuse of discretion. *Castillo,* 279 S.W.3d at 661. "A trial court abuses its discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law." *Id.* "[A] party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action." TEX. R. CIV. P. 192.3(a). Discovery requests must reflect a "reasonable expectation of obtaining information" that would aid in resolving the dispute and "must be 'reasonably tailored' to include only relevant matters." *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting *In re Am. Optical*, 988 S.W.2d 711, 713 (Tex. 1998)).

2. Analysis

Fastracked has not shown that the trial court abused its discretion in not compelling its requested discovery. Rather than tailoring its discovery requests to "include only relevant matters," Fastracked sought extensive, overly broad discovery on topics that mostly related to claims released by the settlement agreement. As discussed above, Fastracked had already released its claims against Prevost and Stevens relating to the sale of the motor coach.

Fastracked relies on *Ford Motor Co. v. Castillo* to argue that the trial court erred by completely denying Fastracked discovery relating to the settlement

agreement. *See* 279 S.W.3d at 663. However, *Castillo* is distinguishable from the facts of this case. In *Castillo*, Ford settled a claim with Castillo while the jury was deliberating. *Id.* at 659. Ford then withdrew its consent to the settlement and moved to delay the settlement in order to take discovery regarding outside influence on the jurors. *Id.* at 659–60. The trial court denied Ford's motion and granted Castillo's summary-judgment motion for breach of the settlement agreement. *Id.* at 660–61. The Supreme Court held the trial court abused its discretion in denying Ford the opportunity to conduct discovery on the juror misconduct, noting that the underlying discovery deadlines in the case did not apply to the new cause of action that arose only during jury deliberations; this was not an instance of a party needing more time to conduct discovery, the Court explained, but one in which the party was "completely precluded by the trial court from conducting discovery to begin with." *Id.* at 662–64.

In the present case, unlike *Castillo*, the trial court did not completely preclude Fastracked from conducting discovery. The suit had been pending for three years when the trial court granted summary judgment, and Fastracked's claims that only arose after the signing of the settlement agreement had been pending for two years. Even taking into consideration the trial court's order staying discovery pending another mediation that lasted nearly one year, Fastracked was still able to conduct discovery on its claims. The fact that Fastracked mainly sought discovery relating to

claims it had already released and refused to reasonably tailor its requests to relevant matters does not amount to an abuse of discretion by the trial court. Further, as discussed above, the trial court properly granted summary judgment for both Prevost and Stevens as a matter of law based on the undisputed facts. Therefore, the judgments would not be altered by additional discovery, and any discovery Fastracked asserts was denied could not have resulted in an improper judgment and has not prevent Fastracked from properly presenting its appeal. *See* TEX. R. APP. P. 44.1(a) (no judgment may be reversed on appeal unless error complained of probably caused rendition of improper judgment or probably prevented appellant from properly presenting appeal).

Fastracked's first point of error is overruled.

CONCLUSION

We affirm the trial court's judgments.

Gordon Goodman
Justice

Panel consists of Justices Kelly, Goodman, and Guerra.