In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-19-00436-CV

SISU ENERGY, LLC AND JIM J. GRUNDY, Appellants

V.

JAMES HARTMAN, JR., INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF TEX SAND TRANSPORT, LLC, Appellees

---

On Appeal from the 355th District Court
Hood County, Texas
Trial Court No. C2019076

Before Gabriel, Bassel, and Womack, JJ.
Memorandum Opinion by Justice Bassel

MEMORANDUM OPINION

In this interlocutory appeal, Appellants SISU Energy, LLC and Jim J. Grundy raise seven issues challenging the trial court's signing of a Second Agreed Temporary Injunction (the Injunction). In their first issue, SISU and Grundy argue that the trial court erred by executing the Injunction as an agreed order when it was not agreed to by the parties. We agree. The record does not reflect the existence of an enforceable Rule 11 agreement between SISU and Grundy, on the one hand, and Appellee James Hartman, Jr., individually and derivatively on behalf of Tex Sand Transport, LLC (Hartman), on the other, to the entry of the Injunction.

Moreover, at the injunction hearing, which the trial court recessed after Hartman presented one witness, the trial court added an additional precondition on its signing of an agreed temporary injunction: both the parties and their attorneys had to sign the proposed agreed order. After the parties subsequently failed to reach a final agreement, however, Hartman's counsel requested on only Hartman's behalf that the trial court sign a proposed agreed injunction order. The trial court signed the injunction order despite the fact that (1) the order was not signed by any of the parties or their attorneys and (2) the trial court had been notified that SISU's and Grundy's consent to the Injunction was lacking. The precondition that the trial court had expressly set for its signing of an agreed order had not been satisfied. But the trial court signed the order as an agreed injunction anyway. The trial court abused its discretion by signing the Injunction as an agreed order.

In the first part of their fourth issue, SISU and Grundy argue that the Injunction is void because it does not comply with the specificity requirements of Texas Rule of Civil Procedure 683. We agree. The Injunction fails to set forth the reasons for its issuance because it does not describe any threatened immediate and irreparable harm to Hartman. The Injunction also fails to describe in reasonable detail the acts to be restrained. Thus, the trial court abused its discretion by signing the Injunction.

The lack of an enforceable agreement and the order's failure to comply with Rule 683 each independently provides a basis to declare the Injunction void. Accordingly, we will reverse the order of the trial court and dissolve the Injunction.

I. BACKGROUND[1]

A. Pertinent procedural events prior to the injunction hearing

This lawsuit concerns a dispute between Grundy and Hartman regarding the ownership of Tex Sand, a trucking company. Grundy and Hartman dispute their respective percentages of ownership of Tex Sand for reasons not pertinent to this appeal. Grundy, individually and in the right of Tex Sand, brought this suit asserting numerous claims against Hartman. Grundy alleged that he was wrongfully expelled from Tex Sand following an employee's assertion of a disputed sexual-harassment claim against him.

[1]Our review of the procedural history is limited to those events necessary to give the parties' arguments on appeal context.

Hartman answered and filed a counterclaim. He promptly obtained a temporary restraining order against Grundy, and then Hartman and Grundy agreed to a mutual temporary injunction; the terms of those orders are not pertinent to this appeal.

Months later, Hartman filed a supplemental application for temporary restraining order and temporary injunction and motion for contempt. Hartman alleged that Grundy was soliciting Tex Sand's drivers to work for Grundy's newly formed entity, SISU; that Grundy had misappropriated Tex Sand financials and a lease form for SISU's benefit; and that Grundy has disparaged Tex Sand and Hartman to Tex Sand vendors, among other things. Hartman requested that the trial court order Grundy to show cause why he should not be held in contempt for violating a previous order and that the court enter another restraining order and injunctive relief against Grundy.

Hartman then promptly obtained a second temporary restraining order (Second TRO) against Grundy. Grundy and Hartman later agreed to extend the Second TRO until a temporary-injunction hearing set for October 17, 2019. The terms of the Second TRO are not relevant to this appeal.

On October 4, 2019, Hartman added derivative claims on Tex Sand's behalf and joined SISU as a thirty-party defendant.

B. The temporary-injunction hearing

On October 17, 2019, Grundy and Hartman appeared for the temporary-injunction and contempt hearing before the Honorable Jerry Ray, a visiting judge. Both

sides made an opening statement. Then Hartman's counsel called Grundy as Hartman's first witness.

After about an hour of direct examination, Hartman's counsel passed Grundy as a witness. Judge Ray then halted the proceedings and ordered the attorneys to his chambers:

> [Hartman's counsel]: I'm - - Your Honor, I'll pass the witness.
>
> THE COURT: All right. We're going to in [sic] recess. Let me see the attorneys in chambers.

Judge Ray and the attorneys briefly came back on the record to admit into evidence exhibits from Grundy's examination, and then the recess resumed.

When the trial court came back on the record again, Judge Ray stated that "[a]fter hearing the direct examination of . . . Grundy, the [c]ourt recessed the proceedings and . . . met with counsel in chambers, and they had indicated that they were willing to and wanted to discuss some possibility of exploring an agreed outcome pertaining to the prayed-for injunction." Judge Ray asked the attorneys to "bring [him] up to date on what [they had] achieved, if anything," stating that he could come back in the morning if needed.

In the exchange that followed below, Hartman's counsel appeared to offer to dictate the terms of a second agreed injunction on the record, but no specific terms were dictated on the record. Instead, Judge Ray ordered that if the parties reached an agreement, then the attorneys and the parties had to sign the agreed order before he

would sign the order. He ordered that if they could not reach an agreement, then both sides must submit a proposed order and then he would simply enter the order he wanted (despite acknowledging that he had not received all of the evidence yet):

> [Hartman's counsel]: Your Honor, I - - excuse me, Roger Diseker on behalf of Mr. Hartman and Tex Sand. The parties have reached an agreement on the terms of a second temporary injunction. *I - - do you want to dictate this in the record?* We will submit an agreed order to the Court for execution by close of business tomorrow.
>
> [Grundy's counsel]: And I don't think we need to come back in the morning, Your Honor. I *think* we've got the terms *pretty much* agreed to.
>
> THE COURT: All right. The - - the procedure we'll use then is that *if it is agreed*, *the parties and the attorneys will sign off on it, not just the attorneys as like a Rule 11. I want the two parties to be a party to whatever agreement you have.* E-mail it to me. My contact information is . . . .
>
> [Hartman's counsel]: We have your e-mail.
>
> THE COURT: . . . E-mail it to me. *If it is agreed, I will almost certainly enter it* and forward it to the clerk electronically for filing.
>
> If you don't have all of the language agreed to, then each of you send me your proposed and I'll pick which one I'm willing to do or I'll bastardize both of them and do what it is that I'm going to do.
>
> . . . .
>
> *So it's really great if y'all can agree, even if it's upsetting or is a hard negotiation . . . .*
>
> *So whatever the agreement is, if you agree to it based upon the advice of your lawyers* and it provides a Bible

to live by until you all can get this dispute into court or settle it some other way, then it must be I's dotted, T's crossed and all punctuation marks in place.

. . . .

THE COURT: All right. Thank you for your courtesies today, and we'll follow the procedure that I indicated on wrapping up the injunction part of this.

I don't know if y'all talked about it or not - - and *I did not hear all of the evidence.* I understood that *you had more evidence on behalf of Mr. Hartman and that I hadn't heard any evidence other than your client's responses to questions that were asked. But if your agreement includes anything about the show cause*, that's separate and apart from the new injunction in my view. So *if your agreement is to withdraw that or to hold it for another day or not waive the right to raise it*, my opinion is is that *if you do a good drafting job of whatever it is that you agree on*, then it should have the teeth to be enforceable at a later date without regard to previous conduct.

. . . .

THE COURT: Okay. And *I don't know what y'all have talked about in that regard.* We're right in the middle of a hearing in which you've accused Mr. Grundy of violating a court order, and that ain't decided yet. I understand that. But *if your agreement includes dealing with that pending pretrial matter, then say so.* If it doesn't, then I'll know what it means? [Emphases added.]

The trial court then excused the parties.

C. Emails between the parties' attorneys and the trial court regarding the Injunction

After the hearing, the parties exchanged the following pertinent emails with Judge Ray regarding an order for the temporary injunction.

On October 24, 2019, a week after the hearing, one of Hartman's attorneys emailed Judge Ray, copying Grundy's attorneys, an unsigned draft of a proposed injunction. He submitted the proposed order on Hartman's behalf because the parties could not reach a "final agreement" on the form of the order:

> Please find attached a proposed form of Second Agreed Temporary Injunction[,] which I am submitting on behalf of [Hartman]. . . . As of this writing *we have been unable to secure a final agreement* as to form from [Grundy's] counsel despite attempts to reach them and [Hartman] accordingly requests that the Court sign this order.
>
> . . . .
>
> We therefore submit [*Hartman's*] *requested form* of order for your consideration. [Emphases added.]

One of Grundy's attorneys promptly responded to this email and requested additional time to review the order, explaining that Jay Gray (Grundy's lead counsel) was traveling and dealing with the imminent death of his father. This attorney indicated that he was not involved in the negotiation of the order and that although he did "not believe that there [was] a lot of language on the [proposed] order that [was] in dispute," he needed time to communicate with Gray about the order:

> Counsel and Judge Ray:
>
> Jay's father is gravely ill and is imminently passing away and Jay is in transit to Texarkana and probably doesn't have access to his emails at

> the moment. Hopefully I will be able to reach him soon and respond substantively to the proposed order. Unfortunately, I have been somewhat out of the loop on this matter this week and I prefer not to substitute my judgment for Jay's unless absolutely necessary. I do not believe that there is a lot of language on the prop[os]ed order that is in dispute. However, we would certainly appreciate any time latitude that could be afforded until Jay is able to be communicated with which I believe will be sometime this afternoon.

The following day, on October 25, 2019, one of Hartman's attorneys emailed Judge Ray a revised, unsigned draft of an injunction order, copying Grundy's attorneys. Hartman's attorney again submitted the order for Judge Ray's consideration on only Hartman's behalf, explaining that the parties could not agree upon the applicable geographical limitation that he contended they had negotiated at the injunction hearing:

> Further to the communications of yesterday, the parties have agreed to a form of Second Temporary Injunction which [sic] is attached in Word form. However, the *parties have been unable to resolve a disagreement* as to the inclusion of [a specific entity] (geographical limitation of South Texas) on the Customer List [that] is attached for the Court to review. [Hartman] contends that [the entity] (South Texas) was part of the agreement negotiated at the Courthouse on October 17. [Grundy's] position appears to be that it was not. In any event, [*Hartman*] *requests that the Court sign the form of injunction and rule in favor of the attached form of Customer List and require that Plaintiff Grundy sign acknowledging agreement as to the form of same.* [Emphases added.]

Below that paragraph, Hartman's attorney argued in support of his proposed geographical limitation by (1) making representations about facts that were not based on testimony at the injunction hearing and (2) offering two documents that were neither admitted into evidence nor the subject of any testimony at the injunction hearing:

> As further support of the Tex Sand Customer List including [the disputed entity], we offer a copy of the Tex Sand/[disputed entity] Master Service

> Agreement[,] which was acquired through Mr. Hartman's efforts and bears his signature as CEO of Tex Sand. Although, [the disputed entity] is currently not contracting pneumatic trailers for frac sand having moved to hopper box containers, [the disputed entity] remains a customer of Tex Sand and the MSA remains valid.

Hartman's attorney attached to this email a letter from Hartman's counsel to Grundy's counsel setting forth the "'Tex Sand Transport, LLC Customer List' for purposes of the Second Agreed Temporary Injunction." The letter includes a blank acknowledgement for SISU and Grundy to sign to document their receipt of the list. The letter in the record redacts all customer names and is not signed by anyone, including Hartman's counsel, Grundy, and SISU. Hartman's attorney also attached to the above email a document entitled "Master Transportation Agreement" that has the name of the disputed entity at the top. The version of this document in the record is otherwise redacted in its entirety.[2]

Three days later, at midnight on October 28, 2019, SISU filed its answer. That morning, one of Hartman's attorneys "re-sen[t]" Hartman's proposed injunction to Judge Ray, copying SISU and Grundy's attorneys, and noting unspecified "technical issues in [his] prior e-mail." The proposed order was not signed by any of the parties or their attorneys.

[2]Although a form "Transportation Service Agreement" was admitted into evidence at the October 17 hearing, the identity of the "Contractor" in that document is blank, and the form agreement is over twenty pages in length, not including multiple addenda. By contrast, the "Master Transportation Agreement" attached to the October 25 email is only one page long and in a different font.

Three hours later, Judge Ray signed the Injunction, and then the court coordinator emailed the signed Injunction to Hartman's attorney; her email did not attach any version of a customer list referenced in the order. The following notation was also entered on the trial court's docket sheet for that day: "Entered 2nd Agreed Temp. Injunction, & forwarded to Ct[.] Coordinator."

Nearly four hours later, Hartman's attorneys emailed the Injunction (signed by Judge Ray but not by Hartman or his attorneys) to SISU and Grundy's attorneys, copying Judge Ray. At that point in time, Hartman's position was that the Injunction still needed to be signed by the parties and attorneys in order to be "fully executed":

> Attached please find a copy of the Second Agreed Temporary Injunction[,] which Visiting Judge Ray signed today. *The injunction now needs to be signed by counsel and the parties. Please have Mr. Grundy sign the Injunction* in both his individual capacity and on behalf of Defendant SISU Energy. *Once we have all of the signatures we will circulate a fully executed copy for the court and for counsel.*
>
> *Also attached* – but not for filing with the court – *is the Tex Sand Customer List*[,] *which we are providing to* [*Defendants*] *as contemplated by the injunction. Please have Mr. Grundy sign where indicated and return his signature acknowledging receipt of same.* [Emphases added.]

The customer list in the record is again redacted.

D. Pertinent terms of the Injunction

The Injunction is entitled "Second Agreed Temporary Injunction" and leaves spaces for the parties' and their attorneys' signatures to document that the order is "So Agreed"; the spaces are blank. The Injunction provides that "[d]uring the hearing, the

parties reached agreement on the entry of a Second Agreed Temporary Injunction that the [c]ourt now enters." It then sets out the following:

> The Court, having heard the evidence presented by the parties and argument of counsel is of the opinion that Hartman is entitled to a temporary injunction until trial of this matter is completed; that unless [SISU and Grundy] are immediately enjoined and restrained from engaging in acts or omissions that are detrimental to the interests of Hartman and [Tex Sand], Hartman and Tex Sand will have no adequate remedy at law and will suffer immediate and irreparable injury, as described below.
>
> IT IS THEREFORE ORDERED, ADJUDGED, and DECREED AS FOLLOWS:
>
> That in addition to the terms of the Court's Agreed Temporary Injunction of June 13, 2019, [SISU and Grundy] and their agents, servants, employees, and those persons in active concert or participation with him who receive actual notice of the order, are further enjoined from the following acts or practices:
>
> (a) Contacting, soliciting, calling upon, directly or indirectly, or conducting any work (whether directly or indirectly via subcontract or other arrangement) for any person or entity who is on the "Tex Sand Customer List" that has been provided to counsel for Grundy.
>
> Grundy specifically acknowledges that the Tex Sand Customer List will not be included in this Temporary Injunction order. Grundy acknowledges receipt of the Tex Sand Customer List, is on notice of the customers specified therein and specifically waives any complaint or objection to future enforcement of this order that might arise related to the exclusion of the Tex Sand Customer List from this order as it pertains to the customers listed on the list provided to Grundy's Counsel.
>
> If any entity or person related to any entity on the Tex Sand Customer List, initiates communications with Grundy,

SISU, SISU employees or agents, then Grundy, SISU, SISU employees or agents are required to do the following:

1) respond only (whether verbally, by email or other electronic communication, or in writing) that "SISU is unable to assist you at this time[";] and,

2) report, in writing or by e-mail to Tex Sand's counsel, the communication with date, times and participants in the communication. If the communication was in writing or electronically, then a copy of the communications shall be included. This reporting shall be made within 24 hours of the event requiring reporting.

(b) Hiring, employing, soliciting, attempting to solicit, inducing, attempting to induce, or otherwise encouraging any current employee and/or contracted owner/operator drivers of Tex Sand, and/or employee that has been employed by Tex Sand within thirty-five (35) days and/or any owner/operator driver of Tex Sand that has been employed by Tex Sand within thirty-five (35) days directly or indirectly, to commence any kind of employment, working or commercial relationship with Grundy, [SISU] or any other corporation, association, or entity engaged in the same business as Tex Sand or to compete against Tex Sand.

(c) [SISU and Grundy] will provide a report to Grundy's counsel, Jay K. Gray, by 3:00 p.m. on Friday of each week until trial of this matter. The report will include a list of every customer for whom SISU has worked for that preceding week. Jay K. Gray will provide the list to Hartman's counsel, Roger C. Diseker, by 4:00 p.m. Friday of every week. Roger C. Diseker will keep the list and information to himself unless there is a conflict with the Customer List provided as part of this Order to Grundy's counsel referenced above.

The order also states that a $1,000 bond previously posted by Hartman was sufficient to secure the injunction and it set a trial date. The Injunction did not recite the contents of any customer list or attach any such customer list as an exhibit.

II. STANDARD OF REVIEW

A temporary injunction is an extraordinary remedy and does not issue as a matter of right. *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993). Whether to grant or deny a temporary injunction is within the trial court's sound discretion. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) (op. on reh'g). A reviewing court should reverse an order granting injunctive relief only if the trial court abused that discretion. *Id.* The reviewing court must not substitute its judgment for the trial court's judgment unless the trial court's action was so arbitrary that it exceeded the bounds of reasonable discretion. *Id.*; *see also Henry F. Coffeen III Mgmt., Inc. v. Musgrave*, No. 02-16-00070-CV, 2016 WL 6277375, at *2 (Tex. App.—Fort Worth Oct. 27, 2016, no pet.) (mem. op.). "[A]bsent a clear agreement by the parties, a trial court has no discretion to grant injunctive relief without supporting evidence." *Morrison v. Gage*, No. 02-15-00026-CV, 2015 WL 4043260, at *2 (Tex. App.—Fort Worth July 2, 2015, no pet.) (mem. op.) (citing *Operation Rescue–Nat'l v. Planned Parenthood of Hous. & Se. Tex., Inc.*, 975 S.W.2d 546, 560 (Tex. 1998)).

III. THE TRIAL COURT ABUSED ITS DISCRETION BY SIGNING THE INJUNCTION AS AN AGREED ORDER WHEN THERE WAS NO AGREEMENT.

In their first issue, SISU and Grundy argue that the trial court abused its discretion by entering an "agreed" order when there was no agreement between the parties when the order was entered. We agree.

A. Consent to the terms of an agreed temporary injunction must exist at the time the trial court signs the injunction.

A trial court is without authority to render a valid agreed judgment absent consent at the time it is rendered. *See Padilla v. LaFrance*, 907 S.W.2d 454, 461 (Tex. 1995). "[C]onsent must exist at the very moment the court undertakes to make the agreement the judgment of the court." *Id.* "When the court has knowledge that consent of one of the parties is lacking, it cannot render judgment based upon that agreement[.]" *Vineyard v. Wilson*, 597 S.W.2d 21, 23 (Tex. App.—Dallas 1980, no writ) (citing *Burnaman v. Heaton*, 240 S.W.2d 288, 291 (Tex. 1951)). Moreover, for a consent judgment to be valid, the parties must have definitely agreed to all the terms of the agreement and nothing should be left for the court to provide. *Id.* (citing *Matthews v. Looney*, 123 S.W.2d 871, 873 (Tex. [Comm'n Op.] 1939)). In a judgment by consent, "the court has no power to supply terms, provisions, or essential details not previously agreed to by the parties." *Matthews*, 123 S.W.2d at 872.

As to the existence of an agreement, Rule 11 of the Texas Rules of Civil Procedure states that "[u]nless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record." Tex. R. Civ. P. 11. On point for this case, the Supreme Court of Texas has explained that the rationale for this long-standing rule is straightforward:

> Agreements of counsel . . . [that] are merely verbal[] are very liable to be misconstrued or forgotten[] and to beget misunderstandings and

> controversies; and hence there is great propriety in the rule [that] requires that all agreements of counsel respecting their causes shall be in writing, and if not, the court will not enforce them. They will then speak for themselves, and the court can judge of their import, and proceed to act upon them with safety. The rule is a salutary one, and ought to be adhered to whenever counsel disagree as to what has transpired between them.

Padilla, 907 S.W.2d at 460 (quoting *Birdwell v. Cox*, 18 Tex. 535, 537 (1857)). Further, at the injunction hearing, Judge Ray expressly ordered the parties that *if* they agreed upon the terms of the injunction, then "the parties and the attorneys shall sign off on it, not just the attorneys as like a Rule 11."

B. The record does not reflect that the parties ever made an enforceable agreement on the terms for the Injunction.

We conclude that there is no enforceable agreement reflected in the record relating to the terms of the Injunction that meets the requirements of Rule 11. There is no agreement in writing, signed, and filed with the papers of the court, and the parties did not make an agreement in open court that was entered of record at the October 17 injunction hearing. *See* Tex. R. Civ. P. 11. Hartman's counsel asked if matters should be dictated on record at the injunction hearing, but no specific terms were dictated on the record. Instead, Judge Ray instructed the parties that the procedure for them to follow, if they could agree upon an agreed order, was for the parties and their attorneys to sign the order and then email the signed order to him.[3] Judge Ray then repeatedly

[3]The events of the October 17 hearing are in stark contrast to an October 7 hearing before Judge Ray where, on the record, the parties recited the terms of an agreement, Grundy's counsel conferred with his client and confirmed their consent to

indicated his understanding that any agreement between the parties at the hearing was merely one in principle and that the parties still had to negotiate a final agreement, as explained below.

Hartman argues that SISU and Grundy agreed to the Injunction at the October 17 injunction hearing. He points to his own counsel's statement at the hearing that "[t]he parties have reached an agreement on the terms of a second temporary injunction." Hartman then references Grundy's attorney's statement that he "[didn't] think [they] need[ed] to come back in the morning" because he thought they had "the terms pretty much agreed to." Hartman argues that Judge Ray then "accepted the parties' stipulation[,] . . . told the parties to submit a proposed order," and "ended the hearing" with the parties' consent.

We do not agree that these events evidenced an agreement on the entry of the Injunction. "It is well settled law that when an agreement leaves material matters open for future adjustment and agreement that never occur, it is not binding upon the parties and merely constitutes an agreement to agree." *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 237 (Tex. 2016). "If an agreement to make a future agreement is not sufficiently definite as to all of the future agreement's essential and material terms, the agreement to agree is nugatory." *Id.* (quotation marks omitted). "[T]o be enforceable, an

---

the agreement that had just been recited on the record, and Judge Ray accepted the parties' agreement. After the October 7 hearing, the parties' attorneys also signed an agreed order that Judge Ray also signed. None of these events took place with respect to the October 17 hearing or the Injunction.

agreement to agree, like any other contract, must specify all its material and essential terms, and leave none to be agreed upon as the result of future negotiations." *Id.* (quotation marks omitted).

Here, the attorneys did not recite a single term of an agreed injunction at the October 17, 2019 hearing, let alone any arguable essential terms to an existing or future agreement. Thus, they did not communicate a meeting of the minds on the terms of a second temporary injunction. Grundy's attorney's statement that he "think[s] we've got the terms pretty much agreed to" was equivocal and indicated that the parties were still negotiating.[4] *See Clarent Energy Servs., Inc. v. Leasing Ventures, LLC*, No. 01-18-00821-CV, 2020 WL 1173706, at *9–10 (Tex. App.—Houston [1st Dist.] Mar. 12, 2020, no pet.) (mem. op.).

Contrary to Hartman's position, the record reflects that the parties left the hearing with the essential terms of the injunction order open for future adjustment. In fact, Judge Ray repeatedly indicated throughout the hearing that he understood that a final agreement had yet to be negotiated—and that he did not even know what, if anything, the parties had agreed to at that time:

[4]On appeal, the parties dispute whether SISU made an appearance at the October 17 hearing. We note that Hartman's counsel argued at the end of his opening statement at the hearing that there "is a motion for continuance on file. We have added [SISU] as a party to the case, and I believe the continuance will have to be granted to allow that party to answer and get into the case." Nonetheless, we will assume without deciding that SISU was present and represented by Grundy's counsel at the hearing because the resolution of that issue does not alter the outcome of this appeal. *See* Tex. R. App. P. 47.1.

> "[T]he procedure we'll use then is that *if it is agreed,* the parties and the attorneys will sign off on it . . . ." [Emphasis added.]
>
> "*If it is agreed*, I will almost certainly enter it . . . ." [Emphasis added.]
>
> "*If you don't have all of the language agreed to,* then each of you send me your proposed [order] . . . ." [Emphasis added.]
>
> "So it's really great *if y'all can agree*, even if it's upsetting or is a hard *negotiation* . . . ." [Emphases added.]
>
> "*So whatever the agreement is, if you agree to it based upon the advice of your lawyers* . . . it provides a Bible to live by . . . ." [Emphasis added.]
>
> "*But if your agreement includes anything about the show cause*, that's separate and apart from the new injunction in my view. *So if your agreement is to withdraw that or to hold it for another day or not waive the right to raise it*, my opinion is is that *if you do a good drafting job of whatever it is that you agree on*, then it should have the teeth to be enforceable . . . ." [Emphases added.]
>
> "*And I don't know what y'all have talked about in that regard. . . . But if your agreement includes* dealing with that pending pretrial matter, then say so. *If it doesn't, then I'll know what it means*[.]*"* [Emphases added.]

After the hearing, Hartman's attorney likewise conveyed a similar understanding when he emailed Judge Ray on October 24 and stated that no "final agreement" had been secured and "submit[ted] [Hartman's] requested form of order for [Judge Ray's] consideration." Although one of Grundy's attorney's subsequently stated on October 24 that he did "not believe that there [was] a lot of language on the [proposed] order that [was] in dispute," his email did not indicate what, if any, essential terms Grundy and his attorneys had agreed to. Thus, this email did not evidence an enforceable agreement, even assuming that that the disputed terms at that time were not material. *See Chalker Energy Partners III, LLC v. Le Norman Operating LLC*, 595

S.W.3d 668, 670 (Tex. 2020) (reviewing email exchange for meeting of minds required for a contract, given the nature of the transaction and the parties' expressed contemplations).

Then, on October 25, when Hartman's attorney emailed a copy of the injunction for Judge Ray to sign, he again informed the judge that the parties had not agreed on the terms for the Injunction. He stated that the parties had "a disagreement as to the inclusion of [a specific entity] (geographical limitation of South Texas) on the Customer List." Hartman's attorney then requested that the trial court "*rule in favor* of the attached form of Customer List and *require that Plaintiff Grundy sign acknowledging agreement* as to the form of same." [Emphases added.] In order to support his request, Hartman's attorney even offered new argument based on his representation of facts that were not admitted into evidence at the hearing along with a purported Master Transportation Agreement. These actions do not evidence the existence of an agreement; to the contrary, they constituted a request for a ruling in favor of one party against the wishes of the other. When Hartman's attorney submitted his proposed order to Judge Ray, the parties' dispute about the terms of an agreed order was far from resolution.

In arguing on appeal that the parties had agreed to the Injunction, Hartman downplays the role the customer list had in setting forth the essential terms of the Injunction by calling it a "side agreement" or a "side letter agreement." We reject that characterization. "Essential terms are those that the parties would reasonably regard as vitally important elements of their bargain, an inquiry that depends primarily on the

intent of the parties." *McCoy v. Alden Indus., Inc.*, 469 S.W.3d 716, 725 (Tex. App.—Fort Worth 2015, no pet.). "Whether an agreement contains all essential terms, and is therefore enforceable, is a question of law." *Id.*

Here, the content of the customer list is an essential term of the Injunction because without it, the Injunction is almost entirely devoid of substance. The Injunction

- prohibits SISU and Grundy from contacting, soliciting, calling upon, or conducting any work for any person or entity on the customer list;
- requires Grundy to acknowledge that the customer list will not be included in the Injunction, to acknowledge receipt of that customer list, to acknowledge that he is on notice of the customers specified in that list, and to waive any complaint or objection to future enforcement of the order relating to the exclusion of the customer list from the order; and
- orders that if any person or entity related to any entity on the customer list initiates a communication with Grundy, SISU, or a SISU employee or agent, then Grundy, SISU, and any SISU employees and agents must respond a certain way and notify Hartman's counsel.

Simply put, based on the record, because the parties did not agree upon what entities to include on the customer list, the parties did not agree upon what entities SISU and Grundy could not contact, solicit, work for, or communicate with. Although Hartman argues that Grundy "balked at the inclusion of one customer on the list," Hartman's attorney's October 25 email indicates that this one customer represented the "geographical limitation of South Texas." Hartman fails to explain how the parties

entered into an enforceable agreement despite their failure to agree upon the inclusion of the geographical limitation of "South Texas."[5]

Accordingly, the record does not evidence that SISU and Grundy ever made an enforceable agreement on the terms of the Injunction.

C. SISU and Grundy did not invite, agree to, or induce the trial court's erroneous signing of the Injunction as an agreed order.

Hartman argues that this court need not address SISU and Grundy's appellate issues "because the record demonstrates they agreed to the injunction" and because they "cannot attack an agreed injunction." Hartman invokes the doctrine of invited

[5]We recognize that the Injunction also includes one paragraph (paragraph (b)) prohibiting SISU and Grundy from hiring, employing, and soliciting certain current and former Tex Sand employees and drivers without reference to the disputed customer list. And we recognize that Hartman's attorney's October 25 email did not state that SISU and Grundy specifically objected to paragraph (b), and there is nothing in the record indicating that SISU and Grundy expressly objected to this paragraph. Yet even if we assume that paragraph (b) could be separated from paragraphs (a) and (c), the latter of which refer to the customer list, SISU's and Grundy's silence with respect to paragraph (b) in response to Hartman's attorney's October 25 email did not create an implied-in-fact agreement to the entry of an injunction on only the terms of paragraph (b). This is because the facts and circumstances did not demonstrate a mutual intention to agree to an injunction on only those terms. *See Stewart Title Guar. Co. v. Mims*, 405 S.W.3d 319, 338–39 (Tex. App.—Dallas 2013, no pet.). None of the parties or their attorneys signed an injunction striking out paragraphs (a) and (c), despite the trial court's instructions requiring such signatures for an agreed order. And neither Hartman nor SISU and Grundy documented their agreement to an injunction on only those terms in writing or on the record in open court as required by Rule 11. *See* Tex. R. Civ. P. 11. As noted above, Hartman's counsel's October 25 email simply requested that Judge Ray sign the proposed order as presented with paragraphs (a), (b), and (c).

error, or estoppel, and argues that a party should not be allowed to complain on appeal of an action or ruling that he invited, agreed to, or induced.

Under the invited-error doctrine, a litigant is precluded from "requesting a ruling from a court and then complaining that the court committed error in giving it to him." *Tittizer v. Union Gas Corp.*, 171 S.W.3d 857, 861 (Tex. 2005). According to Hartman, SISU and Grundy invited error when they did not object to the temporary injunction order or revoke their "prior agreement before the injunction was signed." Hartman's reliance upon the invited-error doctrine is misplaced.

First, SISU and Grundy did not enter into an enforceable agreement on the terms of the Injunction, as explained above. Thus, there was no "prior agreement" to revoke.

Second, there is nothing in the record to evidence that SISU and Grundy asked Judge Ray to sign the Injunction. Judge Ray had ordered the parties and their attorneys to sign the order if they agreed to it—but the Injunction that Hartman's attorney sent to Judge Ray was unsigned. The only party that asked Judge Ray to sign the order was Hartman. When Hartman's counsel sent the order to Judge Ray, he expressly stated that "*the parties have been unable to resolve a disagreement* as to the inclusion of [an entity] (geographical limitation) on the Customer List . . . . *Defendant* [*Hartman*] *requests that the Court sign the form of injunction and rule in favor of the attached form of Customer List and require that Plaintiff Grundy sign* acknowledging agreement as to the form of same." [Emphases added.] On these facts, we cannot conclude that SISU and Grundy asked Judge Ray to sign the order. The order was not signed and, as discussed above, the parties had not

reached a final agreement on all of the essential terms of the Injunction. Instead, Hartman essentially asked the trial court to order SISU and Grundy to sign the Injunction after they refused to agree to Hartman's terms.

Third, the cases cited by Hartman to support his application of the invited-error doctrine to this case are all distinguishable. He cites *Samples Exterminators v. Samples*, 640 S.W.2d 873 (Tex. 1982), to argue that the Supreme Court of Texas upheld an injunction based upon the parties' consent in open court to entry of the judgment, after the parties voiced their approval of the settlement in open court. But in that case, "[i]n open court, the attorneys dictated the settlement into the record. The trial court conferred with the parties to confirm that the settlement was agreeable with them." *Id.* at 874. The trial court then asked the parties to stand, approved the settlement, and ordered the parties to sign all papers necessary to carry out the agreement "made and dictated into the record." *Id.* None of these events happened at the October 17 injunction hearing in this case.

Next, Hartman cites three cases to argue that intermediate courts have held that an agreed temporary injunction was not subject to attack by the enjoined party. But in the first case, and unlike the instant case, the attorneys recited an agreement on the record in open court and the trial court confirmed the agreement with the enjoined party. *See Ayala v. Minniti*, 714 S.W.2d 452, 454–55 (Tex. App.—Houston [1st Dist.] 1986, no writ). In the second case, a trial court dissolved a writ of garnishment based on an attorney's statement that the writ was "no good" and that the trial court could

enter an order dismissing it. *See Sherman Acquisition, L.P. v. Raymond*, No. 04-05-00246-CV, 2006 WL 1004680, at *1 (Tex. App.—San Antonio Apr. 19, 2006, no pet.) (mem. op.). There is no similar statement by SISU and Grundy telling the trial court it could enter the Injunction. And in the third case, the opinion states that the appellant had "agreed to the orders," but the opinion contains no information about how, if at all, such agreement was reflected in the record. *See Henke v. Peoples State Bank of Hallettsville*, 6 S.W.3d 717, 720 (Tex. App.—Corpus Christi–Edinburg 1999, pet. dism'd w.o.j.).

Moreover, none of Hartman's cited cases stand for the proposition that an attorney's statement that he "thinks" the parties have "pretty much" worked out an agreement on the terms of an injunction—when the attorneys do not dictate terms on the record—constitutes a request that the trial court enter an injunction on whatever terms the opposing party presents to the trial court for signature.

Accordingly, we conclude that the invited-error doctrine does not apply to this case because SISU and Grundy did not request the trial court to sign the Injunction.

D. SISU and Grundy did not waive their attacks on the Injunction.

Hartman next argues that even if SISU and Grundy did not agree to the Injunction or invite any alleged error, they waived any alleged error through their conduct and silence. We disagree.

Waiver is "an intentional relinquishment of a known right or intentional conduct inconsistent with claiming that right." *Jernigan v. Langley*, 111 S.W.3d 153, 156 (Tex. 2003); *see also Chalker Energy Partners*, 595 S.W.3d at 676. A party's express renunciation

of a known right can establish waiver. *Tenneco Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 643 (Tex. 1996). "Silence or inaction, for so long a period as to show an intention to yield the known right, is also enough to prove waiver." *Id.* Implied "[w]aiver is largely a matter of intent, and for implied waiver to be found through a party's actions, intent must be clearly demonstrated by the surrounding facts and circumstances." *Jernigan*, 111 S.W.3d at 156. "There can be no waiver of a right if the person to be charged with waiver says or does nothing inconsistent with an intent to rely upon such right." *Chalker Energy Partners*, 595 S.W.3d at 677. "While ordinarily a fact question, when the surrounding facts and circumstances are undisputed, waiver may be decided as a matter of law." *Id.* at 676–77.

Hartman argues that SISU and Grundy waived their challenges to the Injunction when they "agreed to end the injunction hearing and consented to an agreed injunction" without objection. But as explained above, we reject Hartman's characterization that Grundy "consented to an agreed injunction" at the hearing. *See Clarent Energy Servs.*, 2020 WL 1173706, at *9–10.

Next, Hartman argues that SISU and Grundy waived their challenges to the Injunction when they remained silent and did not object to the proposed order after it was sent to Judge Ray or after Judge Ray signed it. But Hartman forwarded to Judge Ray an *agreed* order. Judge Ray had previously ordered the parties and their attorneys to sign the order "if" it was agreed to. Neither SISU and Grundy nor their counsel had signed the Injunction. When emailing Judge Ray the Injunction, Hartman's attorney

informed the trial court that the parties still disputed the geographical limitations of the order. And although Hartman's counsel stated in his October 25 email that the parties had "agreed to a form of Second Temporary Injunction," even if we assume that was true, an agreement as to form only does not constitute an agreed order. *See Morrison*, 2015 WL 4043260, at *6. Moreover, Hartman's counsel requested Judge Ray to sign the order on *only* Hartman's behalf.

While it may have been preferable for SISU and Grundy's counsel to have expressly objected to the order after Hartman's counsel requested Judge Ray to sign the order, their lack of objection on this record did not manifest an intentional waiver of their right to later challenge the fact that they never agreed to the Injunction. *See Tenneco*, 925 S.W.2d at 643. On this record, their lack of agreement to the order was evident and their remaining silent was consistent with their lack of agreement; their silence did not suddenly transform their lack of agreement into an agreement.

Finally, Hartman cites *Bennett v. Lacy* to argue that "[a] party cannot complain for the first time on appeal that an agreed judgment was, in fact, not agreed." No. 14-03-00530-CV, 2003 WL 22945637, at *2 (Tex. App.—Houston [14th Dist.] Dec. 16, 2003, no pet.) (mem. op.). Hartman's reliance upon *Bennett* is misplaced.

In *Bennett*, an agreed judgment was signed on the appellant's behalf by the appellee's attorney with the notation "by permission." *Id.* at *1 n.1. The appellant's argument on appeal was that he had not agreed to the judgment, that he did not see the judgment until after the trial court had signed it, and that he did not give the appellee's

attorney permission to sign it on his behalf. *Id.* at *1. The court stated that "[a] party cannot appeal from or attack a judgment *to which he has consented or agreed* absent an allegation and proof of fraud, collusion, or misrepresentation." *Id.* at *2 (emphasis added). In that instance, a motion for new trial must be filed as a prerequisite to appeal because the complaint is one on which evidence must be heard. *Id.* (citing Tex. R. Civ. P. 324(b)(1)). The court held that no record had been developed demonstrating any conflict between the record and the recitals in the judgment and thus the appellant had waived his complaints by not filing a motion for new trial. *Id.* Unlike *Bennett*, the record in this case is sufficiently developed to demonstrate a conflict between the record and the recitals in the Injunction. Also unlike *Bennett*, the Injunction is not signed by any of the parties or attorneys.

Accordingly, we conclude that SISU and Grundy did not waive their complaint that they did not agree to the Injunction.

E. Conclusion

After indulging all reasonable inferences in the light most favorable to the trial court's order, we conclude that there was no enforceable Rule 11 agreement as to the terms of the Injunction and that SISU's and Grundy's consent to the Injunction was lacking at the time Judge Ray signed the Injunction. Thus, the trial court was without authority to impose Hartman's preferred terms upon SISU and Grundy by signing the Injunction as an agreed order. *See Padilla*, 907 S.W.2d at 461. Accordingly, we hold that the trial court abused its discretion by signing the Injunction and that the Injunction is

void. *See Morrison*, 2015 WL 4043260, at *6; *Brooks v. Bank of New York Tr. Co., N.A.*, No. 2-07-189-CV, 2008 WL 2639240, at *3 (Tex. App.—Fort Worth July 3, 2008, no pet.) (mem. op.) (per curiam) ("When consent has either been withdrawn or is lacking at the time the agreed judgment is rendered, the judgment is void." (citing *Samples Exterminators*, 640 S.W.2d at 874–75)).

We sustain SISU and Grundy's first issue.

IV. THE TRIAL COURT ABUSED ITS DISCRETION BY SIGNING THE INJUNCTION BECAUSE THE INJUNCTION DOES NOT CONFORM TO RULE 683.

In the first part of SISU and Grundy's fourth issue, they argue that the Injunction is void because it does not comply with Texas Rule of Civil Procedure 683. We agree.

A. The specificity requirements of Rule 683 are mandatory.

Rule 683 provides that every injunction "shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained." Tex. R. Civ. P. 683; *see also Premier Trailer Leasing, Inc. v. GTR Rental, L.L.C.*, No. 02-09-00449-CV, 2011 WL 1901980, at *2 (Tex. App.—Fort Worth May 19, 2011, no pet.) (mem. op.) (citing *Vaughn v. Drennon*, 202 S.W.3d 308, 316 (Tex. App.—Tyler 2006, no pet.)). "That is, there can be no doubt about the conduct required to comply with the order, nor can there be any doubt about the conduct that would be a failure to comply with the order." *Premier Trailer Leasing*, 2011 WL 1901980, at *2.

Rule 683 also requires that a temporary-injunction order state precisely why the applicant would suffer irreparable harm. *Bellefeuille v. Equine Sports Med. & Surgery, Weatherford Div., PLLC*, No. 02-15-00268-CV, 2016 WL 1163364, at *3 (Tex. App.—Fort Worth Mar. 24, 2016, no pet.) (mem. op.) (citing *City of Corpus Christi v. Friends of the Coliseum*, 311 S.W.3d 706, 708–09 (Tex. App.—Corpus Christi–Edinburg 2010, no pet.), and *Byrd Ranch, Inc. v. Interwest Sav. Ass'n*, 717 S.W.2d 452, 454 (Tex. App.—Fort Worth 1986, no writ)). An unsupported or conclusory statement in the order that irreparable harm would occur is insufficient to satisfy Rule 683. *Id.* (citing *El Tacaso, Inc. v. Jireh Star, Inc.*, 356 S.W.3d 740, 745–46 (Tex. App.—Dallas, 2011, no pet.), and *Byrd Ranch*, 717 S.W.2d at 454).

Rule 683's requirements are mandatory and must be strictly followed. *Qwest Commc'ns Corp. v. AT & T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000); *Big D Props., Inc. v. Foster*, 2 S.W.3d 21, 22–23 (Tex. App.—Fort Worth 1999, no writ). A trial court abuses its discretion when it issues a temporary injunction that does not conform to Rule 683. *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 201 (Tex. App.—Fort Worth 2005, no pet.); *Armstrong–Bledsoe v. Smith*, No. 2-03-323-CV, 2004 WL 362293, at *2 (Tex. App.—Fort Worth Feb. 26, 2004, no pet.) (mem. op.) (citing *EOG Res., Inc. v. Gutierrez*, 75 S.W.3d 50, 53 (Tex. App.—San Antonio 2002, no pet.)). Where a temporary injunction does not meet Rule 683's requirements it is subject to being declared void and dissolved. *Qwest Commc'ns*, 24 S.W.3d at 337; *Big D Props.*, 2 S.W.3d at 22–23.

B. The requirements of Rule 683 cannot be waived.

Hartman argues that SISU and Grundy waived their Rule 683 challenge by not raising it in the trial court. We disagree. This court previously rejected a similar argument in *Big D Properties* and held that Rule 683's requirements may not be waived. 2 S.W.3d at 23. In fact, an appellate court may declare a temporary injunction that does not comply with Rule 683 void even if that claim has not been raised. *See Good Shepherd Hosp., Inc. v. Select Specialty Hosp. - Longview Inc.*, 563 S.W.3d 923, 929 (Tex. App.—Texarkana 2018, no pet.); *City of Sherman v. Eiras*, 157 S.W.3d 931, 931 (Tex. App.—Dallas 2005, no pet.); *EOG Res.*, 75 S.W.3d at 52–53.

Hartman also argues that SISU and Grundy agreed to the injunction and invited error with respect to their Rule 683 complaint. For the same reasons stated above with respect to SISU and Grundy's first issue, we disagree. *See also Conlin v. Haun*, 419 S.W.3d 682, 687 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (rejecting argument that party was estopped from complaining about an agreed temporary injunction's failure to comply with the mandatory requirements of Rule 683). Further, because a temporary-injunction order that fails to comply with Rule 683 is void, a party cannot waive the error in the order by agreeing to the order's form or substance. *Indep. Capital Mgmt., L.L.C. v. Collins*, 261 S.W.3d 792, 795 n.1 (Tex. App.—Dallas 2008, no pet.). Thus, even if there was an agreement to the entry of the Injunction, the order would nonetheless remain void if it does not comply with Rule 683.

C. The Injunction does not conform to Rule 683 because it does not specify the reasons for its issuance or describe in reasonable detail the acts to be restrained.

The Injunction does not comport with Rule 683 in at least two ways. First, the Injunction fails to comply with Rule 683's requirement that an injunction state the reasons for its issuance. The Injunction's only reference to the reasons for its issuance is the following:

> The Court, having heard the evidence presented by the parties and argument of counsel, is of the opinion that Hartman is entitled to a temporary injunction until trial of this matter is completed; that unless [SISU and Grundy] are immediately enjoined and restrained from engaging in acts or omissions that are detrimental and harmful to the interests of Hartman and [Tex Sand], Hartman and Tex Sand will have no adequate remedy at law and will suffer immediate and irreparable injury, as described below.

But there is nothing "below" this paragraph describing why Hartman and Tex Sand would suffer irreparable harm.

Hartman cites *Texas Black Iron, Inc. v. Arawak Energy, International Ltd.* to argue that the Injunction states the reasons for its issuance by "linking" the restrained conduct to an immediate and irreparable injury. *See* 527 S.W.3d 579, 588–89 (Tex. App.—Houston [14th Dist.] 2017, no pet.). But in *Texas Black Iron*, the injunction specifically described not only the conduct of the appellant that posed a risk of injury to the applicant but also the specific harm that would result to the applicant if the injunction was not issued:

> [T]he potential injury to [the applicant would be] irreparable if [the appellant was] not enjoined from altering, pledging, or reselling any of

> the returned drilling equipment because [the applicant would] lose its ability to recover any damages in the event [the appellant became] insolvent or otherwise [was] unable to satisfy any judgment issued on [the applicant's] claims.

Id. In this case, the Injunction wholly fails to specify any immediate, irreparable injury for which Hartman and Tex Sand have no adequate remedy at law.

Second, the Injunction does not comply with Rule 683's requirement that an injunction be specific and describe in reasonable detail the actions it prohibits. An injunction should inform the enjoined party of the acts he is restrained from doing without calling on him for inferences or conclusions about which persons might well differ and without leaving anything further for trial. *Heat Shrink Innovations, LLC v. Med. Extrusion Techs.-Tex., Inc.*, No. 02-12-00512-CV, 2014 WL 5307191, at *8 (Tex. App.—Fort Worth Oct. 16, 2014, pet. denied) (mem. op.).

Here, the Injunction repeatedly imposes prohibitions and obligations by reference to a customer list. But the identities of the customers on that list are not disclosed in the Injunction. Hartman argues that the Injunction's reference to the customer list reasonably informs SISU and Grundy of the acts restrained. But Rule 683 expressly states that an injunction must describe the acts restrained in reasonable detail without "reference to the complaint or other document." Tex. R. Civ. P. 683. "Thus, the injunction itself must provide the specific information as to the off-limits clients, without inferences or conclusions, or . . . implied references to other records [the

enjoined party] might have." *Computek Comput. & Office Supplies, Inc. v. Walton*, 156 S.W.3d 217, 222 (Tex. App.—Dallas 2005, no pet.).

But even if, as Hartman contends, an injunction may refer to an external customer list and still comply with Rule 683, there was no agreement on what entities to include on the customer list, as explained above. Indeed, it was the parties' inability to agree on the customer list that caused their negotiations to break down. Like this court, SISU and Grundy are left guessing who is on the customer list and what acts are restrained. An order that requires an enjoined party to engage in such guesswork flies in the face of Rule 683 and cannot stand. *See id.*

The Injunction is too vague for additional reasons as well. It imposes certain obligations upon SISU and Grundy if any "entity or person related to an entity" on the customer list initiates a communication with SISU or Grundy. The Injunction provides no means for SISU and Grundy to ascertain the identities of the entities and people "related to an entity" on the undetermined customer list.

Further, the Injunction prohibits SISU and Grundy from soliciting any type of employment from, working for, or having a commercial relationship with current and certain former employees and drivers of Tex Sand. But it provides no means for SISU and Grundy to ascertain the identities of Tex Sand's current or former employees or drivers. *See Heat Shrink Innovations*, 2014 WL 5307191, at *9 (holding that injunction that prohibited sales to a list of names without providing other identifying information was impermissibly vague).

The Injunction fails to comply with Rule 683 because it fails to set forth the reasons for its issuance and fails to describe in reasonable detail the acts to be restrained and is, therefore, void for this additional and independent reason. Accordingly, we sustain the first part of SISU and Grundy's fourth issue.

V. HARTMAN'S PENDING RULE 29.4 MOTION IS DENIED.

During this appeal, Hartman filed with this court a "Rule 29.4 Motion to Enforce Reporting Obligations Under Paragraph [(c)] of the Second Agreed Temporary Injunction and Request for Expedited Consideration" (the Motion). *See* Tex. R. App. P. 29.4. Hartman argued that SISU and Grundy were failing to comply with Paragraph (c) of the Injunction by not providing weekly reports of all customers for whom SISU had worked each preceding week. Hartman asked this court to compel SISU and Grundy to comply with Paragraph (c) of the Injunction, to award him attorney's fees, and to consider his Motion on an expedited basis.

This court denied Hartman's requests for expedited consideration and for attorney's fees. Pursuant to Rule 29.4, we referred the portion of the Motion contending that SISU and Grundy had not complied with Paragraph (c) of the Injunction to the trial court for findings and recommendations. *See* Tex. R. App. P. 29.4(b).

We subsequently received the findings and recommendations signed by the presiding judge of the district court. The findings recite, among other things, that SISU and Grundy had "agreed to the terms of the Second Agreed Temporary Injunction"

and had "waived any right to continue the Temporary Injunction hearing and instead chose to enter into the Second Agreed Temporary Injunction." The presiding judge recommended that this court (1) find that SISU and Grundy are willfully and deliberately violating the reporting provisions of the Injunction, (2) reconsider Hartman's request for attorneys' fees, and (3) order that this appeal be dismissed as a sanction if SISU and Grundy do not make the required reports.

We decline to adopt and instead reject the trial court's findings and recommendations for three reasons. First, our order referred Hartman's Motion to the trial court only "to make findings and recommendations concerning Appellants [SISU's and Grundy's] *compliance with Paragraph* [*(c)*] of the Second Agreed Temporary Injunction." [Emphasis added.] The trial court exceeded that authority by making findings addressing the merits of this appeal. *See* Tex. R. App. P. 29.5.

Second, for the same reasons stated above with respect to SISU and Grundy's first issue, the presiding judge's findings that SISU and Grundy agreed to the Injunction and that they waived their right to continue the injunction hearing are not supported by the record. *See also id.*

Third, even if SISU and Grundy had agreed to the order, a party who agrees to a void order has agreed to nothing. *In re Garza*, 126 S.W.3d 268, 271 (Tex. App.—San Antonio 2003, orig. proceeding). "A void order has no force or effect and confers no rights; it is a mere nullity." *Id.* (citing *Slaughter v. Qualls*, 162 S.W.2d 671, 674 (Tex. 1942)); *see also Conlin*, 419 S.W.3d at 687. A party "legally cannot be held in contempt

for violating a void order." *In re Sloan*, 214 S.W.3d 217, 224 (Tex. App.—Eastland 2007, orig. proceeding) (citing *Ex parte Shaffer*, 649 S.W.2d 300, 301–02 (Tex. 1983)).

Accordingly, we deny Hartman's Motion.

VI. CONCLUSION

Having sustained SISU and Grundy's first issue and the first part of their fourth issue, we declare the Injunction void, dissolve the Injunction, and remand the case to the trial court for proceedings consistent with this opinion. Because of this conclusion, we do not reach appellants' remaining issues. *See* Tex. R. App. P. 47.1. We further instruct the clerk of this Court to issue the mandate immediately. *See* Tex. R. App. P. 18.6; *Helix Energy Sols. Grp., Inc. v. Howard*, 452 S.W.3d 40, 45 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

/s/ Dabney Bassel

Dabney Bassel
Justice

Delivered: July 16, 2020