2015 IL App (2d) 150053-U
Nos. 2-15-0053
Order filed January 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DIABETES AMERICA, LLC,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-MR-1182
	)	
TECHPRO, INC.,	)	Honorable
	)	David R. Akemann,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court had jurisdiction to enter a temporary restraining order in favor of the plaintiff; (2) the trial court did not abuse its discretion in entering the order; and (3) the defendant was sanctioned for filing a frivolous appeal.

¶ 2 On December 29, 2014, the parties entered into an oral settlement agreement before the circuit court of Kane County. On January 16, 2015, after the defendant, TechPro, Inc., indicated that it did not intend to comply with the settlement agreement, the trial court entered a temporary restraining order (TRO) in favor of the plaintiff, Diabetes America, LLC, requiring the defendant

to comply with the material terms of the settlement agreement. The defendant appeals from that order. As we find that the defendant's appeal is frivolous, we affirm with sanctions.

¶ 3 BACKGROUND

¶ 4 The plaintiff is a management company for physicians who provide care to over 18,000 diabetic patients throughout Texas. The plaintiff is based out of Houston, Texas. In March 2013, the plaintiff and the defendant entered into a contract whereby the defendant would store the plaintiff's electronic information, including the plaintiff's patients' electronic medical records. The defendant is located in Geneva, Illinois. The defendant had difficulty providing the services that the plaintiff needed. The plaintiff therefore terminated the parties' contract.

¶ 5 After the contract was terminated, the defendant sought payment for its past services. The defendant indicated that if it did not receive payment, it would not allow the plaintiff access to its patients' medical records. In response, on November 3, 2014, the plaintiff obtained a restraining order from a Texas state court, requiring the defendant to continue providing the plaintiff with access to its own records.

¶ 6 On November 13, 2014, pursuant to the Uniform Enforcement of Foreign Judgments Act (735 ILCS 5/12-650 (West 2012)), the plaintiff registered its Texas judgment in the circuit court of Kane County. The defendant thereafter raised an objection to the Texas court's jurisdiction over it. On December 22, 2014, the plaintiff filed a complaint in Kane County for a TRO and a preliminary injunction. The plaintiff sought to restrain the defendant from restricting access to the plaintiff's data or programs hosted on the defendant's servers. On December 29, 2014, the defendant filed a motion to dismiss the plaintiff's complaint.

¶ 7 That same day, the trial court conducted a hearing on the plaintiff's complaint for a TRO and a preliminary injunction. At the hearing, the defendant's president and trial counsel stated that they would like to settle the matter rather than proceed with the hearing. The parties then negotiated a settlement for the next five and half hours. Following those negotiations, the parties jointly asked the trial court to enter the material terms of the agreement on the record, and asked the trial court to continue the hearing so that it could maintain jurisdiction over the enforcement of the stated settlement agreement.

¶ 8 On December 31, 2014, the plaintiff sent the defendant a draft settlement agreement. The material terms of the agreement provided that the plaintiff would pay the defendant $95,000 in exchange for the defendant continuing to providing the plaintiff access to all of the plaintiff's records and the defendant assisting the plaintiff with the transfer of all of its records to a new provider. The defendant's counsel again informed the plaintiff that the defendant agreed with all of the material terms.

¶ 9 On January 14, 2015, the defendant was represented by a different attorney than had represented the defendant on December 29, 2014. That attorney sent the plaintiff a letter which indicated that the defendant did not intend to honor the December 29, 2014, oral agreement because the court "does not have subject-matter jurisdiction" over any of the disputes at issue between the parties.

¶ 10 The next day, the plaintiff filed an emergency motion for a temporary restraining order. The motion sought an order compelling the defendant to comply with the parties' settlement agreement or to immediately begin transferring the data.

¶ 11 On January 16, 2015, following a hearing, the trial court granted the plaintiff's motion for a temporary restraining order. The trial court found that there was a need for such an order because the defendant and its attorneys had led the plaintiff to reasonably believe that the defendant would comply with the settlement agreement and that the data transfer would occur. If the data transfer did not occur, the plaintiff would incur substantial damages. The trial court found that the plaintiff had a clearly ascertainable right to the consummation of the parties' settlement agreement and the continued access to and the return of its electronic records. The plaintiff had a likelihood of success on the merits because the settlement agreement had been placed on the record. Further, the plaintiff had no adequate remedy at law because at issue was its records that affected the health and safety of it patients. Moreover, the equities favored the plaintiff because, whereas the plaintiff could suffer immeasurable damages if the order was not entered, the defendant represented that it could perform the minor tasks it needed to comply with the order in as little as 10 minutes.

¶ 12 On January 20, 2015, the defendant filed a petition for interlocutory appeal of the trial court's order pursuant to Supreme Court Rule 307(d) (eff. Feb. 26, 2010).

¶ 13 ANALYSIS

¶ 14 On appeal, the defendant argues that the trial court's order should be vacated because it lacked subject matter jurisdiction over the defendant. The defendant additionally contends that the order should be vacated because the plaintiff did not comply with the notice requirements of Supreme Court Rule 105 (eff. Jan. 1, 1989). Further, the defendant argues that the trial court's order should be vacated because there were insufficient facts warranting the entry of a TRO.

¶ 15 In arguing that the trial court lacked jurisdiction, the defendant contends that the parties' contract required that all contractual disputes be subject to arbitration. See *Ruff v. Splice, Inc.*, 398 Ill. App. 3d 431, 434 (2010) (court lacks jurisdiction where parties' contract requires arbitration of all disputes). The defendant misstates the parties' contract. Specifically, the contract states that "notwithstanding the foregoing [arbitration provision], claims for preliminary injunctive relief *** may be brought in a state or federal court in the United States with jurisdiction over the subject matter and parties."

¶ 16 More importantly, at issue in this case is not the parties' underlying contract but rather the settlement agreement that the parties entered into on December 29, 2014. With that agreement, the parties informed the trial court that they had reached agreement as to all the material terms and requested that the trial court "retain jurisdiction in case something might happen." The court clearly had jurisdiction in regards to the parties' settlement agreement. See *Sheffield Poly-Glaz, Inc., v. Humboldt Glass*, 42 Ill. App. 3d 865, 868 (1976) (a trial court has the power to summarily enforce a settlement agreement entered into by the parties while their suit is pending before it).

¶ 17 The defendant also argues that the trial court should not have considered the complaint that the plaintiff filed on December 22, 2014, because the plaintiff did not provide the defendant notice of that complaint in the manner described in Supreme Court Rule 105. However, in making this argument, the defendant ignores the fact that defense counsel and the defendant's president appeared before the trial court on December 29, 2014, and indicated that they were willing to enter into settlement negotiations with the plaintiff. The defendant's actions on December 29, 2014, forfeited any claims it may have had to improper notice. See *Gregory v.*

Industrial Comm'n, 310 Ill. 409, 412 (1923) (party who appears and without objection participates in the hearing waives all right to object to the court's jurisdiction); see also *Shortt v. City of Chicago*, 160 Ill. App. 3d 933, 936 (1987) (when a party files a general appearance and answer, that party waives objections to the court's jurisdiction and to defects in the service process).

¶ 18 The defendant further contends that the trial court abused its discretion in entering the TRO. The defendant argues that the TRO was unfounded in light of a letter that defense counsel authored on December 19, 2014, and was attached to the defendant's motion to dismiss the plaintiff's complaint, filed on December 29, 2014. The defendant argues that defense counsel's letter "exposes all the obfuscation and misleading opinions and debunks all the unsubstantiated claims of [the plaintiff]."

¶ 19 First, having reviewed the entire record, we cannot say that the trial court's decision constituted an abuse of discretion. See *Schroeder Murchie Laya Associates, Ltd. v. 100 West Lofts, LLC*, 319 Ill. App. 3d 1089, 1092 (2001) (reviewing court will not disturb trial court's entry of a TRO absent an abuse of discretion). Second, we note that, once again, the defendant ignores the oral settlement agreement that the parties entered into on December 29, 2014. That agreement and the defendant's lack of desire to comply with it was the basis for the trial court's TRO. Rather than challenging that agreement, the defendant only complains of events between the parties before the settlement agreement. That the defendant is now apparently having buyer's remorse as to the settlement agreement is not a basis to find that the trial court's decision was improper. See *Sheffield Poly Glaz, Inc.*, 42 Ill. App. 3d at 870 (court will not allow party to

"dilute the binding effect of oral compromise and settlement agreements and permit parties thereto to change their minds at their pleasure").

¶ 20 Finally, we note that the plaintiff asks that we impose sanctions upon the defendant and its counsel for having filed a frivolous appeal. The plaintiff insists that the defendant and its attorney knew it had no chance of success after it "stood in front of the trial court and assented to the settlement at issue and asked the court to retain jurisdiction to enforce it." Rather, the plaintiff maintains that the defendant only filed this appeal in order "to run up the costs of litigation and harass [it] in an attempt to bully and extort more money."

¶ 21 Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) allows us to impose an appropriate sanction upon a party or a party's attorney if:

> "it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose."

The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants and their attorneys who appear before us. *Sterling Homes, Ltd. v. Rasberry*, 325 Ill. App. 3d 703, 709 (2001).

¶ 22 The following quotation aptly expresses our view of this appeal:

> "We find that this appeal, viewed as a whole, was frivolous, that it was taken for an improper purpose, and that it was filed specifically to harass and to cause unnecessary delay and needlessly increase the cost of litigation. We choose to impose sanctions for this conduct, finding that cases like this drain valuable resources intended to benefit those

who accept the social contract of living under a law-based system of government." *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 88 .

¶ 23 We agree with the plaintiff that sanctions should be imposed against defendant for filing a frivolous appeal. Since the plaintiff has not yet done so, we direct the plaintiff to file within 14 days a statement of reasonable expenses and attorney fees incurred as a result of this appeal. The defendant and its attorney shall have seven days to file a response. This court will then file a supplemental order determining the amount of the sanction, which will be imposed upon the defendant and its appellate attorney.

¶ 24 CONCLUSION

¶ 25 The judgment of the circuit court of Kane County is affirmed with sanctions. We remand to the trial court to enforce the parties' settlement agreement.

¶ 26 Affirmed with sanctions; remanded for additional proceedings.