

**NOTICE:** This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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KIMBERLY BRADNER,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 20-LM-482
	)	
BOB KOLVITZ, d/b/a Kol	)	
Construction,	)	Honorable
	)	John G. Dalton,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Jorgensen and Kennedy concurred in the judgment.

**ORDER**

¶ 1 *Held:* In proceedings on plaintiff’s motion to enforce a settlement agreement because defendant had not paid any sums due under the agreement, the trial court did not err in refusing to hold an evidentiary hearing on defendant’s allegation that plaintiff breached the agreement’s confidentiality provision. Defendant’s breach allegation was immaterial to plaintiff’s motion because the agreement did not condition plaintiff’s right to payment on her compliance with the confidentiality provision. Finally, because plaintiff has not filed a cross-appeal, we decline her request to remand this matter for a determination of the fees she is owed under a fee-shifting provision in the settlement agreement.

¶ 2 Defendant, Bob Kolvitz, d/b/a Kol Construction, appeals from an order of the circuit court of Kane County granting the motion of plaintiff, Kimberly Bradner, to enforce a settlement

agreement and entering judgment in plaintiff's favor for \$23,338. Defendant argues that the trial court erred by (1) holding a hearing on plaintiff's motion before the time for complying with discovery had expired and (2) denying defendant's request for an evidentiary hearing on the motion. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On May 13, 2020, plaintiff filed a three-count complaint against defendant, seeking damages stemming from plaintiff's engagement of defendant to make specific improvements to her residence. The parties eventually agreed to settle the matter.

¶ 5 On September 10, 2021, the parties executed a "Settlement Agreement and Mutual Release of Liability" (Agreement). Per the Agreement, defendant was to pay plaintiff \$14,000 in exchange for a release of all claims. Defendant was to make an initial \$2000 payment by September 13, 2021, followed by 12 monthly \$1000 payments by the 15th of each month.

¶ 6 The Agreement contained a provision titled "Breach/Default." Under this provision, defendant would be in default if he failed to make the required payments. It further provided that, if defendant failed to cure the default within 14 days of receipt of written notice of default, plaintiff "may reinstate litigation against [defendant] and shall be entitled to Judgment against [defendant] in the amount of \$23,338.00, less any amounts actually paid, plus reasonable and necessary attorney[ ] fees and costs to enforce the terms of this Agreement."

¶ 7 The Agreement also contained a provision titled "Confidentiality." It provided:

"Each of the Settling Parties agrees this Agreement was (a) entered into by the mutual satisfaction of the Parties under confidential terms; (b) the provisions of this Agreement are confidential; (c) they will treat the provisions of this Agreement in the strictest confidence; and (d) they will not disclose or permit anyone to disclose the terms

and conditions of this Agreement to any person (other than to their respective attorneys, accountants, or otherwise as required by law) without prior authorization of the other Party.”

¶ 8 On February 22, 2022, plaintiff filed a “Motion to Enforce Settlement Agreement and for Entry of Judgment.” Plaintiff attached the Agreement as an exhibit. The motion alleged that defendant had failed to make any payments to plaintiff. The motion further alleged that, on or about October 15, 2021, plaintiff provided defendant with written notice of default, demanding compliance with the Agreement. According to the motion, plaintiff’s counsel thereafter received correspondence informing him that defendant “was taking the position that [plaintiff] had violated the confidentiality provisions of the \*\*\* Agreement and that, therefore, was ‘voiding’ the \*\*\* Agreement and would be making no payments.” However, plaintiff denied breaching the confidentiality provision but noted that, in any event, although the Agreement provided remedies for defendant’s failure to pay, it did not provide that a breach of the confidentiality provision voided the Agreement. Accordingly, plaintiff asked the court to find that defendant had breached the Agreement and to enter judgment in favor of plaintiff for \$23,338, plus attorney fees and costs incurred to enforce the Agreement.

¶ 9 On April 5, 2022, defendant filed a response to plaintiff’s motion. Defendant stated, *inter alia*, that he “has not refused to make any payments, but has taken the position that the [A]greement has been materially breached and was unenforceable” due to plaintiff’s breach of the confidentiality provision of the Agreement.

¶ 10 On April 19, 2022, plaintiff filed her reply, alleging that defendant was fabricating his claim that plaintiff breached the Agreement.

¶ 11 On May 5, 2022, plaintiff filed a “Proof of Service,” indicating that plaintiff’s counsel had served “Plaintiff’s [Illinois Supreme Court] Rule 214 [(eff. July 1, 2018)] Notice to Produce to Defendant and Interrogatories pursuant to [Illinois] [S]upreme [C]ourt [R]ule 213 [(eff. Jan. 1, 2018)].”

¶ 12 On May 12, 2022, defendant filed a “Certificate and Affidavit of Delivery by Email,” indicating that defendant’s counsel had delivered “Defendant’s [Illinois Supreme] Court Rule 213(f) [(eff. Jan. 1, 2018)] Interrogatories to Plaintiff.”

¶ 13 On May 24, 2022, the parties appeared via Zoom, and the matter was continued by agreement to May 31, 2022, for a hearing on plaintiff’s motion. (No report of proceedings for the May 24, 2022, hearing appears in the record.)

¶ 14 On May 31, 2022, the parties appeared again via Zoom. At the outset, defendant’s counsel objected to having a hearing that day. He asserted that discovery was ongoing and that both sides had propounded interrogatories. He further stated that he had three witnesses to call but could not make them available that day. In response, the court noted neither side had requested an evidentiary hearing on the motion. Defense counsel disagreed. Counsel noted that defendant had alleged in his response that plaintiff breached the Agreement’s confidentiality provision. Counsel suggested that discovery was needed on the issue of plaintiff’s breach. Counsel told the trial court that defendant learned of plaintiff’s breach on September 15, 2021, and that defendant had witnesses to testify to the breach.

¶ 15 In response, the trial court pointed out that the Agreement did not provide a remedy for a breach of the confidentiality provision. The court also pointed out that the initial payment was due before defendant allegedly became aware of the confidentiality provision.

¶ 16 Plaintiff's counsel argued that there was no dispute that defendant did not make the required payment and that the Agreement was "absolutely clear" as to damages for a breach of the payment provision.

¶ 17 The trial court ruled as follows:

"I have one motion in front of me. It's a motion filed by the plaintiff for enforcement of the [A]greement. It's the only matter before the Court. Unless the alleged breach asserted in the response is a defense to that motion, then I should hear that motion and resolve it. And I should await resolution of the claimed damages for breach of the confidentiality clause until that matter is properly before me, which it is not today. I have neither a motion, petition, nothing.

I suppose it could also be the basis of a separate standalone lawsuit, but I think I might be stuck with resolving it should such a motion be filed because I retain jurisdiction to enforce the [A]greement. But that language, retaining jurisdiction to enforce the [A]greement, I don't think that was contemplated to include what is essentially a separate action, but I will cross that bridge when it's before me and it isn't. If there was a breach of the confidentiality clause, the aggrieved party may have a right to some sort of relief. But that relief would not be to render the payment provisions of the \*\*\* [A]greement nugatory. There isn't any connection between the amount agreed to be paid as part of the settlement and the alleged damages for breach of the confidentiality clause. There's no evidence as to any damages by virtue of the breach of the confidentiality clause, if such a breach took place, and there's no basis for me doing an offset or anything of the sort.

In short, I think that the plaintiff has proven that there was a default in the payment provisions. I do not believe that the defendant has asserted that that's factually incorrect.

I don't believe those facts are in any way contested. I don't think there's any reason to have an evidentiary hearing with respect to this motion.

Anyone have anything you want to add?

All right. Plaintiff's motion is granted. Judgment is entered. I'm going to enforce the [A]greement. [Defense counsel], if your client wants to file some sort of pleading with respect to your alleged breach, I will hear that when it's properly before me."

¶ 18 The trial court entered an order granting plaintiff's motion and awarding judgment in favor of plaintiff for \$23,338.

¶ 19 This timely appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Defendant argues that the trial court erred by (1) holding a hearing on plaintiff's motion to enforce the Agreement before the time for complying with discovery had expired and (2) denying defendant's request for an evidentiary hearing on the motion.

¶ 22 As in *City of Chicago v. Ramirez*, 366 Ill. App. 3d 935 (2006), we note that a motion to enforce a settlement agreement is akin to a motion for summary judgment:

"Like a summary judgment motion, the trial court's decision to grant or deny enforcement of a settlement agreement made on the motion pleadings and attachments, without holding an evidentiary hearing, is reviewable *de novo*. [Citation.] Also like a summary judgment motion, if the court determines that there is insufficient evidence to decide summarily whether a settlement agreement exists or what its terms are, the factual dispute regarding the settlement agreement may be resolved in a later evidentiary hearing or trial." *Id.* at 946.

Thus, an evidentiary hearing is only necessary when a question of fact exists. *Id.*

¶ 23 Defendant first argues that the trial court erred by holding a hearing on plaintiff’s motion to enforce the Agreement before the time for complying with discovery had expired. Defendant has forfeited this argument by failing to cite supporting authority in his opening brief. Illinois Supreme Court Rule 341(h)(7) states that arguments in the opening brief unsupported by authority are forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb.6, 2013); see *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 31 (argument unsupported by authority was forfeited). We note that defendant does cite two cases in his reply brief. However, the first case is inapplicable to the argument advanced in his initial brief. See *Patterson v. Avery Dennison Corp.*, 281 F.3d 676, 681 (7th Cir. 2002) (finding that the trial court did not abuse its discretion in refusing to compel the deposition of an individual that would have been “quite costly and burdensome”). The second—*Nucap Industries Inc. v. Robert Bosch LLC*, No. 15-CV-2207, 2017 WL 6059770, at \*1 (N.D. Ill. Dec. 7, 2017)—is an unreported federal district court decision, which has no precedential value in this court. See *County of Du Page v. Lake Street Spa, Inc.*, 395 Ill. App. 3d 110, 122 (2009).

¶ 24 In any event, forfeiture aside, as plaintiff notes, the trial court’s conduct of discovery is reviewed for an abuse of discretion. *Ragan v. Columbia Mutual Insurance Co.*, 183 Ill. 2d 342, 352 (1998). Here, the trial court determined that the only matter properly before it was plaintiff’s motion for enforcement of the Agreement. Defendant’s discovery sought evidence that plaintiff had breached the Agreement’s confidentiality provision. However, the court found that, under the Agreement’s terms, there was no “connection between the amount agreed to be paid as part of the settlement and the alleged damages for breach of the confidentiality clause.” The court was correct. Therefore, as the discovery sought was not relevant to plaintiff’s motion, the court did not abuse its discretion in proceeding to a hearing on the motion before the time for complying with discovery had expired.

¶ 25 Defendant next contends that the trial court erred in denying defendant's request for an evidentiary hearing on plaintiff's motion. We disagree. Plaintiff's motion alleged that defendant failed to make the payments required under the Agreement. Defendant did not deny that he failed to pay as required; instead, defendant claimed that, because plaintiff breached the confidentiality provision of the Agreement, defendant was no longer required to pay. However, as the trial court noted, the Agreement does not condition plaintiff's right to payment on her compliance with the confidentiality provision. Thus, because defendant did not raise a question of fact as to whether plaintiff was entitled to enforcement of the Agreement, the trial court did not err in failing to hold an evidentiary hearing.

¶ 26 Defendant's reliance on *In re Marriage of Giammerino*, 81 Ill. App. 3d 998 (1980), and *In re Marriage of Lorenzi*, 84 Ill. App. 3d 427 (1980), does not warrant a different conclusion, as they are distinguishable. In each case, the reviewing court found that a remand for an evidentiary hearing was warranted due to a disputed factual issue. See *Giammerino*, 81 Ill. App. 3d at 999-1000 (finding that respondent's affidavit alleging that the parties' property settlement agreement erroneously included nonmarital property presented a factual issue requiring a hearing); *Lorenzi*, 84 Ill. App. 3d at 432 (finding that an evidentiary hearing on a postjudgment petition for relief from a property-settlement agreement was warranted where the facts were controverted and outside the record). No disputed factual issue is present here.<sup>1</sup>

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<sup>1</sup>Plaintiff asks us to affirm the trial court's judgment *and* remand this matter for a determination of the attorney fees owed to her per a fee-shifting provision in the Agreement. Although plaintiff asked for such fees in her motion to enforce the Agreement, the court did not address that request in its order granting the motion *and* plaintiff did not raise this issue by way of



¶ 27

III. CONCLUSION

¶ 28 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 29 Affirmed.

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cross-appeal. “In the absence of a cross-appeal, an appellee will not be permitted to challenge or ask the reviewing court to modify a portion of the trial court’s order.” *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1024 (2009). Thus, we decline to remand for a fee determination. However, the plaintiff remains free to file a fee petition on remand if she wishes.