IN THE COURT OF APPEALS 05/21/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00332 COA

ATLAS ENVELOPE CORPORATION, A MISSISSIPPI CORPORATION

APPELLANT

v.

MURRAY ENVELOPE CORPORATION, A MISSISSIPPI CORPORATION

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. RICHARD WAYNE MCKENZIE

COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

RAY T. PRICE

ATTORNEYS FOR APPELLEE:

LAWRENCE C. GUNN, JR.

L. CLARK HICKS, JR.

NATURE OF THE CASE: CONTRACT

TRIAL COURT DISPOSITION: COURT ENTERED SUMMARY JUDGMENT FOR DEFENDANT

BEFORE FRAISER, C.J., COLEMAN, AND McMILLIN, JJ.

COLEMAN, J., FOR THE COURT:

The Appellant, Atlas Envelope Corporation (Atlas), sued the Appellee, Murray Envelope Corporation (Murray), for breach of contract. The Circuit Court of Forrest County granted Murray's motion for summary judgment. Atlas has appealed from the circuit court's grant of summary judgment, which we reverse and remand.

I. Facts

On September 9, 1980, Hampton Lamar Hurt obtained United States Patent No. 4221161 which covered a method of forming a double pocket envelope. Hurt's patent allowed him to produce an x-ray envelope which is used in hospitals, clinics, and physicians' offices nationwide. Hurt is also the sole owner of Atlas Envelope Corporation.

On October 4, 1983, Hurt granted to Murray a license "to manufacture a double pocket envelope pursuant to a patent that I hold, patent #4,221,161." The license authorized Murray "to manufacture the double pocket envelope for and during the original term of the patent issued by the U. S. Government on September 6,1980, subject to the reservations as hereinafter set forth." The patent expired on September 5, 1997. The license contained the following paragraph:

> Murray has the right to cancel its license at will. This cancellation must be made in writing to [Hurt] at his last known address known to Murray. Any manufacturing by Murray after cancellation of this license of the envelopes will be unauthorized, and Murray will be subject to patent infringements, if any.

On the same date, October 4, 1983, Atlas and Murray entered into a seventeen page contract, the terms and purposes of which Atlas describes in its brief as follows:

> Murray agreed to furnish Atlas with space in its plant in Hattiesburg, Mississippi, in order for Atlas to conduct its operations. Atlas agreed to fold several different types of envelopes and folders for a rate which was specified for its first year of the contract for subsequent years of the contract, the parties agreed to renegotiate Atlas' rates yearly at the annual date of the renewal of the contract. Murray agreed to furnish a minimum amount of folding business for the first three (3) years of the contract, with the amount increasing in each of the first three years. Murray agreed that it would give Atlas the first opportunity to perform the types of work set out in the contract, and Atlas agreed to use its best efforts to perform all of the work requested of it by Murray. Murray was free to use other persons or companies to do its folding business if Atlas could not perform all of the folding needed by Murray, and Atlas retained the right to conduct business with the other persons or companies, so long as that outside business did not interfere with the performance of the contract with Murray.

The final sentence in this contract reads as follows: "In the event there is any conflict between the terms of this contract and the license granted by [Hurt], it is the intent of the parties herein that the

license provisions shall control."

On October 25, 1993, L. E. Rhian, Jr., Murray's president, wrote a letter to Hurt in which he advised him that "[i]n view of your obvious bad faith in fulfilling the provisions of our contract and license, we hereby declare same canceled." After Hurt received this letter, Atlas filed its complaint for damages for breach of contract against Murray in the Forrest County Circuit Court on March 9, 1994.

II. Litigation

In Count I of its complaint, Atlas sought to recover damages "in the sum of $417,000.00 for [Murray's] breach of contract and loss of profits for the years 1992 and 1993 and for [Murray's] prohibited use of license." In Count II of its complaint, Atlas sought to recover for its loss of future earnings pursuant to Murray's cancellation of the license agreement on October 25, 1993. To justify its claim against Murray for its loss of future earnings, Atlas stated in paragraph C of its complaint:

> That because the contract and license are tied to the life of the patent and plaintiff's entering into the contract in good faith with reasonable expectation that this relationship would endure until the termination of the patent on September 9, 1997, plaintiff is entitled to have and recover damages of and from the defendant [Murray] for the average yield of this contract for the balance of the life of the patent which would be $532,750.00 a year. However, in an effort to mitigate his damages, plaintiff would show unto the court that the first year that defendant began removing work from the plant and prior to an outright breach of the contract, the gross from work done by plaintiff for defendant was $387, 000.00 and plaintiff hereby accepts that amount as the basis for work that would have been performed in the years 1994, 1995, and 1996 and the life of the patent would terminate of September 7, 1997 and therefore plaintiff [Atlas] assigns as his loss under the breach of contract for eight months for the year 1997 $258,000.00. That the total loss for breach of contract under Count II of this complaint is $1,419,000.00.

Atlas concluded its complaint by demanding "judgment of and from [Murray] in the cumulative total of $1,836,000.00 for damages sustained in Counts I and II for defendant's wilful breach of the contract and license dated October 4, 1983, and for all costs of court accruing herein." Our extensive quoting from Atlas' complaint is necessary to demonstrate that Atlas bifurcated its claim for damages against Murray. Part of its claim for damages, $417,000, sprang from what had already occurred in the years 1992 and 1993; and the other part of its claim for damages, $1,419,000.00, sprang from its prospective loss of income which followed Murray's termination of the license agreement with Hurt on October 25, 1993.

Murray answered the complaint; and Atlas filed preliminary discovery measures, *i.e.*, interrogatories, requests for admissions, and requests for production of documents. After Murray filed its answers to requests for admissions and response to motion for production of documents -- but not its answers to Atlas' interrogatories -- Atlas' counsel, Rex K. Jones and William L. Ducker, withdrew as counsel of record for Atlas by leave of the circuit court which it granted by its judgment authorizing attorneys to withdraw dated October 31, 1994.

On January 25, 1994, the Forrest County Circuit Court entered its final judgment in which it recited:

> Previously, the court considered the motion for summary judgment on Murray Envelope Corporation, noting that the plaintiff has not properly filed any response to the motion.
>
> Nevertheless, the court has examined all pleadings and other documents on file in this cause, especially the contract and license agreement. The contract between the parties provides on page 14 in part:
>
> > By this contract and by the issuance of the license for and during the term that Murray may manufacture the double pocket envelope pursuant to the Hurt patent, Atlas shall have full exclusive folding rights to the Murray manufactured envelope. (emphasis added).
>
> It is thus clear that both the contract and the license agreement are connected and must be construed together.
>
> Plaintiff's president, Mr. Hampton Hurt, conceded at the hearing before the court that these documents were prepared by plaintiff's attorney.
>
> The license agreement provides, "Murray has the right to cancel its license herein at will." It is further clear from a review of the record that Murray in fact did cancel the license agreement, which in effect terminated the contract.
>
> It is therefore the judgment of this court that the plaintiff's case should be, and the same is hereby dismissed with costs assessed to plaintiff.

This final judgment was filed the next day, January 26, 1995.

On January 27, the day after this final judgment was filed, Hattiesburg attorney, Ray T. Price, filed an entry of appearance on behalf of Atlas. Although Atlas was not represented by counsel when the trial court entered its final judgment on January 26, 1995, it assigns no error based on its lack of representation. On February 6, 1995, Price filed a motion to reconsider summary judgment; but on March 3, 1995, the circuit court entered its Order Denying Motion for Reconsideration. We need not review the post final judgment events because of our reversal of the final judgment as a matter of law.

III. Issues and the Law

In its brief, Atlas propounds the following issue, which it then sub-divides into four facets:

I. That the trial court committed reversible error by granting the summary judgment in the face of many contested issues of fact and based on an erroneous interpretation of the contract of issue.

A. The Court erred in finding that the contract could be canceled at will by Murray.

B. The Court erred in failing to consider the obligation of Murray to treat Atlas with good faith in the performance of the contract.

C. The lower Court erred in ignoring the allegations in the plaintiff's complaint concerning breaches of the contract occurring when the contract was being performed by both parties, which allegations were not even addressed by the motion for summary judgment filed by Murray.

D. The lower Court erred in failing to consider the affidavits submitted by Atlas with its motion for reconsideration.

In its brief, Murray offers three issues for us to consider in this appeal. They are:

I. Whether the trial judge correctly granted summary judgment as to plaintiff's claim pertaining to the patented double pocket envelope.

II. Whether the trial court correctly granted summary judgment on the remaining allegations.

III. Whether the trial court abused its discretion in denying the plaintiff's motion for reconsideration.

A. General Discussion

Before we begin our analysis of such of these issues as we determine to be necessary to resolve this appeal, we first consider the standard of review for these issues and then we recite general concepts of contract law with which to illuminate these issues.

1. Standard of Review

Rule 56(c) of the Mississippi Rules of Civil Procedure provides:

> The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

M.R.C.P. 56(c). The burden of proving by production rather than by persuasion that no genuine issues of material fact exist is borne by the movant. *Newell v. Hinton*, 556 So. 2d 1037, 1042 (Miss. 1990); *Tucker v. Hinds County*, 558 So. 2d 869, 872 (Miss. 1990); *Fruchter v. Lynch Oil Co.*, 522 So. 2d 195, 198 (Miss. 1989). As an appellate court, we approach the issue of the propriety of the granting of summary judgment on a *de novo* basis. The Mississippi Supreme Court elaborated on the concept of a *de novo* approach to the issue of whether a trial court erred when it granted summary judgment in *Seymour v. Brunswick Corp.*, 655 So. 2d 892, 894-95 (Miss. 1995):

> We employ a ***de novo*** standard of review in reviewing a lower court's grant of summary judgment. Thus, we use the same standard that was used in the trial court. We must review all evidentiary matters before us in the record: affidavits, depositions, admissions, interrogatories, etc. The evidence must be viewed in the light most favorable to the nonmoving party who is to be given the benefit of every reasonable doubt. The burden of demonstrating that no genuine issue of material fact exists is on the moving party. However, this burden on the moving party is one of production and persuasion, not of proof. A motion for summary judgment lies only when there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. This Court does not try issues on a rule 56 motion, it only determines whether there are issues to be tried. In reaching this determination, this Court examines affidavits and other evidence to determine whether a triable issue exists, rather than for the purpose of resolving that issue.

Perhaps it is fair to summarize the foregoing with the statement that if this Court can find a "genuine issue as to any material fact" in the case *sub judice*, then it must reverse the circuit court’s grant of summary judgment and remand this case for further proceedings.

2. Relevant general principles of the law of contracts

In *First National Bank of Vicksburg v. Caruthers*, 443 So. 2d 861, 864 (Miss. 1983), the Mississippi Supreme Court observed that "[t]he right of persons to contract is fundamental to our jurisprudence

and absent mutual mistake, fraud and/or illegality, the courts do not have the authority to modify, add to, or subtract from the terms of a contract validly executed between two parties." (citations omitted) . In *Leach v. Tingle*, 586 So. 2d 799, 801 (Miss. 1991), the supreme court instructs that "[q]uestions of the validity, enforceability and construction of contracts -- of whether the parties have satisfied the law's formal requisites -- are committed to the court as distinguished from the trier of facts." "Where a contract is clear and unambiguous, its meaning and effect are matters of law which may be determined by the court." *Overstreet v. Allstate Ins. Co.*, 474 So. 2d 572, 575 (Miss. 1985)(citing *Pfisterer v. Noble*, 320 So. 2d 383, 384 (Miss. 1975)).

B. Atlas' Issue I.A. and I.C. and Murray's Issue I.

Atlas' Issue I.A. is:

I. That the trial court committed reversible error by granting the summary judgment in the face of many contested issues of fact and based on an erroneous interpretation of the contract of issue.

> A. The Court erred in finding that the contract could be canceled at will by Murray.

Atlas' Issue I.C. is:

> C. The lower Court erred in ignoring the allegations in the plaintiff's complaint concerning breaches of the contract occurring when the contract was being performed by both parties, which allegations were not even addressed by the motion for summary judgment filed by Murray.

Murray's Issue I. is:

> I. Whether the trial judge correctly granted summary judgment as to plaintiff's claim pertaining to the patented double pocket envelope.

We consider these three issues simultaneously because our resolution of them determines whether the circuit court erred when it entered it final judgment for Murray on January 25, 1995. We contend with two instruments in this case. One is a license to manufacture the double pocket envelope granted by Hurt, the inventor, to Murray. The other is a contract for the manufacture of the patented double pocket envelope and other envelopes among the three parties: Atlas, Murray, and Hurt. Both instruments were executed on the same day, October 4, 1983.

We find the provision in the license which reads, "Murray has the right to cancel its license at will" to be clear and unambiguous. When the trial court found in its final judgment that "Murray in fact did

cancel the license agreement, which in effect terminated the contract," it also found by implication that the license continued in full force and effect until Murray canceled it by its letter dated October 25, 1993. Hurt and Murray were the parties to the license -- not Atlas; and Hurt was not a party to this case. However, if Atlas were a third-party beneficiary of the license, then perhaps it had the right to sue Murray for damages for Murray's breach of the license. The standard of review which we previously quoted renders it appropriate for us to consider this possibility because our review of the trial court's grant of summary judgment is *de novo*. Also, "[a] motion for summary judgment lies only when . . . the moving party is entitled to a judgment as a matter of law."

Among the provisions which pertained to Atlas in the license were the following, with our emphasis added:

> [Murray] is authorized to manufacture the double pocket envelopes . . . as long as Atlas Envelope Corporation . . . is given the exclusive right to fold double pocket envelopes for Murray. Murray's license will be in full force and effect to manufacture as long as it allows Atlas to fold all double pocket envelopes pursuant to this license. The price for the folding of the double pocket envelope is to be negotiated between Atlas and Murray and is to be set forth and controlled by a contract between Murray, Atlas, and Hampton Lamar Hurt signed, sealed, and delivered this day.
>
> All envelopes manufactured by Murray pursuant to this patent shall bear the patent number on the envelopes.
>
> As long as Atlas has the ability to fold the double pocket envelopes, it has the exclusive right to fold the same as manufactured by Murray for and during the entire term of this license. In the event Atlas becomes unable to handle the folding of the entire amount of double pocket envelopes produced by Murray pursuant to this patent, and further is unable to perform said work after being afforded the opportunity to construct additional machinery for the folding of said envelopes, then Murray is authorized to manufacture the envelopes and have the envelopes which are unable to be folded by Atlas to be folded by itself or by any other authorized party.
>
> In the event [Atlas] decides to stop folding envelopes for [Murray], then Murray is hereby authorized and licensed to manufacture the double pocket envelope and to have same folded either by itself or by any party or firm that Murray may select to fold the envelopes.
>
> The provision that [Atlas] should fold the envelopes for Murray pursuant to the manufacture under this patent is made because [Hurt] at this time is the sole owner of [Atlas]. Instead of royalty payments, it would be to his benefit to accept the exclusive folding contract for said envelopes. *It is the paramount theme of this license that the*

> *folding shall be made by Atlas.* In the event that Atlas is able to perform the folding work, and Murray does attempt to fold the envelopes pursuant to this patent itself or to hire some other firm without the authorization of Atlas and/or [Hurt], then this license shall be voided, and permission under this license to manufacture the double pocket envelopes by Murray will be canceled.

From our review of these provisions in the license, which we also find to be clear and unambiguous so that we may interpret them as a matter of law, we conclude that "the paramount theme" of the license was "that the folding shall be made by Atlas." Murray was obligated by these provisions to negotiate the price of folding these double pocket envelopes with Atlas. The clear purpose of the license was to insure Atlas that it had the option to fold all of the envelopes that Murray could manufacture.

In *Mississippi High School Activities Ass'n v. Farris*, 501 So. 2d 393, 395-96, (Miss. 1987), the Mississippi Supreme Court dealt with the issue of whether the students at Hattiesburg High School (HHS) were third party beneficiaries of a contract made between Hattiesburg High School and the Mississippi High School Activities Association (MHSAA). While the supreme court found that the students were not third party beneficiaries of the contract, it affirmed the proposition that:

> A third person may enforce a promise made for his benefit even though he is a stranger to the contract or to the consideration. However, the right of a third party beneficiary to maintain an action on the contract must "spring" from the terms of the contract itself.

Id. (citations omitted).

The supreme court then explained:

> In addition, a third party beneficiary may sue for a breach of the contract 'only when the condition which is alleged to have been broken was placed in the contract for his direct benefit. A mere incidental beneficiary acquires by virtue of the contractual obligation no right against the promisor or promisee.'

Id. at 396 (citations omitted). The Court concluded its exposition on the rights of third party beneficiaries as follows:

> The comments made by this Court in *Yazoo & M.V.R. Co. v. Sideboard*, 161 Miss. 4, 14, 133 So. 669, 671 (1931) are still valid: "The difficulty is to determine when a particular case comes within the rule." To advance its decision, the Court in *Sideboard* developed the following analysis:
>
> > (1) When the terms of the contract are expressly broad enough to include the third party either by name as one of a specified class, and (2) the said third

> party was evidently within the intent of the terms so used, the said third party will be within its benefits, if (3) the promisee had, in fact, a substantial and articulate interest in the welfare of the said third party in respect to the subject of the contract.

161 Miss. at 15, 133 So. at 671.

Farris, 501 So. 2d at 396.

This Court applies the foregoing *Sideboard* test to the license in the case *sub judice* to determine: (1) that Atlas was included in the terms of the license by name, (2) that Atlas was "within the intent of the terms so used in the license" because the license included the provision that the "paramount theme of this license [is] that the folding shall be made by Atlas," and (3) that Murray as promisee had "a substantial and articulate interest in the welfare of [Atlas] in respect to the subject of the contract," which was the manufacturing of the double fold envelope patented by Hurt. Therefore, we adjudge that as a third party beneficiary of the license, Atlas could "enforce a promise made [by Murray in the license] for [its] benefit." Murray's promises which Atlas could enforce were, first, that consistent with its own capacity to do so, Atlas would have the first option to fold as many of the envelopes as Murray could manufacture and, secondly, that Atlas would be paid for its folding of the double pocket envelopes at a price to be negotiated between the two of them.

Now we consider Atlas' status as a third party beneficiary of the license relative to the propriety of the trial court's grant of summary judgment for the benefit of Murray. We begin our consideration of this matter by quoting from Murray's motion for summary judgment:

> [Murray] moves for summary judgment on the following grounds:
>
> 1. There is no dispute as to any material issue of fact. Interpretation of the contractual documents between the parties mandates judgment as a matter of law in favor of Murray.
>
> 2. The contract which is Exhibit "A" to the complaint, provides for a 3 year contract between the parties, beginning in 1983, to be renewed and renegotiated by the parties each year on a yearly basis thereafter, if they should desire to extend the contract.
>
> 3. The contract also provides that it depends upon a license agreement, Exhibit "B" to the complaint, which has the same date as the contract.

4. The license agreement states in part at paragraph VI:

> Murray has the right to cancel its license at will. This cancellation must be made in writing to Hampton L. Hurt at his last known address known to Murray . . . .

5. Exhibit "D" to the complaint is a letter dated October 25, 1993, from Murray's Chief Executive Officer, L. E. Rhian, Jr., to Mr. Hurt, President of Atlas, evidencing Murray's cancellation of the license agreement.

6. Without the license agreement, the contract was not renewed for an additional year.

As a matter of law, Murray is entitled to judgment on all claims of the plaintiff in this case.

We repeat a portion of the circuit court's final judgment which it entered in response to Murray's motion for summary judgment:

The contract between the parties provides on page 14 in part:

> By this contract and by the issuance of the license for and during the term that Murray may manufacture the double pocket envelope pursuant to the Hurt patent, Atlas shall have full exclusive folding rights to the Murray manufactured envelope. (emphasis added).

It is thus clear that both the contract and the license agreement are connected and must be construed together.

Plaintiff's president, Mr. Hampton Hurt, conceded at the hearing before the court that these documents were prepared by plaintiff's attorney.

The license agreement provides, "Murray has the right to cancel its license herein at will." It is further clear from a review of the record that Murray in fact did cancel the license

> agreement, which in effect terminated the contract.
>
> It is therefore the judgment of this court that the plaintiff's case should be, and the same is hereby dismissed with costs assessed to plaintiff.

In response to Murray's assertion in its motion for summary judgment that "[i]nterpretation of the contractual documents between the parties mandates judgment as a matter of law" in its favor, the circuit court found as a matter of law that Murray rightfully canceled the license agreement -- with which we agree --and that Murray's cancellation of the license "in effect terminated the contract." The circuit court granted Murray's motion for summary judgment on its interpretation of the contract and license, both of which were exhibits to Atlas' complaint. The circuit court referred to no evidence from any source in granting summary judgment to Murray.

In *Kountouris v. Varvaris*, 476 So. 2d 599, 600 (Miss. 1985), the Mississippi Supreme Court considered the chancellor's grant of summary judgment on the issue whether an attorney in fact was empowered by a power of attorney executed by the owner of a lot on the Island of Patmos in Greece to convey the lot. Relevant to our discussion of the questions in the case *sub judice* is the following quotation from a footnote to that opinion:

> We regard Rules 12(c) and 56 as interchangeable alternative procedural vehicles. Rules 12(c) provides:
>
> > If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.
>
> *Conversely, where a motion for summary judgment is filed and the court determines that it may appropriately be acted upon without reference to matters outside the pleadings, the judgment entered shall be a judgment on the pleadings. See* 2A *Moore's Federal Practice* §§ 12.15 (2d ed. 1984) and 6 *Moore's Federal Practice* § 56.09 (2d ed. 1983); Wright & Miller, *Federal Practice and Procedure*: *Civil* §§ 1369 and 2713 (1985). Frequently, as here, little turns on whether the motion has been treated as a motion for judgment on the pleadings or a motion for summary judgment.

Kounturis, 476 So. 2d at 602 n.3 (emphasis added).

The circuit court entered its final judgment in response to Murray's motion for summary judgment, but nowhere in the final judgment did the circuit court specify on what rule of civil procedure it relied

to render its final judgment for Murray. Because the circuit court granted final judgment to Murray solely on its interpretation of the license and the contract without referring to any other evidence or product of discovery, we find that the trial court's final judgment for Murray was a judgment on the pleadings pursuant to Mississippi Rule of Civil Procedure 12(c) even though Murray's motion was styled a motion for summary judgment. With this finding in mind, we begin our review of the circuit court's final judgment by noting that portion of which we accept and thus affirm.

First of all, we have already affirmed the circuit court's finding that the provision in the license which we previously quoted permitted Murray to cancel it. We further affirm the circuit court's finding of fact that Murray did cancel the license by Rhian's letter to Hurt dated October 25, 1993. Implicit in the finding that Murray canceled the license on October 25, 1993, is the proposition that the license remained in full force and effect from the date of its inception, October 4, 1983, until Murray canceled it on October 25, 1993. Atlas' claim "in the sum of $417,000.00 for [Murray's] breach of contract and loss of profits for the years 1992 and 1993 and for [Murray's] prohibited use of license" falls within the period during which the license remained in full force and effect. Therefore, regardless of the contract, Murray owed certain duties to Atlas which the license created and imposed on Murray.

As a matter of law, the circuit court stated in its final judgment that "[i]t is thus clear that both the contract and the license agreement are connected and must be construed together." It then concluded that Murray's cancellation of the license "in effect terminated the contract" apparently because "both the contract and the license agreement are connected and must be construed together." As a general proposition, instruments which have been executed on the same date and for the same purpose should be read in conjunction with one another. *Cf. Hardy v. First National Bank of Vicksburg*, 505 So. 2d 1021, 1023 (Miss. 1987) (the supreme court dealt with interpreting a promissory note and a guaranty agreement by others for the payment of the promisor's debt both executed on the same day for ostensible purpose of paying the debt to the bank).

However, a provision in the contract made it clear that in the event of a conflict between the terms of the license and the contract, "the license provisions shall control." Thus, while the contract and the license agreement may have been connected, it does not follow that the two of them must be construed together. To the contrary, the contract specifically provided that the license provisions controlled in the event of a conflict between the two instruments. Murray argues in support of its position on its first two issues that the contract covered only a three-year period from October 4, 1983, its date of inception, until October 3, 1986. For example, Murray emphasizes that the contract provided:

> Murray guarantees that it will furnish or make available folding orders to Atlas during the first year of this contract at a minimum amount of $250,000.00 in gross folding orders. Murray agrees to furnish or make available folding orders to Atlas during the second year of this contract at a minimum amount of $340,000.00 in gross folding orders. Murray agrees to furnish or make available folding orders to Atlas during the third year of this contract at a minimum amount of $480,000.00 in gross folding orders.

In its complaint Atlas wrote, "That the first three years for work and amounts were specified but the

contract speaks for itself and indicates that after 1985, there would be annual renegotiations of fees for amounts of work and services to be rendered." This allegation in the complaint seems to support Atlas' understanding that the contract endured but for three years. Other provisions in the contract dealt with Atlas' obligation to furnish equipment with which to fold the envelopes during this three-year period only. In its final judgment, the circuit court did not specifically find that the contract was only for the three-year period from October 4, 1983, until October 3, 1986.

We belabor this matter to the point of tedium to demonstrate that the license and the contract cannot be construed together because of the conspicuous conflict between the provisions for the duration of the license until October 6, 1997, unless Murray earlier cancels it, which it did on October 25, 1993, and the terms and provisions of the contract which clearly called for it to terminate on October 3, 1986, unless the parties negotiated new terms for its continuance.

Another reason that the license and the contract cannot be construed together is that the subject matter of the license differed from the subject matter of the contract. The subject of the license was Hurt's patented double pocket envelope -- but nothing else. On the other hand, the subject of the contract extended beyond this double pocketed envelope which Hurt had patented to the manufacture of other kinds of envelopes for which there were specific provisions and terms of payment for the manufacture of these other kinds of envelopes in the contract.

Therefore, we can only conclude that regardless of when the contract may have terminated, the license did not terminate until Murray canceled it by letter dated October 25, 1993 addressed to and received by Hurt. We further determine that Atlas' claim for damages against Murray "in the sum of $417,000.00 for [Murray's] breach of contract and loss of profits for the years 1992 and 1993 and for [Murray's] prohibited use of license," which was contained in Count I of its complaint fell within the period of time when the license was in full force and effect between October 4, 1983, and October 25, 1993.

Therefore, as a matter for judgment on the pleadings pursuant to Rule 12(c), the complaint stated at the very least Atlas' claim for damages against Murray for "$417,000.00 for [Murray's] breach of [license] and loss of profits for the years 1992 and 1993 and for [Murray's] prohibited use of license." This claim had the potential for enforcement pursuant to the terms of the license, the subject of which was Hurt's patented double pocket envelope which the circuit court correctly held Murray did not terminate until October 25, 1993. This Court must reverse the circuit court's final judgment in favor of Murray because it denied Atlas the opportunity to pursue its claim for damages which it might otherwise have *under the terms of the license* from 1991 through October 25, 1993.

Our reversal of the circuit court's final judgment responds squarely only to Murray's Issue I., which is "Whether the trial judge correctly granted summary judgment as to plaintiff's claim pertaining to the patented double pocket envelope." Our reversal of the circuit court's final judgment demonstrates that the trial judge's grant of summary judgment "as to plaintiff's claim pertaining to the patented double pocket envelope" was error. We have decided adversely to Atlas its Issue I.A., "The Court erred in finding that the contract could be canceled at will by Murray." The consequence of resolving this issue contrary to Atlas' argument denies in toto its claim for damages in the amount of $1,419,000 in Count II of the complaint for what this Court would describe as lost income occasioned by Murray's cancellation of the license. If Murray had the right to cancel the license at will, which we

have agreed with the circuit court that it did, then it cannot be liable to Atlas for any breach of the license after it has been lawfully canceled.

In only a partial way does our reversal of the circuit court's final judgment decide Atlas' Issue I.C., which is, "The lower Court erred in ignoring the allegations in the plaintiff's complaint concerning breaches of the contract occurring when the contract was being performed by both parties, which allegations were not even addressed by the motion for summary judgment filed by Murray." To the extent that we have found that Atlas' claim for Murray's breach of the license -- and not the contract -- for loss of profits for the years 1992 and 1993 and for Murray's prohibited use of license fell within the effective period of the license, we have resolved this issue favorably to Atlas.

C. All Remaining Issues

Two of Atlas' issues remain for our consideration. They are Issues I.B. and I. D., which read as follows:

> I. That the trial court committed reversible error by granting the summary judgment in the face of many contested issues of fact and based on an erroneous interpretation of the contract of issue.
>
> B. The Court erred in failing to consider the obligation of Murray to treat Atlas with good faith in the performance of the contract.
>
> D. The lower Court erred in failing to consider the affidavits submitted by Atlas with its motion for reconsideration.

Two of Murray's issues also remain for our consideration. They are:

> II. Whether the trial court correctly granted summary judgment on the remaining allegations.
>
> III. Whether the trial court abused its discretion in denying the plaintiff's motion for reconsideration.

Because we have concluded that we must reverse the circuit court's final judgment, we consider these remaining four issues only in relation to that final judgment because the events which followed the entry of the final judgment on January 25, 1995 become irrelevant, if not moot, by our reversal of that final judgment.

1. Atlas' Issue I.B.

> B. The Court erred in failing to consider the obligation of Murray to treat Atlas with good faith in the performance of the contract.

Murray correctly points out that Atlas did not include this issue in its complaint and that it was not before the circuit court when it considered its motion for summary judgment. Atlas did not raise this issue until it filed its Motion to Reconsider Summary Judgment on February 6, 1995, several days after the circuit court entered its final judgment.

2. Murray's Issue II.

> II. Whether the trial court correctly granted summary judgment on the remaining allegations.

Our earlier resolution of Atlas' Issue I.C., which was "The lower Court erred in ignoring the allegations in the plaintiff's complaint concerning breaches of the contract occurring when the contract was being performed by both parties, which allegations were not even addressed by the motion for summary judgment filed by Murray," also resolves this issue. To the extent that Atlas' Count I claim for damages based on Murray's breach of the license occurred before Murray terminated the license, the circuit court erred by entering its final judgment.

3. Atlas' Issue I.D. and Murray's Issue III.

Atlas' Issue I.D. is, "The lower Court erred in failing to consider the affidavits submitted by Atlas with its motion for reconsideration." Murray's Issue III. is "Whether the trial court abused its discretion in denying the plaintiff's motion for reconsideration." We reiterate that our reversal of that final judgment renders these two issues irrelevant for the purpose of this opinion because both of them deal with post final judgment events.

4. Duration of contract

We proceed to consider the question of the duration of the contract as it relates to all of the previous issues which we have reviewed and resolved. We have found as a matter of law that the license which Hurt granted to Murray bestowed on Atlas as a third party beneficiary of the license specific benefits which it was entitled to enforce against Murray. It is the license, and not the contract, which serves as the basis for our reversal of the circuit court's final judgment. We have noted that regardless of Murray's appellation of its motion as a motion for summary judgment, the circuit court's final judgment was instead a judgment on the pleadings which Rule 12(c) authorizes. It is a judgment on the pleadings because in reaching its decision, the circuit court interpreted, albeit incorrectly, the license and contract without resort to any other evidence or product of discovery.

Mississippi Rule of Civil Procedure 12(c) provides, "[i]f on such a motion matters outside the pleadings are not presented, and if the motion is granted, leave to amend shall be granted in accordance with Rule 15(a)." M.R.C.P. 12(c). Mississippi Rule of Civil Procedure 15(a) provides

that "On sustaining a motion . . . for judgment on the pleadings pursuant to Rule 12(c), thirty days leave to amend shall be granted, provided matters outside the pleadings are not presented at the hearing on the motion." M.R.C.P. 15(a).

In the present state of the pleadings, the contract's terms and provisions clearly and unambiguously establish that Atlas and Murray intended the contract to last for but three years, after which they would renegotiate its terms and provisions. Obviously, Murray continued to manufacture and Atlas continued to fold envelopes other than the patented double fold envelope after the expiration of the contract on which Atlas sued Murray. We cannot determine from the pleadings whether they continued the manufacture and folding of these other envelopes under a renegotiation of this contract, or whether they did so under a "new and different" contract. Subject to Atlas' right to amend its complaint which Rule 15(a) affords it, we find from the present state of the pleadings that pursuant to its clear and unambiguous terms, the contract on which Atlas sued Murray terminated on October 3, 1986. After our remand to the circuit court, Atlas may elect to amend its complaint to state other claims against Murray pursuant to Rule 15(a).

IV. Summary

The circuit court correctly held that Murray canceled the license which Hurt had granted it on October 25, 1993. Atlas can assert no claim for damages against Murray which may have arisen from and after October 25, 1993, the date that Murray canceled the license. However, the license remained in full force and effect until that date. The subject of the license was the double pocket envelope for the manufacture of which Hurt held United States Patent No. 4,221,161. As a third party beneficiary of the license, Atlas Envelope Company was entitled to enforce the terms and provisions of the license for its benefit. Atlas sought to recover damages "in the sum of $417,000.00 for [Murray's] breach of contract and loss of profits for the years 1992 and 1993 and for [Murray's] prohibited use of license." The period of time in which Murray's alleged breach of the license occurred, 1991 until October 25, 1993, was included within the effective dates of the license. Thus, the circuit court erred when it declared that Murray's cancellation of the license "in effect terminated the contract." The circuit court's error lay in failing to recognize that Atlas enjoyed certain benefits under the license, quite apart from the contract. Another form of this proposition is that the circuit court erred when it adjudicated that Atlas' benefits were created solely by the contract.

The circuit court further erred by concluding that the contract and the license must be construed together. The contract provided that in the event of conflict between the terms of the license and the contract, the "license provisions shall control." Of course, Atlas' benefits bestowed by the license were limited to its income from folding the double fold envelope on which Hurt held a patent -- and not from the folding of any other envelope.

We have adjudicated that the circuit court's final judgment was actually a judgment entered on the pleadings pursuant to Rule 12(c) because that court based its decision solely on its interpretation of the contract and the license, both of which were exhibits to Atlas' complaint. The contract on which Atlas sued Murray terminated by its own terms on October 3, 1986, three years after Atlas and Murray executed it. However, Rule 15(a) appears to permit Atlas to amend its complaint pursuant to Rule 12(c) since we find that the trial court's entry of final judgment was accomplished as a judgment on the pleadings in accordance with Rule 12(c) rather than as a summary judgment pursuant to Rule

56. Therefore, while we find from the present state of the pleadings that the contract between Atlas and Murray terminated on October 3, 1986, that finding is subject to whether Atlas successfully amends its complaint to state other claims against Murray for breach of this contract as it may, or may not, have been renegotiated.

All other issues which pertain to events which followed the circuit court's entry of final judgment on January 26, 1995, become moot, and we need not address them. We reverse the final judgment because we find from the state of the pleadings as a matter of law that Atlas' complaint stated a claim for damages against Murray for its breach of the license, which breach began in 1991 and continued until Murray canceled the license on October 25, 1993.

THE JUDGMENT OF THE FORREST COUNTY CIRCUIT COURT IS REVERSED AND REMANDED. COSTS ARE ASSESSED TO APPELLEE.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. BARBER, J., NOT PARTICIPATING.