Rel: August 25, 2023

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2023-0056

Ex parte John R. Cooper, in his official capacity as Director of the Alabama Department of Transportation

PETITION FOR WRIT OF MANDAMUS

(In re: Baldwin County Bridge Company, LLC

v.

John R. Cooper, in his official capacity as Director of the Alabama Department of Transportation, and Scott Bridge Company, Inc.)

(Montgomery Circuit Court: CV-22-901306)

SC-2023-0354

John R. Cooper, in his official capacity as Director of the Alabama Department of Transportation

v.

Baldwin County Bridge Company, LLC

Appeal from Montgomery Circuit Court (CV-22-901306)

SC-2023-0364

Scott Bridge Company, Inc.

v.

Baldwin County Bridge Company, LLC

Appeal from Montgomery Circuit Court (CV-22-901306)

MITCHELL, Justice.

Baldwin County Bridge Company, LLC ("BCBC"), filed suit against John R. Cooper, in his official capacity as Director of the Alabama

Department of Transportation ("ALDOT"), seeking to halt construction of a bridge that ALDOT had hired Scott Bridge Company, Inc. ("Scott Bridge"), to build over the Intracoastal Waterway in Baldwin County. BCBC later added Scott Bridge as a defendant. That lawsuit has since spawned three matters that are now pending before this Court.

In the first matter, Cooper seeks mandamus relief because the trial court entered an order compelling him to respond to certain discovery requests made by BCBC; he argues that the information sought is protected from disclosure by the executive-privilege doctrine. On Cooper's motion, we stayed enforcement of the trial court's discovery order to allow us to consider his privilege argument.

Meanwhile, the trial-court proceedings continued and, before we were able to rule on Cooper's mandamus petition, the trial court granted BCBC's motion for a preliminary injunction to halt construction of the bridge. Cooper has appealed that injunction, arguing that it was unwarranted and that the $100,000 preliminary-injunction bond put up by BCBC was insufficient. Scott Bridge has filed its own appeal challenging the preliminary injunction, while also arguing that the trial

court erred by dismissing it from the case and by stating that it is not entitled to the protection of an injunction bond.

After reviewing the briefs submitted by the parties in all three of these matters, we now conclude that BCBC's claim on which the preliminary injunction is based is barred by State immunity. Accordingly, the trial court has no subject-matter jurisdiction over that claim and the preliminary injunction must be reversed. Although we rule in favor of Cooper on this point, we reject his companion argument that the trial court should be directed to increase the $100,000 preliminary-injunction bond on remand. We also reject Scott Bridge's argument that that it is entitled to recover on the preliminary-injunction bond. Finally, because the discovery that Cooper seeks to withhold based on executive privilege is being sought in conjunction with the claim that is barred by State immunity, the trial court's order compelling Cooper to produce that information is moot, as is Cooper's petition challenging that order.

Facts and Procedural History

BCBC is a private company that operates the Beach Express Bridge ("the BEX Bridge"), a toll bridge that crosses the Intracoastal Waterway in Orange Beach. There is one other bridge over the Intracoastal

Waterway in Baldwin County, Holmes Bridge, which is located on Highway 59 in Gulf Shores about four miles west of the BEX Bridge. These are the only two bridges crossing the Intracoastal Waterway in Alabama.

After becoming Director of ALDOT in 2011, Cooper approached BCBC about the possibility of ALDOT's buying the BEX Bridge and removing the toll to make it a free public bridge. Cooper says that this inquiry and ALDOT's ongoing interest in purchasing the BEX Bridge was always motivated by a desire to reduce congestion on Holmes Bridge and Highway 59 caused by people unwilling to pay the BEX Bridge's toll. BCBC disputes this; it says that Cooper was actually motivated by his dislike of the deal the State struck with BCBC in 1996, which granted BCBC a license to set and collect tolls on the BEX Bridge in perpetuity. In any event, after BCBC rebuffed ALDOT's interest, Cooper decided to revisit an idea ALDOT had once considered -- building a third bridge over the Intracoastal Waterway between the BEX Bridge and Holmes Bridge.

For about a decade, Cooper and ALDOT continued on a dual track, negotiating with BCBC and its corporate owners about the BEX Bridge,

while also making plans to build a third bridge.[1] It is undisputed that BCBC has been aware that Cooper was making plans to build a third bridge since at least 2015. Nonetheless, negotiations concerning the BEX Bridge continued until October 2022, at which point the State entered into a formal contract with Scott Bridge for construction of the third bridge.[2] Six days later, BCBC filed suit in the Montgomery Circuit Court, asserting (1) a bad-faith claim seeking an injunction to stop construction of the third bridge and (2) an inverse-condemnation claim requesting compensation from the State for the value of the BEX Bridge. See Ex parte Neely, 653 So. 2d 945, 946 (Ala. 1995) (recognizing the general rule that "where an officer of the state is a defendant … venue is proper only in Montgomery County"). The theory underlying both claims was that Cooper wanted to construct the third bridge -- not to alleviate traffic congestion in Baldwin County -- but to intentionally harm BCBC and to

[1]At different times the negotiations about the future of the BEX Bridge included discussions about a potential sale of the bridge to the State or another governmental entity, the potential expansion of the bridge to increase its capacity, and lowering the toll on the bridge to attract more vehicles.

[2]That contract was signed on behalf of the State by both Cooper and Governor Kay Ivey.

destroy the value of the BEX Bridge. After Scott Bridge began initial construction work on the third bridge, BCBC amended its complaint to add Scott Bridge as a necessary defendant.

In conjunction with its complaint, BCBC served discovery requests on Cooper seeking, among other things, records of all communications ALDOT had engaged in relevant to the bridge dispute, including (1) intraoffice communications between ALDOT employees and (2) communications between ALDOT and other State and local government officials, including Governor Kay Ivey and her office. After Cooper objected to this request, arguing that much of the information sought was protected from disclosure by executive privilege,[3] BCBC moved the trial court to compel him to turn over the requested information. Cooper opposed that motion and moved the trial court to enter a protective order. Following a hearing, the trial court granted BCBC's motion and ordered

[3]Executive privilege stems from "the undeniable interest of the executive branch of government in maintaining confidentiality over certain types of information necessary for the performance of its constitutional duties." Assured Invs. Life Ins. Co. v. National Union Assocs., Inc., 362 So. 2d 228, 233 (Ala. 1978) (overruled on other grounds, Ex parte Norfolk S. Ry. Co., 897 So. 2d 290 (Ala. 2004)).

Cooper to produce unredacted copies of all documents being withheld on the basis of executive privilege.

Cooper then petitioned this Court for a writ of mandamus. In his petition, he asked us to direct the trial court to vacate its order compelling him to produce the requested discovery and to instead enter an order granting his motion for a protective order. Cooper simultaneously filed a motion asking us to stay the trial court's discovery order until we ruled on his mandamus petition. We granted that request and ordered a limited stay to allow us to consider the issues raised in Cooper's petition.

While this discovery dispute was playing out, proceedings continued below and BCBC moved for a preliminary injunction that would prohibit Cooper and Scott Bridge from continuing construction on the third bridge. Before responding to that motion, Cooper moved to dismiss BCBC's complaint on various grounds, including State immunity and BCBC's alleged failure to state a claim upon which relief could be granted.

Scott Bridge filed its own motion to dismiss, arguing that it was not an indispensable party to the case. But two weeks later Scott Bridge withdrew that motion, arguing that it would be irreparably injured if a

preliminary injunction halting construction of the third bridge was entered. Scott Bridge therefore argued that it was an indispensable party under Rule 19(a)(2)(i), Ala. R. Civ. P., and that it was entitled to recover on the preliminary-injunction bond if an injunction was entered but later found to be unwarranted. At this point, BCBC reversed course and filed a response in which it argued that Scott Bridge was not an indispensable party and that Scott Bridge's initial motion to dismiss should be granted. BCBC further moved to amend its complaint to remove Scott Bridge as a defendant.

The trial court thereafter held a seven-day hearing on BCBC's motion for a preliminary injunction. At the outset, the trial court stated that it had jurisdiction over the case and that it would be denying Cooper's motion to dismiss. The trial court also dismissed Scott Bridge, expressly stating that it was not an indispensable party and that it was "not entitled to an injunction bond."

Over the course of the hearing, the trial court took testimony from 13 witnesses and admitted over 200 exhibits. After testimony concluded, Cooper filed a renewed motion to dismiss, arguing again that BCBC's lawsuit was barred by State immunity and that BCBC's claims were not

recognized by Alabama law. But the trial court again rejected those arguments, entering separate orders (1) denying Cooper's motion to dismiss[4] and (2) granting BCBC's request for a preliminary injunction halting work on the third bridge and ordering BCBC to post a $100,000 preliminary-injunction bond. Cooper filed his appeal challenging the "preliminary injunction and denial of related motions" that same day; Scott Bridge filed its own appeal two days later.

Jurisdiction

As always, when a jurisdictional issue has been raised by the parties or is apparent to us, we begin our analysis there. See Johnson v. Washington, [Ms. SC-2022-0897, June 30, 2023] ___ So. 3d ___, ___ (Ala. 2023) ("We address the jurisdictional disputes first because, absent subject-matter jurisdiction, we have no authority to reach the merits."). Cooper argues that the trial court lacked subject-matter jurisdiction over BCBC's bad-faith claim -- the only basis for the preliminary injunction now on appeal -- because, he says, that claim is barred by the doctrine of

[4]The trial court did dismiss BCBC's inverse-condemnation claim to the extent that the claim was based on State law, but it held that BCBC had asserted a viable inverse-condemnation claim under federal law.

State immunity.[5] See Butler v. Parks, 337 So. 3d 1178, 1182 (Ala. 2021) (explaining that when State immunity applies the trial court is divested of subject-matter jurisdiction). The trial court rejected Cooper's argument; we review the issue de novo. See Hawkins v. Ivey, [Ms. 1200847, Mar. 18, 2022] ___ So. 3d ___, ___ (Ala. 2022) (stating that matters of subject-matter jurisdiction are subject to de novo review).

The doctrine of State immunity is rooted in the Alabama Constitution, which provides that "the State of Alabama shall never be made a defendant in any court of law or equity." Ala. Const. 1901, Art. I, § 14 (Off. Recomp.). We have explained that § 14's grant of immunity is a jurisdictional bar that strips courts of all power to adjudicate not only claims against the State and its agencies, but also claims against State officers, employees, and agents in their official capacities when a result favorable to the plaintiff would directly affect a contract or property right

[5]Cooper has also argued that there is no such thing as a bad-faith cause of action outside of certain insurance disputes. Our discussion of BCBC's bad-faith claim in the context of Cooper's State-immunity argument should in no way be viewed as implicit recognition of the viability of that claim. See Ex parte City of Bessemer, 142 So. 3d 543, 549 (Ala. 2013) (explaining that this Court was reviewing the plaintiff's bad-faith claim to determine "whether the [defendant municipality was] immune from such a suit, leaving aside any questions as to the legal or factual merits of that claim").

of the State. Ex parte Pinkard, [Ms. 1200658, May 27, 2022] ___ So. 3d ___, ___ (Ala. 2022).

Here, BCBC's bad-faith claim has been asserted against Cooper in his official capacity -- and there can be no dispute that a result favorable to BCBC would directly affect a contract right of the State. The bad-faith claim therefore appears to be within the category of claims barred by § 14 that a trial court has no subject-matter jurisdiction to entertain. Nonetheless, BCBC argues that its claim should be allowed to proceed because, it says, the claim falls within a limited class of claims against State officers that this Court has held are not claims against the State for § 14 purposes.

In Ex parte Moulton, 116 So. 3d 1119,1141 (Ala. 2013), this Court explained that § 14 does not bar certain categories of actions, including "actions for injunction brought against State officials in their representative capacity where it is alleged that they had acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law." BCBC argues that its bad-faith claim seeking an injunction falls within this class of permitted actions because the claim alleges Cooper has acted in bad faith throughout his dealings with BCBC.

But BCBC's argument confuses the inquiry. The touchstone is not whether a claim can be framed as falling within one of the Moulton categories -- it is whether the claim is against the State, that is, whether a result favorable to the plaintiff would directly affect a contract or property right of the State. Pinkard, ___ So. 3d at ___. The categories enumerated in Moulton are simply illustrations of claims for which State immunity generally does not apply because the action is -- both in form and in substance -- against an individual person rather than "the State" as such.[6] As relevant here, § 14 typically does not bar claims against a State official alleging that the official acted in an ultra vires, fraudulent, or bad-faith fashion because such claims almost always seek to control only the unlawful conduct of the official; they do not seek to control the rights or property of the State itself. Still, that logic does not hold when a claim is styled as a "bad-faith" claim yet seeks in substance to enjoin the State from exercising its contractual rights. As always, it is the

[6]The Moulton categories are commonly referred to as "exceptions" for the sake of convenience or as shorthand, but they are not actually "exceptions" to the doctrine of State immunity, as Moulton itself outlined. See 116 So. 3d at 1132 ("'These actions are sometimes referred to as "exceptions" to § 14; however, in actuality these actions are simply not considered to be actions "'against the State' for § 14 purposes."'" (citations omitted)).

substance of the claim that matters, not its label. Pinkard, ___ So. 3d at ___.

The upshot here is that, even when a claim might appear to fall within one of the categories discussed in Moulton, a court has subject-matter jurisdiction to consider that claim only if a favorable result for the plaintiff would not directly affect a contract or property right of the State and would not result in the plaintiff's recovery of money from the State treasury. That this limitation applies even to the categories of cases discussed in Moulton was made clear in Alabama Agricultural & Mechanical University v. Jones, 895 So. 2d 867, 873 (Ala. 2004), in which, after listing several "'species of action that are not "against the State" for § 14 purposes,'" the Court expressly stated: "However, '[a]n action is one against the [S]tate when a favorable result for the plaintiff would directly affect a contract or property right of the State, or would result in the plaintiff's recovery of money from the [S]tate.'" (Citations omitted.) See also Moulton, 116 So. 3d at 1132 (recognizing that this Court has "qualified" the so-called "exceptions" to § 14's bar by recognizing that an action is nonetheless against the State when a result in favor of the plaintiff would affect a contract or property right of the State or would

result in the plaintiff recovering money from the State). Thus, because BCBC's bad-faith claim seeks to directly affect a State contract right by sinking the State's contract with Scott Bridge, that claim is against the State and is barred by § 14 regardless of BCBC's efforts to fit it into one of the Moulton categories.

BCBC argues that ruling in favor of Cooper would be contrary to this Court's previous decisions in both Ingle v. Adkins, 256 So. 3d 62 (Ala. 2017) (plurality opinion), and Ex parte Alabama Department of Transportation, 143 So. 3d 730 (Ala. 2013) ("Ex parte ALDOT") (plurality opinion); but those cases are not controlling and, in any event, are readily distinguishable.[7] In Ingle, the plaintiff sought a judgment declaring that a State contract was illegal as well as injunctive relief barring State officials from making payments under that contract. 256 So. 3d at 68. A plurality of this Court held that the plaintiff's claims fell within the sixth Moulton category and thus rejected the defendants' State-immunity claims. Id. BCBC summarizes that holding as follows: "Even though the plaintiff sought to halt performance under the State's 'contract,' this

[7]See Ex parte DBI, Inc., 23 So. 3d 635, 647 (Ala. 2009) (recognizing that a plurality opinion does not constitute binding precedent).

Court found it was not an 'action against the State' and permitted the claim to proceed under the sixth exception to § 14 immunity." BCBC's brief at 53 (in appeal no. SC-2023-0354). BCBC argues that its bad-faith claim against Cooper should similarly be allowed to proceed.

But there is a crucial distinction between Ingle and this case -- the contract at issue in Ingle was alleged to be "unconstitutional, illegal, and void." Id. at 65. If that were true here, then the State would have no valid contract right that could be affected by a judgment in favor of BCBC -- and BCBC's action would not be considered "against the State" for § 14 purposes. Moulton, 116 So. 3d at 1132. BCBC, by contrast, has not asserted in this case that the State's contract with Scott Bridge to build the third bridge was illegal. And while BCBC challenges Cooper's motivations for entering the contract and whether the contract was wise, it has not argued that the State was prohibited from entering it.[8] Thus, unlike in Ingle, the State has a contract right here that is protected by § 14.

[8]In fact, § 23-1-40(a), Ala. Code 1975, expressly gives ALDOT the authority to enter into such contracts, stating: "It shall be the duty of [ALDOT] … to construct, standardize, repair, and maintain roads and bridges of this state; and it shall have authority to make contracts or agreements to construct or pave the roadway …."

Ex parte ALDOT also provides no help to BCBC. In that case, this Court rejected Cooper's argument that the plaintiff's claim against him should be barred because the plaintiff sought "to recover money from the State"; but the claim at issue there was an inverse-condemnation claim. 143 So. 3d at 739. Such claims fall within a different Moulton category and have a fundamentally different nature. As this Court explained in Engelhardt v. Jenkins, 273 Ala. 352, 354, 141 So. 2d 193, 194 (1962), while the Alabama Constitution bars claims against the State, that same Constitution -- as well as the United States Constitution -- prohibits the taking of private property by the State without due process and the payment of just compensation. See §§ 23 and 235, Ala. Const. 1901 (Off. Recomp.); U.S. Const., 14th Amend., § 1. Thus, the Court explained, "no sort of rationale can bring [an inverse-condemnation] case within the ban of § 14 of our constitution, prohibiting suits against the State." 273 Ala. at 354, 141 So. 2d at 195.[9] Our holding today is in no way inconsistent with Ex parte ALDOT.

[9]As the Ex parte ALDOT Court explained, "[t]he very point" of an inverse-condemnation claim is for the property owner to recover compensation the property owner would have received had the government properly initiated eminent-domain proceedings. 143 So. 3d at 739. Thus, the Ex parte ALDOT Court observed, "[i]t would make no

Finally, we address BCBC's argument that our acceptance of Cooper's State immunity argument "would gut" the so-called "exception" to § 14 for injunctive suits against State officials in their representative capacity when it is alleged that they have acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law. BCBC's brief at 53 (in appeal no. SC-2023-0354). BCBC argues that our holding today would effectively permit the State "to immunize otherwise actionable conduct" by contracting with a third party to achieve it. Id. We disagree. As explained above in our discussion of Ingle, § 14 does not operate to bar a properly brought action when it is shown that the State contract being challenged is illegal or unconstitutional. And, to the extent that BCBC is arguing that the result today is unfair, we repeat the observation made by this Court in Dunn Construction Co. v. State Board of Adjustment, 234 Ala. 372, 376, 175 So. 383, 386 (1937), that "all persons dealing with the state are charged with knowledge that no one has authority to subject the state to suit." BCBC says that Cooper has dealt with it in bad faith for years, but it was on notice that Cooper was

---

sense for valid inverse-condemnation actions to fall outside § 14 immunity and yet to conclude that such a plaintiff could not recover damages from the State." Id. at 739-40.

a State official that entire time. Considering our caselaw explaining what constitutes an action against the State for § 14 purposes, see, e.g., Alabama Agric. & Mech. Univ., 895 So. 2d at 873, the result today is hardly unforeseeable.

In sum, because BCBC's bad-faith claim is barred by State immunity, the trial court has no subject-matter jurisdiction over that claim. And because the trial court's order entering a preliminary injunction enjoining construction of the third bridge is predicated on the bad-faith claim, that order is void. See Ex parte Alabama Dep't of Hum. Res., 999 So. 2d 891, 898 (Ala. 2008) (holding that, because State immunity barred the underlying claim, "the trial court's order granting … injunctive relief is void"). The preliminary-injunction order is hereby reversed, and, on remand, the trial court is directed to dismiss BCBC's bad-faith claim.[10]

[10]Cooper also argues that the trial court lacks subject-matter jurisdiction over BCBC's inverse-condemnation claim because, he says, that claim is not ripe. See, e.g., Pontius v. State Farm Mut. Auto. Ins. Co., 915 So. 2d 557, 562 (Ala. 2005) ("Ripeness implicates subject-matter jurisdiction."). In essence, Cooper argues that this claim is not ripe because BCBC is not in immediate danger of sustaining a legally cognizable injury. But that is a challenge to the merits of the claim. See Ex parte Safeway Ins. Co. of Alabama, Inc., 990 So. 2d 344, 353-55 (Ala. 2008) (Murdock, J., concurring in the result) (emphasizing the difference

The Preliminary-Injunction Bond

Because the trial court did not have subject-matter jurisdiction to enter the preliminary injunction against Cooper, it follows that Cooper was "wrongfully enjoined" from continuing construction on the third bridge. In fact, he "'had the right all along to do what [he] was enjoined from doing.'" Ex parte Waterjet Sys., Inc., 758 So. 2d 505, 512 (Ala. 1999) (citation omitted). Cooper is therefore entitled to "recover those damages that are 'the actual, natural and proximate result of the [wrongful] injunction.'" Id. at 511 (citation omitted). Notably, however, his recovery of damages is limited to the amount of the preliminary-injunction bond; BCBC cannot be held liable for any amount in excess of that bond unless it is determined that the injunction was pursued in bad faith. Id. at 513. See also DeVos v. Cunningham Grp., LLC, 297 So. 3d 1176, 1185 (Ala.

---

between an issue of ripeness, which implicates subject-matter jurisdiction, and the ability of the plaintiff to prove the elements of the asserted claim). BCBC has alleged that it faces an imminent injury (the total loss of the value of its property) caused by a government action (the building of the third bridge) that is redressable by the payment of compensation for the value of that property. That is sufficient to assert a ripe claim appropriate for judicial review regardless of whether the claim is ultimately determined to have any merit. See Ex parte Riley, 11 So. 3d 801, 807 (Ala. 2008) (explaining that ripeness requires that the case involve "a dispute that is '"'a real and substantial controversy admitting of specific relief through a [judgment]'"'" (citations omitted)).

2019) ("The amount of the damages recoverable on the bond, however, is limited to the amount of the injunction bond.").

In recognition of this limitation, and because he claims ALDOT's damages will likely exceed $100,000, Cooper urges us to "reverse the trial court's ruling on the bond amount" and to remand the case "for the setting of a proper bond," after which the trial court should take evidence as to ALDOT's actual damages and enter an award consistent with that evidence. Cooper's brief at 69 (in appeal no. SC-2023-0354). But regardless of what ALDOT's damages might be, Cooper has not shown that it would be proper for us to permit the trial court to increase the amount of the preliminary-injunction bond after we have already held that the preliminary injunction itself was wrongful and due to be reversed. Indeed, the weight of authority indicates that such retroactive increases are generally not allowed. See Michael T. Morley, Erroneous Injunctions, 71 Emory L.J. 1137, 1169 (2022).

The holding of the United States Court of Appeals for the Third Circuit in Sprint Communications Co. L.P. v. CAT Communications International, Inc., 335 F.3d 235 (3d Cir. 2003), is instructive. The federal district court in that case initially awarded Sprint a preliminary

injunction conditioned on the submission of a $250,000 bond. Id. at 238. When CAT Communications later moved the district court to terminate the injunction and increase the amount of the injunction bond, the district court granted both requests, dissolving the injunction and increasing the amount of the bond to $4.95 million. Id. at 239. On appeal, the Sprint court affirmed the dissolution of the injunction but reversed the increase in the injunction bond. Id. at 243. The court explained that while the primary purpose of an injunction bond is to provide a fund for compensating incorrectly enjoined defendants, the bond also protects the party that sought the injunction by limiting that party's liability and informing the party of the potential cost of a wrongful injunction. Id. at 240. But, "[i]f a retroactive increase is permissible, the injunction bond is no longer cabined; the bond no longer fixes exposure nor caps liability." Id. at 240-41. Thus, the Sprint court concluded, "[a] retroactive increase in the amount of an injunction bond on dissolution or reversal is generally improper." Id. at 241. Following this same reasoning, another federal circuit court similarly concluded that "there is neither logical nor legal room for a post-reversal increase in an injunction bond." Mead Johnson & Co. v. Abbott Lab'ys, 209 F.3d 1032, 1034 (7th Cir. 2000).

We agree with the rationale of the Sprint and Mead Johnson courts. It would be improper for the trial court here to increase the amount of the preliminary-injunction bond on remand so as to expand BCBC's potential liability beyond the amount to which BCBC previously agreed. Of course, this holding does not mean that the amount of a preliminary-injunction bond can never be increased. We have previously considered appeals involving that question and did so as recently as DeVos.[11] But such requests can be entertained only while the injunction is still in

[11]In DeVos, this Court considered consolidated appeals challenging both the entry of a preliminary injunction and the denial of a later request to increase the amount of the preliminary-injunction bond. Id. at 1178. The Court first held that the trial court had not properly considered whether the plaintiffs had a reasonable chance to prevail on the merits, one of the factors that must be weighed before a preliminary injunction is entered. Id. at 1183-84. But the Court also held that the trial court had erred by denying the defendants' request for an increased bond. Id. at 1187. Thus, the Court instructed the trial court to first increase the amount of the injunction bond and, after doing that, to reconsider "whether there is a reasonable likelihood that [the plaintiffs] will prevail on the merits to warrant the continuation of injunctive relief." Id. at 1187. The net effect of this procedure was that the trial court could properly increase the injunction bond (after which the plaintiffs could presumably decide not to proceed with their request for injunctive relief if they found the increased potential liability to be unpalatable) before making a separate determination as to whether the preliminary injunction was warranted. The Court gave the trial court 30 days to complete this procedure, at which point the injunction would automatically be dissolved if the court had not affirmatively determined it should be continued. Id.

place; once the injunction is determined to be unwarranted, any request to increase the bond is moot. See Thomas & Betts Corp. v. Panduit Corp., 65 F.3d 654, 664 n.13 (7th Cir. 1995) ("Because the preliminary injunction is dissolved, [the defendant's] appeal of the magistrate judge's refusal to increase the bond amount is dismissed as moot."). Thus, Cooper's recovery under the preliminary-injunction bond is limited to $100,000 in the absence of a finding by the trial court that BCBC sought the injunction in bad faith.

This rationale also compels us to reject Scott Bridge's argument that it should be allowed to recover its damages for being wrongfully enjoined. A preliminary-injunction bond is a contract whereby the party providing the bond agrees to compensate the enjoined party if it is later determined that the preliminary injunction was wrongful. Sycamore Mgmt. Grp., LLC v. Coosa Cable Co., 81 So. 3d 1224, 1235 (Ala. 2011). The bond submitted by BCBC and approved by the trial court provides that BCBC is "bound unto the Defendant [Cooper] in the sum of $100,000 dollars, as security for the payment of such costs, damages and reasonable attorneys fees as may be incurred or suffered by the Defendant in the event the Defendant is found to have been wrongfully

enjoined or restrained." (Emphasis added.) If we altered the terms of the bond here to permit Scott Bridge to recover under the bond, it would effectively increase the exposure of BCBC -- which agreed only to be liable for expenses incurred by Cooper (and by extension ALDOT) -- beyond what it agreed to when the injunction was entered. As explained above, that should be avoided. See Mead Johnson, 209 F.3d at 1033 (explaining that the plaintiff should know "what his exposure is when the bond is set by the district court. It is not unlimited."); see also Alabama Power Co. v. Hamilton, 201 Ala. 62, 65, 77 So. 356, 359 (1917) ("After all that may be said on the subject of liability to the obligee of [injunction] bonds, it cannot be held to be extended beyond the precise terms of the undertaking. … [T]he surety is entitled to the protection of, and to subjection to liability by, the letter of the contract. That obligation cannot be added to nor taken from by either party to the suit, nor by the court itself."); Marengo Cnty. v. Matkin, 144 Ala. 574, 576-77, 42 So. 33, 34 (1905) ("[The plaintiff] has a right of action upon the bond if on the facts averred he has shown that he has suffered any recoverable damages. [¶] It is true he is not named as an obligee in it, neither was he a party to the proceeding in which the writ of injunction was issued, but the bond

is conditioned 'To pay or to cause to be paid all damages and costs which any person may sustain by the suing out of said injunction if the same is dissolved.' This obligation is broad enough to confer upon him a right of action for all damages resulting to him from the direct effects of the injunction.").[12] Scott Bridge is therefore not entitled to recover on the preliminary-injunction bond.

Our holding on this point makes it unnecessary to consider Scott Bridge's argument that the trial court erred by dismissing it as a defendant. Scott Bridge sought to remain in the case only so it could seek recovery on the injunction bond. We have concluded that it cannot, which means there is no reason for Scott Bridge to be a defendant in the case (which now consists only of BCBC's inverse-condemnation claim) on

[12]Scott Bridge notes that, in Sycamore, "a competitor of a plaintiff cable-television provider was permitted to make a claim on a preliminary injunction bond when the plaintiff had obtained an improper injunction stopping a defendant owner of [an] apartment complex from switching cable-television providers." Scott Bridge's brief at 20 (in appeal no. SC-2023-0364). But, unlike here, the language of the bond in that case expressly contemplated the claim. See Sycamore, 81 So. 3d at 1228 ("'Surety, hereby acknowledges that it is bound to pay the sum of $100,000 … for any damages incurred as a result of the [preliminary-injunction] [o]rder if it is determined that [the owner of the apartment complex and competing cable-television provider] were wrongly enjoined or restrained.'" (quoting bond; emphasis added)).

remand. The trial court's order dismissing Scott Bridge is therefore affirmed.

The Discovery Order

Finally, we turn to Cooper's petition challenging the trial court's order compelling him to produce certain records that he alleges are protected from disclosure by executive privilege. As BCBC's motion to compel made clear, BCBC sought the records that are the subject of this discovery dispute because "[t]he key issue that will be tried at the preliminary injunction [stage] is whether Director Cooper decided to build an expensive new bridge with Alabama taxpayer money to harm BCBC and put it out of business, and whether he acted with a dishonest purpose in proceeding with the new bridge." Thus, BCBC continued, "the deliberative process of Director Cooper and [ALDOT] is the central issue in this case."

From these statements, it is evident that BCBC's discovery request was targeted toward its bad-faith claim. And as we have already explained above, that claim is due to be dismissed because it is barred by State immunity. BCBC therefore has no need for the discovery sought because Cooper's intent and motivations for building the third bridge

have no relevance to BCBC's sole remaining claim that the State has effectively condemned its property. See Housing Auth. of Birmingham Dist. v. Logan Props., Inc., 127 So. 3d 1169, 1174 (Ala. 2012) ("[A] plaintiff asserting an inverse-condemnation claim is required to put forth substantial evidence of the following elements: (1) that the defendant is an entity 'invested with the privilege of taking property for public use'; (2) that the plaintiff's property was 'taken, injured, or destroyed'; and (3) that that taking, injury, or destruction was caused 'by the construction or enlargement of [the defendant's] works, highways, or improvements.'" (citation omitted)). The trial court's order compelling Cooper to produce the requested discovery is therefore moot, as is Cooper's petition challenging that order.

Conclusion

The trial court did not have subject-matter jurisdiction over the bad-faith claim that served as the basis of the preliminary injunction; the order entering that injunction is therefore void, and we reverse it. On remand, the trial court is directed to dismiss the underlying bad-faith claim. Because Cooper was wrongfully enjoined, we affirm the order permitting him to recover expenses up to the $100,000 limit of the

injunction bond. Finally, the trial court's judgment dismissing Scott Bridge from the case is affirmed, and Cooper's petition challenging the trial court's discovery order is dismissed as moot.

SC-2023-0056 -- PETITION DISMISSED.

Shaw, Wise, Sellers, Mendheim, and Stewart, JJ., concur.

Parker, C.J., concurs specially, with opinion.

Cook, J., recuses himself.

SC-2023-0354 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Shaw, Wise, Sellers, and Stewart, JJ., concur.

Parker, C.J., concurs specially, with opinion.

Mendheim, J., concurs in part and concurs in the result, with opinion.

Cook, J., recuses himself.

SC-2023-0364 -- AFFIRMED.

Shaw, Wise, and Stewart, JJ., concur.

Parker, C.J., concurs specially, with opinion.

Sellers, J., concurs in the result.

Mendheim, J., concurs in the result, with opinion.

Cook, J., recuses himself.

PARKER, Chief Justice (concurring specially).

"You shall not show partiality in judgment; you shall hear the small and the great alike." Deuteronomy 1:17 (NASB). Unless the Alabama government is the defendant. See Art. I, § 14, Ala. Const. 2022.

MENDHEIM, Justice (concurring in part and concurring in the result in appeal no. SC-2023-0354 and concurring in the result in appeal no. SC-2023-0364).

I concur in the result as to the section of the main opinion entitled "The Preliminary-Injunction Bond." I concur as to all other parts of the main opinion.