

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 8th *day of* May, 2015.

Bruce B. Nolte, et al.,

Appellants,

against

Record No. 140979

Circuit Court No. CL09-2485

MT Technology Enterprises, LLC,

Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of the City of Richmond.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of the opinion that there is error in the
judgment of the circuit court.

In Nolte v. MT Technology Enterprises, LLC, 284 Va. 80, 726
S.E.2d 339 (2012), (Nolte I), we reversed the judgment of the
circuit court in part and remanded the case for further proceedings
on the issue of damages only. We stated that, at the hearing on
remand,

the issue of damages for statutory conspiracy and
tortious interference shall be tried and the
defendants will be permitted the opportunity to
cross-examine witnesses and introduce evidence
addressing the amount of damages to be recovered by
[MT Technology Enterprises, LLC].

Id. at 98, 726 S.E.2d at 349.¹

On remand, the trial court construed the mandate to mean that "discovery had been concluded and damages are limited to those amounts that could have been recovered as of the first date of trial [in 2010]" and that "the opportunity to rebut that evidence is limited to evidence that was available as to mitigation as of the date of trial [in 2010.]" Consequently, the trial court resolved issues raised on remand relating to further discovery and witnesses based on this interpretation. The first trial on remand resulted in a mistrial before the case was submitted to the jury. Following the subsequent jury trial, the trial court entered judgment awarding appellee MT Technology Enterprises, LLC \$6,636,468, plus interest and costs.

The appellants raise a number of issues on appeal, the majority of which relate to the trial court's rulings limiting further discovery and testimony of witnesses based on the trial court's interpretation of the mandate. The dispositive issue in this appeal, raised in the appellants' first assignment of error, is whether the trial court correctly interpreted and applied the mandate of Nolte I on remand.

¹The mandate in Nolte I, like many mandates, recited that the proceedings on remand should be consistent with the views expressed in the opinion. Nolte, et al. v. MT Technology Enterprises, LLC, Record No. 111490 (July 6, 2012). As used in this Order, the term "mandate" refers to the mandate and opinion collectively. See Rule 5:36(a) and (b) (certified copy of the opinion to be forwarded by the Clerk of this Court as part of the mandate directions to be delivered to the clerk of the court or commission where the case originated).

The mandate of an appellate court binds the trial court for "'matters within its compass.'" In re Commonwealth of Virginia, 278 Va. 1, 11, 677 S.E.2d 236, 240 (2009) (citation omitted). A mandate holding that a judgment of the trial court is erroneous, setting aside the judgment, and remanding the case means that "on remand the parties begin anew," unless the mandate contains words of limitation. Nassif v. Board of Supervisors, 231 Va. 472, 480, 345 S.E.2d 520, 525 (1986). The mandate in Nolte I held the trial court's judgment erroneous in part, set aside that part of the judgment, and remanded the case for a new trial on damages. It specifically directed that "damages for statutory conspiracy and tortious interference shall be tried." Nolte, 284 Va. at 98, 726 S.E.2d at 349. (emphasis added). Thus, the mandate required that the "parties begin anew," but only with regard to the issue of damages for statutory conspiracy and tortious interference. The additional language in Nolte I regarding cross-examination of witnesses and presentation of damage evidence was not a limitation on the proceedings in the new trial, but rather emphasized the necessity of avoiding the errors that occurred in the 2010 trial. Therefore, the trial court erred by not allowing the parties to "begin anew."

Accordingly, we reverse the judgment of the trial court and again remand this case for a new trial on damages for tortious interference and statutory conspiracy, Counts I - IV,

only.² Beginning anew requires that a new pre-trial scheduling order be entered pursuant to Rule 1:18 and that additional discovery appropriate under Part Four of the Rules of the Court related to the damage issues be permitted on a reasonable schedule if requested by any party, and that resolution of evidentiary, witness, and other issues be based on all of the information and evidence available at the time of the damages trial required by this Order, governed by the Virginia Rules of Evidence and other applicable rules and statutory provisions applying at the time of this remand, not as of 2010.

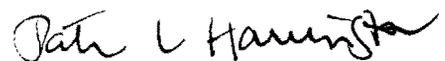
The judgment of the circuit court is reversed and the case is remanded.³

Justice McClanahan took no part in the consideration of this case.

This order shall be certified to the said circuit court.

A Copy,

Teste:



Clerk

²Appellants did not appeal the trial court's summary judgment order against appellant Cristol, LLC, awarding MT Technology Enterprises, LLC \$84,851 on its breach of contract claim, Count V; thus, that order is not before us in this appeal and retrial on that count is not contemplated.

³In light of this disposition, we need not address appellants' remaining assignments of error.