

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SUSAN BISIO,

Plaintiff,
vs.

Hon. Leo Bowman
Case No.: 2015-150462-CZ

THE CITY OF THE
VILLAGE OF CLARKSTON,

Defendant.

KEMP KLEIN LAW FIRM
RICHARD BISIO (P30246)
Attorney for Plaintiff
201 W. Big Beaver Road, Ste. 600
Troy, MI 48084
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KERR, RUSSELL AND WEBER, PLC
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DEFENDANT'S MOTION TO ENFORCE SETTLEMENT

NOW COMES Defendant, THE CITY OF THE VILLAGE OF CLARKSTON, through its counsel, Kerr, Russell and Weber, PLC, and for its motion to enforce settlement agreement with Plaintiff Susan Bisio, hereby states as follows:

1. This case involves Plaintiff Susan Bisio's Freedom of Information Act (FOIA) claim against Defendant the City of the Village of Clarkston.
2. The records sought by Plaintiff were disclosed, and the parties agreed to and participated in facilitation with retired Oakland County Judge Edward Sosnick to resolve the remaining issues related to Plaintiff's request for an attorney's fee award.
3. Facilitation took place on February 1, 2021. Given an impasse between the parties after extensive all-day negotiations, and with the parties' consent, Judge Sosnick made a

facilitator's recommend number to settle the case on February 8, 2021, giving the parties until February 10, 2021 at 5:00 p.m. to respond. Judge Sosnick informed the parties, "If both sides accept, we have a settlement. If not, the matter will proceed in court." See (Exhibit A, Judge Sosnick's Affidavit, ¶¶ 3-4).

4. All parties timely communicated their acceptance via email to Judge Sosnick. (*Id.* at ¶ 5).

5. Judge Sosnick emailed the parties on February 10, 2021 at 5:15 p.m. advising "that we have a settlement subject to [city council] approval. If [city council] approves, then you will have to agree on a settlement agreement." (*Id.* at ¶¶ 6-7).

6. Plaintiff's counsel asked the City's counsel to review an agreement on February 11, 2021 at 7:15 a.m. requiring the City to, among other things, agree to entry of a judgment against it – a proposition entirely inconsistent with the settlement.

7. On February 13, 202, the Clarkston City Council approved the payment of the City's portion of Judge Sosnick's settlement number. The remaining settlement funds are being paid by insurers.

8. On February 15, 2021, counsel for the City, Mark Peyser, who was retained by the City shortly before and did participate in the facilitation, contacted Plaintiff's counsel and provided a proposed settlement agreement that consisted of standard terms and conditions. In particular, the settlement agreement contemplated the parties stipulating to an order of dismissal with prejudice – not entry of a judgment in favor of one party and against the other.

9. Victoria King, Esq., the Court's Judicial Staff Attorney, asked counsel for the parties to confirm on February 16, 2021 "if the parties resolved their claims." Mr. Peyser confirmed that there was a settlement. Plaintiff's counsel denied its existence.

10. Despite his email to Judge Sosnick accepting the recommended settlement, Plaintiff has failed and/or refused to execute the settlement agreement and now denies that there is a binding settlement.

11. As a result, Defendant the City of the Village of Clarkston now requests that the Court enforce the settlement as previously agreed. See MCR 2.507(G).

12. A settlement agreement evidenced by writing is binding on the parties who entered into it. *Michigan Mutual Ins Co v Indiana Ins Co*, 247 Mich App 480, 483; 637 NW2d 232 (2001). Courts are generally reluctant to set aside written settlement agreements because they are favored in Michigan. *Metropolitan Life Ins Co v Goolsby*, 165 Mich App 126, 128; 418 NW2d 700 (1987). Because Plaintiff's counsel confirmed acceptance of the settlement by email, this Court should enforce the settlement as agreed. See *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 459–60; 733 NW2d 766, 773–74 (2006) (Rejecting argument that settlement “was not in writing, signed by plaintiff or his attorney[.]” Instead, “e-mail containing the terms of the settlement offer was subscribed by plaintiff's attorney because he typed, or appended, his name at the end of the e-mail message.”).

13. Because Judge Sosnick received an email from Plaintiff's counsel agreeing to the settlement, and thereby “subscribing” to it, Plaintiff is bound by the settlement and should not be permitted to now deny its existence or demand unilateral amendments.

14. Therefore, Defendants ask this Court to enforce the settlement agreement.

WHEREFORE, Defendant THE CITY OF THE VILLAGE OF CLARKSTON requests that the Court grants its motion and order that there is a binding settlement in the amount of Judge Sosnick's recommended number, and further order the Plaintiff to execute and comply with the provisions of the Release and Settlement Agreement submitted by the City.

KERR, RUSSELL AND WEBER, PLC

By: /s/Kevin A. McQuillan

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Kevin A. McQuillan (P79083)

Attorneys for Defendants

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Dated: February 22, 2021

CERTIFICATE OF SERVICE

The undersigned certifies that on February 22, 2021 he caused a copy of the foregoing Defendants' Motion for Enforcement of Settlement Agreement to be filed with the court and served upon the counsel of record as indicated in the caption above via the court's E-File & Serve Service.

/s/Kevin A. McQuillan

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EXHIBIT A

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AFFIDAVIT OF EDWARD SOSNICK, ESQ.

COUNTY OF OAKLAND)
) SS
STATE OF MICHIGAN)

I, Edward Sosnick, first being duly sworn on oath, state as follows:

1. I am an attorney licensed to practice in Michigan, and previously served as a District and Circuit Court Judge in Oakland County. I now serve as a mediator and facilitator.
2. The parties in this matter requested my mediation and facilitation services.
3. Facilitation took place on February 1, 2021.
4. After extensive negotiations an impasse between the parties occurred. Thus, with the parties agreement I made a facilitator's recommendation of a settlement number on February

8, 2021, and instructed the parties to send me an email if they accepted or rejected the recommended number by February 10, 2021 at 5:00 p.m.

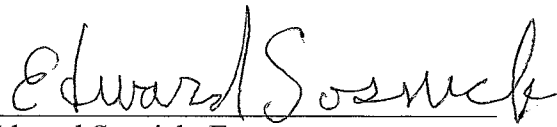
5. Thru their respective counsel, all parties timely communicated to me via email their acceptance of my recommended number.

6. I advised the parties on February 10, 2021 at 5:15 p.m. "that we have a settlement subject to [city council] approval. If [city council] approves, then you will have to agree on a settlement agreement."


7. My original email mistakenly used the word "counsel" but I meant to use the phrase "city council" as indicated above.

8. It is my understanding that the Clarkston City Council subsequently approved the City's \$35,000 contribution towards the agreed recommended number.

Further, deponent sayeth not.


Edward Sosnick, Esq.

Subscribed and sworn to before me
This 19 day of February, 2021.


NOTARY PUBLIC
Oakland County, Michigan
My Commission expires: 11/28/2025

BOBBIE JEAN FURNESS
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Nov 28, 2025
ACTING IN COUNTY OF OAKLAND