

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
(248) 740-5698
richard.bisio@kkue.com

KERR, RUSSELL AND WEBER, PLC
James E. Tamm (P38154)
Kevin A. McQuillan (P79083)
Attorneys for Defendant
500 Woodward Avenue
Suite 2500
Detroit, MI 48226
(313) 961-0200
jtamm@kerr-russell.com
kmcquillan@kerr-russell.com

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR ENTRY OF ORDER

NOW COMES Defendant, THE CITY OF THE VILLAGE OF CLARKSTON, through its counsel, Kerr, Russell and Weber, PLC, and for its Response to Plaintiff's Motion for Entry of Order, hereby states as follows:

1. Admitted that Plaintiff filed a motion seeking an award of attorney's fees. Denied that Plaintiff is entitled to the amounts sought for the reasons stated in Defendant's prior briefs.
2. Admitted that the Court previously scheduled a hearing on Plaintiff's prior motion.
3. Admitted that the parties agreed to facilitation to resolve this matter. Further admitted that a hearing on Plaintiff's prior motion has not occurred.

4. Admitted that the parties participated in facilitation with former Judge Sosnick. The remainder of Plaintiff's assertions in Paragraph 4 are denied as untrue and Plaintiff is left to her proofs.

5. Admitted that facilitation took place on February 1, 2021. Further admitted that the facilitator made a "settlement" recommendation "to help resolve the case" after the parties "reached an impasse." See (Plaintiff's Exhibit 1, Email from Judge Sosnick dated Feb. 8, 2021). The remaining allegations and assertions made by Plaintiff in Paragraph 5 are denied as untrue and Plaintiff is left to her proofs.

6. Admitted that Plaintiff accepted the settlement recommendation but denied that this agreement contemplated "that a judgment be entered against the city" as Plaintiff now claims. Rather, the parties reached an agreement to resolve the entire case (not merely the issue of an attorney's fee award). Resolving a case through facilitation necessarily entails payment in exchange for an agreement to dismiss the case with prejudice as well as other agreements like confidentiality. There was never an agreement for entry of judgment in favor of one party and against the other.

7. Admitted that Defendant accepted the settlement recommendation.

8. Denied as untrue. After accepting the settlement, Plaintiff now seeks to impose unilateral terms.

9. Denied as untrue. There is an enforceable settlement because Plaintiff's counsel affixed his name to the email accepting Judge Sosnick's recommendation. See *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 459-60; 733 NW2d 766, 773-74 (2006). This Court should order the parties to reach an agreement regarding the settlement release document within thirty days and then enter an order of dismissal with prejudice. See (**Exhibit A, Defendant's Proposed Final**

Order). However, there is no settlement agreement if Plaintiff insists on a judgement against the City. The Court should not enter a judgement in favor of one party and against the other in this case without first conducting a detailed evidentiary hearing to determine the reasonableness of Plaintiff's request for an attorney's fee award. If Plaintiff and her counsel retract their acceptance of Judge Sosnick's recommendation, the next step is an evidentiary hearing on Plaintiff's motion for an attorney's fee award. Defendant stands ready and willing to either amicably resolve this matter without further delay or proceed with proofs detailing why Plaintiff's counsel deserves no more than \$1,000 for this years-long crusade.

WHEREFORE, Defendant THE CITY OF THE VILLAGE OF CLARKSTON requests that the Court DENY Plaintiff's Motion for Entry of Order, find that there is a binding settlement in the amount of Judge Sosnick's recommended number, enter Defendant's proposed final order, and grant all further relief that is just and equitable.

KERR, RUSSELL AND WEBER, PLC

By: /s/Kevin A. McQuillan
James E. Tamm (P38154)
Kevin A. McQuillan (P79083)
Attorneys for Defendants
500 Woodward Avenue, Suite 2500
Detroit, MI 48226
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jtamm@kerr-russell.com
kmcquillan@kerr-russell.com

Dated: March 25, 2021

BRIEF IN SUPPORT OF DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR ENTRY OF ORDER

I. STATEMENT OF FACTS

On January 4, 2021, counsel for Defendant extended an offer to facilitate: “Our hope is . . . the case will resolve through facilitation.” (Plaintiff’s Affidavit, Exhibit 2, p 3). Plaintiff’s counsel responded with six demands on January 5, 2021. (*Id.* at pp 1-2). None of these demands included entry of a judgment in favor of Plaintiff against the City. Rather, Plaintiff agreed that facilitation would resolve the entire case (i.e., they would reach an agreement to exchange money for a dismissal with prejudice).

On January 27, 2021, Plaintiff sought to change the terms of the facilitation by demanding entry of a judgment. See (Plaintiff’s Affidavit, Exhibit 3). There is no evidence of anyone agreeing to this unilateral change. Rather, on February 8, 2021, Judge Sosnick made a “settlement” recommendation “to help resolve the case” after the parties “reached an impasse.” See (Plaintiff’s Exhibit 1, Email from Judge Sosnick dated Feb. 8, 2021). The parties accepted the settlement, but Plaintiff again sought to impose a unilateral change. See (Plaintiff’s Affidavit, Exhibit 6).

After receiving acceptance emails from both sides, Judge Sosnick advised the parties “that we have a settlement” and encouraged the parties “to agree on a settlement agreement.” (Plaintiff’s Affidavit, Exhibit 7). The settlement now appears on the verge of collapse because Plaintiff now rejects the premise of a settlement in exchange for dismissal and instead now demands entry of a judgment against the City. The City promptly moved to enforce the settlement and Plaintiff subsequently filed the instant motion for entry of order. Defendants oppose Plaintiff’s latest motion.

There are two ways to proceed. First, the Court can order the parties to come to an agreement regarding the settlement agreement (as Judge Sosnick indicated) and then enter an order of dismissal with prejudice. See (**Exhibit A, Defendant's Proposed Final Order**). Alternatively, the Court can cast the facilitation aside and schedule a hearing to determine whether plaintiff is entitled to an award of attorney's fees and the determine reasonableness of Plaintiff's request for an attorney's fee award. If Plaintiff and her counsel retract their acceptance of Judge Sosnick's recommendation, the next step is an evidentiary hearing on Plaintiff's motion for an attorney's fee award. Defendant stands ready and willing to either amicably resolve this matter without further delay or proceed with proofs detailing why Plaintiff's counsel deserves no more than \$1,000 for this years-long crusade.

II. LEGAL STANDARD

Plaintiff's motion states no legal basis for the relief sought. However, this Court has inherent authority to "control its own docket" and to take other actions to ensure that the ends of justice are achieved. *Baynesan v Wayne State Univ*, 316 Mich App 643, 651; 894 NW2d 102, 106 (2016) (citing *Maldonado v Ford Motor Co*, 476 Mich 372, 376, 719 NW2d 809 (2006)).

III. LEGAL ARGUMENT

This matter could have been resolved already, but Plaintiff and her counsel are not ready to give up their obsession with this case. Facing the prospect of receiving nothing for her years-long toil, Plaintiff agreed to facilitation and suggested Judge Sosnick. Now that there is a real prospect of resolving the case, Plaintiff seeks to avoid it. When opposing Defendant's motion to enforce settlement, Plaintiff contends the facilitation was not binding. But here, in her request for entry of an order, Plaintiff seeks to use the facilitator's recommendation as binding to justify entry of a judgment against the City. There is no merit to Plaintiff's antics here.

Previously, Plaintiff incredulously chastised Defendant's motion to enforce settlement for lacking specificity regarding the relief sought. Her argument ignored the concept of confidentiality. Regardless, Plaintiff's latest motion truly fails to "state the relief or order sought." MCR 2.119(A)(1)(c). In fact, Plaintiff's motion does not identify any legal authority at all. No court rule is identified to entitle Plaintiff to the relief sought, no analysis of case law is offered to justify applying the law to these facts in the way Plaintiff demands. Plaintiff's motion appears to be little more than a last-ditch effort to drag this litigation out as much as possible. This Court need not abide by Plaintiff's heads-I-win-tails-you-lose approach to litigation.

Here, the latest barrage of motions shows that the parties agreed to a settlement through facilitation to resolve this matter. Plaintiff agrees that a settlement is a contract. A settlement contract means one party pays the other in exchange for entry of a dismissal with prejudice. There is no settlement if the end result is to be a judgment against one party in favor of the other, and Plaintiff fails to identify any legal authority to suggest a contrary conclusion. Instead of identifying a sound basis for her argument, Plaintiff simply ignores the law and spews more unreasonable demands.

The Michigan Court of Appeals has already heard and decided cases with analogous facts to those here. In *Kloian v Domino's Pizza LLC*, 273 Mich App 449; 733 NW2d 766 (2006), a contractual dispute arose regarding a pizza franchise. "Through a series of e-mail messages exchanged between plaintiff's attorney and defendant's attorney, the attorneys agreed that defendant would pay plaintiff \$48,000 to settle the lawsuit in exchange for a release of all possible claims." *Id.* at 451. After initially agreeing to this amount, the plaintiff unilaterally demanded a "mutual release." *Id.* The defendants moved to enforce the settlement as agreed and the plaintiff argued there was no agreement on the essential terms. In particular, the plaintiff argued that the

email communications were insufficient to satisfy MCR 2.507. *Id.* at 456. The Court of Appeals unequivocally rejected this argument:

The original settlement agreement, embodied in the March 18, 2005, e-mail messages, satisfies the subscription requirement of MCR 2.507([G]). The March 18, 2005, 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. Likewise, the March 18, 2005, e-mail from defendant's attorney containing the acceptance of the offer was subscribed because it, too, contained defendant's attorney's name at the end of the e-mail message.

Id. at 459. Since an email from an attorney is enough to enforce a settlement, and there is no evidence of an agreement to entry of judgment against the City, this Court should deny Plaintiff's latest motion and instead enforce the original settlement.

Rather than entertain Plaintiff's unilateral demands, this Court should order the parties to come to an agreement regarding the settlement agreement (as Judge Sosnick indicated) and then enter an order of dismissal with prejudice. See (**Exhibit A, Defendant's Proposed Final Order**). If Plaintiff insists on the entry of a judgment against the City, then there is no settlement. Although Defendant would rather see this matter resolved than endure more of Plaintiff's delays, the City stands ready and willing to proceed with proofs detailing why Plaintiff's counsel deserves no more than \$1,000 for this years-long crusade.

IV. CONCLUSION

WHEREFORE, Defendant THE CITY OF THE VILLAGE OF CLARKSTON requests that the Court DENY Plaintiff's Motion for Entry of Order, find that there is a binding settlement in the amount of Judge Sosnick's recommended number, enter Defendant's proposed final order, and grant all further relief that is just and equitable.

KERR, RUSSELL AND WEBER, PLC

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James E. Tamm (P38154)
Kevin A. McQuillan (P79083)
Attorneys for Defendants
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kmcquillan@kerr-russell.com

Dated: March 25, 2021

CERTIFICATE OF SERVICE

The undersigned certifies that on March 25, 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

Exhibit A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

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FINAL ORDER FOR DISMISSAL WITH PREJUDICE

At a session of said Court on: _____
Present: Hon: _____

This matter having come before the Court upon Plaintiff's Motion for an Award of Fees, Costs, and Disbursements, Defendant's Motion to Enforce Settlement, and Plaintiff's Motion for Entry of Order; the parties having advised the Court that they participated in facilitation; the parties having accepted the facilitator's recommendation of \$160,000.00; and the Court being otherwise fully advised in the premises;

NOW, THEREFORE:

IT IS HEREBY ORDERED that Plaintiff's Motion for an Award of Fees, Costs, and Disbursements is **GRANTED** in the amount of \$160,000.00.

IT IS FURTHER ORDERED that all other pending motions are **DENIED** as moot.

IT IS FURTHER ORDERED that Plaintiff's claims are dismissed in its entirety with prejudice and without any additional costs or attorneys' fees to either party.

This Final Order disposes of the last pending claim and closes the case.

Hon.

Order prepared by:
James E. Tamm (P38154)
Attorney for Defendant
jtamm@kerr-russell.com