

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

SAROLI & POLIUTO LANDSCAPING, LLC
d/b/a GROUNDS, INC. and
MATTHEW POLIUTO,

Plaintiff,

v

Case No. 14-1167-CZ

JOSEPH SAROLI,

Defendant.

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OPINION AND ORDER

Plaintiff has filed a motion to enforce a settlement agreement pursuant to MCR 2.507(F). Defendant has filed a response and requests that the enforcement of settlement be denied.

Facts and Procedural History

Plaintiffs filed their complaint on March 24, 2014. Plaintiffs' complaint asserted a shareholder action for breach of statutory and fiduciary responsibilities and other causes of action. On April 17, 2014, the parties met and allegedly negotiated terms to settle the dispute by, *inter alia*, dividing Grounds' assets. Plaintiffs' counsel then sent an email to Defendant and other individuals to confirm the terms of the settlement. In addition, the email included copies of the distribution of the equipment and client distribution list as agreed to, in writing, by the parties. On or about April 23, 2014, documents and paperwork concerning the settlement were delivered to Defendant to review and sign. The documents were not signed and returned.

On April 30, 2014, Plaintiffs filed their instant motion to enforce settlement pursuant to MCR 2.507(F). On May 15, 2014, Defendant filed a response requesting that the motion be denied and that costs and attorney fees be awarded to Defendant.

Standard of Review

Motions to enforce a settlement agreement between parties or their attorneys are not granted unless they are made in open court or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney. MCR 2.507(F). A settlement agreement is a contract and is construed and applied under general contract principals. *Michigan Mutual Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001).

Arguments and Analysis

In support of their motion, Plaintiffs contend that there is a valid settlement agreement between the parties and that the valid settlement agreement is not diminished by the fact that the parties have yet to sign the agreement. Plaintiffs contend that the parties agreed on the essential terms of the settlement and that Defendant cannot back out of the deal that the parties willingly entered into.

In Defendant's response to Plaintiffs' motion, Defendant argues that there is no binding settlement agreement between the parties because Defendant did not sign any contract. Specifically, Defendant argues that there was not an agreement as to all the material issues indicated in the email by Plaintiffs' attorney and that there must be further negotiations to resolve those issues.

After reviewing the record, including Plaintiffs' instant motion, this Court is convinced that Plaintiffs' motion must be denied. In order to be binding and enforceable under Michigan

law a settlement agreement must be made in open court or memorialized in a writing subscribed by the party against whom enforcement is sought. MCR 2.507(F). Additionally, settlement agreements are contracts and are therefore subject to interpretation and enforcement principals found in contract law. *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006), citing *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). Generally, a contract requires mutual assent or a meeting of the minds on all of the essential terms on the contract. *Id.* at 453 citing *Burkhardt v Bailey*, 260 Mich App 636, 655; 680 NW2d 453 (2004). “A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts.” *Id.* at 453, quoting *Kamalath v Mercy Mem Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992).

In regard to agreements that settle pending litigation, and under MCR 2.507(F), to subscribe is to “append” an indication of “one’s signature at the bottom of a document.” *Id.* at 459. A party’s initials satisfy an indication of signature under a statute of frauds. *Archibold v Industrial Land Co*, 264 Mich 289, 290-291; 249 NW 858 (1933). Furthermore, MCR 2.507(F) is read similarly to the statute of frauds. *Kloian*, 273 Mich App at 456; 733 NW2d 766.

In this case, Defendant’s initials on the documents describing the route and equipment distributions arguably satisfy the subscription requirement under MCR 2.507(F). Routes were type-listed and divided within the same writing as Defendant’s initials at the bottom of each page. Further, equipment distribution was type-listed and handwritten in the same writing as Defendant’s initials. While the writing may satisfy the subscription requirement of MCR 2.507(F), the alleged agreement fails to document a meeting of the minds on all the essential terms of the agreement the Plaintiffs are seeking to enforce. Rather, the agreement, at best, represents a partial agreement on only the equipment and client distribution list issues.

Additionally, Plaintiffs' attorney, in his April 17th email, states that the parties had made "substantial progress" on reaching a resolution", which evidences that the parties had not agreed on all essential terms, much less reduced such agreement to writing as required by MCR 2.507(F). For these reasons, the Court is convinced that there was not a meeting of the minds on all essential terms of the settlement agreement. Therefore, Plaintiffs' motion must be denied.

Plaintiffs' counsel also argues that Defendant's conduct reveals acceptance to the equipment distribution and client list and infers the acceptance of the other terms set forth in the email. However, settlement agreements are strictly required to be made in open court or confined to a writing subscribed by individual parties or their attorneys. MCR 2.507(F). If Defendant had replied to the email from Plaintiffs' counsel in receipt and acceptance of the essential terms to the proposed settlement in its entirety, then evidence of a settlement agreement in regard to those additional terms would have been established. *Kloian*, 273 Mich App at 459; 733 NW2d 766. Additionally, if Defendant had authorized Plaintiffs' counsel to attach his initials subscribing to the terms of the route and equipment distributions and apply them to the terms stated in the body of the email, a settlement agreement to all of the listed terms most likely would have been formed. *Lansing Pavilion, LLC, supra*. However, Defendant took no such action. Accordingly, Plaintiffs' contention is without merit.

Conclusion

Based upon the reasons set forth above, Plaintiffs' motion to enforce settlement agreement DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: June 11, 2014

JCF/sr

Cc: *via e-mail only*

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