

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

27225 ASSOCIATES, LLC,

Plaintiff,

Case No. 2014-4230-CB

vs.

27000 ASSOCIATES, LLC; P.K. INDUSTRIES, LLC, CHESTERFIELD TOWN PROPERTIES, LLC, INTERACTIVE CAPITAL MARKETS, CORP., CAROL HUMPHRIES, CHARTER TOWNSHIP OF CHESTERFIELD, MIKE ZIMMER, DIRECTOR OF MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS, ANTHONY MARROCCO, COMMISSIONER OF THE MACOMB DEPARTMENT OF PUBLIC WORKS, BOB HOEPFNER, DIRECTOR OF MACOMB COUNTY DEPARTMENT OF ROADS, DTE ENERGY ELECTRIC COMPANY (F/K/A THE DETROIT EDISON COMPANY), MICHIGAN BELL TELEPHONE COMPANY D/B/A AT&T MICHIGAN, and SEMCO ENERGY, INC.

Defendants.

FILED
2016 SEP 16 A 10:40
CARMELLA SABAUGH
MACOMB COUNTY CLERK
MT. CLEMENS, MICHIGAN

OPINION AND ORDER

Plaintiff has filed a motion to confirm an arbitration award. Defendant has filed a response and requests that the motion be denied.

Factual and Procedural History

On June 10, 2015, the Court ordered the parties to facilitative mediation. On November 19, 2015, the parties attended mediation with Stephen Wasinger ("Facilitator"). On November 19, 2015, after the mediation concluded, the Facilitator sent the parties an email in which he stated: "The terms on which we resolved the dispute are.....". (See Plaintiff's Exhibit 3.) Further, the Facilitator's email provides that

the parties agreed that any disagreements with respect to the alleged agreement would be resolved via binding arbitration with the Facilitator sitting as the arbitrator. (Id.)

Over the next few months, the parties' counsel exchanged proposed settlement documents. After Defendant's representative refused to sign the settlement documents, Plaintiff invoke the arbitration provision referenced in the Facilitator's email. The parties submitted briefs and exhibits to the Facilitator. On August 16, 2015, the Facilitator issued an arbitration award ("Award") in favor of Plaintiff. (See Plaintiff's Exhibit 4.) On August 22, 2016, Plaintiff filed its instant motion to confirm the Award. On August 29, 2016, Defendant filed a response in which it requests that the motion be denied. On August 29, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

Arguments and Analysis

A settlement agreement will be enforced so long as it satisfies the elements of contract formation and satisfies MCR 2.507(G). *Mich Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484-485; 637 NW2d 232 (2001). In its response, Defendant avers that the alleged settlement does not satisfy MCR 2.507(G). MCR 2.507(G) provides:

An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was 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.

In this case, there is no record of a settlement agreement being put on the record. As a result, in order to be binding the alleged settlement agreement was required to be reduced to writing and subscribed by the parties against whom the agreement is offered, which in this case is the Defendant. While Plaintiff avers that Defendant agreed to the settlement agreement, it has not provided any

evidence that the terms were ever reduced to a writing subscribed by Defendant or its attorney. As a result, the settlement agreement does not comply with MCR 2.507(G) and is therefore invalid. Consequently, the Award is not binding and must be vacated, and Plaintiff's motion to enforce the arbitration award must be denied.

Conclusion

Based upon the reasons set forth above, Plaintiff's motion to confirm an arbitration award is DENIED and the arbitration award in question is hereby VACATED. This Opinion and Order neither resolves the last pending claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: SEP 16 2016



In abs of Hon. Kathryn A. Viviano, Circuit Court Judge