

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

REC'D & FILED

APR 27 2016

GRR CAPITAL FUNDING, LLC,
an Indiana limited liability company,

JUDGE YATES

Plaintiff,

Case No. 11-08297-CH

vs.

HON. CHRISTOPHER P. YATES

STEVEN D. BENNER,

Defendant.

ORDER APPROVING ENTRY OF CONSENT JUDGMENT

On January 28, 2016, the Court issued a five-page Opinion and Order Granting Plaintiff's Motion to Set Aside Order of Dismissal, Reinstate Case, and Enter Consent Judgment. The opinion and order ended with an invitation for Plaintiff GRR Capital Funding, LLC ("GRR") to submit "a proposed consent judgment within seven days under the so-called seven-day rule." On January 29, 2016, GRR submitted a proposed "Order Entering Consent Judgment." Defendant Steven Benner responded with a blizzard of filings.¹ Most significantly for present purposes, he filed "Defendant's Objection to Proposed Order Entering Consent Judgment, Submitted Under MCR 2.602(B)(3)," so he has asserted a timely challenge to GRR's proposed order that the Court must resolve. But beyond that, on April 8, 2016, he filed a supplemental brief in support of his objection that raises a host of new issues. Now, the Court must decide whether to enter GRR's proposed order.

¹ Defendant Benner thrice moved to disqualify Judge Christopher Yates, and then he sought relief from at least two of the orders denying those requests. He moved for reconsideration of the opinion and order issued on January 28, 2016, but the Court denied that motion on April 14, 2016. He filed an *ex parte* motion to stay the proceedings on February 24, 2016, but the Court denied that motion on March 1, 2016. Additionally, he filed a complaint against Judge Yates with the Judicial Tenure Commission, which was dismissed on April 12, 2016.

Under MCR 2.602(B)(3), “a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice.” Plaintiff GRR followed this provision in submitting the proposed “Order Entering Consent Judgment” on January 29, 2016. Defendant Benner then availed himself of his right to file objections to the proposed order, see MCR 2.602(B)(3)(b) & (c), so the Court conducted a hearing on April 15, 2016, to consider the parties’ competing positions concerning the proposed order. But prior to that hearing, Benner filed a supplemental brief raising subject-matter jurisdiction issues and other new concerns, and then he argued those issues at the hearing on April 15, 2016.

A conventional objection under MCR 2.602(B)(3) simply contends that “the proposed order . . . inaccurately set[s] forth the trial court’s . . . ruling.” E.g., Arbor Farms, LLC v GeoStar Corp., 305 Mich App 374, 379 (2014). When an objecting party seeks to introduce additional issues into the hearing about the accuracy of the proposed order, such efforts can be properly rejected as beyond the scope of the hearing. See id. at 380. That is certainly the case here because Defendant Benner already had two opportunities to shape the Court’s underlying ruling – first in responding to Plaintiff GRR’s motion to set aside the order of dismissal, reinstate the case, and enter a consent judgment, and second in moving for reconsideration of the Court’s decision to grant GRR’s motion. Benner’s new legal arguments presented orally on April 15, 2016, and in his supplemental objection constitute a third bite at the apple, which MCR 2.602(B)(3) does not allow him to take.²

² Even if the Court could consider the new arguments advanced by Defendant Benner, that inquiry would not alter the outcome. Benner’s contention that the United States Bankruptcy Court of the Western District of Michigan has exclusive jurisdiction over this dispute flies in the face of the settlement agreement’s language and the Bankruptcy Court’s recognition that “other enforcement actions” such as the instant case can proceed.

The Court's mission at a hearing under MCR 2.602(B)(3) is simply to determine whether the proposed order – submitted in this instance by Plaintiff GRR – accurately reflects the Court's ruling on the underlying motion. Without question, the proposed order properly memorializes the Court's ruling, so the Court shall approve that order. Indeed, the "Order Entering Consent Judgment" that GRR submitted under the so-called seven-day rule constitutes a verbatim recitation of the consent order that Benner signed as part of his settlement agreement with GRR's predecessor in interest, *i.e.*, Comerica Bank,³ with the exception of language affording Benner a credit of \$18,750,000 against his existing indebtedness. Consequently, GRR is entitled to entry of its proposed "Order Entering Consent Judgment," which perfectly captures the Court's ruling in the opinion and order issued on January 28, 2016.⁴

IT IS SO ORDERED.

Dated: April 27, 2016



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

³ A copy of that consent order signed by Defendant Benner in conjunction with the execution of the settlement agreement is appended to this order as Exhibit A.

⁴ The Court notes that the proposed "Order Entering Consent Judgment" includes an award of "costs and attorneys' fees of \$450,000.00[.]" Ordinarily, the Court cannot provide attorney fees to a party without first conducting an evidentiary hearing. See B&B Investment Group v Gitler, 229 Mich App 1, 15-17 (1998). Here, however, Defendant Benner expressly consented to an award in that amount when he signed the consent order as part of his settlement agreement, see Exhibit A, and Plaintiff GRR has not requested a single dollar of attorney fees beyond that amount specified in that consent order, so the Court need not devote further attention to the reasonableness of attorney fees claimed by GRR.

Exhibit A: Consent Order Signed by Defendant Benner

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

COMERICA BANK,
Plaintiff,

Case No. 11- 08297 -CH

v.

Hon. Christopher P. Yates

STEVEN D. BENNER, an individual,
Defendant. /

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**CONSENT ORDER SETTING ASIDE ORDER OF DISMISSAL, REINSTATING CASE
AND ENTERING CONSENT JUDGMENT**

At a session of said Court
held in Grand Rapids, Michigan
on _____

PRESENT: HON. _____
Circuit Court Judge

Upon the stipulation of the parties, by their undersigned attorneys, Plaintiff having filed with this order an affidavit stating that it provided three business days notice to James Doezema and Michael Baum on or after September 29, 2012, and stating the amount if any the judgment amount set below should be reduced, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the previously entered order of dismissal without prejudice is set aside and that this case is hereby reinstated.

IT IS FURTHER ORDERED that judgment be and hereby does enter against Defendant Steven D. Benner. in favor of Plaintiff in the amount of \$21,363,259.72, which is the sum of

\$18,499,429.65 principal, plus \$572,516.42 accrued interest and late fees as of June 26, 2012, plus \$1,841,313.65 unpaid SWAP payments and termination fees, plus costs and attorneys fees of \$450,000.00, less \$ _____, which reflects principal payments received by Plaintiff from the bankruptcy proceedings of S.D. Benner, LLC or of S.D. Benner III, LLC, after June 19, 2012 and prior to entry of this order. Interest will accruing at the applicable statutory judgment rate from the date of entry of this judgment until this judgment is fully satisfied.

This is a final order and closes this case.

Circuit Court Judge

The undersigned stipulate to entry of this Order and waive a hearing thereon:

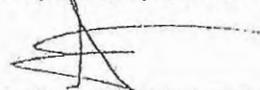
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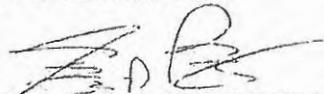
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STEVEN D. BENNER

By: 

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