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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

CAROLYN WEED, Individually and
as owner and president of
C. WEED, INC., a Michigan
Corporation,

Plaintiff,

vs.

File No. 90-7831-CK
HON. PHILIP E. RODGERS

PAM RICHARDS YEAGER and
JOHN YEAGER,

Defendants.

William Rastetter (P26170)
Attorney for Plaintiff

Donald A. Brandt (P30183)
Attorney for Defendants

DECISION AND ORDER

The Defendants have filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and (10) to enforce a settlement agreement. The Plaintiff responds that the agreement is not enforceable pursuant to MCR 2.405(B) and asks that the motion be denied. Both parties rely on written correspondence to support their arguments and have attached this correspondence to their briefs as exhibits. Having reviewed the parties' briefs and the attached exhibits, it is the Court's finding that an enforceable settlement agreement did exist as of January 18, 1991. However, following a dispute among counsel regarding the settlement, defense counsel indicated, on February 12, 1991, that Plaintiff and Plaintiff's counsel had the option of either fulfilling the settlement terms or proceeding with the litigation. For this reason, the Court is reluctantly constrained to deny Defendants' Motion for Summary Disposition.

The procedural mechanism to enforce a written settlement agreement or one made in open court is not a motion for summary disposition but a motion to enforce the agreement. Similarly, Plaintiff's counsel errs in arguing that a case may only be settled in accordance with the formal requirements of MCR 2.405. This court rule deals with offers of judgment. Clearly, there are other ways parties can settle litigation. These include the entry of a judgment following mediation, a stipulated consent judgment, the execution of a release and the submission to the Court of a stipulated final order of dismissal and, where appropriate, the Court will enforce written agreements to settle as well as oral settlements made in open court. MCR 2.507(H). In this case, the applicable court rule provides as follows:

"An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, 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." MCR 2.507(H)

It has long been recognized that settlement agreements made in open court by the parties or their attorneys are binding and will be enforced. Pedder v Kalish, 26 Mich App 655 (1970); and Michigan Bell Telephone Company v Sfat, 177 Mich App 506 (1989). In Groulx v Carlson, 176 Mich App 484 (1989), the Court of Appeals defined the term "open court" for purposes of MCR 2.507(H) to include agreements entered into in the chambers of the trial judge and in the presence of the trial judge, court clerk and court reporter.

A review of cases decided pursuant to the applicable court rule indicate that the appellate courts also will support the trial court's enforcement of less formal settlement agreements where it is clear that an agreement was reached and one side later wishes to revoke it. See, e.g., Rossi v Transamerica Car Leasing Co, 138 Mich App 807 (1984), and on rehearing, 141 Mich App 403 (1985). It is essential, however, that all parties agree

to all terms of the purported settlement. Metropolitan Life Ins Co v Goolsby, 165 Mich App 126 (1987).

Citing Booth Fisheries Co v Alpena Circuit Judge, 170 Mich 611, 615-616 (1912), the Court in Rossi, supra, stated as follows:

"Settlements of disputed matters and compromises of unsettled claims are favored by the law, and it will be presumed that parties consult their own interests in making them. Usually they will not be interfered with in the absence of fraud or mutual mistake, and then only when the party who seeks to rescind returns to the other party what he has received by virtue of the settlement. ...Nor will such settlement be set aside because one of the parties did not understand it or its legal effect."
(Citations omitted)

A review of the documents supplied to the Court in this matter shows that Plaintiff's counsel made an unconditional offer to settle the litigation for \$10,000.00 on November 28, 1990. The relevant paragraph states as follows:

"But presumably the Defendants also would like to have this entire matter resolved. I have two suggestions: (1) that the parties agree to submit their contractual dispute to binding arbitration under the Uniform Arbitration Act; or (2) that we split the difference of the settlement offers and agree to a settlement in the amount of \$10,000.00."
(Emphasis Added) Defendants' Exhibit A

There is no evidence that this offer was withdrawn or otherwise subsequently modified. Thereafter, on January 18, 1991, defense counsel accepted the offer. Defense counsel wrote as follows:

"As I shared with you in my correspondence of December 11, 1990, Mr. Yeager was inclined to accept your offer to settle this matter for \$10,000.00, and I write you at this time to confirm that agreement."
Defendants' Exhibit C

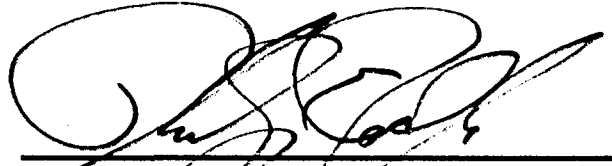
In reviewing all of the correspondence, there is no question that an offer was made by Plaintiff and accepted by Defendants. Were it not for the subsequent correspondence of defense counsel, this exchange of correspondence exemplifies a form of compromise or settlement agreement which this Court would enforce. However, defense counsel modified the acceptance on February 12, 1991, wherein he wrote as follows:

"I will suggest to my clients that if the form of your documents meets with their approval, that they provide a check made payable to Ms. Weed in the amount of \$10,000.00, together with executing your proposed Stipulation and Release forwarding same on to me for transmittal to you. At that time you will be confronted with the decision whether to proceed with the matter or settle it, and if you elect to proceed, you can simply return the check and the signed Stipulation and Release to the undersigned and we will proceed with the litigation. On the other hand, if you elect to settle the matter, then I trust the check will be negotiated and I will be provided copies of the fully-signed Release and Stipulation for processing." (Emphasis Added) Plaintiff's Exhibit 5

In the case at bar, and for tactical reasons, the Defendant chose to give Plaintiff a choice between consummating an agreed-upon settlement or taking the risks of proceeding with the litigation which, net of fees and costs, may generate a greater or significantly diminished recovery. Plaintiff returned the funds and elected to proceed. Plaintiff's Exhibit 6.

Given the amount in dispute, \$577.13, it is clear to the Court that this litigation is no longer driven by a rational assessment of economic benefit relative to cost. For those reasons, the Court will endeavor to accelerate the date for a settlement conference. Defendants' Motion for Summary Disposition is denied. No costs are awarded.

IT IS SO ORDERED.



HON. PHILIP E. RODGERS, Jr.
Circuit Judge

DATED: 5/01/91