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

ADELINE HAMBLEY,

Case No: 23-7180-CZ

Plaintiff,

Hon. Jenny McNeill
Sitting by SCAO Assignment

v.

OTTAWA COUNTY,
a Michigan County;
OTTAWA COUNTY BOARD OF COMMISSIONERS; and
JOE MOSS, **SYLVIA RHODEA**,
LUCY EBEL, **GRETCHEN COSBY**,
REBEKAH CURRAN, **ROGER BELKNAP**,
and **ALLISON MIEDEMA**,
Ottawa County Commissioners in their
individual and official capacities,

Defendants.

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

The parties agreed to settle this matter on November 6, 2023. Now Defendants have remorse and want out of the deal. Plaintiff Adeline Hambley seeks an Order from this Court enforcing the parties' settlement agreement.

On November 6, the parties negotiated an agreement while Defendants were in closed session in a special meeting. The parties memorialized that agreement in writing, whereby Plaintiff Hambley would leave her position as Health Officer in exchange for a payment of $4 million, among other terms (the November 6 Agreement). A majority of the full Board, including all individual Defendants,

voted for the agreement in an open session of the meeting, just prior to recessing the meeting for that day. After entering into the agreement, however, Defendants contracted a case of buyer's remorse. Defendants now argue that there was never a binding agreement in the first place. That is legally incorrect, however. The November 6 Agreement was in writing and subscribed by Defendants' attorney, and thus meets the standards set forth for enforceable settlement agreements under Michigan Court Rule 2.507(G). Accordingly, Hambley requests that the Court enter an order to enforce the November 6 Agreement.

BACKGROUND[1]

As this Court is aware, this matter has already been up to the Court of Appeals, where the appeals court affirmed this Court's holding that Plaintiff is Ottawa County's duly-appointed Health Officer. This case began after Defendants voted in their first meeting in office to demote Plaintiff to interim Health Officer in favor of putting a political crony in the role.

In September, during the pendency of the Court of Appeals case, Board Chair and Defendant Joe Moss unilaterally filed charges for termination of Plaintiff, in a second attempt to oust her. The Court of Appeals held that Defendants could run a hearing for termination and attempt to fire Plaintiff if their efforts complied with MCL 46.11(n). Defendants then held a two-day termination proceeding in October as part of a special meeting seeking to remove Plaintiff. That special meeting is

[1] Hambley incorporates the statements of facts and background from her previous briefs.

technically still ongoing in front of the Ottawa County Board of Commissioners (the Board).

On October 24, 2023, the Board began its two-day hearing under MCL 46.11(n) in a special meeting to consider termination of Hambley.[2] Hambley testified at the hearing, as did numerous witnesses who appeared pursuant to subpoenas that Hambley requested. Defendants did not offer any evidence beyond what was included with the charges and did not call any witnesses. Hambley maintained several objections to the lawfulness of the hearing and the manner in which it was conducted. At the conclusion of the hearing's second day, Defendants chose not to hold a vote on the charges, but instead voted to adjourn until October 30, 2023, asserting that they needed to consider the matter further. When they resumed the termination hearing on October 30, the Board voted to adjourn again until November 6, 2023, without further public explanation except that they needed more time.

In the days leading up to November 6, the parties engaged in settlement discussions. As part of those discussions, Plaintiff's counsel wrote a letter and asked defense counsel to share it with the full Board, explaining her position that the full Board should first consider whether it would agree to Plaintiff staying in her role as Health Officer with certain other terms – before Plaintiff would even agree to extend any settlement offer to resign in exchange for a payment to resolve her

[2] The Board later voted to amend the charges to comply with MCL 46.10, after making the decision to do so in a "recess" behind closed doors that Plaintiff has asserted, and continues to assert, violated the Open Meetings Act.

damages claims. Plaintiff's counsel also explained and previewed in the letter that because of Plaintiff's large economic damages if she resigned – stemming from the significant loss of value in her County pension, in addition to other factors – Plaintiff's first monetary offer to settle and resign would be in the millions of dollars.[3]

When the Board met on November 6, it immediately voted to go into closed session to confer with counsel about this litigation. While the Board was in closed session, Plaintiff's counsel and Defendants' counsel exchanged settlement offers and counteroffers. At around 5 p.m., Defendants' counsel accepted a settlement counteroffer from Hambley, pending Board approval in a public vote. At 5:15 p.m., Defendants' counsel emailed Plaintiff's counsel to confirm the terms of the agreement. (Ex. 1.) That email listed the terms as follows:

- Payment of 4 million dollars to Ms. Hambley.
- Ms. Hambley resigns from her position but will remain in office until 12/15/23 at the latest.
- Marcia Mansaray will resign from her position and her final day will be 1/31/23. She will be placed on paid administrative leave two days after the signing of the agreement. She will also receive one year severance with benefits or until such time as she has obtained employment at 75% of what she earned at Ottawa county.
- All parties, including Ms. Mansaray, well [sic] execute a full and final release of all claims, known and unknown, and will dismiss all pending litigation. The county will not appeal the court of appeals decision in Hambley v Ottawa county.
- The county will continue its liability coverage for Ms. Hambley and Ms. Mansaray for any acts they committed while in their official capacity.

[3] Because settlement discussions are generally confidential, Plaintiff's counsel has attempted to summarize here only what is necessary from the letter for the Court's consideration on the issue before it. Plaintiff's counsel will produce the letter in camera if the Court wants to examine it.

(Ex. 1 (bullets added).) Plaintiff's counsel responded that the terms were correct, except for the following additions and corrections:

- Ms. Hambley stays until at least 11/30/23, but no later than 12/15/2023.
- Ms. Mansaray's last day is 1/31/**2024**.
- County will continue liability coverage/county indemnity for AH [Adeline Hambley] and MM [Marcia Mansaray] for any suits or claims of any kind arising out of their employment, whether they committed any act or not.
- County drops the charges against AH [Adeline Hambley] and dismisses the hearing.

(Ex. 1 (bullets added).) At 5:23 p.m., Defendants' counsel responded: "Those additional terms and changes are correct." (*Id.*) The emails from Defendants' counsel contained his signature block at the bottom. (*Id.*) Defense counsel advised that once the Board formally voted to accept the agreement, defense counsel would do the first draft of a written settlement agreement for Plaintiff's counsel's consideration. There was no discussion between counsel that the agreement would not become final until the written formal document was finalized, only that the Board Chair would sign the written agreement in open session at its next meeting. Plaintiff's counsel suggested to defense counsel that the Board should announce the terms of the agreement when they voted, instead of waiting until the written document was released.

At around 5:30 p.m., the Board returned to open session. Defendant Moss moved to "accept Counsel's recommendation regarding litigation and settlement activities in the case of Hambley v. Ottawa County as addressed during closed session." Defendant Moss said nothing more about it, and he asked that a roll call

vote be taken. The individual defendants all voted in favor of the motion, and the other Board members all voted against the motion, except for Commissioner Terpstra, who was absent. The motion passed. The Board then voted to recess until November 14, 2023.

On November 8, 2023, The Holland Sentinel broke the story about the terms of the agreement. (S. Leach, "Instead of firing her, Ottawa Impact plans to give Hambley millions to resign," 11/6/2023, https://www.hollandsentinel.com/story/news/politics/county/2023/11/08/instead-of-firing-her-oi-plans-to-give-hambley-millions-to-resign/71501009007/.") There was significant public outcry opposed to the agreement.

On November 9, 2023, defense counsel sent an email to Plaintiff's counsel that attached a draft formal settlement document that included the terms of the November 6 Agreement. The text of the email provided the first indication that Defendants might attempt to back out of the agreement, stating that "until the Board votes on terms of a final settlement agreement, there is no final resolution." (Ex. 2.) Plaintiff's counsel made several small changes to the writing which did not alter the substance of the agreement – as is typical when counsel are finalizing the written document memorializing a settlement – and sent it back to Defendants' counsel. (Ex. 3.) Plaintiff's counsel also disagreed with Defendants' attempt to back away from the agreement, stating:

> I disagree that there is no final resolution. We have agreed to all major terms, which were confirmed in writing before the Board took its vote to accept counsel's recommendation and accept the settlement terms.

> That is a binding agreement between our clients. The writing is a mere memorialization of the agreement.
>
> …

(*Id.*) Defense counsel also sent an email to Plaintiff's counsel on November 10, 2023, saying that Defendants have "run in to problems on how to fund the proposed settlement."

When the Board reconvened on November 14, Defendants again voted to go into closed session. During discussions with Plaintiff's counsel, defense counsel notified Plaintiff's counsel that Defendants did not intend to honor the November 6 Agreement. Defendants' counsel claimed that they did not notify the primary or excess insurer before negotiating or agreeing to the deal, and they had since learned of potential negative consequences as a result, and so Defendants wished to start again with negotiations for different terms to resolve the litigation and termination hearing. Again, Plaintiff's counsel asserted that the November 6 Agreement was binding. Neither public outcry, Defendants' general remorse about the agreement, nor unforeseen potential negative financial consequences are enough to make the November 6 Agreement non-binding or unenforceable.

ARGUMENT

MCR 2.507(G) provides that an agreement between the parties to a case is binding if "the agreement is in writing, subscribed by the party against whom the agreement is offered or by the party's attorney." The court rule is "in the nature of a statute of frauds." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 456 (2006). An exchange of emails that is "subscribed" satisfies the writing requirement. *Id.* at

459. An email is subscribed if it has the name of the writer at the bottom of the document. *Id.*; accord *Melton v Barnard*, No 339521, 2018 Mich App LEXIS 3597, at *8 (Ct App Nov 29, 2018).

"An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts." *Reagan v Ford Motor Co*, 207 Mich App 566, 571 (1994). As such, there must be offer and acceptance, as well as "mutual assent or meeting of the minds on all the essential terms." *Kloian*, 273 Mich App at 452-53. To determine whether there is a meeting of the minds, courts use an objective standard, examining the parties' words and actions rather than their subjective states of mind. *Id.* at 454.

The parties in this case exchanged several offers throughout the day on November 6, 2023. As the day was nearing its close, Defendants accepted Hambley's last counteroffer, and Defendants' counsel memorialized that agreement in an email to Plaintiff's counsel. (Ex. 1.) Plaintiff's counsel responded with some changes, and Defendants' counsel affirmed that Defendants agreed to those changes. (*Id.*) That email exchange demonstrates a meeting of the minds on all the essential terms of a settlement; the agreement created a binding contract between the parties as to the terms listed. The agreement was in writing and subscribed by Defendants' counsel, as required by MCR 2.507(G).

Defendants' counsel claims that the agreement was not intended to create a binding contract because the subject line of the email says "Tentative Settlement Agreement." (See Ex. 1.) However, this is because the Board cannot formally agree

until they take the vote in the open public meeting. The Board cannot act in closed session with legal counsel to agree to a settlement under the Open Meetings Act. But once the Board came back into the open, public meeting, and voted to accept counsel's recommendation as to the settlement, that was an agreement to these terms. No caveat was stated that they needed to approve the written memorialization of the agreement for it to become binding.

In determining the applicability of MCR 2.507(G) to the facts at issue, the Michigan Court of Appeals decisions in *Kloian*, 273 Mich App 449, is instructive. In that case, the plaintiff's attorney sent an email to the defendant's attorney offering to settle the lawsuit for payment of $48,000 in exchange for a dismissal with prejudice and a release. *Id.* at 453. The defendant's attorney emailed back, stating "[Defendant] accepts your settlement offer" and offered to draft the written settlement as agreed. *Id.* The court held that the defendant expressed intent to be bound by the plaintiff's offer, and that there was a "meeting of the minds on the essential terms of the agreement." *Id.* at 455. Accordingly, the court found that the parties created a contract and enforced the settlement agreement pursuant to MCR 2.507(G).

Similarly, the parties in this case exchanged emails that demonstrate an agreement as to all material terms of the settlement. The emails from Defendants' counsel agreeing to the settlement terms were subscribed. The Board majority then voted to accept the agreement in open session.

Finally, Defendants' counsel drafted a formal settlement agreement with the same agreed-upon terms. The parties need not have completed a formal settlement agreement containing all non-material terms to create an enforceable agreement under MCR 2.507(G). *Melton*, No 339521, 2018 Mich App LEXIS 3597, at *8. *Melton* is instructive here. There, the parties' attorneys reached a "settlement in principle" in a series of email exchanges. *Id.* at *1. The parties told the trial court that they had reached "an agreement in principle" and requested adjournments to "complete the settlement." *Id.* The plaintiff later tried to back out of the agreement, arguing that the parties did not finalize a formal settlement agreement and that the agreement in principle was not binding. *Id.* at *9.

However, the court rejected that argument in *Melton*, finding that the parties had agreed to settle, and were "actively working towards a comprehensive written agreement." 2018 Mich App LEXIS 3597, at *9. The court went on to explain that "the list of agreements contained in the e-mail was specific enough to address the parties' disputed issues" and there was no indication that any essential terms were left to be negotiated in the future. *Id.* at *10-11. Moreover, the court explained, where parties agreed to all material terms of a contract, "the law may supply missing nonessential details of a contract by construction." *Id.* at *10. Accordingly, the court concluded that the settlement agreement was enforceable under MCR 2.507(G). *Id.* at *11.

Here, too, the small edits that Plaintiff's counsel requested in the written document memorializing the agreement did not alter the major terms to which the

parties all assented. Calling it an agreement "in principle" also did not support a claim that a settlement was not binding where the circumstances demonstrated that everyone knew there was a settlement agreement on the major terms. This is the exact situation presented in this case, where the Board voted minutes after counsel confirmed the terms of the deal to accept those terms.

Thus, like the settlement agreement in *Kloian* and in *Melton*, the November 6 Agreement is enforceable under MCR 2.507(G). All essential terms were agreed and documented, in a writing which was subscribed with the name of defense counsel. The Board voted to "accept Counsel's recommendation regarding litigation and settlement activities in the case of Hambley v. Ottawa County as addressed during closed session." If the Board asserts that they were not voting to accept the settlement terms, which seems impossible given the timing of the vote after the confirming email, the Board cannot plausibly even make such an argument unless they submit the original closed session meeting meetings in camera for the Court's inspection, with the Court permitting Plaintiff's counsel to inspect redacted minutes including only the discussion regarding acceptance of the settlement terms and an intent to vote on them once the Board returned to the open meeting. Given all of the circumstances, though, it is already settled under Michigan law that the November 6 Agreement is binding, and Defendants are obligated to go through with it.

CONCLUSION

Accordingly, Hambley respectfully requests that this Court enter an order to enforce the November 6 Settlement Agreement, pursuant to MCR 2.507(G).

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Dated: November 16, 2023 By: /s/ Sarah R. Howard

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