

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

VERSTRAETE ENTERPRISES, LLC
THE DG GROUP, LLC, DARLENE SOAVE,
and GEORGE M. VERSTRAETE,

Plaintiffs,

vs.

Case No. 2015-3128-CB

GEORGE J. VERSTRAETE, KIMBERLY
VERSTRAETE, f/k/a KIMBERLY ROMAIN,

Defendants.

OPINION AND ORDER

Plaintiffs have filed a motion to enforce settlement and enter judgment. Defendants oppose the motion and request that it be denied. Plaintiffs have also filed a supplemental brief in support of their motion.

I. Factual and Procedural History

On September 27, 2016, counsel for each side exchanged emails, which ultimately culminated in the parties' reaching a settlement of this matter. After Defendants refused to execute formal settlement documents, Plaintiffs filed the instant motion to enforce settlement and enter judgment. While Defendants did not file a response to the motion, their counsel appeared at the November 14, 2016 hearing held in connection with the motion and provided oral argument opposing the motion. At the conclusion of the hearing, the Court granted Plaintiffs' request to enforce settlement, but took Plaintiffs' request to enter judgment under advisement.

II. Arguments and Analysis

In their motion, Plaintiffs request that the Court enter a judgment against

Defendants in the amount of \$30,000.00, plus court costs and attorney fees. Specifically, Plaintiffs seek a judgment awarding them the settlement amount of \$22,500.00, plus a \$7,500.00 penalty, in addition to attorney fees and costs. While the Court has already found that the email exchange formed a binding settlement agreement between the parties, the remaining dispute in this case is whether Defendants defaulted under the terms on that agreement, thereby entitling Plaintiff to the \$7,500.00 penalty.

At 9:44 a.m. on September 27, 2016, Defendants' counsel sent Plaintiffs' counsel an email which provided, in part, that Defendants were "agreeable to the penalty clause of \$7,500.00 in the event [Defendants] default and judgment needs to be entered." (See Exhibit 4 to Plaintiffs' supplemental brief.) However, the 9:44 email does not provide a date on which the first payment was due. At 10:35 a.m. on the same date, Plaintiffs' counsel sent an email to Defendants' counsel responding to the 9:44 email. In that email, Plaintiffs' counsel provides some amendments to Defendants' proposed terms. (Id.) However, the 10:35 email also does not provide a date the first payment is due. (Id.) The last email was a 10:41 a.m. response from Defendants' counsel accepting the proposed amendments. The 10:41 email also does not provide a date for the first payment.

While, for the reasons stated on the record at the November 14, 2016 hearing, the Court is convinced that the above-referenced email chain formed a binding settlement agreement resolving the remaining claims in this case, the Court is not persuaded that Plaintiffs are entitled to recover the \$7,500.00 penalty amount as Defendants have not defaulted on their obligations under the settlement agreement. A

default is defined as "the omission or failure to perform a legal or contractual duty." *Black's Law Dictionary* (10th ed). In this matter, Plaintiff aver that Defendants defaulted under the settlement agreement by failing to make the required payments. However, as discussed above, no payment date was provided in the September 27th email chain. Consequently, Defendants did not fail to make any payment(s) by the required date, as no such date was in place. Further, the parties' previous failure to set a deadline for the first payment is evidenced by the fact that the parties stipulated, following the November 14, 2016 hearing, that Defendants' first payment is due on December 1, 2016. For these reasons, the Court is convinced that Defendants have not defaulted on their obligations under the settlement agreement. Consequently, Plaintiffs are not entitled the \$7,500.00 penalty at this time. As a result, Plaintiffs' motion to enter judgment must be denied.

Conclusion

For the reasons discussed above, Plaintiffs' motion to enter judgment is DENIED. Pursuant to MCR 2.602(A)(3), the Court states that this matter REMAINS CLOSED.

IT IS SO ORDERED.

Date: DEC 12 2016



Hon. Kathryn A. Viviano, Circuit Court Judge