

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

MOUNT GROUP, LLC and
MOUNT CLEMENS INVESTMENT
GROUP, LLC,

Plaintiffs,

vs.

Case No. 18-256-CB

MOSTAFA M. AFR, A&A MANAGEMENT
SERVICE, LLC, SHLDON STONE,
TURFAH FAMILY HOLDINGS, and
ZEINAB AFR,

Defendants.

OPINION AND ORDER

This matter comes before the Court on Defendants Mostafa M. Afr, A&A Management Service, LLC, Sheldon Stone, Turfah Family Holdings and Zeinab Afr's (hereinafter referred to collectively as "Defendants") Motion to Resubmit to Case Evaluation and to Adjourn Scheduling Order Dates.

I. Background

This case involves multiple claims by two plaintiffs against five defendants. The matter went to case evaluation in December 2018, resulting in a single award in favor of both Plaintiffs against all Defendants. The award did not specify how the award applied to each individual plaintiff or defendant.

II. Arguments

Defendants argue that the Court should resubmit the matter to case evaluation because the court rules require that case evaluators make individual awards for each plaintiff against each defendant. According to Defendants, the current award does not

differentiate between individual plaintiffs and defendants and is thus meaningless making it difficult to settle the case or calculate sanctions.

Plaintiffs respond that the Court should deny Defendants' motion because: the award was proper; Defendants consented to the format; and that Defendants merely seek to delay the settlement conference.

III. Law and Analysis

MCR 2.403(K)(2) provides that a case evaluation "*must* include a separate award as to the plaintiff's claim against each defendant ...", and that all "claims filed by any one party against any other party shall be treated as a single claim." Emphasis added. MCR 2.403(K)(2) makes it possible for a plaintiff to accept awards against some defendants while rejecting awards against other defendants. *Merc Bank Mtg Co, LLC v NGPCP/BRYS Ctr, LLC*, 305 Mich App 215, 225; 852 NW2d 210 (2014).

The same interpretation rules apply to court rules as those applied to statutes. *Lech v Huntmore Estates Condominium Ass'n (On Remand)*, 315 Mich App 288 at 290; 890 NW2d 378 (2016). Words of court rules are construed according to their "plain and ordinary meanings," and "legal terms according to their legal meanings." *Id.*

Michigan Courts have recognized that MCR 2.403(K)(2) requires a case evaluation award to contain separate awards as to each defendant. See *Dane Const, Inc v Royal's Wine & Deli, Inc*, 192 Mich App 287, 291, n.2; 480 NW2d 343 (1991); *Mer Bank Mtg Co, LLC*, 305 Mich App at 223 ("MCR 2.403(K)(2) requires the case evaluation panel to issue a separate award as to each plaintiff against each defendant..."); *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 93; 649 NW2d 397 (2002) (A plain reading of MCR 2.403(K)(2) requires that the case evaluation provide a

separate award against each defendant on plaintiff's claim.)

In the present matter, the case evaluation award clearly does not conform to compulsory language in MCR 2.403(K)(2) stating that an award "must include" a separate award for each defendant. The case evaluators in this case provided only a single award for seven parties. Plaintiffs' response that the award conforms to the court rules or that Defendants' consented to the format lacks merit. Defendants could not consent to a format disallowed by court rule. Further, Plaintiffs have not cited authority for the proposition that alleged "joint and several" liability defeats the express requirements of the court rule.

The Court is persuaded that it has the authority set aside a defective case evaluation award. It stands to reason that if the Court has the authority to set aside a case evaluation for good cause after both parties have accepted it, see, e.g., *Goch Properties, LLC v C Van Boxell Transp, Inc*, 477 Mich 871, 871; 721 NW2d 581 (2006), then it may set aside an award defective on its face. See also, MCR 2.410(C) (Court may submit a case to more than one ADR process); and *Berger v Katz*, unpublished per curiam opinion of the Court of Appeals, issued July 28, 2011 (Docket No. 291663) p, 9 (To extent case evaluation panel did not follow MCR 2.403(K)(2) because defendant desired separate awards, "it was incumbent upon them to raise the issue in an appropriate motion in the trial court."). Plaintiffs have cited no authority permitting reliance on a defective award. Therefore, the Court will set aside the award and order the matter resubmitted.

In summary, based on the language of MCR 2.403(K)(2) and the above-referenced authority, the case evaluation award entered in this matter must be set aside and a new case evaluation held.

IV. Conclusion

For the reasons set forth above, Defendants' motion is GRANTED. Further, the (1) case evaluation award is set aside, (2) parties shall provide copies of their case evaluation summaries to the case evaluation panel that issued the incorrect award on or before April 23, 2019, (3) case evaluation panel shall issue a corrected award consistent with MCR 2.403(K)(2) on or before May 7, 2019. Neither party shall be charged a fee for the new case evaluation.

Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

Date: APR 09 2019

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge