

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN W. DUARTE,

Plaintiff/Counterdefendant-Appellee,

v

CITY OF LANSING,

Defendant/Counterplaintiff-Appellant

and

CITY OF LANSING EMPLOYEES
RETIREMENT SYSTEM BOARD OF
TRUSTEES, MAYOR OF LANSING, SANDY
ALLEN, ELLEN BEAL, TONY BENAVIDES,
ROBERT BROCKWELL, MARK CANDY,
HOWARD JONES, RICK LILLY and PAUL
NOVAK,

Defendants-Appellants.

UNPUBLISHED
September 2, 1997

No. 193627
Ingham Circuit Court
LC No. 94-079040-CZ

Before: Gribbs, P.J., and Sawyer and Young, JJ.

PER CURIAM.

Defendants appeal the April 10, 1996, second amended judgment enforcing a settlement agreement. The underlying settlement agreement was entered into during the week set for trial in this matter, by plaintiff and a majority of the Lansing City Council members, during two sessions of open court, following a series of ongoing settlement negotiations. We affirm.

On appeal, defendants challenge the settlement that they entered into in this case. Defendants argue that the circuit court improperly entered a judgment “contrary to the terms of the Lansing City charter, the Open Meeting Act, and the doctrine of separation of powers”. We do not agree. First, defendants complied with the provisions of the city charter. As defendants acknowledge in their

appellate brief, the city council has the authority to settle a civil action. Indeed, civil settlements are not permitted without the consent of the council. Here, all members of the seven-member city council except one were present in court for the negotiations. Pursuant to the city charter, city business may be properly conducted whenever there is a quorum of five members. The charter also provides that a council action becomes effective upon vote of five council members. Defendants concede that five council members accepted the proposed settlement on the record in open court and that all five stated on the record that they would vote to approve the settlement at the next council meeting. Although one council member asked permission to leave the courtroom on other business and returned later to enter his consent on the record, he discussed his position with the other council members before leaving. This is not a case where the council members lacked authority to enter into a binding agreement. In *Presnell v Wayne Co Bd of Red Comm'rs*, 105 Mich App 362; 306 NW2d 516 (1981), cited by defendants, this Court determined that a board of road commissioners could not be bound by the consent of their attorney. Here, a majority of the council itself acknowledged in open court its intent to be bound by the settlement agreement.

There is no merit to defendants' suggestion that their negotiations here were in violation of the Open Meetings Act (OMA), MCL 15.261 *et seq.*; MSA 4.1800(11) *et seq.* The restrictions of the OMA do not necessarily apply to settlement negotiations, MCL 15.268(e); MSA 4.1800(18)(e), and defendants' consent to the settlement proceedings in this case was given publicly in open court. It is of no moment that one council member returned after the others had left, with the knowledge and apparent approval of the court, the city attorney and the other council members, to enter his consent on the record in open court. Moreover, defendants have failed to make any showing that their alleged noncompliance or failure under the OMA impaired the rights of the public in any way. See MCL 15.270(2); MSA 4.1800(20)(2).

Nor is there any merit to defendants' claim that there was a violation of the separation of powers. There is nothing on the record to indicate that the circuit court interfered with the discretionary actions of defendants in this case. *Wayne Sheriff v Wayne Comm'rs*, 148 Mich App 702, 704; 385 NW2d 267 (1983). Defendants argue that the circuit court should not have enforced their settlement agreement because the city council's failure to approve the settlement at a later city council meeting was a "discretionary act". We note, however, that defendants do not claim mistake, fraud or unconscionable advantage, and that defendants' decision to enter into the settlement in open court was also an act of discretion on their part. The circuit court properly declined to interfere with defendants' settlement decision merely because one of the members later changed her mind. MCR 2.507(H). See also *Zelenka v Wayne Corp Counsel*, 143 Mich App 567; 372 NW2d 356 (1985).

Defendants also contend that the circuit court erred by imposing sanctions on the basis of defendants' opposition to entry of the judgment. We do not agree. Defendants' position was devoid of any arguable legal merit and sanctions were properly imposed. We also note that defendants' claim on appeal that the circuit court's judgment did not comport with the terms of the settlement agreement is without support. It is clear, both from the hearing transcript and from the attorneys' initials on the draft judgment, that the settlement agreement was as the parties intended.

Defendants' remaining claims, concerning their counterclaim, the witness list, and their request for adjournment, are rendered moot by our decision and need not be reviewed.

Affirmed.

/s/ Roman S. Gibbs

/s/ David H. Sawyer

/s/ Robert P. Young, Jr.