STATE OF MICHIGAN

COURT OF APPEALS

ARKWRIGHT MUTUAL INSURANCE COMPANY, MICHIGAN MUNICIPAL GROUP SELF INSURED POOL, and CITY OF IONIA,

Plaintiffs/Counter-Defendants,

v

GRANGER CONSTRUCTION COMPANY,

Defendant/Counter-Plaintiff/Cross-Defendant-Appellee,

and

AMERICAN SURFPAC CORPORATION,

Defendant/Counter-Plaintiff/Cross-Plaintiff-Appellee,

and

CAPITAL CONSULTANTS, INC.,

Third-Party Defendant/Third-Party Plaintiff-Appellant.

UNPUBLISHED
May 26, 2000

No. 216198
Ionia Circuit Court
LC No. 94-015990-CK

Before: Gage, P.J., and Meter and Owens, JJ.

PER CURIAM.

In this procedurally complex case involving the failure of certain filtering materials at the Ionia wastewater treatment plant, third-party counter-plaintiff Capital Consultants, Inc. ("Capital"), who filed

a counterclaim against third-party counter-defendant Granger Construction Company ("Granger"), appeals by right from an order in which the trial court held that Capital's counterclaim against Granger was invalid because both parties had earlier accepted a mediation award that purported to dispose of all "potential claims" in the case. We affirm the trial court's dismissal of Capital's counterclaim.

City of Ionia ("Ionia") is a municipality and a member of Michigan Municipal Group Self Insurance Pool ("MGSIP"), an entity that insured property at the Ionia wastewater treatment facility. Arkwright Mutual Insurance Company ("Arkwright") also insured property at the facility. In July 1990, Ionia contracted with Granger to update the wastewater treatment facility, and Granger subcontracted with American Surfpac Corporation ("Surfpac") to supply and install filtering materials in the facility's filter towers. In April 1992, the filter materials malfunctioned, causing damages. Ionia, MGSIP, and Arkwright then sued Granger and Surfpac for negligence and breach of contract.

Subsequently, Surfpac counterclaimed against Ionia and cross-claimed against Granger for the return of money it had spent to replace the originally defective filtering materials, arguing that it had not been obligated to replace them. Granger and Surfpac then filed third-party complaints against Capital, the architect and engineer on the project, arguing that any money awarded against them should be reimbursed by Capital because Capital failed to properly design and supervise the project.

Granger also filed a countercomplaint against the original plaintiffs, arguing that Ionia had been negligent in its operation of one of the filter towers in question. Additionally, Granger filed a cross-complaint against Surfpac for indemnification and defense costs, contending that the damages alleged by the original plaintiffs were caused by Surfpac's negligent design, manufacturing, and installation of the filter materials. The trial court granted Granger's motion for summary disposition with regard to the cross-claims between Surfac and Granger.

The case was submitted to mediation, and on September 5, 1997, the mediators returned an evaluation of $225,000 for plaintiffs in the principal suit and $7,500 in the third-party claim by Granger against Capital. The mediation evaluation stated that "all other claims, including cross, counter, 3rd party and potential claims are no caused."

Before mediation, Capital sought leave to file a counterclaim against Granger and Surfpac, and the court granted leave after mediation, on September 15, 1997. On September 24 and 25, 1997, Capital and Granger accepted the mediation evaluation, and on November 3, 1997, Capital formally filed its counterclaim against Granger, alleging that Granger was required to indemnify Capital against losses attributable to acts or omissions of the contractor or subcontractors.

Capital filed a motion for summary disposition of its counterclaim against Granger, and Granger then filed a motion for entry of judgment on the mediation evaluation, arguing that the acceptance of the mediation evaluation by Granger and Capital disposed of all claims and potential claims in the case and therefore precluded the viability of Capital's counterclaim. The trial court ruled that because (1) there is no prohibition against mediators ruling on unfiled claims, (2) the proposed answer was in existence at the time of the mediation, (3) the counterclaim was mentioned in Capital's mediation brief, (4) the

counterclaim was encompassed by the decision of the mediators as a "potential claim," and (5) the mediation award was accepted by both parties, the counterclaim was not viable.

Capital argues that the trial court erred by entering judgment on the mediation evaluation – and therefore rejecting Capital's counterclaim – because the mediation panel was without jurisdiction under MCR 2.403 to make an award that disposed of a claim not yet filed in the case. We review this issue de novo, since it involves the interpretation of a court rule. *Merit Mfg & Die, Inc v ITT Higbie Mfg Co*, 204 Mich App 16, 19; 514 NW2d 192 (1994).

MCR 2.403(K)(2) states, in relevant part, as follows:

> The evaluation must include a separate award as to the plaintiff's claim against each defendant and as to each cross-claim, counterclaim, or third-party claim that has been filed in the action.

Capital contends that the mediation panel had no authority to rule on the counterclaim because it had not been "filed in the action" under MCR 2.403(K)(2). However, MCR 2.403(K)(2) does not indicate that a mediation panel may *only* rule on claims "filed in the action;" instead, it indicates that a mediation panel *must* rule on claims "filed in the action." In other words, while the panel here was obligated to rule on all filed claims, nothing in the court rule prohibited it from ruling on claims that had not yet been filed.

Capital contends that allowing the mediators to rule on claims that had not yet been filed would constitute an impermissible expansion of the mediators' jurisdiction beyond the claims over which the trial court had jurisdiction. Beyond its flawed reliance on MCR 2.403, however, Capital cites no authority for this proposition. We conclude that under the specific circumstances of this case, where (1) Capital sought leave to file the counterclaim before mediation and attached the proposed claim to the motion for leave; (2) Capital characterized the counterclaim as "currently pending" at one point in its mediation summary and also mentioned the theory behind the counterclaim in the summary; (3) Capital acknowledged in the summary that the goal of the mediation was to "facilitate a resolution of all claims" and to achieve a "complete settlement of this matter;" (4) the mediation award specifically disposed of "all other claims, including cross, counter, 3rd party and potential claims;" and (5) both parties accepted the mediation evaluation without alteration, the mediation award did in fact dispose of Capital's counterclaim. Indeed, the mediators were aware of the counterclaim, and they specifically "no-caused" all "counter . . . and potential claims." Moreover, the parties accepted the mediation award as written, thereby acquiescing in the nonviability of "potential claims." Accordingly, the trial court did not err by entering judgment on the mediation award and dismissing Capital's counterclaim.[1] This holding is in accordance with the purpose of the mediation court rule: to simplify and expedite the *final* settlement of cases. See *Joan Automotive Industries, Inc v Check*, 214 Mich App 383, 388-389; 543 NW2d 15 (1995).

Capital further argues that the trial court improperly assessed the merits of its counterclaim by denying its motion for summary disposition regarding the counterclaim.[2] We need not address this issue, however, in light of our conclusion that the trial court properly dismissed the counterclaim.

The trial court's dismissal of Capital's counterclaim is affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Donald S. Owens

[1] Capital further argues that this Court should either set aside the judgment under MCR 2.612(C) (governing motions for relief from judgment) or remand this case for the trial court to consider whether relief under MCR 2.612(C) is appropriate. Given that Capital accepted the mediation award disposing of all "potential claims," we can discern no basis for relief under this court rule. Nothing in the rule prohibits Capital, however, from raising a motion under MCR 2.612(C) in the trial court if Capital does find a meritorious basis for such a motion.

[2] It is unclear why the trial court, in ruling on Capital's summary disposition motion, addressed the merits of the counterclaim after ruling that the counterclaim was not viable as a result of the mediation acceptance.