STATE OF MICHIGAN

COURT OF APPEALS

SAGINAW INTERMEDIATE SCHOOL DISTRICT, Plaintiff-Appellant, v COLEMAN COMMUNITY SCHOOLS, Defendant-Appellee.	UNPUBLISHED November 20, 2007 No. 270098 Midland Circuit Court LC No. 03-006362-CK

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Plaintiff, the Saginaw Intermediate School District ("the SISD"), appeals as of right an order that, in relevant part, concluded that defendant Coleman Community Schools ("Coleman") was not obligated to pay for certain software packages that had been purchased pursuant to a "consortium" of school districts in which the parties participated.[1] We reverse.

In the late 1990s, the Oakland Intermediate School District sold data processing services, including payroll, accounting, and student recordkeeping, to a number of schools in the state. In approximately June 1999, Oakland began notifying schools that it had decided to stop selling these services. Twelve school districts in Saginaw and Midland counties, including the SISD and Coleman, decided that they would work together to find replacement services, using the SISD as a central facility for discussions. All decisions reached by the group of representatives were arrived at by consensus. The group referred to itself as a "consortium," although apparently informally; minutes from meetings refer to the group as the "Software Evaluation Team." The only business-related definition of "consortium" in Black's Law Dictionary is a "group of companies that join or associate in an enterprise." Black's Law Dictionary, 8th ed. Similarly, the Random House Webster's College Dictionary (2001 ed) defines "consortium" as "a combination, as of corporations, for carrying out a business venture requiring large amounts of capital." The group did not commit any operating procedures or rules governing their

[1] The portion of the order requiring defendant to pay for certain printing hardware that had been ordered specifically for defendant is uncontested on appeal.

interactions to writing. However, intent can be inferred from how people or organizations define their relationships with others.

Representatives of the school districts eventually agreed, by consensus,[2] to purchase hardware and software for two independent systems, and that the SISD would house and maintain the servers and central software and act as a provider to the other districts. The costs of the project – many of which were fixed and independent of the number of participants – would be divided by the total number of students and then apportioned to all participating schools on a per-student basis; the exceptions were the SISD and the Midland ESA, both of which committed to fixed contributions. "SCI" would be used for payroll and accounting, and "TIES" would be used for student records. As of May 23, 2000, the software evaluation team expected that it would take approximately six to nine months to bring the school districts online; Coleman would be operational by January 2001. The SISD insisted that all the participating schools pass resolutions, with attached pro-forma contracts containing estimated costs, committing to their software purchases before the SISD signed the relevant contracts with the software providers. The testimony uniformly showed that all parties understood that the purpose of the resolutions was to provide the SISD with commitments to the software. Furthermore, the pro-forma contracts were between the individual schools and the SISD.

One of the factual disputes in this matter concerns the Coleman school board's resolution. In particular, Coleman maintains that the pro-forma contract was not attached to the copy of the resolution given to, and actually adopted by, its board on August 16, 2000. Nevertheless, the resolution explicitly provided, among other things, that "The Board of Education of the District does hereby authorize the purchase of Administrative Software and Student Software records management services, according to the terms and conditions of the Technology Access Services Agreement set forth in substantial form in Exhibit A, attached hereto."

The trial court observed that it would be "pretty bizarre" for the Coleman board to have passed such a resolution that clearly refers to an attached contract without actually having the contract. The trial court ruled that whether Coleman actually received a copy of the pro-forma contract was irrelevant because if the board "decided to execute the resolution without any understanding of what's in the document when it contained – references contained to it in the resolution" then it did so "at [the board's] own peril." The Coleman representative who presented the resolution to the Coleman board testified that the board was aware that its decision whether to join in the deal would affect pricing for itself and for all of the other districts. Furthermore, the trial court ruled that although the pro-forma contract at the time of the resolution had "a reasonable number of blanks in it," particularly the specific price, Coleman was well aware of the estimated price, which turned out to be accurate.

Coleman initially participated in training in the new software along with all of the other participating districts. Although there were no problems implementing the TIES package, the

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[2] It is undisputed that the final vote was by consensus. Some witnesses testified that Coleman threatened to leave if an alternative software package was selected, whereas other witnesses testified that they observed no such coercive tactics employed.

SCI package suffered delays and implementation problems. In the meantime, Coleman's superintendent was replaced at the end of August 2000 with an interim superintendent, and a different individual became the new superintendent in February 2001. At some point prior to June 2001, Oakland reversed its decision to discontinue its services and offered Coleman a "competitive" price for a continuation of those services. Coleman's personnel perceived serious difficulties with the training and unacceptable deficiencies in the software, and Coleman's replacement superintendent – who had had nothing to do with the consortium until that point – concluded that it would be in Coleman's best interests to withdraw from the project. The Coleman board rescinded its August 16, 2000 resolution, and Coleman's superintendent refused to sign the final contract. As a result of Coleman's departure from the project, the SISD has absorbed the per-student costs that otherwise would have been paid by Coleman for the software.

The gravamen of this case is the SISD's contention that Coleman is legally or equitably required to pay for the costs that it would have paid had it remained in the project. The trial court concluded that, although it was "understandable" that the SISD had relied on Coleman's resolution, the lack of a written agreement among all consortium members meant that the resolution was not legally binding.

"We review the trial court's findings of fact in a bench trial for clear error and conduct a review de novo of the court's conclusions of law." *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). We review de novo as a question of law the proper interpretation of a contract, including a trial court's determination whether contract language is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). We review a trial court's equitable decisions de novo, but we review the underlying factual determinations for clear error. *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997).

We find that the evidence in this case wholly failed to support the trial court's finding of fact that Coleman, or any other participant in the project, anticipated a written "consortium agreement" or any other written contract between all participating members. The trial court found that the contract actually produced, between each participating district and the SISD, was contrary to Coleman's expectations and therefore not enforceable against Coleman on the basis of equity or its resolution. We disagree.

It is undisputed that the overall arrangement was to be a collective effort by all of the involved school districts to purchase and operate administrative software *through the SISD*. It is also undisputed that all of the entities involved, *including Coleman's board at the time it passed the resolution*, knew that the resolution was intended to be a firm and final head-count of which schools were committing themselves to the software. The resolution was known to Coleman to be a commitment to an aliquot share of the cost of the software, not to the collective effort, and Coleman was also aware that the software was to be purchased and operated through the SISD. The resolution itself states that the entities "*have* collaborated to select software and hardware vendors collectively for the provision of said service," and Coleman "desires to purchase said services through the ISD, which opportunity is made possible by various entities cooperating to collaboratively avail themselves of such services." Finally, Coleman's replacement superintendent testified that he only developed concerns about whether a "consortium" existed or whether its operating guidelines were written down *after* trial began. No law has been cited to us showing a requirement for such a written agreement. Our research shows that a contract requires

only mutual assent to all essential terms of the parties' agreement, not necessarily even a signature. See *Hall v Small*, 267 Mich App 330, 333; 705 NW2d 741 (2005).

The trial court's reasoning, and Coleman's argument, appear to be that Coleman's resolution was intended as a commitment, but it was intended as a commitment to something other than the terms of the final contract that Coleman refused to sign. However, all of the evidence shows the opposite: Coleman was already involved in an existing cooperative venture, and it intended the resolution to be no more than a commitment to the software. Coleman was aware that the SISD would be the central management point for acquiring and administering the software, and it was aware that the resolution was for the purpose of satisfying SISD's – and the other involved parties' – need to know for sure who would be paying for what. The resolution stated, in relevant part, that Coleman "desired to purchase said services through the ISD, which opportunity is made possible by various entities cooperating to collaboratively avail themselves of such services" and therefore resolved to authorize "the purchase of Administrative Software and Student Software records management services, according to the terms and conditions of the Technology Access Services Agreement set forth in substantial form in Exhibit A, attached hereto." The record does not support a finding that the resolution passed by the Coleman board on August 16, 2000, was premised on the board's belief at the time that the resolution would commit it to something other than what the resolution itself specified.

The trial court was also concerned about the reciprocity of obligations in the contract; it appears the trial court's concern was legal consideration, which is an "essential element in a contract claim." *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 158; 719 NW2d 553 (2006). Consideration is merely "a bargained-for exchange" where a party performs a service, receives a benefit, or sustains a detriment. *General Motors Corp v Dep't of Treasury, Revenue Div*, 466 Mich 231, 238-239; 644 NW2d 734 (2002). In *46th Circuit Trial Court*, our Supreme Court concluded that there could be no consideration where a party agreed to do something it was already obligated to do. The trial court concluded that there was no reciprocity of obligation because the "commitments that were all executed were executed between Saginaw and the individual districts." However, that fact was known to the Coleman board, and it is irrelevant to determining whether there was consideration. Under the contract, the SISD was required, among other things, to acquire and maintain the pertinent hardware and software, and it was required to provide access to the same. Coleman, once it formally resolved to do so, was required to pay its aliquot share, which the record reflects had been quite accurately forecast and was known to the Coleman board at the time it acted. The contract also provided a mechanism for resolving disputes in the event either party deemed the other to be in breach of their obligations. The SISD had more than the apocryphal "peppercorn" of obligation to Coleman, and Coleman was not without recourse. The trial court clearly erred in finding no "mutual exchange[] of promises concerning performance"

Furthermore, under the circumstances, the resolution itself was a legally binding commitment. "Boards of education, like other corporate boards, execute their powers at meetings lawfully called and held unless otherwise authorized by statute." *McLaughlin v Bd of Ed of Fordson School Dist of City of Dearborn*, 255 Mich 667, 670; 239 NW 374 (1931). The August 16, 2000, resolution states that it was adopted at a regular meeting of the Coleman Board of Education. Such a meeting may be considered a quasi-legislative proceeding, *Kefgen v Davidson*, 241 Mich App 611, 619; 617 NW2d 351 (2000), and an act of legislation by one

legislature cannot bind future legislatures. *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 713; 664 NW2d 193 (2003). However, a resolution is not actually in the nature of legislation. "A resolution is the form in which a legislative body expresses a determination or directs a particular action. It is of a special or temporary character, whereas an ordinance prescribes a permanent rule for the conduct of government." *Duggan v Clare Co Bd of Comm'rs*, 203 Mich App 573, 576; 513 NW2d 192 (1994). "The nature of the act, not its effect, determines whether an action by the legislative body of a county may be accomplished by resolution rather than by ordinance." *Id*. In *Duggan*, a contract for the sale of land was special or temporary in nature, and it was therefore appropriate for the county to enter into it by a resolution. In other words, "a resolution is not a law or an ordinance but merely the form in which a legislative body expresses a determination or directs a particular action." *Kalamazoo Muni Utilities Ass'n v City of Kalamazoo*, 345 Mich 318, 328; 76 NW2d 1 (1956).

We find that the Coleman board's resolution constituted an official act of entering into an agreement to purchase software pursuant to the terms of the attached contract. The trial court erred in refusing to enforce Coleman's commitment.

Reversed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis