

STATE OF MICHIGAN  
COURT OF APPEALS

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CAPCO 1998-D7 PIPESTONE, LLC,

Plaintiff-Appellant,

v

MILTON VENTURES LIMITED  
PARTNERSHIP, GILA SHALTIEL, MOSHE  
SHALTIEL, MAL CORPORATION, and  
MILTON VENTURES II, LP,

Defendants-Appellees.

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UNPUBLISHED

July 24, 2008

No. 271907

Berrien Circuit Court

LC No. 2004-003157-CZ

Before: Davis, P.J., and Murphy and White, JJ.

DAVIS, J. (*concurring in part and dissenting in part*).

I agree with majority's analysis in all respects but one. In particular, I agree with the majority's analysis regarding the preclusive effect of a denial of leave "for lack of merit."

I respectfully disagree with the conclusion that there was any agreed-upon settlement between the parties that the trial court could enforce. As the majority accurately states, by the time defendant decided to accept the original settlement offer, plaintiff had rescinded its own agreement therewith. Therefore, no meeting of the minds took place. But more importantly, there was no written agreement signed by the parties, and there was no agreement placed on the record in open court, as required by MCR 2.507(G).

In my view, the underlying litigation remained open, viable, and contested, and it was not properly dismissed.

/s/ Alton T. Davis