

STATE OF MICHIGAN
COURT OF APPEALS

SPARTAN GRAPHICS, INC.,

Plaintiff-Appellant,

v

ENTERMARKET CORPORATION,

Defendant-Appellee,

and

GEORGE SCHMUTZ,

Defendant.

UNPUBLISHED

November 16, 2010

No. 292235

Kent Circuit Court

LC No. 09-000170-CZ

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

O'CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority's decision to affirm the dismissal of Count III. I disagree, however, with the majority's resuscitation of Counts II and IV. Because plaintiff relinquished any right to pursue those claims, I would affirm the trial court's dismissal of all three counts.

As this Court has repeatedly explained, "[a]n agreement to settle a pending lawsuit is a contract, governed by the legal rules applicable to the construction and interpretation of other contracts." *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 663; 770 NW2d 902 (2009). This Court enforces settlement agreements according to the plain terms of the agreements. *Id.* at 664-665. Further, "this Court must honor the parties' contract, and not rewrite it." *Id.* at 665.

Here, the parties freely entered into a binding settlement agreement in which plaintiff released and forever discharged defendant from all claims "known or unknown, accrued or unaccrued." Plaintiff now seeks to rewrite the release by transplanting a date limitation into the governing provision. The transplantation would undoubtedly sweeten the settlement agreement for plaintiff, but would also impermissibly alter the plain terms of the agreement. In my view, this Court should not allow plaintiff to create a hybrid apple from which to take a second proverbial bite, however sweet. I would affirm the trial court.

/s/ Peter D. O'Connell