

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

DANIEL ZIMMER

Plaintiff,

Case No: 24-8070-CZ

Hon. Scott A. Noto
Sitting by SCAO Assignment

v.

**OTTAWA COUNTY and
OTTAWA COUNTY BOARD OF COMMISSIONERS,**

Defendants.

**STIPULATION AND PROPOSED ORDER OF VOLUNTARY DISMISSAL OF
COUNTS II and III ONLY OF PLAINTIFF'S COMPLAINT and FOR LEAVE TO
FILE PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff and Defendants stipulate that Plaintiff be permitted to voluntarily dismiss without prejudice, and without costs or attorney fees to any party, Counts II and III only from Plaintiff's original Complaint, pursuant to MCR 2.504(A)(1)(b).

In support of this stipulation, the parties state:

1. Plaintiff filed the Complaint on December 16, 2024. Counts II and III pertained to a contract ("the Contract") which was passed by Defendant Ottawa County Board of Commissioners on December 10, 2024, to pay more than a half of a million dollars to Chester Township ("the Township") to do work on Crockery Lake. Plaintiff complained that Defendant Board passed the Crockery Lake Contract in violation of the Open Meetings Act, and that the Contract itself was unlawful and unenforceable. Among other relief, Plaintiff sought a declaratory judgment that the Contract was unlawful and could not be enforced, and he also sought emergency

injunctive relief seeking to prevent action under the Contract, as well as action on two other contracts also challenged in the Complaint, but not at issue in this Stipulation. The Court denied emergency injunctive relief.

2. On February 25, 2025, Defendant Board of Commissioners voted to file a declaratory judgment action on behalf of Defendants regarding the legality of the Contract. In light of Defendants' intention to pursue a declaratory judgment action on the Contract themselves, Plaintiff and counsel wish to voluntarily dismiss Counts II and III without prejudice, and without costs and attorney fees to any party. Defendants, through their legal counsel, have consented to this dismissal. Because Defendants have already answered the Complaint, the voluntary dismissal of Plaintiff's Counts II and III must be accomplished by stipulation and a Court order, as proposed herein. See MCR 2.504(A)(1)(b).

3. Plaintiff desires to file a First Amended Complaint in this matter, which filed today with this Stipulation. MCR 2.118(A)(2) states, in part, that leave of Court to amend a complaint "shall be freely given when justice so requires." Given that it is anticipated that Defendants will be filing a pleading themselves related to the original complaint, and that discovery has not yet begun, Michigan law holds that Plaintiff should be freely given leave to file an amended pleading at this stage.

Accordingly, the parties respectfully request that the Court enter the proposed order below.

PINSKY SMITH, PC
Attorneys for Plaintiff Daniel Zimmer

Dated: March 7, 2025

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Dated: March 7, 2025

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ORDER

At a session of the Ottawa County Circuit Court, at the
Kent County Courthouse, City of Grand Rapids, County of
Kent, State of Michigan on March 8, 2025.

Present: Hon. Scott A. Noto
Circuit Court Judge

Upon review of the parties' Stipulation of Voluntary Dismissal of Counts II
and III Only of Plaintiff's Complaint, the Court orders voluntary dismissal without
prejudice as stated in the Stipulation. For reasons stated in the Stipulation,
Plaintiff is granted leave to file his First Amended Complaint, and it is hereby filed.

[CONTINUED ON THE NEXT PAGE]

IT IS SO ORDERED.

This Order does not resolve the last pending claim and does not close the case.

By: Scott A. Noto
Hon. Scott A. Noto
Circuit Court Judge
Acting in Ottawa County by SCAO
assignment