Michigan Case Law on

Enforceability of Mediated Agreements

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# Overview

## No published cases

To date, there are no published appellate cases on enforceability of mediated agreements under the Michigan Court Rules on mediation. There are no Supreme Court decisions. This compendium consists entirely of unpublished Michigan Court of Appeals cases. Unpublished cases are not predecentially binding. MCR 7.215(C)(1).

## Summary

Generally, agreements reached in mediation are enforceable like any other contract. All the defenses available in contract actions – e.g., mutual mistake, fraud, unconscionable advantage, lack of capacity to contract, duress, coercion – are available to set aside a mediation agreement. See, e.g., *Borger v Lusch*, supra; *Miller v Miller*, supra. Courts also consider the Michigan Court Rules regarding the need for a settlement agreement to be in writing, MCR 2.507(G); for domestic relations mediations, MCR 3.216(H)(7).

In the cases in this compendium, there is no dispute that the parties reached an agreement in mediation, but one party subsequently refused to abide by the agreement, usually by filing a motion to set it aside, or by asserting a defense to an action to enforce the agreement. In most cases, the Court of Appeals has enforced the mediated agreement. Successful defenses include mutual mistake, ambiguity, and lack of a written agreement.

# Contractual Defenses

## No Meeting of the Minds

Where Plaintiff admitted she changed her mind after signing the agreement, the agreement was enforceable. Plaintiff’s misunderstanding as to the binding nature of the mediation agreement was not a valid ground for relief. The Court of Appeals thus reversed the trial court, which had granted Plaintiff’s motion because the mediator left before the parties signed the agreement. *Borger v Lusch*, unpub’d opinion of Mich Ct Apps issued March 1, 2002 (Docket No. 229220) from Wayne Cir Ct.

Where father claims the mediation agreement should not be enforced, but offers no reason except his poor language skills, the agreement is enforceable. “There is nothing on the record to substantiate any language barrier; to the contrary.” Record demonstrates that the requirements of MCR 3.216(H)(7) were met. Father provides no argument that the agreement should be set aside on meritorious grounds such as fraud, duress, or mutual mistake, and he cannot expect the court to discover and rationalize the basis for his claim. *Chui v Lamm*, 2008 WL 4092834, unpub’d opinion of Mich Ct Apps issued Sept. 4, 2008 (Docket No. 284015).

## Agreement is Ambiguous

A mediation agreement that released defendant “of all claims and actions arising from the December 2004 freezing water loss” was not ambiguous, but released defendant from claims for damage to plaintiffs’ condo unit as well as to their personal property and for loss of use. The release was also found to be supported by consideration. *Jack v Hastings Mutual Ins Co*, 2008 WL 4958787, unpub’d opinion of Mich Ct Apps issued Nov. 20, 2008 (Docket No. 278109) from Grand Traverse Cir Ct.

Where a phrase in the mediation agreement was ambiguous, the case must be remanded to the trial court “to determine the nature of the parties’ agreement under the facilitation agreement.” The sentence in the mediation agreement, “The parties shall take testimony from BCBSM regarding periods 11/1/04-1/31/05,” did not provide for how to resolve claims during that period and was subject to different interpretations, so, ambiguous. *Health Call v State Farm Mutual Ins Co,* unpub’d opinion of Mich Ct Apps issued December 22, 2009 (Docket Nos. 286353; 288009), from Oakland Circuit Court.

## Mutual Mistake

Where the parties did not know how much wife earned, and agreed in mediation to impute wife’s income at minimum wage for purposes of calculating child support, there was no mutual mistake when it was later discovered that wife’s income was higher. “In the absence of an actual income figure for [wife], the parties and their attorneys agreed to ascribe her some income.” The mediation agreement based on the wife’s lower income figure was enforceable. *Schafer v Schafer,* unpub’d opinion of Mich Ct Apps issued January 20, 2009 (Docket No. 287435), from Clinton Circuit Court.

Where the parties erroneously referred only to the early retirement subsidies in their mediation agreement, while intending to distribute the early retirement supplement as well, a mutual mistake occurred. “Because both parties intended to distribute the martial [sic] portion of the pension and because there was a common error regarding the distinction between a subsidy and a supplement, the trial court’s finding of a mutual mistake was not clearly erroneous.” The trial court’s decision to modify the consent judgment was thus appropriate. *Joyce v Joyce,* unpub’d opinion of Mich Ct Apps issuedNovember 19, 2009 (Docket No. 281175) from Oakland Cir Ct.

## Unilateral Mistake

“A unilateral mistake of fact is not grounds for voiding a contract” so plaintiff’s claim that she executed the mediation agreement based on her mistaken belief that she had to accept it to obtain spousal support did not entitle her to set aside the mediation agreement. *Miller v Miller,* unpub’d opinion of Mich Ct Apps issuedMarch 24, 2009 (Docket No. 282997) from Oakland Cir Ct.

## Fraud

Where the parties did not know how much wife earned, and agreed in mediation to impute wife’s income at minimum wage for purposes of calculating child support, there was no fraud when it was later discovered that wife’s income was higher. The mediation agreement based on the wife’s lower income figure was enforceable. *Schafer v Schafer,* unpub’d opinion of Mich Ct Apps issued January 20, 2009 (Docket No. 287435), from Clinton Circuit Court.

## Coercion

“Coercion by one’s own attorney is not a valid basis for setting aside a settlement agreement, absent a showing that the other party participated in the coercion.” Plaintiff’s claim that her attorney tricked her into signing the mediation agreement thus failed. *Miller v Miller,* unpub’d opinion of Mich Ct Apps issuedMarch 24, 2009 (Docket No. 282997) from Oakland Cir Ct.

## Unconscionable

Where plaintiff was represented by counsel in mediation, and admitted on the record in open court that she had read and voluntarily signed the mediation agreement, she had not shown that the agreement was unconscionable so that it should be set aside. *Miller v Miller,* unpub’d opinion of Mich Ct Apps issuedMarch 24, 2009 (Docket No. 282997) from Oakland Cir Ct.

# Other Principles

## Agreement Must be in Writing

Where the parties in a medical malpractice action reached a verbal agreement at the close of the mediation, but the parties never put the agreement in writing or on the record, the agreement is unenforceable, pursuant to MCR 2.507(G), even though the agreement may be valid under contract law. *Seman v Graham,* unpub’d opinion of Mich Ct Apps issuedMay 22, 2007 (Docket No. 265969) from St. Joseph Circuit Court.

## Agreement Enforceable Prior to Being Entered as Judgment

Until defendant or his attorney signed the agreement or the settlement was established in

open court, they were free to disavow their oral agreement. Once signed, the mediation agreement was enforceable, and parties were bound to take steps to enter it into a judgment. Any claim that a party retained the option of breaching the agreement up until the time it was entered into judgment is without merit. *Schafer v Schafer,* unpub’d opinion of Mich Ct Apps issued January 20, 2009 (Docket No. 287435), from Clinton Circuit Court.