



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LG*
Allan T. Motzny, Assistant City Attorney *ATM*
DATE: November 28, 2012
SUBJECT: Citizens United Against Corrupt Government v. Troy City Council

Enclosed please find a copy of the order granting the City's motion for summary disposition concerning a lawsuit filed against the Troy City Council by Robert Davis, the founder of the non-profit entity *Citizens United Against Corrupt Government*. This Order dismisses this lawsuit against the Troy City Council.

Plaintiff unsuccessfully alleged that the City Council violated the Open Meetings Act by convening a closed session on August 15, 2012 as part of the City Manager search process. Through this lawsuit, Plaintiff Citizens United Against Corrupt Government sought declaratory relief and injunctive relief, as well as a disclosure of any closed session minutes, plus attorney fees, costs, and other unspecified relief.

This lawsuit was served on the City on September 7, 2012. Plaintiff simultaneously filed an emergency motion with the Complaint, seeking immediate declaratory and injunctive relief. The City prevailed on the emergency motion, and the Court issued its denial order on September 13, 2012. The City then immediately filed a Motion for Summary Disposition in this case. This motion was decided by the Court on November 21, 2012. Any appeal would need to be filed in the Michigan Court of Appeals within twenty one days of that date.

If you have any questions concerning the above, please let me know.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CITIZENS UNITED AGAINST CORRUPT GOVERNMENT,
a Michigan Nonprofit Corporation,

Plaintiff,

v

Case No. 12-129214-CZ
Hon. Colleen A. O'Brien

TROY CITY COUNCIL,

Defendant.

_____ /

OPINION AND ORDER

This matter is before the Court on Defendant's motion for Summary Disposition pursuant to MCR 2.116(C)(4), (7), (8) and (10). Plaintiff has filed a "Complaint for Declaratory and Injunctive Relief" which arises out of Defendant's alleged violation of the Open Meetings Act, MCL 15.261 *et seq.* ("OMA").¹ Defendant has filed the instant motion as its first responsive pleading. The Court heard oral argument and took the motion under advisement.

As more fully set forth below, the Court concludes that Defendant is entitled to summary disposition pursuant to MCR 2.116(C)(4) and MCR 2.116(C)(8). First, the Court finds that Plaintiff has failed to establish that it is entitled to any declaratory relief, which forms the basis of Plaintiff' Complaint.² "Where no **case** of actual controversy

¹ Plaintiff identifies itself as a "Michigan nonprofit corporation organized for the purpose of promoting and ensuring corrupt-free and law-abiding government through social activities and court actions designed to eliminate unlawful illegal actions by all governmental officials, representatives and entities in all levels of government." See Plaintiff's "Complaint for Declaratory Judgment and Injunctive Relief" at Paragraph One. Robert Davis is the director of Plaintiff.

² See Plaintiff's Prayer for Relief

exists, the circuit court lacks subject matter jurisdiction to enter a declaratory judgment." *Fieger v Comm'r of Ins*, 174 Mich. App. 467, 470 (1988).

A plaintiff may seek a declaratory judgment if "the requirements of MCR 2.605 are met." *LSEA v Lansing Board of Education*, 487 Mich 349, 373 (2010). MCR 2.605(A)(1) provides: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." Therefore, a condition precedent to the invocation of declaratory relief under MCR 2.605(A)(1) is the existence of an actual controversy. *LSEA v Lansing Bd of Ed (On Remand)*, 293 Mich App 506, 515 (2011). In the absence of an actual controversy, the trial court lacks subject-matter jurisdiction to enter a declaratory judgment. *Id.* An "actual controversy" exists where declaratory relief is needed to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 55 (2000).

Here, Plaintiff has not established that declaratory relief is needed to guide Plaintiff's future conduct in order to preserve its legal rights. Therefore, this Court lacks subject matter jurisdiction over the requested declaratory judgment and dismissal of the Complaint is appropriate pursuant to MCR 2.116(C)(4).

Furthermore, the Court concludes that Plaintiff is not entitled to injunctive relief. If a public body is not complying with the requirements of the OMA, the act authorizes a person to compel compliance or to enjoin further noncompliance. MCL 15.271(1). However, merely because a violation of the OMA has occurred does not automatically mean that an injunction must issue. *Nicholas v Meridian Twp*, 239 Mich App 525, 533

(2000). "Injunctive relief is an extraordinary remedy to be granted only when justice requires it, there is no adequate remedy at law, and there is a real and imminent danger of irreparable injury." *Id.* at 533-534. Where the record fails to indicate that the public body acted in bad faith, there is no real and imminent danger or irreparable injury requiring issuance of an injunction. *Esperance v Chesterfield Twp*, 89 Mich App 456, 464 (1979).

Here, Plaintiff's pleadings do not allege any other specific or threatened violations of the OMA, except for the allegations concerning the August 15, 2012 City Council Meeting. Plaintiff admits that that Defendant conducted a closed session believing that the closed session was permitted by MCL 15.268(f) and (H) and MCL 15.243(e) and (k). Furthermore, the proposed resolution calling for a closed session was found in a memorandum authored by the City Attorney, which was included in the regular meeting agenda for the July 23, 2012 City Council meeting. Therefore, the Court concludes that the record fails to indicate that the public body acted in bad faith. See *Wexford County Prosecuting Attorney v Pranger*, 83 Mich App 197, 205 (1978). Accordingly, Plaintiff has failed to establish entitlement to injunctive relief.

THEREFORE, IT IS HEREBY ORDERED that Defendant's motion for summary disposition is GRANTED.

IT IS SO ORDERED.

This order resolves the last pending claim and closes the case.

Dated: NOV 21 2012

/s/ Judge Colleen A. O'Brien
Hon. Colleen A. O'Brien ML