

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL, an individual,

Plaintiff/Counter-Defendant,

vs.

Case No. 2012-889-CB

RMD HOLDINGS, LTD, a Michigan corporation
and ROBERT E. DEMIL, an individual,

Defendants/Counter-Plaintiffs.

OPINION AND ORDER

Defendants have filed a motion for reconsideration of the Court's June 1, 2015 Opinion and Order.

In the interests of judicial economy the factual and procedural statements set forth in the Court's June 1, 2015 Opinion and Order are herein incorporated.

Standard of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457,

462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Arguments and Analysis

In their motion, Defendants first contend that the Court's June 1, 2015 Opinion and Order goes beyond the discretion granted to the Court by MCL 450.1489(1). MCL 450.1489(1) provides:

- (1) If the shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate.....

Defendants contend that the Court went beyond the discretion granted by Section 1489 when it appointed Mr. Dunleavy to apportion the % of RMD's value amongst the total voting and non-voting shares of RMD, and to develop and conduct an auction of RMD. Specifically, Defendants assert that the Court may not delegate the decision as to the value of RMD. After reviewing Defendants' position, the Court remains convinced that Mr. Dunleavy's independent valuation is needed in order to apportion the % of RMD's value amongst the total voting and non-voting shares of RMD. Likewise, the Court remains confident that Mr. Dunleavy's assistance with developing an auction process will be immensely beneficial. However, the Court recognizes that it would be premature to adopt such a decision before it is made, and without providing the parties an opportunity to object to Mr. Dunleavy's valuation and proposed auction process.

Moreover, the Court is convinced that a conference including the parties' counsel must be held in order to properly determine the scope of Mr. Dunleavy's duties. MRE 706 permits the Court to appoint any expert witnesses of its own selection. However,

the rule requires the witness to be informed of his/her duties by the Court in writing, a copy of which must be filed with the clerk, or at a conference in which the parties shall have an opportunity to participate. In this case, while Mr. Dunleavy's duties were set forth in the June 1, 2015 Opinion and Order, the Court is convinced that a conference involving the Court, Mr. Dunleavy, and the parties' counsel is the best mechanism by which to develop the proper auction process.

Conclusion

For the reasons discussed above, Defendants' motion for reconsideration of the Court's June 1, 2015 Opinion and Order is GRANTED, IN PART, and DENIED, IN PART. Specifically, the portions of the June 1, 2015 Opinion and Order requiring an auction of RMD to take place with 60 days of that Opinion and Order is vacated. Mr. Dunleavy and each of the parties' counsel shall attend a conference with the Court hereby scheduled for September 11, 2015 at 8:30 am. At the conference, the scope of Mr. Dunleavy's duties shall be determined.

Pursuant to MCR 2.602(A)(3), the Court states this matter remains OPEN.

IT IS SO ORDERED.

Date: AUG 25 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge