

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL, an individual,

Plaintiff/Counter-Defendant,

HENRI JAMES DEMIL, and individual, SARAH
MAE DEMIL, an individual, HANNAH RENE
DEMIL, an individual and SAVANNAH LYNN
DEMIL, an individual

Plaintiffs,

vs.

Case No. 2012-889-CK

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

Defendants/Counter-Plaintiffs.

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OPINION AND ORDER

Defendants have filed a motion for partial reconsideration of the Court's September 29, 2014 Opinion and Order denying Defendants' motion for reconsideration of the Court's August 11, 2014 Opinion and Order granting Plaintiff Michael Demil summary disposition of his oppression claim.

In the interests of judicial economy the factual and procedural statements set forth in the Court's August 11, 2014 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 improperly declined to find that Plaintiff has unclean hands. Specifically, Defendants contend that Plaintiff has competed with RMD via his involvement in Fenton Excavating & Construction, Inc. Even assuming that Plaintiff has competed with RMD, Defendants have failed to provide any support for their position that such competition is improper. Plaintiff's involvement with RMD since January 2012 has, as the result of Defendant Robert E. Demil's actions, been reduced to that of a minority shareholder with no meaningful influence. While Defendants appear to maintain that Plaintiff has retained a duty not to compete with RMD, it has failed to support its position in any way. A party may not merely state a position and then leave it to the Court to rationalize and discover the basis for the claim, nor may he leave it to the Court to search for authority to sustain or reject his position. *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000). Based on Defendants' failure to support their position, the Court is satisfied that the position is without merit.

Next, Defendants contend that the Court erred in holding that article III, section 3(d) is unambiguous. Specifically, Defendants, for the first time, contend that a latent ambiguity exists.

The Court has discretion to deny a motion for reconsideration when the moving party relies on arguments or legal theories that could have been raised prior to the judgment. *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). In this case, Defendants could have raised the argument they now rely upon prior to the Court granting Plaintiff's motion for summary disposition of his oppression claim, or even in their first motion for reconsideration. However, Defendants failed to do so. Consequently, Defendants' contention is untimely and the Court declines to entertain it.

Conclusion

For the reasons discussed above, Defendants' motion for partial reconsideration of the Court's September 29, 2014 Opinion and Order is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: December 1, 2014

JCF/sr

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