

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

VIBRUS GROUP, LLC, a Michigan,
limited liability company,

Plaintiff,

vs.

Case No. 2013-3197-CK

BRENDA PETTWAY, and POWERLINK
ENVIRONMENTAL SERVICES, LLC,
d/b/a POWERLINK FACILITIES
MANAGEMENT SERVICES, a Michigan
limited liability company,

Defendants.

OPINION AND ORDER

Plaintiff has a filed a motion for partial reconsideration of the Court's December 30, 2014 Opinion and Order.

In the interests of judicial economy the factual and procedural statements set forth in the Court's December 30, 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 its motion, Plaintiff contends that this Court erred in dismissing its tortious interference claims. Specifically, Plaintiff alleges that Defendants' actions induced the Targeted Employees to breach the non-compete provisions of their contracts with Plaintiff. The provisions in question provide:

4. Restrictive Covenants:

5.1 Agreement not to Compete

Employee shall not compete or assist anyone else to compete with [Plaintiff] either directly or indirectly:

- (a) While Employee is employed by [Plaintiff]; or
- (b) For a period of one year after the termination of his/her employment, except as otherwise provided below.

5.2 Definitions:

(b) To act "directly or indirectly" means to act in the capacity of an owner, stockholder, officer, director, partner, member, manager, lender or consultant, or in any other capacity. **Nothing in this section shall prohibit an Employee from working for another employer during times wherein said Employee is not employed by [Plaintiff] provided that the Employee is not a founder, owner, stockholder, officer, director or partner of such other employer in competition with [Plaintiff].**

In this case, the Targeted Employees were hired by Powerlink after their employment with Plaintiff had ended. While the Targeted Employees' contracts with Plaintiff provide a one year non-compete provision, the last sentence of section 5.2(b) provides that the Targeted Employees are not prohibited from working as an employee

for another employer during times when they are not employed by Plaintiff. In this case, the Targeted Employees chose to terminate their employment with Plaintiff and to begin their employment with Powerlink. The Court is convinced that such actions are permissible under clear and unambiguous terms of the employment contracts. Accordingly, Powerlink's actions merely convinced the Targeted Employees to change their employment after they ceased working for Plaintiff, which is allowed under Plaintiff's employment contracts. Consequently, Powerlink's actions did not cause the Targeted Employees to breach their contracts. As a result, Plaintiff's tortious interference claims fail.

Additionally, even if the Court were to find that the restrictive covenants provisions are ambiguous, ambiguities are to be construed against the drafting party, which in this case is Plaintiff. See *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 62; 664 NW2d 776 (2003). Consequently, Plaintiff's claims fail regardless of whether the provisions in question are ambiguous or unambiguous.

Conclusion

Based upon the reasons set forth above, Plaintiff's motion for partial reconsideration of the Court's December 30, 2014 Opinion and Order is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

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

Dated: February 23, 2015

JCF/sr

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