

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

GROUP MRJ, INC., d/b/a PASSPORT  
PIZZA, and PASSPORT USA, INC.,

Plaintiffs,

Case No. 2014-584-CK

vs.

GALLO RETAIL GROUP, LLC, and  
ANTHONY GALLO, a/k/a TONY J.  
GALLO,

Defendants.

and

GALLO RETAIL GROUP, LLC,

Plaintiff,

Case No. 2014-666-CK

vs.

MICHAEL BISCHOFF and GROUP  
MRJ, INC., d/b/a PASSPORT PIZZA,

Defendants.

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OPINION AND ORDER

Michael Bischoff and Group MRJ, Inc. (the “Passport Parties”) have moved for reconsideration of a January 28, 2014 Order entered by the 42-1 District Court. In the alternative, the Passport Parties request that the Court review their March 28, 2014 motion to set aside the January 28, 2014 Order under the relief from judgment standard set forth in MCR 2.612(C)(1)(c), (d), (e) and (f).

*Factual and Procedural History*

On January 28, 2014, Judge Leduc of the 42-1 District Court entered an order (1) Requiring Defendant Michael Bischoff to pay Plaintiffs' counsel \$650.00 for failing to appear at a January 13, 2014 hearing, (2) Recusing himself from the case and referring the case to the 42-2 District Court, and (3) Requiring Defendant to post a \$35,000.00 cash or surety bond.

On February 19, 2014, the 42-2 transferred these matters to this Court pursuant to MCR 4.002.

On March 28, 2014, Defendants filed an emergency motion to set aside the January 28, 2014 Order and for clarification of an Order dated August 19, 2013. On April 3, 2014, the Court held a hearing in connection with the motions. At the conclusion of the hearing, the Court entered an Order, *inter alia*, requiring Defendant Michael Bischoff to post the \$35,000.00 bond as required by the January 28, 2014 Order by April 7, 2014.

On April 10, 2014, the Court held a contempt hearing as the result of Defendant's failure to post the required bond. At the conclusion of the hearing, the Court held Defendant in contempt and struck his counter-complaint and answer.

On April 24, 2014, Defendants filed their instant motion for reconsideration of this Court's decision to deny their motion to set aside the January 28, 2014 Order and require Defendant to post the \$35,000.00 bond.

#### *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 Ladbrooke Racing Michigan, Inc.*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

#### *Arguments and Analysis*

After reviewing the instant motion, the Court is convinced that Defendants motion is properly denied as it merely presents the same issues previously address by the Court at the April 3, 2014 hearing. Specifically, Defendants contend that Judge Leduc improperly ordered them to post the \$35,000.00 bond after he recused himself. However, as has been continuously noted in this case, Defendants did not challenge the January 28, 2014 Order until well after the 21 day time limitation set forth in MCR 2.119(F)(3). Accordingly, Defendants' challenge of the January 28, 2014 Order was untimely and properly denied by this Court.

In addition, at the April 3, 2014 hearing this Court held that because Judge Leduc's January 28, 2014 Order contained three items, including his recusal, all three portions of the Order were made simultaneously, regardless of when those items were addressed during the hearing. As a result, the Court held that Judge Leduc had jurisdiction to enter all three portions of the January 28, 2014 Order.

A motion for reconsideration which merely presents the same issue(s) ruled upon by the Court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). Defendants' motion merely presents the same issue previously addressed by the Court. Accordingly, Defendants have failed to provide a basis upon which this Court finds reconsideration is warranted. Consequently, Defendants' motion must be denied.

In addition, while Defendants request that the Court revisit their March 28, 2014 motion under a relief from judgment standard of review, they have failed to set forth the reason(s) why they are entitled to relief under the applicable court rule. Rather, Defendants merely cite the portions of MCR 2.612 without setting forth how the rule applies in this case. Consequently, the Court is convinced that Defendants have failed to properly support their motion. As a result Defendants' motion must be denied.

*Conclusion*

For the reasons set forth above, Michael Bischoff and Group MRJ, Inc's motion for partial reconsideration of the Court's April 3, 2014 Order is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

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

Dated: July 9, 2014

JCF/sr

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