

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.

---

OPINION AND ORDER

Plaintiffs have filed a motion for reconsideration of the portion of the Court's November 12, 2014 Opinion and Order granting Defendants summary disposition of Plaintiffs' illegal lockout, tortious interference, promissory estoppel, and UCC claims, and a portion of Plaintiff's breach of contract claims.

In the interests of judicial economy the factual and procedural statements set forth in the Court's November 12, 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*

#### (1) UCC Claims

In support of their motion, Plaintiffs contend that Defendants' financing statements are improper because the underlying lease did not include any description of the goods that would be encumbered. However, as discussed in the November 12, 2014 Opinion and Order, section 10.10 of the lease lists multiple categories of goods that are covered by Defendants' security interest. Accordingly, Plaintiff's contention remains without merit.

Plaintiffs also contend that a party may not have a security interest over after-acquired goods. While Plaintiffs have cited to the Uniform Commercial Code in general and several specific definitions set forth in MCL 440.2803, they have failed to provide any authority in support of their position that a party may only have a security interest over property owned at the time the underlying lease is executed. 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 Plaintiffs' failure to support their position, the Court is convinced that it is not grounds for reconsideration.

Finally, Plaintiffs contend that Defendants are not the entity/person that holds a security interest in the goods at issue. However, as discussed above the lease granted a security interest to the Gallo Retail Group, LLC, as landlord. Accordingly, Plaintiffs' contention is without merit.

(2) Promissory Estoppel

In their motion, Plaintiffs contend that section 8(c) of the lease in question provides that Defendants must initiate a court proceeding in order to regain possession. However, even if true, the failure to satisfy any promises contained in the lease would be grounds for a breach of contract claim, not a promissory estoppel claim. Consequently, Plaintiff's position is without merit.

(3) Unlawful Lockout

In their motion, Plaintiffs contend that Defendants act of locking them out of the Subject Property and preventing them from re-entering constituted an unlawful lockout under MCL 600.2918. MCL 600.2918 provides:

(1) Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, or being out is afterwards held and kept out, by force, if he prevails, is entitled to recover 3 times the amount of his actual damages or \$200.00, whichever is greater, in addition to recovering possession.

(2) Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner, lessor, licensor, or their agents shall be entitled to recover the amount of his actual damages or \$200.00, whichever is greater, for each occurrence and, where possession has been lost, to recover possession. Unlawful interference with a possessory interest shall include:

(a) The use of force or threat of force.

(b) The removal, retention, or destruction of personal property of the possessor.

(c) A change, alteration, or addition to the locks or other security devices on the property without forthwith providing keys or other unlocking devices to the person in possession.

(d) The boarding of the premises which prevents or deters entry.

(e) The removal of doors, windows, or locks.

(f) Causing, by action or omission, the termination or interruption of a service procured by the tenant or which the landlord is under an existing duty to furnish, which service is so essential that its termination or interruption would constitute constructive eviction, including heat, running water, hot water, electric, or gas service.

(g) Introduction of noise, odor or other nuisance.

(3) The provisions of subsection (2) shall not apply where the owner, lessor, licensor, or their agents can establish that he:

(a) Acted pursuant to court order or

(b) Interfered temporarily with possession only as necessary to make needed repairs or inspection and only as provided by law or

(c) Believed in good faith the tenant had abandoned the premises, and after diligent inquiry had reason to believe the tenant does not intend to return, and current rent is not paid.

(4) A person who has lost possession or whose possessory interest has been unlawfully interfered with may, if that person does not peacefully regain possession, bring an action for possession pursuant to section 5714(1)(d) of this act or bring a claim for injunctive relief in the appropriate circuit court. A claim for damages pursuant to this section may be joined with the claims for possession and for injunctive relief or may be brought in a separate action.

(5) The provisions of this section may not be waived.

(6) An action to regain possession of the premises under this section shall be commenced within 90 days from the time the cause of action arises or becomes known to the plaintiff.

An action for damages under this section shall be commenced within 1 year from the time the cause of action arises or becomes known to the plaintiff.

The Michigan Court of Appeals addressed a similar situation in *J Franklin Interests, LLC v Mu Meng*, unpublished per curium opinion in the Court of Appeals, decided September 29, 2011 (Docket No. 296525)<sup>1</sup>

In *Franklin*, the plaintiff tenant informed the defendant landlord that it would be vacating the leased premises within 30 days. When the plaintiff next returned to the leased premises he found the door barred shut and the locks and alarm code changed. As a result the plaintiff commenced legal proceedings against defendant which included an anti-lockout claim. On appeal, the Michigan Court of Appeals held that locking the plaintiff out of the leased premises violated both subsection (1) and (2) of the statute. Further, the Court held that defendant's retention of plaintiff's personal property violated section (2)(b) of the statute notwithstanding the fact that defendant had a valid security interest in the property under the parties' lease agreement.

The Court is persuaded by the reasoning set forth in *Franklin*. In this case, as in *Franklin*, Defendants locked Plaintiffs out of the Subject Property and took possession of Plaintiffs' personal property. Further, this case is similar to *Franklin* in that the Lease provides Defendants with a security interest in at least some of the personal property. In their original motion and reply, Defendants set forth two bases for summary disposition of Plaintiffs' lock-out claim.

First, Defendants contend that they were awarded possession of the Subject Property and that as such Plaintiffs cannot challenge whether their possession is wrongful. The Order at issue provides that "[Defendants] are in possession of the

---

<sup>1</sup> The Court notes that an unpublished opinion is not binding precedent under the rule of stare decisis. MCR 7.215(C)(1). When case law is limited and the court finds the reasoning persuasive the court can view unpublished opinions as persuasive. *Dyball v Lennox*, 260 Mich App 698, 705 n1; 680. NW2d 522 (2003); *Plymouth Stamping v Lipshu*, 168 Mich App 21, 27-32; 424 NW2d 530 (1988).

premises, and the lease is terminated.” *See* Defendants’ Exhibit E. Upon re-reviewing the record, the Court is convinced that the Order was reflecting the district court’s observation as to the current state of possession rather than formally finding Defendants’ possession was properly effectuated. Accordingly, the Court is satisfied that the Order does not preclude Plaintiffs’ lock-out claim.

In addition, Defendants contend that summary proceedings were not needed and that the lockout was lawful because Plaintiffs had abandoned the Subject Property. “Two requirements must be met to establish abandonment. First, it must be shown that there is an intent to relinquish the property and, second, there must be external acts that put that intention into effect.” *Sparling Plastic Industries, Inc. v Sparling*, 229 Mich App 704, 717–718, 583 NW2d 232 (1998). “Non use alone is insufficient to prove abandonment.” *Id.* at 718, 583 NW2d 232; see also *Ford v Detroit*, 273 Mich 449, 452, 263 NW 425 (1935).

In this case, the only evidence before the Court on the issue of abandonment is the fact that Plaintiffs ceased their business operations and removed some of their personal property after they received the notice. However, at the time of the lock-out some of Plaintiffs’ property was still within the Subject Property and Plaintiffs had not turned in their keys to the Subject Premises. In viewing the evidence in a light most favorable to the Plaintiffs, the Court is convinced that a genuine issue of fact exists as to whether Plaintiffs had abandoned the Subject Property and/or whether Defendants believed, in good faith, that the Subject Property had been abandoned, as is required by MCL 600.2918(3)(c). Consequently, Plaintiffs’ motion for reconsideration of the portion of the

November 12, 2014 Opinion and Order granting Defendants' summary disposition of Plaintiffs' unlawful lock-out claim must be granted.

(4) Breach of Contract

In their instant motion, Plaintiffs contend that the Court made the same mistakes in connection with their breach of contract claim as it did with their UCC claim. However, for the reasons discussed above the Court did not commit error in granting Defendants' summary disposition of Plaintiffs' UCC claim. Consequently, Plaintiffs' contention is without merit.

In addition, Plaintiffs assert that Defendants breached the Lease by unlawfully locking them out of the Subject Property. Specifically, Plaintiffs contend that section 8(c) of the lease in question provides that Defendants must initiate a court proceeding in order to regain possession. Section 8(c) provides:

(c) From and after any date upon which Landlord is entitled to give a Termination Notice, Landlord may, without further notice, enter upon, re-enter, possess and repossess itself of the Premises, by summary proceedings, ejectment or as otherwise permitted by law, and may dispossess and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same.

Section 8(c) provides that Defendants may repossess the Subject Property via summary proceedings or as otherwise provided by law. In this case, Defendants did not elect to initiate summary proceedings due to the fact that they believed that Plaintiffs had voluntarily abandoned the Subject Property. However, for the reasons discussed in section (3) of this Opinion and Order, a genuine issue of fact exists as to whether Plaintiffs had abandoned the Subject Property. Consequently, Plaintiffs' motion for reconsideration must be granted to the extent that it related to the portion of the

November 12, 2014 Opinion and Order related to Plaintiffs' breach of contract claim based on Defendants' failure to initiate summary proceedings.

(5) Tortious Interference

In their response to the initial motion for summary disposition, Plaintiffs asserted that "[t]he combination of the illegal lockout, with the numerous breaches of the lease by the Defendants already listed above in earlier arguments, serve well in regard to this improper interference." However, Plaintiffs have not, to date, specifically cited to a valid business relationship or expectancy with a third party and have not provided any evidence of such a relationship or expectancy. In addition, Plaintiffs have not provided a proof that Defendants had knowledge of any such expectancy or relationship. As such Plaintiffs have failed to properly oppose Defendants' motion. As a result, the Court did not err in granting Defendants summary disposition of Plaintiffs' tortious interference claims.

*Conclusion*

For the reasons set forth above, Plaintiffs' motion for reconsideration of the Court's November 12, 2014 Opinion and Order is GRANTED, IN PART, and DENIED, IN PART. The portions of the November 12, 2014 Opinion and Order granting Defendants summary disposition of Plaintiffs' unlawful lockout claim and the portion of Plaintiffs' breach of contract claim related to whether Defendants were required to initiate summary proceedings under the lease are VACATED, and the corresponding portions of Defendants' motion for summary disposition are DENIED. The remainder of Plaintiffs' motion for reconsideration 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: December 15, 2014

JCF/sr

Cc: *via e-mail only*

James C. Bishai, Attorney at Law, [attybishai@gmail.com](mailto:attybishai@gmail.com)

Vincenzo Manzella, Attorney at Law, [mhintz@lucidolaw.com](mailto:mhintz@lucidolaw.com)

Kenneth S. Dombrowski, Attorney at Law, [dombrowski@kallashenk.com](mailto:dombrowski@kallashenk.com)