

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

ECP COMMERCIAL II LLC,

Plaintiff,

Case No. 2015-273-CB

vs.

TOWN CENTER FLATS, LLC,
VICENT DILORENZO and
ANGELA TINERVIA,

Defendants.

OPINION AND ORDER

Defendant Town Center Flats, LLC ("TCF") has filed a motion for reconsideration of this Court's August 22, 2017 Opinion and Order.

In the interests of judicial economy the factual and procedural statements set forth in the Court's August 22, 2017 Opinion and Order are herein incorporated.

I. 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).

II. Law and Analysis

In its motion, TCF argues that the August 22, 2017 Opinion and Order contains an internal inconsistency that must be corrected. Specifically, TCF argues that this Court held that the July 5, 2017 Receivership Order “can control or enforce a factual circumstance” that occurred prior to entry of the Receivership Order. In particular, TCF maintains that this Court’s August 22, 2017 Opinion and Order ordered that funds TCF tendered to its counsel on July 2, 2017 be turned over to the Receiver. However, TCF misconstrues this Court’s holding.

In the August 22, 2017 Opinion and Order, this Court held that the funds in question remained TCF’s property notwithstanding the transfer to the extent that the funds in question, which were given to TCF’s counsel as a retainer prior to entry of the Receivership Order, had not actually been earned by counsel as of the date of the Receivership Order. Accordingly, contrary to TCF’s position, this Court’s August 22, 2017 Opinion and Order did not rule that the Receivership Order was retroactive in application; rather, the Court merely found that a portion of the funds in question were still TCF’s property as of the date of the Receivership Order, and that as a result they were a part of the receivership estate. Consequently, TCF’s position is without merit.

Finally, TCF argues that subsection (ii) of paragraph 11 of the Receivership Order cannot apply to the funds in question if the last sentence of paragraph 11 provides that

all funds from the Mortgaged Property must be transmitted by the Receiver to Plaintiff.

TCF's argument is without merit. Paragraph 11 provides:

11. TCF and each of its officers, directors, agents, attorneys and employees.....are hereby ordered immediately to (i) turn over to the Receiver the Records; (ii) pay over to the Receiver all cash and all funds and deposits in any Deposit Accounts or investments of TCF, except for funds required to pay checks for expenses of TCF that have been issued on or before the date of entry of this Order but have not yet been presented for payment; and (iii) cooperate with the Receiver in identifying and locating Receivership Assets, transitioning the operations of any Receivership Assets to the Receiver, and identifying and investigating any causes of action of TCF. Notwithstanding the foregoing, all proceeds of the Mortgaged Property shall be remitted by the Receiver (or any other person or entity in possession thereof) to ECP for application first to Professional Fees and then to the Obligations.

(See Plaintiff's Exhibit 1.)

TCF relies on the exception to subsection (ii) by arguing that the funds were required to pay expenses of TCF that had been issued on or before the date of entry of the Receivership Order. However, the question of whether the funds would otherwise fall within the exception is immaterial as the last sentence of paragraph 11 provides that any proceeds from the Mortgage Property, which the funds in question are, must be paid by the Receiver, or any other person or entity in possession of those funds. Therefore, the funds must be paid to Plaintiff to the extent they had not been earned by counsel as of July 5, 2017. Consequently, the exception TCF purports to rely on does not overrule the last sentence of paragraph 11. For these reasons, TCF's position is without merit.

III. Conclusion

Based on the foregoing, TCF's motion for reconsideration of the Court's August 22, 2017 Opinion and Order is DENIED. Pursuant to MCR 2.602(A)(3), the Court states

this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Date: SEP 28 2017

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