

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

RPF, LLC

Plaintiff,

vs.

Case No. 2017-3263-CB

COLE STREET INVESTMENTS, LLC and
DIOCESE OF NEWTON FOR THE MELKITES
IN THE UNITED STATES OF AMERICA,

Defendants.

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OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's November 13, 2017 Order granting Defendant Cole Street Investments, LLC's ("Defendant CSI") motion to dismiss pursuant to MCR 2.116(C)(8).

I. Facts and Procedural History

This matter consists of a dispute over whether Plaintiff or Defendant CSI is entitled to purchase certain real property from Defendant Diocese of Newton for the Melkites in the United States of America ("Defendant Newton"). Defendant Newton originally owned three parcels of property at or near the address of 8525 Cole, Warren, MI, and consists of three parcels, A, B and C.

In 2002, Defendant Newton allegedly sold Parcel A to Defendant CSI. Parcel C is the location of a church owned and operated by Defendant Newton. Parcel B is the property at issue in this matter. Plaintiff and Defendant CSI both claim the right to purchase Parcel B from Defendant Newton.

On September 1, 2017, Plaintiff filed its complaint in this matter (“Complaint”). Count I of the Complaint seek a declaratory judgment declaring that either Defendant CSI’s right to purchase Parcel B is invalid or has expired, and that it is the rightful owner of Parcel B. The remaining claims within the Complaint are only brought against Defendant Newton and were not at issue in Defendant CSI’s original motion to dismiss, or Plaintiff’s instant motion.

On September 20, 2017, Defendant CSI filed its motion to dismiss Count I for failure to state a claim pursuant to MCR 2.116(C)(8). On November 7, 2017, Plaintiff filed its response. On November 13, 2017, the Court held a hearing in connection with the motion. At the conclusion of the hearing, the Court entered an Order granting the motion and dismissing Count I.

On November 27, 2017, Plaintiff filed its instant motion for reconsideration of the November 13, 2017 Order.

II. 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).

III. Arguments and Analysis

As a preliminary matter, Defendant CSI's motion for summary disposition in this case was filed pursuant to MCR 2.116(C)(8). Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). "The merits of factual allegations cannot be considered when deciding a (C)(8) motion." *Mieras v DeBona*, 452 Mich 278, 291; 550 NW2d 202 (1996).

At the hearing held in connection with the Defendant CSI's motion for summary disposition, the Court ruled that the Defendant CSI RFR was valid. However, that ruling required the Court to determine the merits of the Plaintiff's allegations, which was improper given that the motion before it was only brought under subsection (8). As a result, the Court's ruling must be vacated to the extent that it found that the Defendant CSI RFR was valid.

Turning to whether Count I states a claim upon which relief can be granted, Defendant CSI's alleged right to purchase Parcel B from Defendant Newton flows from

the agreement to purchase parcel A ("Parcel A Agreement"). Specifically, the Parcel A Agreement provides, in pertinent part: "At time of closing, [Defendant Newton] shall execute to the benefit of [Defendant CSI] a Right of First Refusal relative to...Parcel B...if [Defendant Newton] desires to sell said property to a party who will use it for anything other than a charter school". (See Exhibit A to Complaint, at ¶19.) The right of first refusal was delivered to Defendant CSI at the closing (Defendant CSI RFR"), and Defendant CSI recorded it on July 19, 2002. (See Exhibit B to the Complaint.) The Defendant CSI RFR specified that it was subject, and subordinate to, a previous right of first refusal granted by Defendant Newton to Connor Creek Academy ("Connor RFR"). The Connor RFR was allegedly issued in favor of Connor Creek Academy and was to apply if Defendant Newton wishes to sell Parcel B to a party who would use the parcel to operate a school.

Plaintiff's claim to Parcel B flows from an agreement dated November 15, 2016, pursuant to which Defendant Newton purported to sell Parcel B to Plaintiff. ("Parcel B Agreement"). While Plaintiff concedes that it knew about the Defendant CSI RFR, it maintains that it had been told by Defendant Newton that the Defendant CSI RFR was expired, null, and void.

On or about August 1, 2017, Defendant CSI contacted Defendant Newton to inquire about the Parcel B Agreement. On August 3, 2017, Defendant CSI represented that it was exercising its right of first refusal.

In its motion to dismiss, Defendant CSI argues that Plaintiff's claim should be dismissed because Plaintiff has no contractual right to contest that the Defendant CSI RFR was properly invoked because it is not a party to the Parcel A Agreement. In

response, Plaintiff argues that it is not seeking challenge the validity of the Defendant CSI RFR based on a contractual right. Rather, Plaintiff maintains that it has properly stated a claim for declaratory relief under MCL 600.2932(1). While Plaintiff avers that MCL 600.2932(1) provides a basis for declaratory relief, that statute governs quiet title claims, not declaratory actions. See *Wells Fargo Bank, NA v SBC IV REO, LLC*, 318 Mich App 72, 106; 896 NW2d 821 (2016). Defendant CSI has not addressed whether the facts plead in this case sufficiently state a claim under MCL 600.2932(1). Accordingly, Defendant CSI's position is misplaced and its motion for summary disposition pursuant to MCR 2.116(C)(8) must be denied.

IV. Conclusion

Based upon the reasons set forth above, Plaintiff's motion for reconsideration of the Court's November 13, 2017 Order granting Defendant CSI's motion for summary disposition pursuant to MCR 2.116(C)(8) is GRANTED and Defendant CSI's motion for summary disposition pursuant to MCR 2.116(C)(8) is DENIED. This Opinion and Order neither resolves the last claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: JAN 05 2018

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