

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

LLOYD E. SCHULTZ, LLC,
LLOYD E. SCHULTZ,

Plaintiffs,

vs.

Case No. 17-4326- CB

STERLING MORTGAGE & INVESTMENT CO.,
ALLYN SMITH LAW GROUP, P.C.,
MAURICE JANOWITZ,
EDEN JANOWITZ ALLYN,
LINDA ROBINETTE, and
KELLIE CARL, jointly and severally,

Defendants.

OPINION AND ORDER

Defendant Sterling Mortgage & Investment Co. ("Defendant Sterling") filed a motion for rehearing and reconsideration of the Court's order granting Plaintiff's motion for leave to amend, and to strike the first amended complaint.

I. Background

Plaintiff Lloyd E. Schultz, LLC is a Michigan limited liability company owned by co-plaintiff Lloyd E. Schultz ("Plaintiffs"). Shultz LLC owned a 24 unit apartment complex in Clinton Township. Answer ¶ 9-10. In 2008, Defendant Sterling loaned Shultz LLC \$280,000 as a mortgage. Answer ¶ 11. Sterling Mortgage then purportedly agreed to forebear from exercising its rights under the loan in exchange for Shultz LLC acknowledging a default and executing a deed in lieu of foreclosure. Plaintiffs filed their complaint on November 14, 2017 seeking to quiet title.

In July 2014, a quit claim deed relating to the apartment complex was allegedly executed in favor of Lisa Kremkow who has since purportedly disclaimed her interest in the property. Defendant Sterling filed a motion for summary disposition challenging Plaintiffs' standing in light of the Kremkow deed. Plaintiffs then sought leave to amend their Complaint to add a claim against Lisa Kremkow. The Court heard argument and granted Plaintiffs' motion for leave to amend on August 24, 2018.

II. Standard of Review

Motions for reconsideration require the moving party to demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion results from correction of the error. MCR 2.119(F)(3). A trial court has discretion on a motion for reconsideration to decline to consider new legal theories or evidence that could have been presented when the motion was initially decided. *Id*; *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012). MCR 2.119(F)(3) allows courts to correct mistakes made when ruling on a motion in order to avoid subsequent correction on appeal at 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 of discretion. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

III. Law and Analysis

Defendant Sterling first argues that the Court should grant a rehearing of Plaintiffs' motion for leave to amend given that no transcript of the hearing exists. An equipment malfunction occurred on August 20, 2018 and consequently Defendant Sterling maintains that it does not have a transcript to use for appeal.

In support of its argument, Defendant Sterling relies on *In re Estate of Stillson*, unpublished per curium opinion of the Court of Appeals, issued on June 29, 2010 (Docket No. 286777) p, 2, where the Court mentioned, without comment, that the trial court granted a motion for rehearing where the equipment malfunctioned and no transcript was made. Nothing in that non-binding opinion requires a trial court to grant a rehearing in such a circumstance.

To the contrary, the lack of a transcript does not require that the Court repeat a proceeding in every instance. See e.g. *People v Jackson*, 95 Mich App 565, 568; 291 NW2d 123 (1980) (“The unavailability of transcripts does not . . . automatically require that the case be started over again.”) When a transcript is unavailable on appeal, MCR 7.210(B)(2) governs. *Nye v Gable, Nelson & Murphy*, 169 Mich App 411, 414; 425 NW2d 797 (1988). “If the surviving record is sufficient to allow evaluation of defendant’s claims on appeal, defendant’s right is satisfied; the sufficiency of the record depends upon the questions which must be asked of it.” *People v Audison*, 126 Mich App 829, 834–35; 338 NW2d 235 (1983) citation and quotation omitted.

Here, the parties thoroughly briefed their positions prior to the hearing of Plaintiffs’ motion to amend. The Court’s order reflects the Court’s decision. Further, the unavailable record only pertains to the argument of a single motion in the case. Therefore, given that the parties’ positions and the Court’s decision on the motion can sufficiently be evaluated on appeal without the transcript, the Court is not persuaded that a rehearing of the motion is required.

Next, Defendant Sterling repeats its arguments that granting Plaintiffs’ motion to amend would cause undue delay. Defendant Sterling argues that Plaintiffs knew of the

Kremkow quit claim deed but waited until Defendant Sterling filed a motion for summary disposition to take any action regarding the deed in an effort to avoid Plaintiffs' standing argument. Defendant Sterling contends that Plaintiffs misled the Court by representing that Kremkow's purported interest in the property could be resolved by stipulation. Defendant Sterling also argues again that any amendment would be futile because Counts V and VI raise the same claim which is barred by the statute of limitations.

Defendant Sterling concedes that joinder of all parties with an interest in property is required so that all parties have an opportunity to litigate their claimed interests and their respective priority. Defendant Sterling also cites to MCL 600.2932 and MCR 3.411(H) for the proposition that a judgment regarding a claim to title only determines the interests of the parties to the action. Those provisions support the inclusion of Kremkow in the lawsuit. The Court remains satisfied that Kremkow should properly be added as a party to the quiet title litigation given that she allegedly had a quit claim deed executed in her favor.

The Court has carefully reviewed Defendant Sterling's motion for reconsideration and finds that it presents the same issues the Court previously considered. Defendant Sterling even incorporated by reference its previous response and admits that in the original opposition brief, it argued that Plaintiff's motion should be denied based on delay, bad faith and futility. Therefore, it is unnecessary to revisit those arguments again here. The Court remains convinced that Plaintiffs' motion for leave to amend was properly granted.

Defendant Sterling next moves to strike Plaintiffs' first amended complaint under MCR 2.115(B) stating that the court may strike redundant, immaterial, impertinent,

scandalous, or indecent matter in pleadings. Specifically, Defendant Sterling points to the Court's previous order that "Plaintiff shall remove reference to Eden Allyn and ASLG as "Defendants" in the Amended Complaint." In alleged violation of the Court's order, Defendant Sterling argues that the amended complaint still includes references to those former defendants. While the Complaint contains references to those defendants in the background facts, it no longer alleges any cause of action against those defendants. Therefore, the Court will deny Defendant Sterling's motion to strike the amended complaint.

IV. Conclusion

For the reasons set forth above, Defendant Sterling's motions for reconsideration and to strike the amended complaint are 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.

Date: OCT 12 2018

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