STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

SEAFOOD OF DETROIT, LLC,

Plaintiff,

vs. Case No. 2017-920-CB

MUER'S TABLE + BAR, LLC, MUER'S SEAFOOD, LLC, KARET PROJECTS, LLC, DAVID MUER, THOMAS J. LEFEVRE, and JEROME T. MOFFITT,

Defendants.
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OPINION AND ORDER

Defendants have filed a motion for reconsideration of the portion of the Court's March 22, 2018 Opinion and Order denying their motion to compel a supplemental answer to request for production #20 of their first discovery requests. On March 29, 2018, the Court ordered that all responsive documents be produced for in camera review. On April 5, 2018, Plaintiff produced the responsive documents. The Court has since conducted an in camera review of the documents.

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. Arguments and Analysis

The Court has conducted an in camera review of the documents responsive to request for production #20. The common interest doctrine is an exception to the rule that the attorney-client privilege or work product privilege is waived if made in the presence of the third party. *Estate of Nash by Nash v City of Grand Haven*, 321 Mich App 587; --NW2d – (2017). Accordingly, in order for the common interest doctrine to apply, the communications must first be privileged in nature.

In this case, Plaintiff argues that the emails in question are protected by the work-product doctrine/privilege. Under the work-product doctrine, "'any notes, working papers, memoranda or similar materials, prepared by an attorney in anticipation of litigation, are protected from discovery.'" *Messenger v. Ingham Co. Prosecutor*, 232 Mich App. 633, 636–637, 591 NW2d 393 (1998), quoting Black's Law Dictionary (6th ed, 1990), p. 1606. However, factual work product receives less protection than work product that reveals opinions, judgments, and thought

processes of counsel. *Id.* at 639. Specifically, work product merely containing relevant, non-privileged, facts is discoverable where there are adequate reasons for its production. *Id.*

While Plaintiff categorizes the documents as "attorney-to-attorney strategy communications", none of the emails provide opinions, advice, or any element of strategy. Rather, the emails generally provide procedural updates on their respective cases against Defendants, and/or share previously-filed pleadings, which are public record. Nevertheless, having reviewed the emails in question, as well as the parties' pleadings, the Court remains convinced that Defendants have failed to establish that the documents are discoverable. Although at best the documents may constitute factual work product, Defendants have not demonstrated adequate reasons for its production. Moreover, the emails do not contain relevant material. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. The documents at issue simply evidence that counsel for Plaintiff and for Partridge Creek Mall were keeping each other updated regarding the status of their respective cases. That fact is not of any consequence to the issues presented in this case. As a result, the emails are irrelevant and need not be produced.

III. Conclusion

Based upon the reasons set forth above, Defendants' motion for reconsideration is DENIED. In compliance with MCR 2.602(A)(3), the Court

states this *Opinion and Order* does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: MAY 04 2018

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge