

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

ARCHITECTURAL STAINLESS, INC.,
d/b/a/ ASI EQUIPMENT,
Plaintiff,

vs.

Case No. 18-2821-CB

KARET PROJECTS, LLC, THOMAS LEFEVRE,
TM PARTRIDGE CREEK MALL, L.P., ROBERT
LEITHAUSER, jointly and severally,
Defendants.

OPINION AND ORDER

Plaintiff Architectural Stainless, Inc. ("ASI") filed a Motion for Reconsideration of the Court's April 24, 2019 *Opinion and Order* granting defendant Partridge Creek, L.P.'s ("Partridge Creek") Motion for Summary Disposition under MCR 2.116(C)(10) on Count I of ASI's Amended Complaint.

I. Factual and Procedural Background

For the sake of judicial economy, the Court here incorporates the factual and procedural background from its April 24, 2019 Opinion. Essentially though, Partridge Creek owns commercial property ("Property") that it leased to defendant Karet Projects, LLC ("Tenant") for the operation of a restaurant. ASI contracted with Tenant for the design and installation of kitchen equipment for the restaurant. ASI then filed a claim of lien against the Property. In Count I of its Amended Complaint, ASI sought to foreclose on the Property but Partridge Creek moved for summary disposition on the basis that the lien only attached to Tenant's leasehold interest.

In its Opinion, the Court recognized that a lessee who acts on behalf of an owner of real property and thereby as the owner's agent may bind the landlord on a lien for the tenant's improvements. Specifically, if the lease required the lessee to make certain improvements, the lessee may act as an agent of the landlord. ASI cited to no Lease provision requiring installation of the subject equipment. Therefore, the Court granted summary disposition in favor of Partridge Creek on Count I. ASI now seeks reconsideration of that Order.

II. Standard of Review

For the Court to grant a motion for reconsideration, "[t]he moving party must demonstrate a palpable error by which the Court and the parties have been misled and show 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 Ladbrooke Racing Michigan, Inc*, 241 Mich App 1, 8; 614 NW2d 169 (2000).

Courts are "permitted to revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court." *Hill v City of Warren*, 276 Mich App 299, 307; 740 NW2d 706 (2007). The trial court does not abuse

its discretion “in denying a motion resting on a legal theory and facts which could have been pled or argued prior to the trial court’s original order.” See e.g., *Chareneau v Wayne Co Gen Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987). If a trial court wants to give a ‘second chance’ to a motion it has previously denied, it has every right to do so, and MCR 2.119(F)(3) does nothing to prevent this exercise of discretion. *Kokx v Bylenga*, 241 Mich App 655, 659; 617 NW2d 368 (2000) citation omitted.

III. Arguments, Law and Analysis

ASI first argues that the Court erred by relying on *J & I Serv Station, Inc v Wash Wagon of Michigan, Inc*, 120 Mich App 533, 535; 327 NW2d 518 (1982) because that case interpreted the predecessor to the Michigan Construction Lien Act (“CLA”). According to ASI, the Court of Appeals rejected the reasoning of *J&I Serv Station, Inc.*, in *Norcross Co v Turner-Fisher Assoc*, 165 Mich App 170; 418 NW2d 418 (1987).

Indeed *J&I Serv Station, Inc.*, relied on the Michigan Mechanics’ Lien Act (“MLA”), predecessor to the CLA. Also true, the Court of Appeals held that *J&I Serv Station, Inc.*, applied a strict construction rule when the Legislature intended a liberal construction of the CLA. *Norcross Co*, 165 Mich App at 179.

However, in its April 24, 2019 *Opinion and Order*, this Court cited *Stock Bldg Supply, LLC v Parsley Homes of Mazuchet Harbor, LLC*, 291 Mich App 403; 804 NW2d 898 (2011) for the proposition that the CLA should be liberally construed. This Court did not rely on *J&I Serv Station, Inc.*, for the question of liberal versus strict construction. In any event, the statutory provision at issue is unambiguous and therefore needs no construction, either liberal or strict. See *AFP Specialties, Inc v Vereyken*, 303 Mich App 497, 505; 844 NW2d 470 (2014).

Instead, this Court referenced *J&I Serv Station, Inc.* for its teaching on agency law in the context of liens and a landlord-tenant relationship. The *J&I Serv Station, Inc.*, Court explained that the MLA allowed a lien to “the extent of the interest of the owner. . . or lessee with whom the claimant has contracted.” *Id.* at 537. The language of the MLA there parallels the language of the CLA, which provides for a construction lien “upon the interest of the owner or lessee who contracted for the improvement. . . .” MCL 570.1107(1). Therefore, the conclusion in *J&I Serv Station, Inc* that “when a lessee acts on behalf of an owners of real property, and thereby as the owner’s agent, a landlord may be bound by a lien for a tenant’s improvements if the improvements are required by the lease,” remains instructive. See also *AFP Specialties, Inc*, 303 Mich App 497 (A 2014 case applying implied agency principles in the context of the CLA).

To be sure, the agency theory of liability forms the basis of ASI’s claims in the first place. It is unclear what alternative legal principle ASI seeks to the one set forth in *J&I Serv Station, Inc.* The Court in *AFP Specialties, Inc.*, in 2014, in addressing agency and liens, relied on the holding of *Rowen & Blair Elec Co v Flushing Operating Corp*, 399 Mich 593; 250 NW2d 481 (1977), a case based on the MLA that predates both *J&I Serv Station, Inc* and the CLA. Of note, ASI also relied on *Rowen & Blair Elec Co v Flushing Operating Corp* in its papers. Therefore, it does not follow that the CLA obviates the reasoning in *J&I Serv Station, Inc.* The Court remains convinced that controlling authority supports its conclusion that a lien may reach a lessor’s interest where the lessee acts as lessor’s agent with authority to contract for improvements to the benefit of the lessor. ASI has not shown any palpable error in the Court’s recitation of the law.

Next, ASI argues the existence and scope of an agency relationship are questions of fact and the Court impermissibly engaged in fact finding by concluding that no agency existed. However, ASI misreads the Court's Opinion. The Court did not find facts but rather decided that ASI cited to no evidence of an agency relationship between Tenant and Partridge Creek to raise a question of fact in the first place. ASI cited only to Lease provisions prohibiting alterations without prior approval and providing that any alterations remain with the Property. The Court found no basis from those provisions, even by reasonable implication, to conclude Tenant acted on behalf of Partridge Creek when contracting with ASI.

ASI now cites additionally to provisions in the Lease between Tenant and Partridge Creek in support of an implied agency relationship. Specifically, ASI cites to Section 7.01 which requires the Tenant to use the Property only for a restaurant. Exhibit 1. Additionally, the Data Sheet following the Index states Tenant shall use the Premises solely for the purpose of a Muer Kitchens restaurant. *Id.*

Further, Exhibit B of the Lease, concerning design and construction of the building, defines "tenant's work" as Tenant's total responsibilities for construction and improvements of the Premises. *Id.* at 52. Section II(A) of the Lease provides that all of "Tenant's Work" shall be subject to Partridge Creek's approval and shall comply with the requirements set forth in Partridge Creek's criteria for the mall, otherwise called the Tenant's Criteria Manual. *Id.*

Moreover, Section II(B) provides that all of Tenant's work must comply with certain requirements and be approved by Partridge Creek. ASI reasons that since Partridge Creek required the Property be used only as a restaurant, Partridge Creek

therefore required the improvements ASI provided to the Property to prepare the Property for that use. Under the Lease Exhibit B, Section VI(A), Partridge Creek had a Tenant Criteria Manual that governed design and construction. Sections VI(E) and VI(G) required designs “in strict conformance with Tenant’s Construction Requirements” and Partridge Creek’s prior approval. Exhibit A, Lease Exhibit B.

ASI should have cited to the more specific, above-mentioned Lease provisions in its original Response. However, given that ASI did cite to the Lease generally, and given that on a motion for reconsideration, the Court has discretion to consider arguments or evidence that could have been raised, See again *Kokx*, 241 Mich App at 659, the Court will reconsider its April 24, 2019 *Opinion and Order*. In light of the Lease provisions cited above, construing all inferences in ASI’s favor, a finder of fact could conclude that an implied agency relationship existed between Tenant and Partridge Creek with regard to the ASI contract. Accordingly, ASI’s motion for reconsideration is granted. The Settlement Conference scheduled for Wed., August 28, 2019 at 8:00a remains.

IV. Conclusion

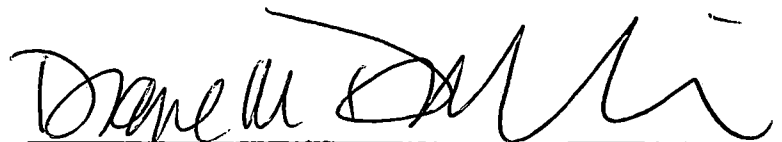
For the reasons set forth above, ASI’s motion for reconsideration is GRANTED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

Date:

JUL 17 2019

DMD/ac



Hon. Diane M. Brzezinski, Circuit Court Judge



cc: Cindy Rhodes Victor, Esq.
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