

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, GWENDOLYN LEITHAUSER, and
TOPLESS INTERIORS, LLC jointly and severally,

Defendants,

TOPLESS INTERIORS, LLC

Defendant and Cross-Plaintiff,

THOMAS LEFEVRE and PARTRIDGE CREEK
MALL, L.P., jointly and severally,

Cross-Defendants.

OPINION AND ORDER

Defendant TM Partridge Creek Mall, L.P. ("Partridge Creek") filed a Motion for Reconsideration of the Court's July 17, 2019 *Opinion and Order*.

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. Architectural Stainless, Inc. ("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 April 24, 2019 Opinion, the Court recognized that a lessee who acts on behalf of an owner of real property and thereby as the owner's implied 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 moved for reconsideration of the Court's April 24, 2019 *Opinion and Order*. On July 17, 2019, the Court issued another *Opinion* reconsidering its previous grant of summary disposition in favor of Partridge Creek. More particularly, the Court concluded that ASI had identified additional provisions in the Lease such that a reasonable finder of fact could conclude that an implied agency relationship existed between Partridge Creek and Tenant with regard to the improvements ASI provided. Partridge Creek now seeks reconsideration of the Court's reconsideration, and an order of summary disposition in its favor.

I. Law and Analysis

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.

In its motion, Partridge Creek essentially raises two arguments. First, Partridge Creek argues an implied agency relationship could not exist between Tenant and Partridge Creek because Section 27.03 of the Lease provides, “Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent.” Lease Section 27.03.

However, Partridge Creek raises this argument for the first time in its Motion for Reconsideration. The Court finds no reference to Section 27.03 in Partridge Creek's Motion for Summary Disposition or its Reply. "Ordinarily, 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." *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012) citing MCR 2.119(F)(3).

Further, ASI is not a party to the Lease so whether Section 27.03 bars a third-party claim based on implied authority is unclear. Partridge Creek relies on *Norcross Co v Turner-Fisher Assoc*, 165 Mich App 170, 182; 418 NW2d 418 (1987) for the proposition that an implied agency cannot exist contrary to the express intention of the principal. However, in *Norcross Co*, a lienholder continued to supply labor and materials after receiving notice the principal no longer "condoned or encouraged further improvements." *Id.* Here, Partridge Creek has not shown ASI had notice of its Lease provision with Tenant prohibiting an agency relationship or that Partridge Creek did not condone the improvements. Moreover, any question of the scope and existence of an agency relationship is a question of fact. *Id.* at 181. Therefore, the Court will not reconsider its decision based on Section 27.03.

Second, Partridge Creek, argues it received no benefit from the improvements because Tenant removed the equipment that ASI provided to the Tenant. Partridge Creek relies on *Rowen & Blair Elec Co v Flushing Operating Corp*, 399 Mich 593, 602; 250 NW2d 481 (1977) to argue that the improvements must provide a benefit to the reversion in order for the lien to be enforceable against a landlord. Partridge Creek cites to the Affidavit of Christopher Martus which states that Tenant removed all the

kitchen equipment from the Premises. Partridge Creek's Exhibit D. Partridge Creek also cited to an email from David Vallas to Cindy Victor on August 31, 2018 advising "It is our intention either to allow ASI to retrieve this equipment or to remove it from the premises as part of the eviction." Partridge Creek's Exhibit B emphasis added; see also Exhibit C (noting that *Tenant* failed to remove the kitchen equipment).

ASI previously cited to the Affidavit of Bruno Fuciarelli who states that the fixtures were custom-built and *permanently* affixed to the walls and floors of the restaurant. ASI's Exhibit 3 emphasis added. Consequently, a question of material fact exists as to the current state of the equipment and whether it could have provided a benefit to Partridge Creek.

If Tenant left the equipment such that it became property of Partridge Creek under the terms of the Lease, and Partridge Creek made the subsequent decision to remove the equipment, then the present facts would differ from *Rowen* where the IRS and other creditors removed the property such that the landlord received no benefit. Here, the Court cannot conclude as a matter of law that the equipment provided no value or benefit to Partridge Creek merely because Partridge Creek may have decided to dispose of it in favor of another use for the space. Because questions remain as to whether Partridge Creek received any value from the property, its Motion for Reconsideration on that basis is also denied.

II. Conclusion

For the reasons set forth above, Partridge Creek's motion for reconsideration is 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.

Diane M. Druzinski

Hon. Diane M. Druzinski, Circuit Court Judge

Date: **SEP - 5 2019**

DMD/ac

cc: Cindy Rhodes Victor, Esq.
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