

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

HEATH M. TRERICE,
Plaintiff,

vs.

Case No. 18-4695-CB

HOWARD O. TRERICE,
Defendant.

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OPINION AND ORDER

This matter comes before the Court on Plaintiff Heath Trerice's ("Heath") Motion for Reconsideration of the Court's May 6, 2019 *Opinion and Order* granting in part and denying in part Defendant Howard Trerice's ("Howard") motion for partial reconsideration of the Court's March 8, 2019 *Opinion and Order*.

I. Factual and Procedural Background

For the sake of judicial economy, the Court herein incorporates the facts from its March 8, 2019 *Opinion and Order*. Essentially, though, this case arises from a shareholder dispute. Miljoco Corp. ("Miljoco"), a closely-held corporation, operates in Macomb County but is incorporated under the laws of Florida. The three-count Complaint, filed on December 5, 2018, alleges: count I, violation of MCL 450.1489; count II, breach of common-law fiduciary duty; and count III, derivative breach of fiduciary duty.

Defendant Howard sought dismissal of Counts I and II of the Complaint under the "internal affairs doctrine" arguing that Michigan law did not apply to the internal affairs of a Florida corporation and therefore claims in the Complaint based on Michigan law fail.

Defendant Howard sought dismissal of Count III on procedural grounds. On March 8, 2019, the Court issued an *Opinion and Order* denying Defendant Howard's Motion for Summary Disposition under MCR 2.116(C)(8).

Defendant Howard then filed a Motion for Reconsideration of the Court's decision regarding Counts II and III. The Court issued an *Opinion and Order* on May 9, 2019 concluding that upon consideration of the additional authority cited in Defendant Howard's Reply brief, Michigan law indeed supported dismissal of Count II of the Complaint on the basis that Plaintiff Heath had not alleged facts supporting a direct claim for breach of fiduciary duty. The Court denied the Motion for Reconsideration regarding Count III.

On May 17, 2019, Plaintiff Heath filed a Motion for Reconsideration of the Court's May 9, 2019 *Opinion and Order*. The Court now addresses Plaintiff Heath's motion.

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).

III. Arguments

Plaintiff Heath argues that he suffered individual harm which supports an individual claim for breach of fiduciary duty even though the alleged conduct also harmed the corporation. In other words, the harm to the individual and to the corporation are not mutually exclusive. Heath claims that he suffered individual harm because the alleged conduct affected dividends and distributions. Plaintiff Heath maintains that he sufficiently alleged a duty owed to him individually based on his position as a minority shareholder.

IV. Law and Analysis

Plaintiff Heath cites to *Christner v Anderson, Nietzke & Co, PC*, 156 Mich App 330, 344–45; 401 NW2d 64 (1986), but that Court permitted an individual claim because the plaintiff was singled out as the only shareholder excluded from a distribution. The *Christner* Court observed that, a “stockholder may individually sue” when the stockholder sustains a “loss separate and distinct from that of other stockholders generally.” *Id.* While Plaintiff Heath may be the only other stockholder in Miljoco Corp., he has not alleged a basis for an individual claim distinct from injury that would be suffered by all shareholders.

Plaintiff also cites to *Lud v Howard*, 161 Mich App 603, 611; 411 NW2d 792 (1987), but there the Court followed an exception to the general rule barring individual claims because relief to the corporation was unavailable. Finally, in addition to federal opinions and secondary sources, Plaintiff Heath cites to *Salvadore v Connor*, 87 Mich

App 664, 675; 276 NW2d 458 (1978), which stands for the proposition that directors and officers owe a fiduciary duty but does not appear to address the distinction between a derivative and a direct claim.

On the other hand, Plaintiff Heath overlooks the authority cited in the Court's *Opinion and Order*, including *Michigan Nat Bank v Mudgett*, 178 Mich App 677, 679–80; 444 NW2d 534 (1989), which held that an individual cause of action does not arise merely because the act complained of results in damage to both the shareholder and the corporation. Rather, an individual claim arises only where the alleged injury results from a duty owed to the individual personally. *Id.* Here, Heath alleges the existence of a fiduciary duty that arises solely because of his position as minority shareholder. Heath has alleged no further facts that support the existence of a fiduciary duty owed to him individually or of any injury or loss accruing separate and distinct from that of the corporation. It is insufficient to claim harm to both the shareholder and the corporation. Rather, Heath must allege a duty owed to him individual and a harm distinct from shareholders generally.

In conclusion, Plaintiff Heath did not demonstrate palpable error by which the Court was misled. See MCR 2.119(F)(3). Instead, the Court has already addressed the issues raised “either expressly or by reasonable implication.” *Id.* Therefore, Heath's Motion for Reconsideration is denied.

V. Conclusion

For the reasons set forth above, Plaintiff Heath'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.


HONORABLE RICHARD L. CARETTI

DATE: July 3, 2019

cc: Norman Ankers, Esq.
Daniel Quick, Esq.
Thomas VanDusen, Esq
Thomas Howlett, Esq..

