STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

THOMAS FRANCIS,

Plaintiff/Counter-Defendant,

Case No. 15-07129-CBB

vs.

HON. CHRISTOPHER P. YATES

JOHN TRIMBERGER,

Defendant/Counter-Plaintiff
and Third-Party Plaintiff,

vs.

WEST MICHIGAN GARAGE INTERIORS LLC; STACY E. KORTMAN; and GARAGE INTERIORS, LLC,

Third-Party Defendants.
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OPINION AND ORDER DENYING DEFENDANT JOHN TRIMBERGER'S MOTION FOR RECONSIDERATION

In an opinion and order issued on March 8, 2017, the Court devoted 18 pages to a discussion of the various parties' competing motions for summary disposition. In the end, the Court permitted Plaintiff Thomas Francis and Defendant John Trimberger to amend their pleadings in order to state claims against one another for breach of the operating agreement of their limited liability company, Slide-Lok of Grand Rapids LLC ("Slide-Lok"). On March 27, 2017, Trimberger filed a motion for reconsideration of several aspects of the Court's decision.

A motion for reconsideration under MCR 2.119(F) permits relief only if the moving party "demonstrate[s] a palpable error by which the court and the parties have been misled and show[s] that a different disposition of the motion must result from correction of the error." To be sure, courts

may "revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court." See Hill v City of Warren, 276 Mich App 299, 307 (2007). But MCR 2.119(F)(3) strongly suggests that something in the motion must impel the Court to conclude that its chosen outcome is so erroneous that it must be rectified. Nothing in Defendant Trimberger's motion gives the Court any reason to change its rulings.

Defendant Trimberger's principal contention concerns claims brought on behalf of Slide-Lok. Specifically, the Court refused to permit Trimberger to assert claims belonging to Slide-Lok because Trimberger failed to comply with the requirements of MCL 450.4510. By its terms, MCL 450.4510 establishes six separate conditions that a member of a limited liability company ("LLC") must meet to pursue claims on behalf of the LLC. The statute requires, *inter alia*, that the member must make a "written demand on the managers or the members with the authority requesting that the managers or members cause the limited liability company to take suitable action[,]"see MCL 450.4510(b), then wait 90 days "from the date the demand was made," see MCL 450.4510(c), and ultimately establish that "[t]he plaintiff fairly and adequately represents the interests of the [LLC] in enforcing the right of the" LLC. See MCL 450.4510(e). That final provision identified by the Court effectively bars a member from using the LLC as a weapon in contravention of the will of the controlling members of the LLC.

Under the Slide-Lok operating agreement, Plaintiff Francis and Defendant Trimberger hold 50-percent ownership shares in the LLC. See Complaint, Exhibit A (Operating Agreement, Schedule 2). The operating agreement further provides that the LLC is member-managed, see id. (Operating Agreement, § 5.1.1), that "all decisions . . . relating to the management and operation of the [LLC] shall be made and executed by a Majority in Interest of the Members[,]" id. (Operating Agreement,

§ 5.1.2), that each "decision, consent, approval, judgment, or action" of the LLC requires "a Majority of the Members[,]" id. (Operating Agreement, § 5.2), and that a "Member has no power to withdraw from the Company, except as otherwise provided in Section 8" of the operating agreement. See id. (Operating Agreement, § 5.3). Because no such withdrawal has occurred, Francis and Trimberger both still hold a 50-percent interest in Slide-Lok, and neither one can take significant actions in the name of Slide-Lok without the other member's consent.[1]

Given the conflict between Plaintiff Francis and Defendant Trimberger, coupled with their equally divided membership stake in Slide-Lok, the Court necessarily concludes that neither one of them "fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company." See MCL 450.4510(e). To the contrary, to permit either of them to essentially weaponize the LLC against the other one would fundamentally alter what should be a straightforward contest between two members asserting rights under the operating agreement. Moreover, neither Francis nor Trimberger complied with the notice-and-wait requirements defined by MCL 450.4510(b) and (c). Accordingly, neither member of Slide-Lok has a right under Michigan law to "commence and maintain a civil suit in the right of" the LLC. See MCL 450.4510. Thus, the Court must deny reconsideration insofar as Trimberger seeks to assert the claims of Slide-Lok.

In addition to his broad-based challenge to the Court's opinion, Defendant Trimberger has also asked for reconsideration of the ruling awarding summary disposition to Plaintiff Francis on the eighth counterclaim of Trimberger asserting tortious interference with business relations. The Court

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[1] To be sure, the Court entered an "Order on Defendant Trimberger's Motion for Preliminary Injunction" on September 21, 2015, that permitted Plaintiff Francis to run a competing business and gave Trimberger operational control of Slide-Lok's commercial efforts, but that order did not modify the membership interests of Francis and Trimberger in Slide-Lok.

not only stands by its ruling that Trimberger cannot accuse Francis of tortiously interfering with the LLC in which Francis still retains a 50-percent membership interest, but also notes that such a claim is fundamentally unsustainable on the facts of this case. Our Court of Appeals has held that a claim for tortious interference with business relations requires evidence "that the interferer did something illegal, unethical or fraudulent." Dalley v Dykema Gossett PLLC, 287 Mich App 296, 324 (2010). The record reveals nothing of the sort,[2] so Trimberger's counterclaim on that theory cannot survive summary disposition under MCR 2.116(C)(10). Consequently, the Court must deny Trimberger's motion for reconsideration.

IT IS SO ORDERED.

Dated: May 10, 2017

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

[2] In the brief supporting the motion for reconsideration, Defendant Trimberger simply states that Plaintiff Francis "called the dealers of Slide-Lok and told them to purchase their products from Francis in direct violation of this court's September 18, 2015 order causing Slide-Lok to suffer loss of profits generated from those dealer sales." Although making such calls comes nowhere near the type of conduct necessary to support a viable claim for tortious interference with business relations, it could conceivably constitute contempt of court carrying civil sanctions. But a finding of contempt requires a process that Trimberger has not yet invoked. See MCR 3.606.