

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

SUMMER WILLIAMS,

Plaintiff,

vs.

MOSLEY SCHOOL OF COSMETOLOGY,
LLC; MOSLEY SCHOOL OF
COSMETOLOGY 2, LLC; and
SINCERAE MOSLEY,

Defendants.

Case No. 19-06112-CBB

HON. CHRISTOPHER P. YATES

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

On October 11, 2019, the Court conducted oral arguments on the defendants' motion seeking partial summary disposition on the pleadings under MCR 2.116(C)(8). At the end of that hearing, the Court rendered a decision from the bench that was memorialized in an order issued by the Court on October 14, 2019. Specifically, the Court granted partial summary disposition on two of the six counts in the plaintiff's complaint, denied summary disposition on the other four counts, and granted the plaintiff 21 days' leave to file an amended complaint recasting one of the two dismissed counts. Remarkably, the plaintiff then filed a motion for reconsideration on November 4, 2019, essentially asking to be declared the winner under MCR 2.116(C)(8) and (9). A motion for reconsideration can seek relief under MCR 2.119(F) 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. Here, the Court finds no reason to grant relief on reconsideration.

The plaintiff has cited MCR 2.116(C)(8) and (9) as grounds for relief in her favor, but MCR 2.116(C)(8) has no application to the plaintiff's request for relief because it simply permits the party facing a complaint (or a counterclaim) to knock out the complaint (or counterclaim) based upon the inadequacy of the allegations in the pleading. See Maiden v Rozwood, 461 Mich 109, 119 (1999). Similarly, the plaintiff has no basis for relief under MCR 2.116(C)(9), which can result in a ruling for the plaintiff if “the opposing party has failed to state a valid defense to the claim asserted against it.” See Hackel v Macomb County Commission, 298 Mich App 311, 316 (2012). “A motion under MCR 2.116(C)(9) ‘is analogous to one brought pursuant to MCR 2.116(C)(8) in that both motions are tested by the pleadings alone, with the court accepting all well-pleaded allegations as true.’” Id. Because the defendants filed a motion for summary disposition in lieu of an answer, the defendants were not yet obligated to file – and the Court therefore could not yet consider – the contents of the defendants’ answer at the argument on the defendants’ motion for summary disposition.* And, as a result, the Court could not yet conclude that the defendants “failed to state a valid defense to the claim[s] asserted” against them so as to permit the plaintiff to obtain summary disposition pursuant to MCR 2.116(C)(9). See Hackel, 298 Mich App at 316. Thus, the Court could not grant any relief to the plaintiff in resolving the summary disposition motions on October 11, 2019.

* According to MCR 2.108(C)(1), “[i]f a motion [for summary disposition] under MCR 2.116 made before filing a responsive pleading is denied, the moving party must serve and file a responsive pleading within 21 days after notice of the denial.” Thus, the defendants bore no obligation to file their answer until after the denial of their motion for summary disposition. Here, the Court allotted 21 days for the plaintiff to amend her complaint and 21 days after that for the defendants to answer.

In the fullness of time, of course, the defendants must file an answer unless they are able to defeat, under MCR 2.116(C)(8), each and every claim asserted by the plaintiffs. Then, the plaintiff may seek summary disposition under MCR 2.116(C)(9) in her own right by challenging the adequacy of the defendants' answer. But that type of challenge necessarily was premature when the Court had not yet received an answer from the defendants, but heard arguments on the defendants' motion for summary disposition under MCR 2.116(C)(8) in lieu of an answer, on October 11, 2019. Therefore, the Court must deny the plaintiff's motion for reconsideration.

IT IS SO ORDERED.

Dated: December 12, 2019



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