STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

COUNTRY OAKS LANDSCAPE SUPPLY II, INC.,

Plaintiff,

v

Case No. 2011-117038-NZ
Hon. Wendy Potts

CHARTER TOWNSHIP OF BRANDON,
A Michigan Charter Township,

Defendant.
_____/

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S OPINION AND ORDER, DATED AUGUST 21, 2015

At a session of Court
Held in Pontiac, Michigan On
MAR 23 2016

This matter is before the Court on Plaintiff's Motion for Reconsideration of the Court's Opinion and Order, Dated August 21, 2015. The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

In review of Plaintiff's motion, the Court relies on MCR 2.119(F)(3), which provides, in relevant part:

> [A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

"The grant or denial of a motion for reconsideration rests within the discretion of the trial court." *Charbeneau v Wayne Cty. Gen. Hosp.*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

On December 24, 2013, Defendant filed a Motion to Enforce Consent Judgment and to Hold Plaintiffs in Contempt[1] for Plaintiff's alleged violation of the November 30, 2006 First Amended Consent Judgment[2] and the May 1, 2012 Consent Judgment. Plaintiff filed an Answer on January 22, 2014 and the Court subsequently held an evidentiary hearing on the issue. Following the evidentiary hearing, the parties submitted their proposed findings of fact and conclusions of law. On August 21, 2015, the Court entered an Opinion and Order Re: Defendant's Motion to Enforce Consent Judgment and to Hold Plaintiffs in Contempt. Therein, the Court concluded that Plaintiff's use of its property and activities at the property, as disputed between the parties, constituted willful, clear, and unequivocal violations of the 2006 and 2012 Consent Judgments. As such, the Court fined Plaintiff $1,000.00 and ordered Plaintiff to pay Defendant's court costs and reasonable attorney fees incurred for the contempt proceeding as required by the 2006 Consent Judgment.

Consequently, Plaintiff filed its motion for reconsideration of the Court's August 21, 2015 Opinion and Order on various arguments, including the contention that the Court relied upon property restrictions that were not imposed by the 2006 First Amended Consent Judgment or by the 2012 Consent Judgment. Plaintiff also asserts that the Court made erroneous rulings regarding the types of trucks or equipment used by Plaintiff as well as a change in traffic patterns. Next, Plaintiff points out that the Court referred to "C-2 General Business" zoning when the 2012 Consent Judgment re-zoned the property as "C-1 Local Business." Finally, Plaintiff maintains that the Court mischaracterized Plaintiff's business as only a nursery selling nursery-related products.

The Court has had an opportunity to review Plaintiff's motion for reconsideration, the testimony of Mark Cherry and William Dinnan from the evidentiary hearing transcripts, the parties' proposed findings of fact and conclusions of law, in addition to the case file, and finds that the

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[1] Defendant's motion refers to Plaintiffs, rather than Plaintiff.

[2] The November 30, 2006 First Amended Consent Judgment was entered by the Honorable Colleen A. O'Brien in the case of Brandon Township v Gary J. Eynon, 82-243700-CZ.

motion presents the same issues previously considered by the Court. While Plaintiff's arguments demonstrate that it disagrees with the Court's ruling, those arguments do not demonstrate palpable error.

The Court's reference to C-2 zoning, as opposed to C-1 zoning, was merely a clerical error and did not in any way influence the Court's ruling as set forth within the August 21, 2015 Opinion and Order. In addition, the Court's Opinion and Order did not mischaracterize Plaintiff's business as only a nursery selling nursery-related products, but rather indicated that the 2006 Consent Judgment limited Plaintiff's use of its property to the sale of nursery and nursery-related products and services.

The Court finds that Plaintiff has failed to demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of Defendant's Motion to Enforce Consent Judgment and to Hold Plaintiffs in Contempt must result from correction of the error.

Accordingly, Plaintiff's Motion for Reconsideration of the Court's Opinion and Order, Dated August 21, 2015 is denied.

IT IS SO ORDERED.

Dated: MAR 23 2016

Hon. Wendy Potts
Circuit Court Judge