

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DRAGO MIHAJLOVSKI, et al,

Plaintiffs,

v

Case No. 14-140471-CK

Hon. Wendy Potts

BIRACH BROADCASTING CORP, et al,

Defendants.

OPINION AND ORDER RE: PLAINTIFFS' MOTION FOR RECONSIDERATION

At a session of Court
Held in Pontiac, Michigan

On

OCT 26 2015

Plaintiffs move the Court to reconsider its decision granting summary disposition of Plaintiffs' claims against Defendants Birach Broadcasting Corporation and Sima Birach, Sr. The Court has discretion to grant or deny reconsideration. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Reconsideration is warranted if a party identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3).

Most of the arguments in Plaintiffs' reconsideration motion were addressed in their response to the summary disposition motion and in the Court's opinion. Defendant cannot demonstrate grounds for reconsideration by reiterating arguments that were raised and rejected in the Court's decision on the original motion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). The fact that Defendant disagrees with the Court's reasoning or

conclusions does not amount to palpable error. *Herald Co v Tax Tribunal*, 258 Mich App 78, 83; 669 NW2d 862 (2003).

Even if the Court were inclined to revisit Plaintiffs' arguments, Plaintiffs give the Court no basis for doing so. Plaintiffs continue to maintain, without evidentiary support, Sima Birach Sr. and Birach Broadcasting are liable for the tortious conduct of Sima Birach Jr. because he was their agent. However, Plaintiffs present no evidence that Birach Jr had actual authority to act on behalf of Birach Sr. or Birach Broadcasting. To the contrary, the undisputed evidence shows that Birach Jr. was neither employed by nor in an actual agency relationship with Birach Sr. or Birach Broadcasting at the time Birach Jr. engaged in the wrongdoing alleged in the complaint. Further, Plaintiffs have no evidence that Birach Sr. or Birach Broadcasting engaged in conduct that would lead a third person to reasonably believe that they had an agency relationship with Birach Jr. *Alar v Mercy Mem Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995). Plaintiffs cannot establish an ostensible agency based solely on Birach Jr.'s conduct. *Alar, supra*. Thus, the fact that Birach Jr. may have represented that he was an agent of Birach Sr. or Birach Broadcasting is irrelevant to whether an ostensible agency existed.

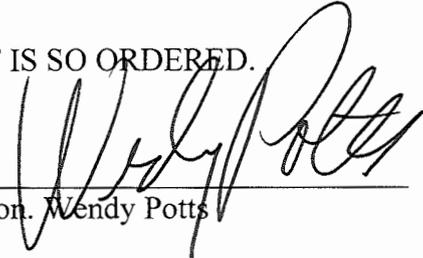
Plaintiffs also assert, for the first time in this motion, that Birach Sr. and Birach Broadcasting are liable for Birach Jr.'s actions because they held the FCC license on WCAR radio station. Because this argument was not raised or briefed in Plaintiffs' response to the summary disposition motion, this Court has no obligation to consider it now. *Charbeneau, supra* at 733. Moreover, Plaintiffs cite only 47 CFR 73.3555, a federal regulation governing ownership of broadcast stations, without explaining how this regulation would impose vicarious liability on the station owner and license holder. This Court has no obligation to research the issue and determine the basis for Plaintiffs' claims. Rather, Plaintiffs "have a duty to fully present their

legal arguments to the court for its resolution of their dispute.” *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 31 (2008).

For all of these reasons, the Court denies Plaintiffs’ motion for reconsideration.

IT IS SO ORDERED.

Dated: **OCT 26 2015**



Hon. Wendy Potts