STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

HAKT CORPORATION and RUTH S. KNOLL,

Plaintiffs,

Case No. 2014-141334-CK
Hon. Wendy Potts

v

NICOLE MARIE COUNTRYMAN,
GARY A. COUNTRYMAN, and
COUNTRY GHOTI, LLC,

Defendants,

_____/

OPINION AND ORDER RE: DEFENDANTS' JOINT MOTION FOR RECONSIDERATION OF DECEMBER 16, 2015 ORDER REGARDING MOTION AS TO LOAN PROCEEDS UNDER MCR 2.119(F)(3)

At a session of Court
Held in Pontiac, Michigan On
MAR 30 2016

This matter is before the Court on Defendants' Joint Motion for Reconsideration of December 16, 2015 Order Regarding Motion as to Loan Proceeds Under MCR 2.119(F)(3). The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

In review of Defendants' joint 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).

By way of background, Plaintiffs filed a Motion for Summary Disposition as to the Fraudulent Conveyance of the Noble Road Property and Related Loan Proceeds on October 16, 2015. Defendants Gary and Nicole Countryman filed their individual Responses to Plaintiffs' summary disposition motion on November 18, 2015 and the Court subsequently heard the motion on December 16, 2015. Following oral argument, the Court granted Plaintiffs' Motion for Summary Disposition in part. Specifically, the Court ruled as follows: "The Court grants Plaintiffs summary disposition of their fraudulent transfer claim as to the loan proceeds Nicole Countryman withdrew from the bank accounts. In all other respects the motion is denied."

As a consequence, Defendants filed their joint motion for reconsideration of the Court's December 16, 2015 Order Regarding Motion. Defendants are seeking reconsideration of the Court's ruling related to certain withdrawals from a joint bank account of funds traceable to loan proceeds secured by a mortgage on the Noble Road property.

According to Defendants, the Court presumed that there was a transfer by Defendant Gary Coleman of his sole property when in fact the funds in the joint account were proceeds of property owned by Gary and Nicole Countryman as tenants by the entirety. Therefore, Defendants contend that an issue of fact exists as to the ownership of the proceeds. Defendants assert further that a fraudulent transfer did not occur when Nicole Countryman withdrew funds from the joint account as those funds were her funds.

Defendants also argue that the Court was mistaken in its statement that Defendant Nicole Countryman testified at her deposition that the loan proceeds in the TCF account belonged to her husband, Gary Countryman. On the record, the Court stated that "Nicole admitted in her deposition

the loan proceeds in the account belonged to Gary."[1] Defendants point out that Nicole Countryman's deposition was taken on February 17, 2015, a date prior to the loan closing in March 2015, and so neither the TCF account nor the future loan proceeds were discussed during her deposition.

Finally, Defendants maintain that Nicole Countryman provided consideration for the loan proceeds in the form of a mortgage on her property, namely the Noble Road property, which Gary and Nicole Countryman hold as tenants by the entirety. That is, Nicole Countryman had to execute the mortgage in order for repayment of the loan to be secured by the Noble Road property. By doing so, Nicole Countryman has subjected her property to foreclosure in the event of non-payment of the loan. Defendants argue that the relevant transaction is the encumbrance of the Noble Road property and partial liquidation of its value into cash rather than the deposit of loan proceeds into the TCF joint account.

Upon review of the December 16, 2015 motion hearing transcript, the Court acknowledges that its ruling regarding the loan proceeds was based primarily on a mischaracterization of Nicole Countryman's deposition testimony. On this basis, the Court will exercise its discretion under MCR 2.119(F)(2) and order Plaintiffs to file a Response to Defendants' joint motion for reconsideration by April 13, 2016. Defendants shall then praecipe the matter for oral argument on April 20, 2016.

IT IS SO ORDERED.

Dated: MAR 30 2016

Hon. Wendy Potts
Circuit Court Judge

[1] In the ruling, the Court stated that "Nicole admitted in her deposition the loan proceeds in the account belonged to Gary and there's no evidence that she gave Gary any reasonable equivalent value in exchange."