

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DONNA L. PARSONS and
WOODWARD SIX MILE PROPERTY, LLC,

Plaintiffs,

v

Case No. 2015-145172-CB
Hon. Wendy Potts

BARBARA LOVELESS, individually, and
BARBARA LOVELESS, as Co-Trustee of
George & Barbara Spears Trust,

Defendants.

**OPINION AND ORDER RE: DEFENDANTS' MOTION FOR RECONSIDERATION OF
OPINION AND ORDER RE: MOTION FOR REINSTATEMENT OF CASE AND
ENFORCEMENT OF SETTLEMENT AGREEMENT**

At a session of Court
Held in Pontiac, Michigan On
OCT 20 2015

This matter is before the Court on Defendants' "Motion for Reconsideration of Opinion and Order Re: Motion for Reinstatement of Case and Enforcement of Settlement Agreement." The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

In review of Defendants' 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, this case was dismissed with prejudice on June 30, 2016 when the Court was notified that the matter was settled, no trial documents were submitted, and the parties did not appear for trial. On July 12, 2016, Plaintiffs filed a motion to reinstate the case and to enforce the executed June 10, 2016 General Settlement and Release Agreement (“Settlement Agreement”), to which Defendants objected. The parties appeared before the Court on Plaintiffs’ motion on July 20, 2016, at which time the Court ordered the parties to present their proposed documents effectuating Paragraph 5 of the Settlement Agreement. The parties submitted their proposed documents and the Court reviewed the same. Upon review, the Court observed that the parties’ Settlement Agreement contains a binding statutory arbitration provision, which provides:

“The Parties agree that *all disputes relating to this Agreement* shall be submitted to binding statutory arbitration, with Thomas G. Hardy, Esq. sitting as the sole arbitrator pursuant to the Michigan Uniform Arbitration Act (the “UAA,” MCL 691.1681, et seq). In the event Thomas G. Hardy is unable to sit as the sole arbitrator of any dispute, then the arbitrator shall be appointed in the manner provided in the UAA, unless the Parties agree in a signed writing to the appointment of an alternate arbitrator.” [Paragraph 17 of the Settlement Agreement; Emphasis added.]

Accordingly, the Court entered an Opinion and Order Re: Motion for Reinstatement of Case and Enforcement of Settlement Agreement on August 9, 2016. In that Opinion and Order, the Court ordered that any remaining disputes relating to the Settlement Agreement shall be submitted to binding statutory arbitration.

Thereafter, Defendants timely filed their motion for reconsideration in which they request the Court to strike the portion of the Opinion and Order regarding binding statutory arbitration. Defendants argue that the agreement at issue is not the Settlement Agreement, but the Nonparty Agreement¹ with Phil Parsons, which Defendants find to be unacceptable. Defendants contend that they never agreed to arbitrate the terms of the Nonparty Agreement or any arrangement with Phil

¹ The Nonparty Agreement is the proposed Dissolution of Partnership Agreement, submitted and filed by Plaintiffs on July 27, 2016. The proposed Dissolution of Partnership Agreement was executed by Phil Parsons and Donna Parsons.

Parsons. Defendants also argue that the Settlement Agreement shall be null and void “if Phil Parsons shall refuse to consent to the dissolution of the Partnership in a form acceptable to all Parties and Judge Potts.” [Paragraph 5 of the Settlement Agreement.] According to Defendants, Phil Parsons has refused to consent to the dissolution of the partnership in a form acceptable to all parties,² and therefore, the Settlement Agreement is null and void.

The Court has considered Defendants’ argument and observes that by virtue of Defendants’ objection to the proposed dissolution agreement offered by Plaintiffs and Phil Parsons, the argument could potentially be made that Phil Parsons has not agreed to the dissolution of the Partnership in a form acceptable to Defendants. Clearly, Plaintiffs and Phil Parsons have submitted proposals to Defendants, which have been rejected. Yet, there are no conclusive factual findings before the Court that Phil Parsons has refused to consent to the dissolution of the Partnership in a form acceptable to or offered by Defendants. In fact, Defendants make indefinite statements in their Supplemental Brief such as “[i]f Phil Parsons should refuse to do what the parties to this action anticipated as part of the Parsons-Loveless Agreement”³ and “if Phil Parsons will insist on any settlement terms that are beyond the scope of the items specifically incorporated in the Parsons-Loveless Agreement.”⁴

While Defendants submit a plausible argument, the Court cannot make a factual determination - based upon the allegations in the motion for reconsideration or Defendants’ Supplemental Brief - that Phil Parsons has refused to consent to the dissolution of the partnership in a form acceptable to all parties and Judge Potts to make the parties’ Settlement Agreement null and void. In addition, the Court finds that the instant matter encompasses both the parties’ Settlement

² Defendants contend that the fact that Phil Parsons has refused to consent to the dissolution of the partnership in a form acceptable to all parties has been established by the parties’ supplemental briefing as ordered by the Court.

³ The Parsons-Loveless Agreement is the parties’ Settlement Agreement.

⁴ See pages 14 and 15 of Defendants’ Supplement Brief in Support of Defendants’ Response to Plaintiffs’ Motion for Reinstatement of Case and Enforcement of Executed Settlement and Release Agreement, filed July 26, 2016.

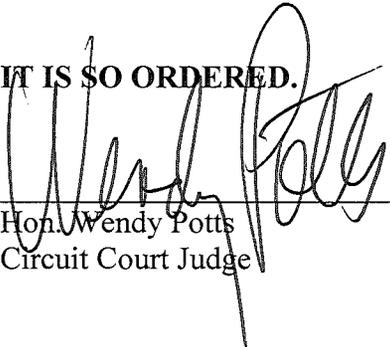
Agreement and the proposed dissolution agreement(s) as they must be considered collectively in light of Paragraph 5 of the Settlement Agreement.

As stated in the August 9, 2016 Opinion and Order, the parties are in dispute over the language of the Settlement Agreement. Since the Settlement Agreement remains in full force and effect at the present time, any disputes relating to that Settlement Agreement shall be submitted to binding statutory arbitration.

For these reasons, the Court finds that Defendants have failed to demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the underlying motion must result from correction of the error.

Therefore, Defendants' "Motion for Reconsideration of Opinion and Order Re: Motion for Reinstatement of Case and Enforcement of Settlement Agreement" is denied.

Dated: **OCT 20 2016**

IT IS SO ORDERED.


Hon. Wendy Potts
Circuit Court Judge