STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BAYSIDE MICHIGAN, INC. and
BAYSIDE PROPERTY, LLC,
Plaintiffs,

Case No. 2015-146663-CZ
Hon. Wendy Potts

v

BLUE MARLIN, LLC d/b/a
BAY SIDE SPORTS GRILLE,
KEY LARGO, LLC, JOHNI SEMMA,
BARRY A. STEINWAY, and STEINWAY
LAW OFFICES, PC,

Defendants,

_____/

OPINION AND ORDER RE: PLAINTIFFS' MOTION FOR RECONSIDERATION

At a session of Court
Held in Pontiac, Michigan On
JUN 21 2016

This matter is before the Court on Plaintiffs' Motion for Reconsideration of the Court's May 18, 2016 Order Regarding Motion under MCR 2.119(F)(1). The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

In review of Plaintiffs' 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, Defendants Blue Marlin, LLC d/b/a Bay Side Sports Grille, Key Largo, LLC, and Johni Semma filed their Motion to Set Aside Default and Default Judgment on May 3, 2016 and the Court subsequently held the motion hearing on May 18, 2016. During the motion hearing, Defendants represented that their retained counsel, Barry Steinway, intentionally withheld Plaintiffs' discovery requests, motions to compel discovery, as well as the Court's orders compelling discovery, as a means to conceal his alleged conversion of the $200,000.00 escrowed funds from the parties. Following oral argument, the Court granted Defendants' Motion to Set Aside the Default for the reasons stated on the record.

Consequently, Plaintiffs filed their motion for reconsideration of the Court's May 18, 2016 Order Regarding Motion. Plaintiffs now present the Affidavit of Barry Steinway, various emails, and a withdrawal slip to refute the representations Defendants made during the motion hearing. First, Plaintiffs offer the Affidavit of Barry Steinway, who asserts that he withdrew funds out of the $200,000.00 escrowed amount at the request of and on behalf of Defendant Johni Semma. Barry Steinway also indicates in his Affidavit that he "notified Johni Semma of all of the discovery issues including the entry of the defaults via telephone and email. Further, Johni Semma was present in court on at least 2 separate occasions on motion hearings regarding the discovery and default issues." In addition, Barry Steinway states in his Affidavit that he "kept Johni Semma informed of the status of the within lawsuit at all times." In support of Barry Steinway's assertions, Plaintiffs attach emails from Barry Steinway to Defendant Johni Semma concerning interrogatories, documents, Plaintiffs' January 2016 emergency motion, etc.

The Court finds that the contradictory Affidavit of Barry Steinway and the supporting emails have called into question the representations that Defendants made in their motion and during the

May 18, 2016 motion hearing regarding Barry Steinway's intentional withholding of discovery requests and orders as well as Defendant Semma's claim that the $55,000.00 was not withdrawn from the Bayside deposit.

For this reason, an evidentiary hearing is necessary to determine the veracity of Defendants' representations, which were the basis for relief from the Default as provided in the May 18, 2016 Order Regarding Motion. Counsel for the parties shall contact chambers forthwith to schedule an evidentiary hearing date.

IT IS SO ORDERED.

Dated: JUN 21 2016

Hon. Wendy Potts,
Circuit Court Judge