

STATE OF MICHIGAN



NINTH JUDICIAL CIRCUIT COURT
TRIAL DIVISION

RAGHURAM ELLURU, M.D.,

HON. PAMELA L. LIGHTVOET P47677

Plaintiff,

FILE NO. 2015-0575-CB

v

GREAT LAKES PLASTIC,
RECONSTRUCTIVE & HAND SURGERY,
P.C., a Michigan corporation, and
SCOTT D. HOLLEY, M.D., jointly and severally,

Defendants.

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**OPINION AND ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION OF
MARCH 18, 2016 OPINION AND ORDER**

At a session of said Court held in the
City and County of Kalamazoo, Michigan
on this 9 day of June, 2016;

HON. PAMELA L. LIGHTVOET, CIRCUIT JUDGE

Pending before the Court is Defendants' Motion for Reconsideration of this Court's March 18, 2016 Opinion and Order Denying Defendants' Motion for Summary Disposition and Granting Plaintiff's Motion for Summary Disposition.

On December 14, 2015, Defendants filed Defendants' Motion to Dismiss, and to Compel Arbitration and to Stay Proceedings and Response Opposing Motion for Preliminary Injunction. On

December 30, 2015, Plaintiff filed Plaintiff Raghuram Elluru, M.D.'s Motion for Summary Disposition. Oral arguments on both Motions were heard by this Court on January 22, 2016. This Court's written opinion titled Opinion and Order Denying Defendants' Motion for Summary Disposition and Granting Plaintiff's Motion for Summary Disposition was filed on March 18, 2016. This Court referenced Defendants' Motion to Dismiss, and to Compel Arbitration and to Stay Proceedings and Response Opposing Motion for Preliminary Injunction as Defendants' Motion for Summary Disposition as Defendants filed it as a single motion and cited MCR 2.116(C)(7). For clarification, this Court's Opinion and Order Denying Defendants' Motion for Summary Disposition and Granting Plaintiff's Motion for Summary Disposition denied the entirety of Defendants' Motion to Dismiss, and to Compel Arbitration and to Stay Proceedings and Response Opposing Motion for Preliminary Injunction and granted Plaintiff's Motion for Summary Disposition.

Under MCR 2.119(F)(3),

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.

Defendants argue that this Court has no jurisdiction under the Michigan Uniform Arbitration Act (MUAA) and that the Corporation is able "to function effectively in the best interests of its creditors and shareholders." These issues have already been addressed by the Court in its March 18, 2016 Opinion and Order. A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). The Court has reviewed Defendants' arguments and is not persuaded that its holding on these issues was error.

Next, Defendants argue that the Court's March 18, 2016 Opinion and Order uses the wrong legal test, and was decided under the wrong, earlier arbitration statute, which was repealed and replaced by the Michigan Uniform Arbitration Act. The Court does agree that the applicable test is under MCL

691.1686(2) which states that “[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.” However, this does not change the Court’s decision. An agreement to arbitrate did not exist between Dr. Elluru and Dr. Holley as the Employment Agreement was between Dr. Elluru and the Great Lakes Plastic, Reconstructive & Hand Surgery, P.C. (the Corporation). Dr. Holley did not have the authority to terminate Dr. Elluru on the Corporation’s behalf. Therefore, the Employment Agreement’s arbitration provision was not triggered.

Defendants also argue that all issues, including “conditions precedent” and “preliminary remedies” must be decided only by the arbitrator. Defendants cite MCL 691.1686(3) to argue that “[a]n arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.” However, MCL 691.1686(2) states that “[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.” The Court finds that the controversy was not subject to an agreement to arbitrate because the Employment Agreement containing the Arbitration Provision was between the Corporation and Dr. Elluru. Defendants also argue that the Court’s Opinion incorrectly finds that there has been no evidence presented to show that Plaintiff resigned. Defendants argue that Paragraph 7-G of the Employment Agreement only require a written notice of intention to terminate the Employment Agreement and Plaintiff’s statements to the employees, his e-mail message to Dr. Holley, and his attorney’s letters and messages, are all written notice of intention to terminate the Employment Agreement. Paragraph 7-G of the Employment Agreement states:

7. TERMINATION. This Employment Agreement shall automatically terminate upon the occurrence of any of the following events:

...

G. If either party acts to terminate this Employment Agreement with or without cause by giving to the other party 90 days **written** notice of intention to terminate this Employment Agreement. (Emphasis added).

Plaintiff’s statements to employees were statements, not written notices. The letters from Plaintiff’s attorney and Dr. Elluru’s e-mail message to Dr. Holley are not written notices to the Corporation of an

intention to terminate, but rather proposals or discussions between Dr. Elluru and Dr. Holley regarding dissolution. Therefore, the Court finds that Defendants have failed to demonstrate a palpable error by which the Court and the parties have been misled.

Next, Defendants argue that the Court's analysis of *Altobelli v Hartmann*, 307 Mich App 612 (2014) is incorrect. Defendants argue that "[t]he Employment Agreement here is between the 'Employer' (the Corporation) and the 'Employee' (Plaintiff) and that is what has occurred here." The Court agrees that the Employment Agreement is between the Corporation and Plaintiff. However, as the Court held, the Employment Agreement's Arbitration Provision was not triggered because Dr. Holley did not have the authority to terminate Plaintiff on the Corporation's behalf. Dr. Elluru filed suit against Dr. Holley, the Corporation is a defendant in this action because Dr. Elluru is seeking dissolution of the Corporation. Therefore, the Court finds that Defendants have failed to demonstrate a palpable error by which the Court and the parties have been misled.

Next, Defendants argue that on page 7 of the March 18, 2016 Opinion and Order, the Court finds that it was wrongful for the Corporation "to prohibit Dr. Elluru from working for five years." Defendants take this out of context. The Court's March 18, 2016 Opinion and Order states:

In Count II, Plaintiff argues that Dr. Holley violated MCL 450.1541a and Section 6.1 of the Bylaws when he attempted to force the sale of Dr. Elluru's shares, attempted to direct the Corporation to prohibit Dr. Elluru from working for five years, and attempted to discharge Dr. Elluru from employment.

The Court was summarizing Plaintiff's arguments, not holding that it was wrongful for the Corporation to prohibit Dr. Elluru from working for five years. Therefore, the Court finds that Defendants have failed to demonstrate a palpable error by which the Court and the parties have been misled.

Next, Defendants argue that "[t]he true effect of the Court's Opinion is that no corporation having equal stock ownership (50-50) can ever have an arbitration provision, ever have an employment agreement, or ever have a redemption agreement. That violates the MBCA." Defendants argue that the Court incorrectly determined that the operation of the Redemption Agreement would be somehow a

breach of fiduciary duty. The Court disagrees. The Court's March 18, 2016, Opinion and Order held that the act of Dr. Holley terminating Dr. Elluru was a breach of a fiduciary duty, stating that "Dr. Holley had a financial interest in terminating Dr. Elluru because it would give him control of the Corporation and it would allow him to acquire Dr. Elluru's shares for the adjusted net book value." Thus, the breach of fiduciary duty was not caused by the operation of the Redemption Agreement, but by the actions of Dr. Holley. Defendants also argue that Plaintiff gave notice of his intention to terminate his Employment Agreement, which resulted in his employment termination under ¶ 7-G, and invoked Dr. Elluru's Redemption Agreement. However, as discussed above, the Court finds that there has been no evidence presented to show that Plaintiff resigned. Therefore, the Court finds that Defendants have failed to demonstrate a palpable error by which the Court and the parties have been misled.

Defendants' last argument is that Plaintiff's unclean hands prohibit dissolution. The Court finds this argument to be without merit. The issues regarding whether there is a conflict of interest is a separate motion that is currently pending before this Court. It was not before the Court when the March 18, 2016 Opinion and Order was entered. Therefore, Defendants have not demonstrated a palpable error by which the court and the parties have been misled.

The Court finds that Defendants' Motion for Reconsideration fails to 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." MCR 2.119(F)(3). Therefore, Defendants' Motion for Reconsideration is **DENIED**.

IT IS SO ORDERED.

Date: June 9, 2016



HON. PAMELA L. LIGHTVOET (P47677)
Circuit Court Judge